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OF THE

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FROM

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MANILA
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 7944. June 3, 2013]

REX POLINAR DAGOHOY, *complainant, vs.* **ATTY. ARTEMIO V. SAN JUAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; NEGLIGENCE OF LAWYER, ESTABLISHED IN CASE AT BAR.— In *Dalisay Capili v. Atty. Alfredo L. Bentulan*, we held that the failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence. x x x In the *first place*, securing a copy of the case records was within Atty. San Juan's control and is a task that the lawyer undertakes. x x x *Second*, Atty. San Juan, unlike his client, knows or should have known, that filing an appellant's brief within the reglementary period is critical in the perfection of an appeal. x x x The preparation and the filing of the appellant's brief are matters of procedure that fully fell within the exclusive control and responsibility of Atty. San Juan. It was incumbent upon him to execute all acts and procedures necessary and incidental to the perfection of his client's appeal. *Third*, the records also disclose Atty. San Juan's lack of candor in dealing with his client. x x x Atty. San Juan's negligence undoubtedly violates the Lawyer's Oath that requires him to

"*conduct [himself] as a lawyer according to the best of (his) knowledge and discretion, with all good fidelity as well to the courts as to (his) clients[.]"* He also violated Rule 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility. x x x "It is a fundamental rule of ethics that 'an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.'" It was Atty. San Juan's bounden duty to see his cases through until proper completion; he could not abandon or neglect them in midstream, in the way he did with the complainant's case.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— In *Pineda v. Atty. Macapagal*, we imposed a one (1) year suspension from the practice of law on a lawyer who, like Atty. San Juan, had been found guilty of gross negligence in handling his client's case. With this case as the norm, we hold that Atty. San Juan should be meted a suspension of one (1) year from the practice of law for his negligence and inadequacies in handling his client's case. x x x Atty. San Juan's self-imposed compliance with the IBP's recommended penalty of three (3) months suspension was premature. The wordings of the Resolution dated April 16, 2012 show that the Court merely noted: (1) the IBP's findings and the recommended penalty against Atty. San Juan; and (2) the IBP referral of the case back to the Court for its proper disposition. ***The IBP findings and the stated penalty thereon are merely recommendatory; only the Supreme Court has the power to discipline erring lawyers and to impose against them penalties for unethical conduct. Until finally acted upon by the Supreme Court, the IBP findings and the recommended penalty imposed cannot attain finality until adopted by the Court as its own.*** Thus, the IBP findings, by themselves, cannot be a proper subject of implementation or compliance.

APPEARANCES OF COUNSEL

Leonar Law Office for complainant.

D E C I S I O N

BRION,* *J.*:

For consideration are: (1) the letter[1] dated August 28, 2012 of respondent Atty. Artemio V. San Juan informing the Court of his compliance with the Court's Resolution[2] dated April 16, 2012; and (2) the Report and Recommendation[3] dated January 14, 2013 of the Office of the Bar Confidant.

The Facts

Atty. San Juan was administratively charged for gross negligence, in connection with the dismissal of his client's appeal filed before the Court of Appeals (*CA*). Tomas Dagohoy (*Tomas*), his client and the father of complainant Rex Polinar Dagohoy, was charged with and convicted of theft by the Regional Trial Court, Branch 34, of Panabo City, Davao del Norte.[4] According to the complainant, the CA dismissed the appeal for Atty. San Juan's failure to file the appellant's brief.[5] He further alleged that Atty. San Juan did not file a motion for reconsideration against the CA's order of dismissal.[6]

The complainant also accused Atty. San Juan of being untruthful in dealing with him and Tomas. The complainant, in this regard, alleged that Atty. San Juan failed to inform him and Tomas of the real status of Tomas' appeal and did not disclose to them the real reason for its dismissal.[7]

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] *Rollo*, p. 112.

[2] *Id.* at 120.

[3] *Id.*, pages unnumbered.

[4] Docketed as Crim. Case No. 99-12; *id.* at 9-14.

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

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

[7] *Ibid.*

In his comment,[8] Atty. San Juan denied the charge. He imputed fault on Tomas for failing to furnish him a copy of the case records to enable him to prepare and file the appellant's brief. He claimed that he tried to save the situation but a rich niece of Tomas dismissed him and prevented him from further acting on the case.

The IBP's Report and Recommendation

After receipt of Atty. San Juan's comment, the Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.[9]

On September 15, 2009, Investigating Commissioner Salvador B. Hababag found Atty. San Juan negligent and recommended the penalty of three (3) months suspension from the practice of law.[10] The Investigating Commissioner opined:

> Under Section 7, Rule 44 of the same Rules, the period within which Appellant should file his Brief is limited only to forty five (45) days, unless an extension of time to file briefs has been granted by the Court upon good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended. However, up to the present or for a period of almost one (1) year, Accused Appellant neither moved for extension of time to file nor filed his brief.[11]

In Resolution No. XIX-2011-305 dated May 15, 2011, the IBP Board of Governors unanimously approved the findings of the Investigating Commissioner.[12]

The IBP refers its findings to the Court

The complainant and Atty. San Juan did not file a motion for reconsideration against Resolution No. XIX-2011-305 dated

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[8] *Id.* at 53-55.

[9] *Id.* at 63.

[10] *Id.* at 106-111.

[11] *Id.* at 110-111.

[12] *Id.* at 104-105.

May 15, 2011. The IBP thereafter submitted its findings to the Court.

In our Resolution dated April 16, 2012, we resolved:

A.C. No. 7944 (*Rex Polinar Dagohoy vs. Artemio V. San Juan)*. — The Court **NOTES** the Notice of Resolution No. XIX-2011-305 dated 15 May 2011 of the IBP Board of Governors which adopted and approved the report and recommendation of the Investigating Commissioner finding the same to be fully supported by the evidence on record and applicable laws and rules, and finding respondent guilty of gross negligence, ordered the suspension of Atty. Artemio V. San Juan from the practice of law for three (3) months; transmitted by letter dated 16 January 2012 of Acting Director Dennis A.B. Funa, IBP Commission on Bar Discipline, together with the records of the case and the notation that no motion for reconsideration was filed by either party.[13] (emphases and italics supplied)

Atty. San Juan's letter dated August 28, 2012 and motion to lift suspension from the practice of law

In a letter dated August 28, 2012, Atty. San Juan manifested his compliance with the April 16, 2002 Resolution and prayed for the lifting of his suspension. He stated that:

This will please confirm receipt on May 31, 2012 of a Resolution dated 16 April 2012, by the Hon. Supreme Court, Second Division, Baguio City, ordering my suspension from the practice of law for three (3) months. Upon receipt of the notice on May 31, 2012, I personally informed the Presiding Judge of the [c]ourts where I have been handling cases by showing to them the above-mentioned notice from the High Court.[14]

In its Report and Recommendation dated January 14, 2013, the Office of the Bar Confidant recommended:

1. A resolution, whether to adopt or modify the penalty imposed on the respondent as recommended by the IBP, be now issued;

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[13] *Id.* at 120.

[14] *Id.* at 112.

2. For purposes of determining the effectivity of the order of suspension, respondent be REQUIRED to notify the Court of the date of x x x the said resolution;

3. After the lapse of the entire duration of the order of suspension, the respondent be REQUIRED to file a sworn manifestation, with attachment of certifications from the IBP Local Chapter where he belongs and the Office of the Executive Judge of the court where he practices his profession, all stating that he has ceased and desisted from the practice of law (stating the date of the start of suspension up to the end of the period of suspension).[15]

The Court's Ruling

Except for the recommended penalty, we adopt the findings of the IBP.

In *Dalisay Capili v. Atty. Alfredo L. Bentulan*,[16] we held that the failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence. In this case, Atty. San Juan's negligence in handling his client's appeal was duly established by the records and by his own admission. We cannot accept as an excuse the alleged lapse committed by his client in failing to provide him a copy of the case records.

In the *first place*, securing a copy of the case records was within Atty. San Juan's control and is a task that the lawyer undertakes. We note that Atty. San Juan received a notice dated April 19, 2005[17] from CA Clerk of Court Beverly S. Beja informing him that the case records were already complete and at his disposal for the preparation of the brief.

Second, Atty. San Juan, unlike his client, knows or should have known, that filing an appellant's brief within the reglementary period is critical in the perfection of an appeal.

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[15] *Id.*, pages unnumbered.

[16] A.C. No. 5862; through an extended resolution dated October 12, 2011.

[17] *Rollo*, p. 46.

In this case, Atty. San Juan was directed to file an appellant's brief within thirty (30) days from receipt of the notice dated April 19, 2005 sent by CA Clerk of Court Beja.

The preparation and the filing of the appellant's brief are matters of procedure that fully fell within the exclusive control and responsibility of Atty. San Juan. It was incumbent upon him to execute all acts and procedures necessary and incidental to the perfection of his client's appeal.

Third, the records also disclose Atty. San Juan's lack of candor in dealing with his client. He omitted to inform Tomas of the progress of his appeal with the CA.[18] Worse, he did not disclose to Tomas the real reason for the CA's dismissal of the appeal.[19] Neither did Atty. San Juan file a motion for reconsideration to address the CA's order of dismissal, or otherwise resort to available legal remedies that might have protected his client's interest.

Atty. San Juan's negligence undoubtedly violates the Lawyer's Oath that requires him to "*conduct [himself] as a lawyer according to the best of (his) knowledge and discretion, with all good fidelity as well to the courts as to (his) clients[.]"* He also violated Rule 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, which provide:

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

xxx xxx xxx

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

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

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[18] Affidavit of Merit dated January 24, 2008 of Tomas and Affidavit–Complaint dated November 14, 2007 of the complainant; *id.* at 15-16 and 27-28, respectively.

[19] *Ibid.*

"It is a fundamental rule of ethics that 'an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.'"[20] It was Atty. San Juan's bounden duty to see his cases through until proper completion; he could not abandon or neglect them in midstream,[21] in the way he did with the complainant's case.

In light of these considerations, we find the IBP's recommended penalty of three (3) months suspension from the practice of law not commensurate to the gravity of the infractions committed; as described above, these infractions warrant the imposition of a stiffer sanction. We take into account the following acts, omissions, and consequence attendant to Atty. San Juan's inadequacies: first, the negligence in handling his client's appeal; second, his failure to act candidly and effectively in communicating information to his client; and more importantly, third, the serious and irreparable consequence of his admitted negligence which deprived his client of legal remedies in addressing his conviction.

In *Pineda v. Atty. Macapagal*,[22] we imposed a one (1) year suspension from the practice of law on a lawyer who, like Atty. San Juan, had been found guilty of gross negligence in handling his client's case. With this case as the norm, we hold that Atty. San Juan should be meted a suspension of one (1) year from the practice of law for his negligence and inadequacies in handling his client's case.

Finally, we deny Atty. San Juan's motion to lift the order of suspension. Atty. San Juan's self-imposed compliance with the IBP's recommended penalty of three (3) months suspension was premature. The wordings of the Resolution dated April 16, 2012 show that the Court merely noted: (1) the IBP's findings and the recommended penalty against Atty. San Juan; and (2) the IBP referral of the case back to the Court for its proper disposition. ***The IBP findings and the stated penalty thereon are merely***

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[20] *Zarate-Bustamante v. Atty. Libatique*, 418 Phil. 249, 255 (2001).

[21] *Ibid.*

[22] 512 Phil. 668, 672 (2005).

recommendatory; only the Supreme Court has the power to discipline erring lawyers and to impose against them penalties for unethical conduct.[23] ***Until finally acted upon by the Supreme Court, the IBP findings and the recommended penalty imposed cannot attain finality until adopted by the Court as its own***. Thus, the IBP findings, by themselves, cannot be a proper subject of implementation or compliance.[24]

WHEREFORE, premises considered, the Court resolves to:

1. **NOTE** the Report and Recommendation dated January 14, 2013 of the Office of the Bar Confidant;
2. **SUSPEND** from the practice of law for a period of one (1) year Atty. Artemio V. San Juan for violating his Lawyer's Oath and Rules 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, with a **WARNING** that the commission of the same or similar act or acts shall be dealt with more severely; and
3. **DENY** the motion filed by Atty. Artemio V. San Juan in the letter dated August 28, 2012 that he be allowed to return to the practice of law.

Let copies of this Decision be furnished to all courts. The Office of the Bar Confidant is instructed to include a copy of this Decision in Atty. San Juan's file.

SO ORDERED.

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

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[23] 1987 Constitution, Article VIII, Section 15.

[24] *Lourdes Corres v. Atty. Juan A. Abaya, Jr.,* A.C. No. 2983; through an extended Resolution dated February 29, 2012.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013.

THIRD DIVISION

[A.M. No. P-10-2879. June 3, 2013]
(Formerly A.M. OCA I.P.I. No. 09-3048-P)

AUXENCIO JOSEPH B. CLEMENTE, Clerk of Court, Metropolitan Trial Court, Branch 48, Pasay City, *complainant, vs.* **ERWIN E. BAUTISTA, Clerk III, Metropolitan Trial Court, Branch 48, Pasay City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; RESPONDENT'S INDIFFERENCE TO AND DISREGARD OF THE DIRECTIVES ISSUED TO HIM BY THE OFFICE OF THE COURT ADMINISTRATOR CLEARLY CONSTITUTED INSUBORDINATION; CASE AT BAR.— We would like to stress that all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. These directives are not mere requests but should be complied with promptly and completely. Clearly, respondent's indefensible disregard of the orders of the OCA, as well as of the complainant and Judge Manodon, for him to comment on the complaint and to explain his infractions, shows his disrespect for and contempt, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA. His indifference to, and disregard of, the directives issued to him clearly constituted insubordination. Compliance with the directive to comment on complaints filed against court personnel is not an empty requirement.

2. ID.; ID.; ID.; NEGLECT OF DUTY; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY; SIMPLE NEGLECT OF DUTY; ESTABLISHED IN CASE AT BAR.— Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, from the gravity of the case or the frequency

of instances, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect or intentional official wrongdoing. Simple neglect of duty, on the other hand, signifies a disregard of a duty resulting from carelessness or indifference. In this case, we agree with the OCA that respondent is liable for simple neglect of duty. In the November 15, 2005 Memorandum, respondent had already been made to explain why mail preparation has always been delayed and why he failed to compute the number of "CFM" cases. In Memorandum No. 08-01 issued by Judge Manodon, respondent was required to explain the delay in mailing the subpoena and notices of hearing in several cases. In the July 29, 2008 Memorandum issued by complainant, respondent was required to show proofs of mailing of the court's orders to a certain Mr. Ferdinand Cruz relative to several cases. No such explanation was made by respondent. Neither did he defend himself before the Court by his failure to file the required comment. Evidently, he neglected his duty because of his indifference. Thus, the OCA is correct in making him liable for simple neglect of duty.

3. ID.; ID.; CIVIL SERVICE RULES; THE PENALTY TO BE IMPOSED ON AN EMPLOYEE WHO IS GUILTY OF TWO OR MORE OFFENSES IS THAT CORRESPONDING TO THE MOST SERIOUS OFFENSE; APPLICATION IN CASE AT BAR.— Under the Civil Service Rules, the penalty that should be imposed on an employee who is guilty of two or more offenses is that corresponding to the most serious offense. The rest of the offenses shall be considered as aggravating circumstances only. Respondent is liable for three offenses, namely, insubordination, simple neglect of duty and violation of office rules and regulations. Under the *Uniform Rules on Administrative Cases in the Civil Service*, simple neglect of duty is a less grave offense wherein the imposable penalty is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. The Rules prescribe the same penalty for insubordination. For violation of reasonable office rules and regulations, reprimand is the imposable penalty for the first offense. In view of the circumstances, respondent should be meted the maximum penalty of suspension for six (6) months. Considering, however, that respondent had already been dropped from the rolls, having been AWOL per Resolution of

the Court, dated December 16, 2009, in A.M. No. 09-11-192-MeTC, such penalty is no longer practicable. Hence, we deem it proper to impose the penalty of fine equivalent to his three (3) months salary.

D E C I S I O N

PERALTA, *J.*:

This is an administrative case against respondent Erwin E. Bautista initiated by complainant Auxencio Joseph B. Clemente in his Affidavit-Complaint[1] for *Gross Insubordination, Gross Inefficiency, Gross Neglect of Duty, Grave Misconduct, Discourtesy, Laziness and Other Acts Prejudicial to the Interest of the Public Service*, dated January 15, 2009.

Respondent was an employee of the Metropolitan Trial Court, Branch 48 of Pasay City occupying the position of Clerk III whose assigned tasks include preparation of mails, docketing and indexing of criminal cases, and such other tasks as may be assigned to him by the Presiding Judge or the Branch Clerk of Court, the complainant herein.[2] Respondent's acts constituting the alleged administrative cases as enumerated above were embodied in various Memoranda issued by complainant to respondent.

In the November 15, 2005 Memorandum Re: Absences,[3] respondent was required to submit a written explanation why no disciplinary action should be taken against him for incurring absences (extended at times) without notice to the office and thus resulting in his failure to perform his job of preparing mails and computing the number of "CFM" cases. Another Memorandum[4] was served on respondent, dated January 17, 2006, requiring him

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[1] *Rollo*, pp. 2-7.

[2] *Id.* at 2.

[3] *Id.* at 8.

[4] *Id.* at 9.

to explain why he should not be recommended for suspension from service for failure to comply with the first memorandum, for incurring yet another unauthorized absences, for sleeping during office hours inside the courtroom while the court was in session, for spending more time for merienda, chatting inside the office, and loitering during office hours. On September 20, 2006, respondent was again served a Memorandum[5] with an order that he explain why he should not be considered absent without official leave (AWOL) because of his prolonged absences. On January 30, 2007, respondent's attention was again called, still because of his absences, his act of dishonesty by making it appear in his bundy card that he was in the office but he was not, and his acts of discourtesy and insubordination because he was still munching food when he entered the courtroom.[6]

On July 29, 2008, respondent was made to submit proofs of mailing in answer to Mr. Ferdinand Cruz's complaint of non-receipt of Orders from the court. Finally, in a Memorandum[7] dated August 20, 2008, respondent was made to explain why no administrative or criminal cases should be filed against him and why he should not be recommended for dropping from the rolls, for his failure to comply with the Memoranda previously issued. Meanwhile, on June 3, 2008, Judge Catherine P. Manodon (Judge Manodon) issued respondent Memorandum No. 08-01[8] requiring him to explain why he should not be dropped from the rolls for his continued unauthorized absences which greatly affected the service and the court proceedings. His absences, according to Judge Manodon, are the reasons why subpoenae and notices of hearing were belatedly sent to parties forcing the court to reset the cases contributing to the delayed disposition of cases.

Complainant further claims that when respondent was given an Unsatisfactory rating in his performance evaluation because

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[5] *Id.* at 10.

[6] Memorandum No. 01-07, *id.* at 11.

[7] *Rollo*, p. 17.

[8] *Id.* at 13-14.

of the above acts, he refused to sign the form indicating his defiance and disrespect to his superior.[9]

In its 1st Indorsement[10] dated February 2, 2009, the Office of the Court Administrator (OCA) referred the complaint to respondent for Comment. In his letter[11] dated February 20, 2009, respondent manifested his intention to comment on the complaint but asked for extension within which to do it as he needed to study and verify the documents attached to the complaint. Despite the granting of said motion for extension,[12] respondent still failed to comply with the OCA's directive. On May 4, 2009, the OCA sent respondent a Tracer Letter[13] informing him of his failure to file his comment and reiterating the directive to comply, otherwise, the case will be submitted for decision without his comment. To date, no comment was filed by respondent.

In a Resolution[14] dated December 8, 2010, the Court required the parties to manifest whether they are willing to submit the matter for resolution on the basis of the pleadings filed and the records submitted. For failure of both parties to make such manifestation, the Court deemed the parties to have submitted the case for resolution on the basis of the records on file.[15]

The OCA found merit in the complaint.

The OCA finds respondent liable for gross insubordination for the countless times that he failed to explain his unauthorized absences and poor performance as well as his failure to submit his comment on the complaint in this case.[16] Respondent is also guilty of simple

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[9] Memorandum dated January 17, 2006, *id.* at 9.

[10] *Rollo*, p. 19.

[11] *Id.* at 20.

[12] *Id.* at 22.

[13] *Id.* at 26.

[14] *Id.* at 37.

[15] Resolution dated August 8, 2011, *id.* at 41.

[16] OCA Memorandum dated August 12, 2010, *id.* at 32.

neglect of duty for not giving attention to his assigned tasks.[17] The OCA likewise makes respondent liable for violation of office rules and regulations for non-observance with the prescribed office hours and the effective use of every moment thereof for public service.[18] With these infractions, the OCA finds the penalty of suspension for one year proper.[19] Considering, however, that he has been dropped from the rolls, the OCA recommends that he be fined ₱40,000.00 payable directly to the Court.[20]

The findings and recommendation of the OCA are well-taken. We find respondent guilty of insubordination, simple neglect of duty and violation of reasonable office rules and regulations.

Respondent has been served several Memoranda on various dates requiring him to explain the complained acts but not a single occasion did he comply with the orders of his superior. Clearly, this shows his propensity to disregard and disobey lawful orders of his superior.[21] The Court also notes that when the OCA required him to comment on the complaint against him, respondent initially asked for extension within which to file the same, but to this date, no such compliance was made.

We would like to stress that all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. These directives are not mere requests but should be complied with promptly and completely.[22] Clearly, respondent's indefensible disregard of the orders of the OCA, as well as of the complainant and Judge Manodon, for

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[17] *Id*.

[18] *Id.* at 33.

[19] *Id*.

[20] *Id.* at 34.

[21] *Alvarez v. Bulao*, 512 Phil. 26, 33 (2005).

[22] *Gonzalez v. Torres*, A.M. No. MTJ-06-1653 (Formerly OCA I.P.I. No. 03-1498-MTJ), July 30, 2007, 528 SCRA 490, 503-504.

him to comment on the complaint and to explain his infractions, shows his disrespect for and contempt, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA.[23] His indifference to, and disregard of, the directives issued to him clearly constituted insubordination.[24]

Compliance with the directive to comment on complaints filed against court personnel is not an empty requirement. As the Court held in *Mendoza v. Tablizo:*[25]

> x x x Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. This Court, being the agency exclusively vested by the Constitution with administrative supervision over all courts, can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.[26]

It is likewise evident from the complaint and the attached memorandum served on respondent that respondent had been remiss in performing his assigned tasks, especially the preparation of mail matters because of his unauthorized absences. Several cases were, in fact, rescheduled because notices were belatedly sent to the parties. The OCA characterizes this infraction as simple neglect of duty.

Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect

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[23] *Tan v. Sermonia,* A.M. No. P-08-2436 (Formerly OCA I.P.I. No. 06-2394-P, August 4, 2009), 595 SCRA 1, 13; *Judge Florendo v. Cadano,* 510 Phil. 230, 235 (2005).

[24] *Alvarez v. Bulao, supra* note 21, at 34; *Re: Request of Mr. Melito E. Cuadra, Process Server, RTC, Br. 100, Quezon City to the RTC, Br. 18, Tagaytay City,* 460 Phil. 115, 119 (2003).

[25] A.M. No. P-08-2553, August 28, 2009, 597 SCRA 381.

[26] *Mendoza v. Tablizo, supra,* at 389-390.

which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.[27] The term does not necessarily include willful neglect or intentional official wrongdoing.[28] Simple neglect of duty, on the other hand, signifies a disregard of a duty resulting from carelessness or indifference.[29]

In this case, we agree with the OCA that respondent is liable for simple neglect of duty. In the November 15, 2005 Memorandum, respondent had already been made to explain why mail preparation has always been delayed and why he failed to compute the number of "CFM" cases. In Memorandum No. 08-01 issued by Judge Manodon, respondent was required to explain the delay in mailing the subpoena and notices of hearing in several cases. In the July 29, 2008 Memorandum issued by complainant, respondent was required to show proofs of mailing of the court's orders to a certain Mr. Ferdinand Cruz relative to several cases. No such explanation was made by respondent. Neither did he defend himself before the Court by his failure to file the required comment. Evidently, he neglected his duty because of his indifference. Thus, the OCA is correct in making him liable for simple neglect of duty.

Complainant likewise claims that respondent's attention had been called several times because of his acts of sleeping during office hours, loitering around the premises, and munching food while inside the courtroom. Respondent's failure to explain his side is tantamount to his admission of the charges against him. He definitely failed to strictly observe working hours and, as aptly held by the OCA, these acts constitute violation of office rules and regulations.

Now on the proper penalty.

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[27] *Marquez v. Pablico*, A.M. No. P-06-2201 (Formerly A.M. OCA I.P.I. No. 03-1649-P), June 30, 2008, 556 SCRA 531, 537-538; *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna*, 521 Phil. 1, 18 (2006).

[28] *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna, supra.*

[29] *Seangio v. Parce*, 553 Phil. 697, 710 (2007).

Under the Civil Service Rules, the penalty that should be imposed on an employee who is guilty of two or more offenses is that corresponding to the most serious offense. The rest of the offenses shall be considered as aggravating circumstances only.[30]

Respondent is liable for three offenses, namely, insubordination, simple neglect of duty and violation of office rules and regulations. Under the *Uniform Rules on Administrative Cases in the Civil Service,* simple neglect of duty is a less grave offense wherein the imposable penalty is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation.[31] The Rules prescribe the same penalty for insubordination.[32] For violation of reasonable office rules and regulations, reprimand is the imposable penalty for the first offense. In view of the circumstances, respondent should be meted the maximum penalty of suspension for six (6) months. Considering, however, that respondent had already been dropped from the rolls, having been AWOL per Resolution of the Court, dated December 16, 2009, in A.M No. 09-11-192-MeTC,[33] such penalty is no longer practicable. Hence, we deem it proper to impose the penalty of fine equivalent to his three (3) months salary.

WHEREFORE, premises considered, respondent Erwin E. Bautista is hereby found **GUILTY** of Insubordination, Simple Neglect of Duty and Violation of Reasonable Office Rules and Regulations, and is meted the penalty of **FINE** equivalent to his three (3) months salary.

SO ORDERED.

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

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[30] *Atty. Talion v. Ayupan,* 425 Phil. 41, 53-54 (2002).

[31] *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna, supra* note 27, at 19-20.

[32] *Re: Request of Mr. Melito E. Cuadra, Process Server, RTC, Br. 100, Quezon City to the RTC, Br. 18, Tagaytay City, supra* note 24, at 120.

[33] *Re: Dropping from the Rolls of Mr. Erwin E. Bautista, Clerk III, Metropolitan Trial Court, Br. 48, Pasay City.*

SECOND DIVISION

[G.R. No. 171692. June 3, 2013]

SPOUSES DELFIN O. TUMIBAY and AURORA T. TUMIBAY-deceased; GRACE JULIE ANN TUMIBAY MANUEL, legal representative, *petitioners, vs.* **SPOUSES MELVIN A. LOPEZ and ROWENA GAY T. VISITACION LOPEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE APPELLATE COURT; GENERALLY NOT DISTURBED BY THE SUPREME COURT; EXCEPTION.— As a general rule, we do not disturb the factual findings of the appellate court. However, this case falls under one of the recognized exceptions thereto because the factual findings of the trial court and appellate court are conflicting.

2. CIVIL LAW; CONTRACTS; CONTRACT TO SELL; DEFINED AND CONSTRUED.— A contract to sell has been defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price." In a contract to sell, "ownership is retained by the seller and is not to pass until the full payment of the price x x x." It is "commonly entered into so as to protect the seller against a buyer who intends to buy the property in installment[s] by withholding ownership over the property until the buyer effects full payment therefor."

3. ID.; ID.; RESCISSION OF CONTRACT; BUYER'S ACT OF TRANSFERRING TITLE OF SUBJECT LAND TO HIS/HER NAME DESPITE NON-PAYMENT OF FULL PRICE AND WITHOUT KNOWLEDGE OF SELLER CONSTITUTES SUBSTANTIAL AND FUNDAMENTAL BREACH OF

CONTRACT WHICH ENTITLES THE SELLER TO RESCISSION OF CONTRACT; CASE AT BAR.— As a general rule, "rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement." In the case at bar, we find that respondent Rowena's act of transferring the title to the subject land in her name, without the knowledge and consent of petitioners and despite non-payment of the full price thereof, constitutes a substantial and fundamental breach of the contract to sell. As previously noted, the main object or purpose of a seller in entering into a contract to sell is to protect himself against a buyer who intends to buy the property in installments by withholding ownership over the property until the buyer effects full payment therefor. As a result, the seller's obligation to convey and the buyer's right to conveyance of the property arise only upon full payment of the price. Thus, a buyer who willfully contravenes this fundamental object or purpose of the contract, by covertly transferring the ownership of the property in his name at a time when the full purchase price has yet to be paid, commits a substantial and fundamental breach which entitles the seller to rescission of the contract.

4. ID.; DAMAGES; MORAL DAMAGES; WHERE FRAUD AND BAD FAITH HAVE BEEN ESTABLISHED, AWARD OF MORAL DAMAGES IS PROPER; PRESENT IN CASE AT BAR.— Fraud or malice (*dolo*) has been defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" and is, thus, incompatible with good faith. In the case at bar, we find that respondent Rowena was guilty of fraud in the performance of her obligation under the subject contract to sell because (1) she knew that she had not yet paid the full price (having paid only 32.58% thereof) when she had the title to the subject land transferred to her name, and (2) she orchestrated the aforesaid transfer of title without the knowledge and consent of petitioners. Her own testimony and documentary evidence established this fact. Where fraud and bad faith have been established, the award of moral damages is proper. Further, under Article 2208(2) of the Civil Code, the award of attorney's fees is proper where the plaintiff is compelled to litigate with third persons or incur expenses to protect his interest because of the defendant's act or omission. Here, respondent Rowena's aforesaid acts caused petitioners to

incur expenses in litigating their just claims. We, thus, find respondent Rowena liable for moral damages and attorney's fees which we fix at ₱100,000.00 and ₱50,000.00, respectively.

APPEARANCES OF COUNSEL

Abundio L. Okit for petitioners.
Barroso Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In a contract to sell, the seller retains ownership of the property until the buyer has paid the price in full. A buyer who covertly usurps the seller's ownership of the property prior to the full payment of the price is in breach of the contract and the seller is entitled to rescission because the breach is substantial and fundamental as it defeats the very object of the parties in entering into the contract to sell.

This Petition for Review on *Certiorari*[1] assails the May 19, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 79029, which reversed the January 6, 2003 Decision[3] of the Regional Trial Court (RTC) of Malaybalay City, Branch 9 in Civil Case No. 2759-98, and the February 10, 2006 Resolution[4]

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[1] *Rollo*, pp. 6-41.

[2] *Id.* at 43-53; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

[3] *Id.* at 107-128; penned by Judge Rolando S. Venadas, Sr.

[4] *Id.* at 72-73; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

denying petitioner-spouses Delfin O. Tumibay and Aurora[5] T. Tumibay's Motion for Reconsideration.[6]

Factual Antecedents

On March 23, 1998, petitioners filed a Complaint[7] for declaration of nullity *ab initio* of sale, and recovery of ownership and possession of land with the RTC of Malaybalay City. The case was raffled to Branch 9 and docketed as Civil Case No. 2759-98.

In their Complaint, petitioners alleged that they are the owners of a parcel of land located in Sumpong, Malaybalay, Bukidnon covered by Transfer Certificate of Title (TCT) No. T-25334[8] (subject land) in the name of petitioner Aurora; that they are natural born Filipino citizens but petitioner Delfin acquired American citizenship while his wife, petitioner Aurora, remained a Filipino citizen; that petitioner Aurora is the sister of Reynalda Visitacion (Reynalda);[9] that on July 23, 1997, Reynalda sold the subject land to her daughter, Rowena Gay T. Visitacion Lopez (respondent Rowena), through a deed of sale[10] for an unconscionable amount of ₱95,000.00 although said property had a market value of more than ₱2,000,000.00; that the subject sale was done without the knowledge and consent of petitioners; and that, for these fraudulent acts, respondents should be held liable for damages. Petitioners prayed that (1) the deed of sale dated July 23, 1997 be declared void *ab initio*, (2) the subject land be reconveyed to petitioners, and (3) respondents be ordered to pay damages.

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[5] Deceased and substituted by her daughter, Grace Julie Ann Tumibay-Manuel, and surviving spouse, petitioner Delfin, as per our Resolution dated February 15, 2012 (*Id.* at 251).

[6] CA *rollo*, pp. 98-124.

[7] Records, pp. 1-4.

[8] Folder of Exhibits, unpaginated.

[9] Deceased and substituted by her daughters, Blesilda V. Coruna and respondent Rowena, as per the trial court's Order dated August 19, 1999 (Records, p. 57).

[10] Folder of Exhibits, unpaginated.

On May 19, 1998, respondents filed their Answer[11] with counterclaim. Respondents averred that on December 12, 1990, petitioners executed a special power of attorney (SPA)[12] in favor of Reynalda granting the latter the power to offer for sale the subject land; that sometime in 1994, respondent Rowena and petitioners agreed that the former would buy the subject land for the price of ₱800,000.00 to be paid on installment; that on January 25, 1995, respondent Rowena paid in cash to petitioners the sum of $1,000.00; that from 1995 to 1997, respondent Rowena paid the monthly installments thereon as evidenced by money orders; that, in furtherance of the agreement, a deed of sale was executed and the corresponding title was issued in favor of respondent Rowena; that the subject sale was done with the knowledge and consent of the petitioners as evidenced by the receipt of payment by petitioners; and that petitioners should be held liable for damages for filing the subject Complaint in bad faith. Respondents prayed that the Complaint be dismissed and that petitioners be ordered to pay damages.

On May 25, 1998, petitioners filed an Answer to Counterclaim.[13] Petitioners admitted the existence of the SPA but claimed that Reynalda violated the terms thereof when she (Reynalda) sold the subject land without seeking the approval of petitioners as to the selling price. Petitioners also claimed that the monthly payments from 1995 to 1997 were mere deposits as requested by respondent Rowena so that she (Rowena) would not spend the same pending their agreement as to the purchase price; and that Reynalda, acting with evident bad faith, executed the deed of sale in her favor but placed it in the name of her daughter, respondent Rowena, which sale is null and void because an agent cannot purchase for herself the property subject of the agency.

Ruling of the Regional Trial Court

On January 6, 2003, the RTC rendered a Decision in favor of petitioners, *viz*:

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[11] Records, pp. 9-14.

[12] Folder of Exhibits, unpaginated.

[13] Records, pp. 40-42.

WHEREFORE**,** Decision is hereby rendered, as follows;

(1) Ordering the [petitioners], jointly and severally, to return the said amount of $12,000.00 at the present rate of exchange less the expenses to be incurred for the transfer of the property in question under the name of the [petitioners];

(2) Ordering the Register of Deeds of Bukidnon to cancel TCT No. T-62674 in the name of the [respondent] Rowena Gay T. Visitacion-Lopez and to issue a new TCT in the name of the [petitioners];

(3) Ordering [respondents,] spouses Melvin and Rowena Gay Lopez[,] to execute a Deed of Reconveyance in favor of the [petitioners], or if said [respondents] should refuse to do so or [are] unable to do so, the Clerk of Court of the RTC and *ex-officio* Provincial Sheriff to execute such Deed of Reconveyance;

(4) No x x x damages are awarded. The respective parties must bear their own expenses except that [respondents], jointly and severally, must pay the costs of this suit.

SO ORDERED.[14]

In ruling in favor of petitioners, the trial court held: (1) the SPA merely authorized Reynalda to offer for sale the subject land for a price subject to the approval of the petitioners; (2) Reynalda violated the terms of the SPA when she sold the subject land to her daughter, respondent Rowena, without first seeking the approval of petitioners as to the selling price thereof; (3) the SPA does not sufficiently confer on Reynalda the authority to sell the subject land; (4) Reynalda, through fraud and with bad faith, connived with her daughter, respondent Rowena, to sell the subject land to the latter; and, (5) the sale contravenes Article 1491, paragraph 2, of the Civil Code which prohibits the agent from acquiring the property subject of the agency unless the consent of the principal has been given. The trial court held that Reynalda, as agent, acted outside the scope of her authority under the SPA. Thus, the sale is null and void and the subject land should be reconveyed to petitioners. The

[14] *Id.* at 122.

trial court further ruled that petitioners are not entirely free from liability because they received from respondent Rowena deposits totaling $12,000.00. Under the principle of unjust enrichment, petitioners should, thus, be ordered to reimburse the same without interest.

Petitioners filed a partial motion for reconsideration[15] praying for the award of attorney's fees. In its January 14, 2003 Order[16] denying the aforesaid motion, the trial court clarified that the reimbursement of $12,000.00 in favor of respondents was without interest because there was also no award of rental income in favor of petitioners. Both parties are deemed mutually compensated and must bear their own expenses.

From this Decision, respondents appealed to the CA.

Ruling of the Court of Appeals

On May 19, 2005, the CA rendered the assailed Decision reversing the judgment of the trial court, *viz*:

> **WHEREFORE**, premises considered, the appealed Decision of the Court *a quo* is hereby **REVERSED** and **SET ASIDE**. Accordingly, title to the subject property shall remain in the name of the Appellant **ROWENA GAY VISITACION-LOPEZ**. The latter and her spouse **MELVIN LOPEZ** are directed to pay the balance of Four Hundred Eighty Eight Thousand Pesos (₱488,000.00) to the [petitioners] effective within 30 days from receipt of this Decision and in case of delay, to pay the legal rate of interests [sic] at 12% per annum until fully paid.
>
> **SO ORDERED**.[17]

In reversing the trial court's Decision, the appellate court ruled that: (1) the SPA sufficiently conferred on Reynalda the authority to sell the subject land; (2) although there is no direct evidence of petitioners'

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[15] *Id.* at 124-126.

[16] *Id.* at 131.

[17] *Rollo*, pp. 52-53. Emphases in the original.

approval of the selling price of the subject land, petitioner Aurora's acts of receiving two money orders and several dollar checks from respondent Rowena over the span of three years amount to the ratification of any defect in the authority of Reynalda under the SPA; (3) petitioners are estopped from repudiating the sale after they had received the deposits totaling $12,000.00; (4) the sale is not contrary to public policy because there is no rule or law which prohibits the sale of property subject of the agency between the agent and his children unless it would be in fraud of creditors which is not the case here; (5) petitioners impliedly ratified the subject SPA and contract of sale as well as its effects; and, (6) the selling price of ₱800,000.00 for the subject land is deemed reasonable based on the testimony of respondent Rowena as this was the selling price agreed upon by her and petitioner Delfin. Considering that respondent Rowena proved that she remitted a total of $12,000.00 to petitioners and pegging the exchange rate at that time at ₱26.00 per dollar, the appellate court ruled that ₱312,000.00 of the ₱800,000.00 selling price was already received by petitioners. Thus, respondents are only liable for the balance of ₱488,000.00.

Hence, this Petition.

Issues

Petitioners raise the following issues for our resolution:

I. Whether the CA erred in [resolving] the issue in the case at bar.

II. Whether under the SPA Reynalda had the power to sell the subject land.

III. Whether the actuations of petitioner Aurora in receiving money from respondent Rowena amounted to the ratification of the breach in the exercise of the SPA.

IV. Whether the CA erred in not declaring the sale void on grounds of public policy.

V. Whether the CA erred in adopting the testimony of respondent Rowena as to the ₱800,000.00 selling price of the subject land.[18]

Petitioners' Arguments

Petitioners argue that the appellate court went beyond the issues of this case when it ruled that there was a contract of sale between respondent Rowena and petitioner Aurora because the issues before the trial court were limited to the validity of the deed of sale dated July 23, 1997 for being executed by Reynalda beyond the scope of her authority under the SPA. Further, the existence of the alleged contract of sale was not proven because the parties failed to agree on the purchase price as stated by petitioner Aurora in her testimony. The money, in cash and checks, given to petitioners from 1995 to 1997 were mere deposits until the parties could agree to the purchase price. Moreover, Reynalda acted beyond the scope of her authority under the SPA because she was merely authorized to look for prospective buyers of the subject land. Even assuming that she had the power to sell to the subject land under the SPA, she did not secure the approval as to the price from petitioners before executing the subject deed of sale, hence, the sale is null and void. Petitioners also contend that there was no ratification of the subject sale through petitioners' acceptance of the monthly checks from respondent Rowena because the sale occurred subsequent to the receipt of the aforesaid checks. They further claim that the sale was void because it was not only simulated but violates Article 1491 of the Civil Code which prohibits the agent from acquiring the property subject of the agency. Here, Reynalda merely used her daughter, respondent Rowena, as a dummy to acquire the subject land. Finally, petitioners question the determination by the appellate court that the fair market value of the subject land is ₱800,000.00 for lack of any factual and legal basis.

[18] *Id.* at 170-171.

Respondents' Arguments

Respondents counter that the issue as to whether there was a perfected contract of sale between petitioners and respondent Rowena is inextricably related to the issue of whether the deed of sale dated July 23, 1997 is valid, hence, the appellate court properly ruled on the former. Furthermore, they reiterate the findings of the appellate court that the receipt of monthly installments constitutes an implied ratification of any defect in the SPA and deed of sale dated July 23, 1997. They emphasize that petitioners received a total of $12,000.00 as consideration for the subject land.

Our Ruling

The Petition is meritorious.

As a general rule, we do not disturb the factual findings of the appellate court. However, this case falls under one of the recognized exceptions thereto because the factual findings of the trial court and appellate court are conflicting.[19] Our review of the records leads us to conclude that the following are the relevant factual antecedents of this case.

Petitioners were the owners of the subject land covered by TCT No. T-25334 in the name of petitioner Aurora. On December 12, 1990, petitioners, as principals and sellers, executed an SPA in favor of Reynalda, as agent, to, among others, offer for sale the subject land provided that the purchase price thereof should be approved by the former. Sometime in 1994, petitioners and respondent Rowena agreed to enter into an oral contract to sell over the subject land for the price of ₱800,000.00 to be paid in 10 years through monthly installments.

On January 25, 1995, respondent Rowena paid the first monthly installment of $1,000.00 to petitioner Aurora which was followed by 22 intermittent monthly installments of $500.00 spanning almost three years. Sometime in 1997, after having paid a total

[19] *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333, 339 (1999).

of $10,000.00, respondent Rowena called her mother, Reynalda, claiming that she had already bought the subject land from petitioners. Using the aforesaid SPA, Reynalda then transferred the title to the subject land in respondent Rowena's name through a deed of sale dated July 23, 1997 without the knowledge and consent of petitioners. In the aforesaid deed, Reynalda appeared and signed as attorney-in-fact of petitioner Aurora, as seller, while respondent Rowena appeared as buyer. After which, a new title, *i.e.*, TCT No. 62674,[20] to the subject land was issued in the name of respondent Rowena.

We explain these factual findings and the consequences thereof below.

Petitioners and respondent Rowena entered into a contract to sell over the subject land.

Petitioners deny that they agreed to sell the subject land to respondent Rowena for the price of ₱800,000.00 payable in 10 years through monthly installments. They claim that the payments received from respondent Rowena were for safekeeping purposes only pending the final agreement as to the purchase price of the subject land.

We are inclined to give credence to the claim of the respondents for the following reasons.

First, the payment of monthly installments was duly established by the evidence on record consisting of money orders[21] and checks[22] payable to petitioner Aurora. Petitioners do not deny that they received 23 monthly installments over the span of almost three years. As of November 30, 1997 (*i.e.*, the date of the last monthly installment), the payments already totaled $12,000.00, to wit:

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[20] Records, p. 5.

[21] *Id.* at 17.

[22] *Id.* at 18-38.

Date	***Amount Paid*** *(in dollars)*
January 25, 1995	*1,000.00*[23]
February 21, 1995	*500.00*
March 27, 1995	*500.00*
April 25, 1995	*500.00*
June 1, 1995	*500.00*
June 30, 1995	*500.00*
July 31, 1995	*500.00*
May 29, 1996	*500.00*
June 30, 1996	*500.00*
July 31, 1996	*500.00*
August 31, 1996	*500.00*
September 30, 1996	*500.00*
October 29, 1996	*500.00*
December 31, 1996	*500.00*
January 31, 1997	*500.00*
February 28, 1997	*500.00*
March 31, 1997	*500.00*
May 31, 1997	*500.00*
July 19, 1997	*500.00*
August 31, 1997	*500.00*
September 30, 1997	*500.00*
October 31, 1997	*500.00*
November 30, 1997	*500.00*
Total	*12,000.00*

Second, in her testimony, petitioner Aurora claimed that the $1,000.00 in cash that she received from respondent Rowena on January 25, 1995 was a mere deposit until the purchase price of the subject land would have been finally agreed upon by both parties.[24] However, petitioner Aurora failed to explain why, after receiving this initial sum of $1,000.00, she thereafter accepted from respondent Rowena 22 intermittent monthly installments in the amount of $500.00. No attempt was made on the part of petitioners

[23] The $1,000.00 was received in cash by petitioner Aurora from respondent Rowena. The rest of the monthly installments were paid either through money orders or checks payable to petitioner Aurora.

[24] TSN, February 3, 2000, pp.17-18.

to return these amounts and it is fair to assume that petitioners benefited therefrom.

Third, it strains credulity that respondent Rowena would make such monthly installments for a substantial amount of money and for a long period of time had there been no agreement between the parties as to the purchase price of the subject land.

We are, thus, inclined to rule that there was, indeed, a contractual agreement between the parties for the purchase of the subject land and that this agreement partook of an oral contract to sell for the sum of ₱800,000.00. A contract to sell has been defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price."[25] In a contract to sell, "ownership is retained by the seller and is not to pass until the full payment of the price x x x."[26] It is "commonly entered into so as to protect the seller against a buyer who intends to buy the property in installment[s] by withholding ownership over the property until the buyer effects full payment therefor."[27]

In the case at bar, while there was no written agreement evincing the intention of the parties to enter into a contract to sell, its existence and partial execution were sufficiently established by, and may be reasonably inferred from the actuations of the parties, to wit: (1) the title to the subject land was not immediately transferred, through a formal deed of conveyance, in the name of respondent Rowena prior to or at the time of the first payment of $1,000.00 by respondent Rowena

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[25] *Coronel v. Court of Appeals*, 331 Phil. 294, 310 (1996).

[26] *Manuel v. Rodriguez*, 109 Phil. 1, 10 (1960).

[27] *Coronel v. Court of Appeals*, *supra* at 314.

to petitioner Aurora on January 25, 1995;[28] (2) after this initial payment, petitioners received 22 intermittent monthly installments from respondent Rowena in the sum of $500.00; and, (3) in her testimony, respondent Rowena admitted that she had the title to the subject land transferred in her name only later on or on July 23, 1997, through a deed of sale, because she believed that she had substantially paid the purchase price thereof,[29] and that she was entitled thereto as a form of security for the installments she had already paid.[30]

Respondent Rowena was in breach of the contract to sell.

Although we rule that there was a contract to sell over the subject land between petitioners and respondent Rowena, we find that respondent Rowena was in breach thereof because, at the time the aforesaid deed of sale was executed on July 23, 1997, the full price of the subject land was yet to be paid. In arriving at this conclusion, we take judicial notice[31] of the prevailing exchange rates at the time, as published by the *Bangko Sentral ng Pilipinas*,[32] and multiply the same with the monthly

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[28] See *Roque v. Lapuz* [185 Phil. 525, 540-541 (1980)] where we ruled that the absence of a formal deed of conveyance is a very strong indication that the parties did not intend immediate transfer of ownership and title but only a transfer after full payment of the price so that the nature of the agreement is a contract to sell.

[29] TSN, January 11, 2002, p. 12.

[30] *Id.* at 16.

[31] We are constrained to rely on these published historical exchange rates because respondent Rowena testified that the parties did not agree on the exchange rate that will be used in computing the value in pesos of the monthly installments. (TSN, January 11, 2002, p. 13) Due to the peculiar circumstances of this case, we deem these published historical exchange rates as reasonable and fair basis for the aforesaid purpose because they constitute the actual exchange rates at the time.

[32] http://www.bsp.gov.ph/statistics/statistics_online.asp, last visited 27 February 2013.

installments respondent Rowena paid to petitioners, as supported by the evidence on record, to wit:

Date	**Amount Paid** (in dollars)	**Exchange Rate** (peso per dollar)	***Peso Equivalent***
January 25, 1995	1,000.00	24.7700	*24,770.00*
February 21, 1995	500.00	25.1140	*12,557.00*
March 27, 1995	500.00	25.9670	*12,983.50*
April 25, 1995	500.00	26.0270	*13,013.50*
June 1, 1995	500.00	25.8040	*12,902.00*
June 30, 1995	500.00	25.5750	*12,787.50*
July 31, 1995	500.00	25.5850	*12,792.50*
May 29, 1996	500.00	26.1880	*13,094.00*
June 30, 1996	500.00	26.2030[33]	*13,101.50*
July 31, 1996	500.00	26.2280	*13,114.00*
August 31, 1996	500.00	26.2020[34]	*13,101.00*
September 30, 1996	500.00	26.2570	*13,128.50*
October 29, 1996	500.00	26.2830	*13,141.50*
December 31, 1996	500.00	26.2880[35]	*13,144.00*
January 31, 1997	500.00	26.3440	*13,172.00*
February 28, 1997	500.00	26.3330	*13,166.50*
March 31, 1997	500.00	26.3670	*13,183.50*
May 31, 1997	500.00	26.3740[36]	*13,187.00*
July 19, 1997	500.00	28.5740[37]	*14,287.00*
		Total	***260,626.50***

[33] The June 28, 1996 exchange rate was used because it is the nearest prior transacting day to June 30, 1996. There is no published exchange rate value for June 30, 1996 because it was a non-transacting day.

[34] The August 30, 1996 exchange rate was used because it is the nearest prior transacting day to August 31, 1996. There is no published exchange rate value for August 30, 1996 because it was a non-transacting day.

[35] The December 27, 1996 exchange rate was used because it is the nearest prior transacting day to December 31, 1996. There is no published exchange rate value for December 31, 1996 because it was a non-transacting day.

[36] The May 30, 1997 exchange rate was used because it is the nearest prior transacting day to May 31, 1997. There is no published exchange rate value for May 31, 1997 because it was a non-transacting day.

[37] The July 18, 1997 exchange rate was used because it is the nearest prior transacting day to July 19, 1997. There is no published exchange rate value for July 19, 1997 because it was a non-transacting day.

Thus, as of July 19, 1997 or prior to the execution of the deed of sale dated July 23, 1997, the total amount of monthly installments paid by respondent Rowena to petitioners was only ₱260,626.50 or 32.58%[38] of the ₱800,000.00 purchase price. That the full price was yet to be paid at the time of the subject transfer of title was admitted by respondent Rowena on cross-examination, *viz*:

> ATTY. OKIT:
> Q - Let us make this clear. You now admit that x x x you agreed to buy the lot at eight hundred thousand, [to] which the Plaintiff x x x agreed. Now [based] on the dollar rate, [your total payment did not] reach x x x eight hundred thousand pesos? Is that correct? [sic]
> A - Yes.
>
> Q - Since notwithstanding the fact this eight hundred thousand which you have agreed is not fully paid why did your mother [finalize] the deed of sale?
> A - My mother is equipped with the SPA to transfer the lot to me only for security purposes **but actually there is no full payment**.[39] (Emphasis supplied)

Respondent Rowena tried to justify the premature transfer of title by stating that she had substantially paid the full amount of the purchase price and that this was necessary as a security for the installments she had already paid. However, her own evidence clearly showed that she had, by that time, paid only 32.58% thereof. Neither can we accept her justification that the premature transfer of title was necessary as a security for the installments she had already paid absent proof that petitioners agreed to this new arrangement. Verily, she failed to prove that petitioners agreed to amend or novate the contract to sell in order to allow her to acquire title over the subject land even if she had not paid the price in full.

Significantly, the evidence on record indicates that the premature transfer of title in the name of respondent Rowena

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[38] 260,626.50/800,000 x 100 = 32.58%

[39] TSN, January 11, 2002, p. 16.

was done without the knowledge and consent of petitioners. In particular, respondent Rowena's narration of the events leading to the transfer of title showed that she and her mother, Reynalda, never sought the consent of petitioners prior to said transfer of title, *viz*:

> COURT:
>
> Q- Why is this check (in the amount of $1,000.00) in your possession now?
>
> A- This is the check I paid to her (referring to petitioner Aurora) which is in cash. [sic]
>
> ATTY. BARROSO:
>
> Q - Now did you continue x x x paying the $500.00 dollar to him (referring to petitioner Delfin)?
>
> A - Yes.
>
> x x x x x x x x x
>
> Q - Now having stated substantially paid, what did you do with the land subject of this case? [sic]
>
> A - I called my mother who has equipped with SPA to my Uncle that **I have already bought the land**. [sic]
>
> Q - And you called your mother?
>
> A - Yes.
>
> x x x x x x x x x
>
> Q - Then what transpired next?
>
> A - After two years my mother called me if how much I have paid the land and being equipped with SPA, **so she transferred the land to me**. [sic][40] (Emphases supplied)

Respondent Rowena's reliance on the SPA as the authority or consent to effect the premature transfer of title in her name is plainly misplaced. The terms of the SPA are clear. It merely authorized Reynalda to sell the subject land at a price approved by petitioners. The SPA could not have amended or novated the contract to sell to allow respondent Rowena to acquire the

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[40] *Id.* at 10-12.

title over the subject land despite non-payment of the price in full for the reason that the SPA was executed four years prior to the contract to sell. In fine, the tenor of her testimony indicates that respondent Rowena made a unilateral determination that she had substantially paid the purchase price and that she is entitled to the transfer of title as a form of security for the installments she had already paid, reasons, we previously noted, as unjustified.

The contract to sell is rescissible.

Article 1191 of the Civil Code provides:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. x x x

As a general rule, "rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement."[41]

In the case at bar, we find that respondent Rowena's act of transferring the title to the subject land in her name, without the knowledge and consent of petitioners and despite non-payment of the full price thereof, constitutes a substantial and fundamental breach of the contract to sell. As previously noted, the main object or purpose of a seller in entering into a contract to sell is to protect himself against a buyer who intends to buy the property in installments by withholding ownership over the property

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[41] *Song Fo and Company v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827 (1925).

until the buyer effects full payment therefor.[42] As a result, the seller's obligation to convey and the buyer's right to conveyance of the property arise only upon full payment of the price. Thus, a buyer who willfully contravenes this fundamental object or purpose of the contract, by covertly transferring the ownership of the property in his name at a time when the full purchase price has yet to be paid, commits a substantial and fundamental breach which entitles the seller to rescission of the contract.[43]

Indeed, it would be highly iniquitous for us to rule that petitioners, as sellers, should continue with the contract to sell even after the discovery of the aforesaid breach committed by respondent Rowena, as buyer, considering that these acts betrayed in no small measure the trust reposed by petitioners in her and her mother, Reynalda. Put simply, respondent Rowena took advantage of the SPA, in the name of her mother and executed four years prior to the contract to sell, to effect the transfer of title to the subject land in her (Rowena's) name without the knowledge and consent of petitioners and despite non-payment of the full price.

We, thus, rule that petitioners are entitled to the rescission of the subject contract to sell.

Petitioners are entitled to moral damages and attorney's fees while respondent Rowena is entitled to the reimbursement of the monthly installments with legal interest.

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[42] *Coronel v. Court of Appeals*, *supra* note 25 at 314.

[43] Parenthetically, we distinguish the present case from a long line of cases, starting with *Manuel v. Rodriguez* (*supra* note 26), where we have consistently ruled that the failure of the buyer to pay the price in full under a contract to sell is not a breach, casual or serious, but simply an event that prevents the obligation of the seller to convey the title to the buyer from acquiring binding force. In the case at bar, the breach is not due to the non-payment of the purchase price but results from the premature transfer of the title of the property by the buyer in her name without the knowledge and consent of the seller.

Article 1170 of the Civil Code provides:

> Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Fraud or malice (*dolo*) has been defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" and is, thus, incompatible with good faith.[44] In the case at bar, we find that respondent Rowena was guilty of fraud in the performance of her obligation under the subject contract to sell because (1) she knew that she had not yet paid the full price (having paid only 32.58% thereof) when she had the title to the subject land transferred to her name, and (2) she orchestrated the aforesaid transfer of title without the knowledge and consent of petitioners. Her own testimony and documentary evidence established this fact. Where fraud and bad faith have been established, the award of moral damages is proper.[45] Further, under Article 2208(2)[46] of the Civil Code, the award of attorney's fees is proper where the plaintiff is compelled to litigate with third persons or incur expenses to protect his interest because of the defendant's act or omission. Here, respondent Rowena's aforesaid acts caused petitioners to incur expenses in litigating their just claims. We, thus, find respondent Rowena liable for moral damages and attorney's fees which we fix at ₱100,000.00 and ₱50,000.00, respectively.[47]

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[44] *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 150 Phil. 114, 125 (1972).

[45] *Titong v. Court of Appeals*, 350 Phil. 544, 559 (1998).

[46] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; x x x

[47] As to the liability of Reynalda for damages, the evidence did not sufficiently establish that Reynalda was similarly guilty of fraud. It appears that respondent Rowena was solely responsible for the premature transfer of title of the subject land when she misrepresented to Reynalda that she (Rowena) had already bought the land. (TSN, January 11, 2002, pp. 10-12)

Anent the monthly installments respondent Rowena paid to petitioners, our review of the records leads us to conclude that respondent Rowena is entitled to the reimbursement of the same with legal interest. Although respondent Rowena was clearly unjustified in prematurely and covertly transferring the title to the subject land in her name, we deplore petitioners' lack of candor in prosecuting their claims before the trial court and intent to evade recognition of the monthly installments that they received from respondent Rowena. The records indicate that, in their Complaint, petitioners made no mention of the fact that they had entered into a contract to sell with respondent Rowena and that they had received 23 monthly installments from the latter. The Complaint merely alleged that the subject sale was done without the knowledge and consent of petitioners. It was only later on, when respondent Rowena presented the proof of payment of the monthly installments in her Answer to the Complaint, that this was brought to light to which petitioners readily admitted. Further, no evidence was presented to prove that respondent Rowena occupied the subject land or benefited from the use thereof upon commencement of the contract to sell which would have justified the setting off of rental income against the monthly installments paid by respondent Rowena to petitioners.

In view of the foregoing, the sums paid by respondent Rowena as monthly installments to petitioners should, thus, be returned to her with legal interest. The total amount to be reimbursed by petitioners to respondent Rowena is computed as follows:

Date	**Amount Paid** (per dollar)	**Exchange Rate** (peso (in dollars)	***Peso Equivalent***
January 25, 1995	1,000.00	24.7700	*24,770.00*
February 21, 1995	500.00	25.1140	*12,557.00*
March 27, 1995	500.00	25.9670	*12,983.50*
April 25, 1995	500.00	26.0270	*13,013.50*
June 1, 1995	500.00	25.8040	*12,902.00*
June 30, 1995	500.00	25.5750	*12,787.50*
July 31, 1995	500.00	25.5850	*12,792.50*
May 29, 1996	500.00	26.1880	*13,094.00*
June 30, 1996	500.00	26.2030	*13,101.50*
July 31, 1996	500.00	26.2280	*13,114.00*
August 31, 1996	500.00	26.2020	*13,101.00*
September 30, 1996	500.00	26.2570	*13,128.50*

October 29, 1996	500.00	26.2830	*13,141.50*
December 31, 1996	500.00	26.2880	*13,144.00*
January 31, 1997	500.00	26.3440	*13,172.00*
February 28, 1997	500.00	26.3330	*13,166.50*
March 31, 1997	500.00	26.3670	*13,183.50*
May 31, 1997	500.00	26.3740	*13,187.00*
July 19, 1997	500.00	28.5740	*14,287.00*
August 31, 1997	500.00	30.1650	*15,082.50*
September 30, 1997	500.00	33.8730	*16,936.50*
October 31, 1997	500.00	34.9380	*17,469.00*
November 30, 1997	500.00	34.6550	*17,327.50*
		Total	***327,442.00***

Since this amount is neither a loan nor forbearance of money, we set the interest rate at 6% *per annum* computed from the time of the filing of the Answer[48] to the Complaint on May 19, 1998[49] until finality of judgment and thereafter at 12% *per annum* until fully paid in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[50] Petitioners are, thus, ordered to pay respondent Rowena the sum of ₱327,442.00 with an interest of 6% *per annum* computed from May 19, 1998 until finality of judgment and thereafter of 12% *per annum* until fully paid.

The sale of the subject land, effected through the deed of sale dated July 23, 1997, is void.

Having ruled that respondent Rowena was in substantial breach of the contract to sell because she had the title to the subject land transferred in her name without the knowledge and consent of petitioners and despite lack of full payment of the purchase price, we now rule on the validity of the deed of sale dated July 23, 1997 which was used to effect the aforesaid transfer of ownership.

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[48] This is deemed to be the time when the demand was established with reasonable certainty because the documents evincing the monthly installments paid by respondent Rowena to petitioners were appended to the Answer to the Complaint.

[49] Records, p. 9.

[50] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96.

It will be recalled that on December 12, 1990, petitioners, as principals and sellers, executed an SPA in favor of Reynalda, as agent. The SPA stated in part:

> That we spouses, AURORA TUMIBAY and DELFIN TUMIBAY, of legal age and presently residing at 36 Armstrong Drive, Clark, New Jersey, 07066 name, constitute and appoint REYNALDA VISITACION, widow, of legal age and residing at Don Carlos, Bukidnon, Philippines, to be our true and lawful Attorney-in-fact, for us and in our name, place and stead and for our use and benefit to do and perform the following acts and deed:
>
> To administer our real property located in the Province of Bikidnon, Town of Malaybalay, Barrio of Bantaunon, Towns of Maramag, Paradise, Maramag and Barrio of Kiburiao, Town of Quezon.
>
> To offer for sale said properties, the selling price of which will be subject to our approval.
>
> xxx xxx xxx
>
> To sign all papers and documents on our behalf in a contract of sale x x x.[51]

As can be seen, the SPA gave Reynalda the power and duty to, among others, (1) offer for sale the subject land to prospective buyers, (2) seek the approval of petitioners as to the selling price thereof, and (3) sign the contract of sale on behalf of petitioners upon locating a buyer willing and able to purchase the subject land at the price approved by petitioners. Although the SPA was executed four years prior to the contract to sell, there would have been no obstacle to its use by Reynalda had the ensuing sale been consummated according to its terms. However, as previously discussed, when Reynalda, as attorney-in-fact of petitioner Aurora, signed the subject deed of sale dated July 23, 1997, the agreed price of ₱800,000.00 (which may be treated as the approved price) was not yet fully paid because respondent Rowena at the time had paid only ₱260,262.50.[52] Reynalda, therefore, acted beyond

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[51] Folder of Exhibits, unpaginated.

[52] The price stated in the deed of sale dated July 23, 1997 is ₱95,000.00 but, as previously discussed, at the time the aforesaid deed was executed, respondent Rowena had already paid a total of ₱260,262.50 to petitioners.

the scope of her authority because she signed the subject deed of sale, on behalf of petitioners, at a price of ₱95,000.00 which was not approved by the latter. For her part, respondent Rowena cannot deny that she was aware of the limits of Reynalda's power under the SPA because she (Rowena) was the one who testified that the agreed price for the subject land was ₱800,000.00.

Article 1898 of the Civil Code provides:

> Art. 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

It should be noted that, under Article 1898 of the Civil Code, the principal's ratification of the acts of the agent, done beyond the scope of the latter's authority, may cure the defect in the contract entered into between the agent and a third person. This seems to be the line of reasoning adopted by the appellate court in upholding the validity of the subject sale. The appellate court conceded that there was no evidence that respondents sought the approval of petitioners for the subject sale but it, nonetheless, ruled that whatever defect attended the sale of the subject land should be deemed impliedly ratified by petitioners' acceptance of the monthly installments paid by respondent Rowena. Though not clearly stated in its Decision, the appellate court seemed to rely on the four monthly installments (*i.e.*, August 31, September 30, October 31, and November 30, 1997) respondent Rowena paid to petitioners which the latter presumably received and accepted even after the execution of the deed of sale dated July 23, 1997.

We disagree.

That petitioners continued to receive four monthly installments even after the premature titling of the subject land in the name of respondent Rowena, through the deed of sale dated July 23, 1997, did not, by itself, establish that petitioners ratified such

sale. On the contrary, the fact that petitioners continued to receive the aforesaid monthly installments tended to establish that they had yet to discover the covert transfer of title in the name of respondent Rowena. As stated earlier, the evidence on record established that the subject sale was done without petitioners' knowledge and consent which would explain why receipt or acceptance by petitioners of the aforementioned four monthly installments still occurred. Further, it runs contrary to common human experience and reason that petitioners, as sellers, would forego the reservation or retention of the ownership over the subject land, which was intended to guarantee the full payment of the price under the contract to sell, especially so in this case where respondent Rowena, as buyer, had paid only 32.58% of the purchase price. In a contract to sell, it would be unusual for the seller to consent to the transfer of ownership of the property to the buyer prior to the full payment of the purchase price because the reservation of the ownership in the seller is precisely intended to protect the seller from the buyer. We, therefore, find that petitioners' claim that they did not ratify the subject sale, which was done without their knowledge and consent, and that the subsequent discovery of the aforesaid fraudulent sale led them to promptly file this case with the courts to be more credible and in accord with the evidence on record. To rule otherwise would be to reward respondent Rowena for the fraud that she committed on petitioners.

Based on the foregoing, we rule that (1) Reynalda, as agent, acted beyond the scope of her authority under the SPA when she executed the deed of sale dated July 23, 1997 in favor of respondent Rowena, as buyer, without the knowledge and consent of petitioners, and conveyed the subject land to respondent Rowena at a price not approved by petitioners, as principals and sellers, (2) respondent Rowena was aware of the limits of the authority of Reynalda under the SPA, and (3) petitioners did not ratify, impliedly or expressly, the acts of Reynalda. Under Article 1898 of the Civil Code, the sale is void and petitioners are, thus, entitled to the reconveyance of the subject land.

WHEREFORE, the Petition is **GRANTED**. The May 19, 2005 Decision and February 10, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 79029 are **ANNULLED** and **SET ASIDE**. The January 6, 2003 Decision of the Regional Trial Court of Malaybalay City, Branch 9 in Civil Case No. 2759-98 is **REINSTATED** and **MODIFIED** to read as follows:

1. The deed of sale dated July 23, 1997 over the subject land, covered by TCT No. T-62674, between petitioner Aurora, represented by Reynalda as her attorney-in-fact, and respondent Rowena is declared void.

2. The contract to sell over the subject land, covered by TCT No. T-25334, between petitioners, as sellers, and respondent Rowena, as buyer, is declared rescinded.

3. The Register of Deeds of Malaybalay City is ordered to cancel TCT No. T-62674 in the name of respondent Rowena and to reinstate TCT No. T-25334 in the name of petitioner Aurora.

4. Respondent Rowena is ordered to pay petitioners the sum of ₱100,000.00 as moral damages and ₱50,000.00 as attorney's fees.

5. Petitioners are ordered to pay respondent Rowena the sum of ₱327,442.00 with legal interest of 6% *per annum* from May 19, 1998 until finality of this Decision. In case petitioners fail to pay the amount due upon finality of this Decision, they shall pay legal interest thereon at the rate of 12% *per annum* until fully paid.

No costs.

SO ORDERED.

Brion (Acting Chairperson),[*] *Perez, Perlas-Bernabe,* and *Leonen,*[**] *JJ.*, concur.

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[*] Per Special Order No. 1460 dated May 29, 2013.

[**] Per Special Order No. 1461 dated May 29, 2013.

SECOND DIVISION

[G.R. No. 177103. June 3, 2013]

ORIENTAL SHIPMANAGEMENT CO., INC., ROSENDO C. HERRERA, and BENNET SHIPPING SA LIBERIA, *petitioners, vs.* **RAINERIO N. NAZAL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); TECHNICALITIES OF LAW AND PROCEDURE ARE INTERPRETED VERY LIBERALLY AND ARE NOT CONSIDERED CONTROLLING IN LABOR CASES; APPLICATION IN CASE AT BAR.— Technicalities of law and procedure are interpreted very liberally and are not considered controlling in labor cases. Article 221 of the Labor Code provides that "[i]n any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." In keeping with the spirit and intent of the law and in the interest of fairplay, we find it both necessary and appropriate to review the present labor controversy. For the same reason, we rule out *laches* as a bar to the filing of the complaint.

2. ID.; ID.; ID.; DISABILITY BENEFITS; AWARD OF TEMPORARY OR PARTIAL TOTAL DISABILITY BENEFITS, WHEN NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IS NOT PROPER; PRESENT IN CASE AT BAR.— Contrary to the conclusions of the NLRC and of the CA, we find no substantial evidence supporting the ruling that the agency and its principal are liable to Nazal by way of temporary or partial total disability benefits. The labor tribunal and the appellate court grossly misappreciated the facts and even completely disregarded vital pieces of evidence in resolving the case. x x x Nazal disembarked from the vessel *M/V Rover* for a "finished contract," not for medical reasons. x x x Except for his bare allegations, nothing on record supports Nazal's claim that

> he contracted his supposed ailments on board the vessel. x x x Under the standard employment contract, the employer is under obligation to furnish the seafarer, upon request, a copy of all pertinent medical reports or any records at no cost to the seafarer. The absence of a medical report or certification of Nazal's ailments and disability only signifies that his post-employment medical examination did not take place as claimed. We thus cannot accept the NLRC reasoning that the absence of a medical report does not mean that Nazal was not examined by the company-designated physician as the medical reports are normally in the custody of the manning agency and not with the seaman. In *UST Faculty Union v. University of Santo Tomas*, the Court declared: "*a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process*."

APPEARANCES OF COUNSEL

Cervantes Blanco Jurisprudencia and Partners for petitioners.

D E C I S I O N

BRION,* *J.*:

We resolve the petition for review on *certiorari*[1] filed by the petitioners, seeking to nullify the resolutions dated December 19, 2006[2] and March 23, 2007[3] rendered by the Court of Appeals (*CA*) in CA-G.R. SP No. 97180.

The Antecedents

On November 15, 2000, respondent Rainerio N. Nazal entered into a twelve-month contract of employment[4] as cook with Oriental

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] *Rollo*, pp. 8-37; filed pursuant to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Myrna Dimaranan-Vidal; *id.* at 44.

[3] *Id.* at 86.

[4] *Id.* at 168.

Shipmanagement Co., Inc. (*agency*) for its principal, Bennet Shipping SA Liberia (collectively, *petitioners*). He was to receive US$500.00 plus other benefits. He had two earlier contracts with the petitioners – from January 25, 1999 to September 14, 1999 and from February 12, 2000 to August 2000.

Nazal boarded the vessel *M/V Rover* on November 22, 2000 and finished his contract on November 24, 2001. Allegedly after his arrival in Manila, he reported to one Ding Colorado of the agency about his health condition and work experience on board *M/V Rover*. He claimed that the agency referred him to a company-designated physician who found him to be suffering from high blood pressure and diabetes. He then asked for compensation and medical assistance, but the agency denied his request. The agency allegedly advised him not to work again.

On May 18, 2002, Nazal consulted Dr. Virginia Nazal, an internal medicine and diabetes specialist, of Clinica Nazal. Almost a year after, or on May 3, 2003, he underwent a medical examination at Clinica Nazal, which included a random blood sugar test. His blood sugar registered at 339. On September 8, 2004, more than a year later, Dr. Nazal certified Nazal to be unfit to work as a seaman.

Claiming that his condition was getting worse, Nazal went to the Philippine Heart Center on September 29, 2004 and underwent medical examination and treatment under the care of Dr. Efren Vicaldo, an internist-cardiologist. Dr. Vicaldo diagnosed Nazal's condition as: **hypertension, uncontrolled; diabetes mellitus, uncontrolled; impediment grade X (20.15 %)**; and unfit to resume work as a seaman in any capacity.[5]

Thereafter, Nazal demanded permanent total disability compensation from the petitioners, contending that his ailments developed during his employment with the petitioners and while he was performing his duties. As his demand went unheeded, he filed the present complaint.

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[5] *Id.* at 177.

The agency, for itself and for its principal, argued that Nazal's claim is barred by *laches* as it was filed at least two years and ten (10) months late; even if it were otherwise, it still cannot prosper because of Nazal's failure to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his disembarkation, as mandated by the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). This resulted, it added, in the forfeiture of his right to claim disability benefits.

The Compulsory Arbitration Rulings

In his decision[6] dated May 25, 2005, Labor Arbiter (*LA*) Eduardo J. Carpio dismissed the complaint, principally on the ground that Nazal failed to comply with the mandatory reporting requirement under his standard employment contract. LA Carpio gave no credence to Nazal's claim that he reported to Colorado, as there was no proof presented in this respect. LA Carpio pointed out that while Nazal might have been complaining about his health condition while on board the vessel, there was no evidence showing that he reported his ailments to the vessel's authorities.

Nazal appealed from LA Carpio's decision. On September 20, 2005, the National Labor Relations Commission (*NLRC*) rendered a decision[7] in Nazal's favor. It set aside LA Carpio's ruling and awarded Nazal US$10,075.00 as partial disability benefit, plus 5% attorney's fees. The NLRC declared that contrary to LA Carpio's conclusion, Nazal presented substantial proof that his ailments had been contracted during his employment with the petitioners. The NLRC relied on Dr. Vicaldo's disability rating of Grade X (20.15%) pursuant to the POEA-SEC.

Both parties moved for partial reconsideration. For his part, Nazal pleaded with the NLRC that he be granted permanent

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[6] *Id.* at 123-127.

[7] *Id.* at 128-136.

total disability benefits as he would not be able to resume his employment as a seaman anymore. On the other hand, the agency insisted that *laches* barred Nazal's claim, but in any event, he failed to comply with the mandatory post-employment reporting requirement under the POEA-SEC.[8] Further, it stressed that a higher degree of proof should have been required by the NLRC because of the badges of suspicion/fraud apparent in the case. It explained in this regard that Nazal submitted proof that he had taken another overseas employment after he disembarked from the vessel *M/V Rover*.

By a resolution dated November 30, 2005,[9] the NLRC denied both motions, stressing that they were based on the same arguments presented to the LA. The agency filed an urgent motion for reconsideration on grounds of newly-discovered evidence and pending motions/incidents. It argued that the new evidence showed that Nazal had entered into another overseas contract after his stint with the petitioners for which reason, his disability could not have been due to his work on board the vessel *M/V Rover*.

The NLRC denied the motion in its resolution[10] of October 31, 2006, declaring as "superfluous and immaterial" the claimed newly-discovered evidence. It emphasized that Nazal's subsequent voyage did not prove that he had not been sick or that his sickness had not been aggravated by his work on board the vessel *M/V Rover*. Thereafter, the agency elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

The CA dismissed the petition outright for having been filed out of time.[11] It pointed out that the assailed NLRC resolution of October 31, 2006 – the subject of the petition – is a ruling

[8] Schedule of Disability Allowances.

[9] *Rollo*, pp. 137-143.

[10] *Id.* at 145-149.

[11] *Supra* note 2.

on the agency's urgent motion for reconsideration of the NLRC resolution dated November 30, 2005 which, in turn, denied the agency's motion for reconsideration of the NLRC decision of September 30, 2005. The second motion for reconsideration filed by the same party, the CA declared, is expressly prohibited by Section 2, Rule 52 of the Rules of Court. The agency moved for reconsideration, but the CA denied the motion.[12]

The Petition

The agency now asks the Court to set aside the CA resolutions, contending that the appellate court committed an error of law and gravely abused its discretion in holding that it filed a prohibited second motion for reconsideration with the NLRC. It argues that the two motions alluded to dealt with different subject matters; the first one (dated November 11, 2005) dealt with the merits of the case while the second one (dated March 21, 2006) was based on newly-discovered evidence.

The NLRC denied the agency's urgent motion for reconsideration in its resolution of October 31, 2006, copy of which the agency allegedly received on November 15, 2006.[13] It maintains that it had until January 10, 2007 to file the petition for *certiorari* which it did on time, or on December 11, 2006.

The agency bewails the CA's resort to technicalities to "thwart substantial justice," insisting that it has proven the merits of its case. It submits that Nazal's claim may even be fraudulent considering that he filed it after he disembarked from the vessel *M/V Rover* and, subsequently, obtained employment with another vessel and kept silent about it. It argues that the fact that Nazal was able to secure a subsequent posting shows that he was fit and able when he left his employment with the petitioners. In any event, it adds that Nazal is disqualified from claiming disability benefits because of his failure to comply with the mandatory post-employment medical examination under the POEA-SEC.

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[12] *Supra* note 3.

[13] *Id.* at 49.

The Case for Nazal and Related Incidents

On July 4, 2007, the Court required Nazal to comment on the petition.[14] Instead of filing his comment, however, Nazal petitioned[15] the CA to convert his "disability to permanent total disability" (G.R. No. SP No. 104246). This prompted the petitioners to file a "motion for leave to file manifestation and admission of manifestation"[16] in relation with the petition for conversion. The petitioners submitted a brief chronology of events showing that Nazal appeared to be "forum shopping" with the filing of the petition with the CA, subsequent to the filing of the present case. The CA, for its part, promptly dismissed the petition.

By a Resolution dated June 22, 2009,[17] the Court granted the petitioners' motion and required Nazal to comment. Nazal submitted his comment on the motion on July 23, 2009[18] under his own signature. It appeared that he no longer had legal representation at the time. He informed the Court in this respect that he sought the help of RODCO Consultancy and Maritime Services Corporation (*RODCO*) for legal and financial assisstance regarding his claim for disability benefits.

RODCO provided Nazal with a lawyer – under contract with the firm for one year – in the person of Atty. Oliver C. Castro. Atty. Castro's contract with RODCO expired on February 13, 2005, prompting him to withdraw as Nazal's counsel; RODCO then sent Attys. Constantino Reyes and Rodrigo Ceniza to represent Nazal. They were also under contract with RODCO and their sevices were terminated as of July 2007, around which time, the partial disability award to Nazal was enforced,[19] as

[14] *Id.* at 289-290.

[15] *Id.* at 345-347.

[16] *Id.* at 335-336.

[17] *Id.* at 378.

[18] *Id.* 380-386.

[19] *Id.* at 390; LA Carpio's order to release garnished amount.

evidenced by a notice of garnishment[20] and acknowledgment receipt by the NLRC of the garnished amount.[21]

Nazal contends in the same comment that he is entitled not only to partial disability benefits but to permanent total disability compensation since he had already lost the capacity to earn a living. This is the reason, he tells the Court, why even without a counsel, he petitioned the CA for the conversion of his disability to permanent total disability. He submits that his receipt of the amount of ₱484,046.31, corresponding to the award of partial disability benefits, does not bar him from demanding what is legally due him and that it cannot be considered as forum shopping.

In a Resolution dated August 17, 2009,[22] the Court noted Nazal's comment on the forum shopping issue. Nazal died in October 2010,[23] without any comment on the petitioners' appeal having been filed.

Our Ruling

The procedural issue

We first resolve the procedural issue of whether the CA erred in dismissing the petition for *certiorari* for having been filed out of time. Obviously, the appellate court counted the 60-day period for the filing of the petition[24] from March 13, 2006,[25] the date the petitioners claimed they received a copy of the NLRC resolution (dated November 30, 2005) denying their partial motion for reconsideration (first motion) and not from November 15, 2006,[26] the day they received the NLRC

[20] *Id.* at 389.

[21] *Id.* at 391.

[22] *Id.* at 400.

[23] *Id.* at 429.

[24] RULES OF COURT, Rule 65, Section 4.

[25] *Rollo*, p. 49.

[26] *Ibid.*

resolution (dated October 31, 2006) denying their urgent motion for reconsideration (second motion).

The CA considered the agency's urgent motion for reconsideration as a second motion for reconsideration which is prohibited under Section 2, Rule 52 of the Rules of Court[27] and also under Section 15, Rule VII of the NLRC Revised Rules of Procedure.[28] The agency takes exception to the CA ruling, reiterating its position that the two motions dealt with two different subject matters, the first motion addressed the merits of the case and the urgent motion was filed on the ground of newly-discovered evidence. It adds that even the NLRC did not consider the urgent motion for reconsideration a prohibited pleading.

We find merit in the agency's argument. Technicalities of law and procedure are interpreted very liberally and are not considered controlling in labor cases. Article 221 of the Labor Code provides that "[i]n any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."

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[27] SEC. 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. [italics supplied]

[28] SECTION 15. MOTIONS FOR RECONSIDERATION. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party, and provided further, that only one such motion from the same party shall be entertained.

In keeping with the spirit and intent of the law and in the interest of fairplay, we find it both necessary and appropriate to review the present labor controversy. For the same reason, we rule out *laches* as a bar to the filing of the complaint.

The merits of the case

Contrary to the conclusions of the NLRC and of the CA, we find no substantial evidence supporting the ruling that the agency and its principal are liable to Nazal by way of temporary or partial total disability benefits. The labor tribunal and the appellate court grossly misappreciated the facts and even completely disregarded vital pieces of evidence in resolving the case.

First. Nazal disembarked from the vessel *M/V Rover* for a "finished contract," not for medical reasons. This notwithstanding, he claims that immediately after his disembarkation, he reported to Colorado about his health condition and work experience on board the vessel. He further claimed that Colorado referred him to a company-designated physician who found him afflicted with high blood pressure and diabetes. Thereupon, he asked for compensation and medical assistance, but the agency denied his request and allegedly advised him not to work again.

Except for his bare allegations, nothing on record supports Nazal's claim that he contracted his supposed ailments on board the vessel. As the LA aptly observed, if indeed a company-designated physician examined Nazal, why did the physician not issue a medical report confirming Nazal's supposed ailments? And why did Nazal not ask for a certification of the physician's findings if he really intended to ask for disability compensation from the petitioners? Under the standard employment contract, the employer is under obligation to furnish the seafarer, upon request, a copy of all pertinent medical reports or any records at no cost to the seafarer.[29]

[29] Section 20(F) of the POEA-SEC.

The absence of a medical report or certification of Nazal's ailments and disability only signifies that his post-employment medical examination did not take place as claimed. We thus cannot accept the NLRC reasoning that the absence of a medical report does not mean that Nazal was not examined by the company-designated physician as the medical reports are normally in the custody of the manning agency and not with the seaman. In *UST Faculty Union v. University of Santo Tomas*,[30] the Court declared: "*a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process*."

Second. While we have ruled out *laches* as a bar to Nazal's claim, the inordinate delay in the institution of the complaint casts a grave suspicion on Nazal's true intentions against the petitioners. It took him two years and 10 months to file the complaint (on September 16, 2004)[31] since he disembarked from the vessel *M/V Rover* on November 24, 2001. Why it took him that long a time to file the complaint only Nazal can answer, but one thing is clear: he obtained another employment as a seaman for three months (from March 1, 2004 to June 11, 2004), long after his employment with the petitioners. He was deployed by manning agent Crossocean Marine Services, Inc. (*Crossocean*) on board the vessel *Kizomba A FPSO,* for the principal Eurest Shrm Far East Pte., Ltd.[32] Nazal admitted as much when he submitted in evidence before the LA photocopies of the visa section of his passport showing a departure on March 1, 2004[33] and an arrival on June 11, 2004.[34]

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[30] G.R. No. 180892, April 7, 2009, 656 SCRA 648, citing *De Paul/ King Philip Customs Tailor v. NLRC,* G.R. No. 129824, March 10, 1999, 304 SCRA 448, 459; italics ours.

[31] *Id.* at 150.

[32] *Id.* at 258.

[33] *Id.* at 172.

[34] *Id.* at 169.

If Nazal was able to secure an employment as a seaman with another vessel after his disembarkation in November 2001, how can there be a case against the petitioners, considering especially the lapse of time when the case was instituted? How could Nazal be accepted for another ocean-going job if he had not been in good health? How could he be engaged as a seaman after his employment with the petitioners if he was then already disabled?

Surely, before he was deployed by Crossocean, he went through a pre-employment medical examination and was found fit to work and healthy; otherwise, he would not have been hired. Under the circumstances, his ailments resulting in his claimed disability could only have been contracted or aggravated during his engagement by his last employer or, at the very least, during the period after his contract of employment with the petitioners expired. For ignoring this glaring fact, the NLRC committed a grave abuse of discretion; for upholding the NLRC, the CA committed the same jurisdictional error.

As a final word, it is unfortunate that Nazal died before the case could be resolved, but his death cannot erase the fact that his claim for disability benefits was brought against the wrong party, nor the reality that his claim against the petitioners suffered from fatal defects.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed resolutions of the Court of Appeals are **SET ASIDE**. The complaint is **DISMISSED** for lack of merit. No costs.

SO ORDERED.

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

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013.

SECOND DIVISION

[G.R. No. 179643. June 3, 2013]

ERNESTO L. NATIVIDAD, *petitioner, vs.* **FERNANDO MARIANO, ANDRES MARIANO and DOROTEO GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW ARE TO BE RESOLVED IN A RULE 45 PETITION; EXCEPTION; PRESENT IN CASE AT BAR.— [W]e reiterate the rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law. A question that invites a review of the factual findings of the lower tribunals or bodies is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition. The Court, as a rule, observes this Rule 45 proscription as this Court is not a trier of facts. The resolution of factual issues is the function of the lower tribunals or bodies whose findings, when duly supported by substantial evidence and affirmed by the CA, bind this Court. The reviewable question sanctioned by a Rule 45 petition is one that lies solely on what the law provides on the given set of circumstances. Under exceptional circumstances, however, we have deviated from the above rules. In the present case, the PARAD gave credit to Ernesto's claim that the respondents did not pay the lease rentals. The DARAB, in contrast, found Ernesto's claim unsubstantiated. This conflict in the factual conclusions of the PARAD and the DARAB on the alleged non-payment by the respondents of the lease rentals is one such exception to the rule that only questions of law are to be resolved in a Rule 45 petition.

2. ID.; CIVIL ACTIONS; JUDGMENT; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT, CONSTRUED; ACCEPTED EXCEPTIONS, ENUMERATED.— The doctrine of immutability of final judgments, grounded on the fundamental principle of public policy and sound practice, is well settled. Indeed, once a decision has attained finality, it becomes immutable and unalterable and may no longer be modified in

any respect, whether the modification is to be made by the court that rendered it or by the highest court of the land. The doctrine holds true even if the modification is meant to correct erroneous conclusions of fact and law. The judgment of courts and the award of quasi-judicial agencies must, on some definite date fixed by law, become final even at the risk of occasional errors. The only accepted exceptions to this general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.

3. ID.; RULES OF COURT; THE BROADER INTEREST OF JUSTICE AND EQUITY MAY DEMAND THE SETTING ASIDE OF PROCEDURAL RULES; APPLICATION IN CASE AT BAR.— The broader interests of justice and equity demand that we set aside procedural rules as they are, after all, intended to promote rather than defeat substantial justice. If the rigid and pedantic application of procedural norms would frustrate rather than promote justice, the Court always has the power to suspend the rules or except a particular case from its operation, particularly if defects of jurisdiction appear to be present. This is the precise situation that we presently find before this Court. In the present petition, the DARAB granted the respondents' appeal, despite the lapse of ten months from the respondents' notice of the PARAD's decision, because the PARAD denied the respondents' petition for relief from judgment simply on a sweeping declaration that none of the grounds for the grant of the petition exists and that the petition had been filed out of time. The records, however, sufficiently contradict the PARAD's reasons for denying the respondents' petition for relief; not only do we find justifiable grounds for its grant, we also find that the respondents filed their petition well within the prescriptive period. Thus, the PARAD effectively and gravely abused its discretion and acted without jurisdiction in denying the petition for relief from judgment.

4. ID.; 1994 DARAB RULES OF PROCEDURE; PETITION FOR RELIEF FROM JUDGMENT; GROUNDS AND TWIN PERIOD REQUIREMENTS, PROPERLY OBSERVED IN CASE AT BAR.— A petition for relief from the judgment of the PARAD is governed by Section 4, Rule IX of the 1994 DARAB Rules of Procedure (the governing DARAB rules at the time Ernesto

filed his complaint). x x x A reading of Section 4 shows that four grounds justify the grant of the petition for relief from judgment, namely: fraud, accident, mistake and excusable negligence. The same provision also presents two periods that must be observed for such grant – 90 days and six months. x x x The respondents invoked the ground of excusable negligence. x x x These circumstances – their averred ignorance coupled with financial constraints if not outright poverty - taken altogether sufficiently convince us that the respondents' negligence is more than excusable and constitutes a justifiable ground for the grant of their petition for relief. We are also convinced that the respondents complied with the twin period requirement set by Section 4, Rule IX of the 1994 DARAB Rules of Procedure. *First*, the records show that the respondents received a copy of the PARAD's October 27, 1999 decision on December 10, 1999, at the earliest; they filed their first petition on May 4, 2000 or five months after. *Second*, following our above discussion that the respondents had sufficiently shown grounds for the grant of their petition, we perforce count the 90-day period from the respondents' discovery of their excusable negligence. We construe this date as the time when the respondents discovered the adverse consequence of their failure to answer, seek reconsideration or appeal the PARAD's decision, which was when they were evicted from the subject property on June 9, 2000 or 35 days before they filed their first petition. Clearly, the respondents filed their petition well within 6 months from their notice of the PARAD's decision and within 90 days from the discovery of their excusable negligence.

5. LABOR AND SOCIAL LEGISLATION; THE AGRICULTURAL LAND REFORM CODE (REPUBLIC ACT NO. 3844); ONCE THE TENANCY RELATIONSHIP IS ESTABLISHED, A TENANT OR AGRICULTURAL LESSEE IS ENTITLED TO SECURITY OF TENURE; SUSTAINED.— Section 7 of R.A. No. 3844 ordains that once the tenancy relationship is established, a tenant or agricultural lessee is entitled to security of tenure. Section 36 of R.A. No. 3844 strengthens this right by providing that the agricultural lessee has the right to continue the enjoyment and possession of the landholding and shall not be disturbed in such possession except only upon court authority in a final and executory judgment, after due notice and hearing, and only for the specifically enumerated causes.

The subsequent R.A. No. 6657 further reiterates, under its Section 6, that the security of tenure previously acquired shall be respected. Finally, in order to protect this right, Section 37 of R.A. No. 3844 rests the burden of proving the existence of a lawful cause for the ejectment of the agricultural lessee on the agricultural lessor.

6. ID.; ID.; IN ORDER TO WARRANT DISPOSSESSION OF LANDHOLDING, THE AGRICULTURAL LESSEE'S FAILURE TO PAY THE LEASE RENTALS MUST BE WILLFUL AND DELIBERATE AND MUST HAVE LASTED FOR A PERIOD OF TWO (2) YEARS; ELUCIDATED.— Non-payment of the lease rentals whenever they fall due is a ground for the ejectment of an agricultural lessee under paragraph 6, Section 36 of R.A. No. 3844. In relation to Section 2 of Presidential Decree *(P.D.)* No. 816, deliberate refusal or continued refusal to pay the lease rentals by the agricultural lessee for a period of two (2) years shall, upon hearing and final judgment, result in the cancellation of the CLT issued in the agricultural lessee's favor. The agricultural lessee's failure to pay the lease rentals, in order to warrant his dispossession of the landholding, must be **willful and deliberate and must have lasted for at least two (2) years**. The term "deliberate" is characterized by or results from slow, careful, thorough calculation and consideration of effects and consequences, while the term "willful" is defined, as one governed by will without yielding to reason or without regard to reason. Mere failure of an agricultural lessee to pay the agricultural lessor's share does not necessarily give the latter the right to eject the former **absent a deliberate intent** on the part of the agricultural lessee to pay.

7. ID.; ID.; TWO STAGES IN ACCOMPLISHING THE TRANSFER OF LANDHOLDING TO THE AGRICULTURAL LESSEE, EXPLAINED.— A CLT is a document that evidences an agricultural lessee's **inchoate ownership** of an agricultural land primarily devoted to rice and corn production. It is the **provisional title of ownership** issued to facilitate the agricultural lessee's acquisition of ownership over the landholding. The transfer of the landholding to the agricultural lessee under P.D. No. 27 is accomplished in two stages: (1) **issuance of a CLT** to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is a "deemed owner"; and (2) **issuance of an Emancipation Patent**

as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary.

APPEARANCES OF COUNSEL

Law Firm of Mario M. Pangilinan and Associates for petitioner.

D E C I S I O N

BRION,* *J.*:

We resolve in this Rule 45 petition for review on *certiorari*[1] the challenge to the November 28, 2006 decision[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 89365. The assailed decision affirmed the February 21, 2005 decision[3] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 10051. The DARAB ruling, in turn, reversed the decision[4] dated October 27, 1999 of the Provincial Agrarian Reform Adjudicator *(PARAD)* of Nueva Ecija granting the petition for ejectment and collection of back lease rentals filed by petitioner Ernesto L. Natividad against respondents Fernando Mariano, Andres Mariano and Doroteo Garcia.

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] *Rollo*, pp. 24-42.

[2] Penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justices Magdangal M. de Leon and Ramon R. Garcia; *id.* at 7-20.

The August 10, 2007 resolution of the CA denied for lack of merit Ernesto's subsequent motion for reconsideration; *id.* at 60.

[3] Penned by DARAB Member Augusto P. Quijano; *id.* at 194-199.

[4] Decision rendered by Adjudicator Napoleon B. Baguilat; *id.* at 96-99.

The Factual Antecedents

At the core of the dispute in this case is a 66,997 square meter parcel of agricultural land *(subject property)* situated in Sitio Balanti, Gapan, Nueva Ecija, owned and registered in the name of Esperanza Yuzon under Transfer Certificate of Title No. NT-15747. The respondents are the tenants of the subject property.[5]

On December 23, 1998, Ernesto filed with the PARAD a petition[6] for ejectment and collection of back lease rentals against the respondents. In his petition, Ernesto alleged that he purchased the subject property in a public auction held on July 17, 1988. Immediately after the purchase, he *verbally* demanded that the respondents pay the lease rentals. Despite his repeated demands, the respondents refused to pay, prompting him to *orally* request the respondents to vacate the subject property. He filed the petition when the respondents refused his demand to vacate.

Although duly served with summons, the respondents failed to answer Ernesto's petition and were deemed to have waived their right to present evidence. The PARAD allowed the case to proceed *ex parte*.

The PARAD granted Ernesto's petition in its October 27, 1999 decision, and ordered the respondents to vacate the subject property and to pay the lease rentals in arrears. The PARAD found merit in Ernesto's unrebutted allegations.

The respondents did not appeal the decision despite due notice.[7] Thus, the PARAD's decision became final and executory, and on April 6, 2000, the PARAD granted Ernesto's motion for the issuance of a writ of execution.[8]

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[5] *Id.* at 195.

[6] *Id.* at 90-94.

[7] Per the Certification dated April 5, 2000 issued by the PARAD; CA *rollo*, p. 47.

[8] Writ of Execution; *rollo*, pp. 101-102.

On May 4, 2000, the respondents, through a private law firm, filed an Appearance and Petition for Relief from Judgment[9] *(first petition)* on the ground of excusable negligence. The respondents claimed that their inexperience and lack of knowledge of agrarian reform laws and the DARAB Rules of Procedure prevented them from appearing before the PARAD in due course; these also led to their belated discovery of the approved *Barangay* Committee for Land Production *(BCLP)* valuation. They cited these reasons as their excusable negligence justifying the grant of the relief from judgment prayed for.

In answer to Ernesto's allegations, the respondents denied knowledge of Ernesto's purchase of the subject property and, alternatively, disputed the validity of the purchase. They averred that they had been paying lease rentals to the landowner. In support of their position, the respondents attached copies of rental payment receipts[10] for the crop years 1988-1998 issued by Corazon Quiambao and Laureano Quiambao, the authorized representatives of Aurora Yuzon.[11] They added that Diego Mariano, the father of respondents Andres and Fernando, and respondent Doroteo were issued Certificates of Land Transfer *(CLTs)* on July 28, 1973.[12] Andres and Fernando added that, as heirs of Diego, they are now the new beneficiaries or allocatees of the lots covered by Diego's CLT.[13] Finally, the respondents pointed out that as of the year 2000, they have an approved valuation report issued by the BCLP.

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[9] Dated May 2, 2000; *id* at 103-105.

[10] *Id.* at 107-126.

[11] Referring to Esperanza; *rollo,* p. 9. She is also referred to as Nanang Anzang Yuzon.

[12] Diego Mariano was granted CLT No. 0-049335 covering an area of 3 hectares, more or less; *id* at 191. While respondent Doroteo was granted CLT Nos. 0-049016 and 0-049017, covering 2.23 and 0.74 hectares, respectively; CA *rollo,* pp. 170-172.

[13] Per the November 21, 1990 order of the DAR- Region III; "Kasunduan sa Pananakahan" executed by Diego in favor of his sons, respondents Andres and Fernando; and letter of consent executed by Esperanza; CA *rollo,* pp. 75-77.

On June 7, 2000, the PARAD denied the respondents' first petition, finding no sufficient basis for its grant.[14] The PARAD declared that none of the grounds for the grant of a petition for relief exists and can be invoked against its October 27, 1999 decision, or could have prevented the respondents from taking an appeal. The records show that the respondents were duly notified of the scheduled hearing date and of the issuance of its decision; despite due notices, the respondents failed to appear and to appeal, for which reasons the decision became final. Lastly, the PARAD considered that the respondents' petition had been filed out of time. On July 13, 2000, the PARAD denied[15] the respondents' motion for reconsideration of the June 7, 2000 order.[16]

On June 23, 2000, the respondents, this time represented by the Agrarian Legal Assistance, Litigation Division of the Department of Agrarian Reform (*DAR*), filed a second Petition for Relief from Judgment *(second petition)*.[17] The respondents repeated the allegations in their first petition, but added lack of sufficient financial means as the reason that prevented them from seeking appropriate legal assistance.

On July 20, 2000, the PARAD denied the respondents' second petition based on technical grounds. When the PARAD denied their subsequent motion for reconsideration,[18] the respondents appealed to the DARAB.[19]

The Ruling of the DARAB

On February 21, 2005, the DARAB granted the respondents' appeal and reversed the PARAD's October 27, 1999 decision.[20]

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[14] *Rollo*, pp. 130-132.

[15] *Id.* at 137.

[16] Dated June 26, 2000; *id.* at 134-136.

[17] Dated June 22, 2000; *id.* at 138-142.

[18] *Id.* at 143-145. The PARAD denied this motion for reconsideration per the order dated September 6, 2000; *id.* at 146-148.

[19] Notice of Appeal dated October 1, 2000, *rollo*, pp. 149-150.

[20] *Supra*, note 3.

The DARAB ordered Ernesto to maintain the respondents in the peaceful possession and cultivation of the subject property, and at the same time ordered the respondents to pay the rentals in arrears as computed by the Municipal Agrarian Reform Officer *(MARO)*. Unlike the PARAD, the DARAB found the evidence insufficient to support Ernesto's allegation that the respondents did not pay the lease rentals. The respondents' respective receipts of payment, the DARAB noted, controverted Ernesto's claim.

Ernesto appealed the February 21, 2005 DARAB decision to the CA *via* a petition for review under Rule 43 of the Rules of Court.[21]

The Ruling of the CA

In its November 28, 2006 decision, the CA denied Ernesto's petition for review for lack of merit.[22] The CA declared that Ernesto failed to prove by clear, positive and convincing evidence the respondents' failure to pay the lease rentals and, in fact, never repudiated the authority of Corazon and Laureano to receive rental payments from the respondents. The CA ruled that under Section 7 of Republic Act *(R.A.)* No. 3844, once a leasehold relationship is established, the landowner-lessor is prohibited from ejecting a tenant-lessee unless authorized by the court for causes provided by law. While non-payment of lease rentals is one of the enumerated causes, the landowner (Ernesto) bears the burden of proving that: (1) the tenant did not pay the rentals; and (2) the tenant did not suffer crop failure pursuant to Section 36 of R.A. No. 3844. As Ernesto failed to prove these elements, no lawful cause existed for the ejectment of the respondents as tenants.

The CA also declared that the DARAB did not err in taking cognizance of the respondents' appeal and in admitting mere photocopies of the respondents' receipts of their rental payments. The CA held that the DARAB Rules of Procedure and the provisions of R.A. No. 6657 (the Comprehensive Agrarian

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[21] CA *rollo*, pp. 15-34.

[22] *Supra*, note 2.

Reform Law of 1988) specifically authorize the DARAB to ascertain the facts of every case and to decide on the merits without regard to the law's technicalities. The CA added that the attendant facts and the respondents' substantive right to security of tenure except the case from the application of the doctrine of immutability of judgments.

Finally, the CA noted that the issues Ernesto raised were factual in nature. It was bound by these findings since the findings of the DARAB were supported by substantial evidence.

Ernesto filed the present petition after the CA denied his motion for reconsideration[23] in its August 10, 2007 resolution.[24]

The Petition

Ernesto imputes on the CA the following reversible errors: *first*, the finding that he authorized Corazon and Laureano to receive the respondents' lease rentals on his behalf; *second*, the conclusion that the respondents cannot be ejected since they were excused from paying lease rentals to him for lack of knowledge of the legality of the latter's acquisition of the subject property; and *third*, the ruling that the final and fully executed decision of the PARAD could still be reopened or modified.

Ernesto argues that the respondents' admission in their pleadings and the rental receipts, which they submitted to prove payment, evidently show that the respondents paid the lease rentals to Corazon and Laureano as representatives of Esperanza and not as his representatives.[25]

Ernesto further insists that the respondents cannot deny knowledge of the legality of his acquisition of the subject property and are, therefore, not excused from paying the lease rentals to him. He claims that the respondents had long since known

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[23] CA *rollo*, pp. 233-251.

[24] *Supra*, note 2.

[25] *Rollo*, pp. 32-34.

that he is the new owner of the subject property when the petition for the annulment of the levy and execution sale, which the respondents filed against him, was decided in his favor.[26]

Finally, Ernesto claims that the CA erred in disregarding the doctrine of immutability of final judgments simply on the respondents' feigned ignorance of the rules of procedure and of the free legal assistance offered by the DARAB. Ernesto maintains that despite due receipt of their respective copies of the PARAD's decision, the respondents nevertheless still failed to seek reconsideration of or to appeal the PARAD's decision. Ernesto concludes that the respondents' inaction rendered the PARAD's decision final and fully executed, barring its reopening or modification.[27]

The Case for the Respondents

In their comment,[28] the respondents maintain that Ernesto's purchase of the subject property is null and void. The respondents contend that both Diego and Doroteo acquired rights over the subject property when they were granted a CLT in 1973.[29] Ernesto's subsequent purchase of the subject property *via* the execution sale cannot work to defeat such rights as any sale of property covered by a CLT violates the clear and express mandate of Presidential Decree *(P.D.)* No. 27, *i.e.*, that title to land acquired pursuant to the Act is not transferable.[30] In fact, when - through the PARAD's final decision - he ejected the respondents from the subject property, Ernesto also violated R.A. No. 6657.[31]

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[26] *Id.* at 34-36. June 28, 1993 decision of the Regional Trial Court of Gapan, Nueva Ecija, Branch 35, on the respondents' petition for the annulment of the levy and execution sale; *id.* at 80-89.

[27] *Id.* at 36-41.

[28] *Id.* at 165-174.

[29] *Supra,* note 12.

[30] *Rollo,* pp. 167-170.

[31] *Id.* at 170.

The respondents further contend that the doctrine of immutability of judgments does not apply where substantive rights conferred by law are impaired, such as the situation obtaining in this case. The courts' power to suspend or disregard rules justified the action taken by the DARAB (as well as the CA in affirming the former) in altering the decision of the PARAD although it had been declared final.[32]

Lastly, the respondents posit that the CA did not err in upholding the DARAB's ruling since the findings of facts of quasi-judicial bodies, when supported by substantial evidence, as in this case, bind the CA.[33]

The Issue

The case presents to us the core issue of whether Ernesto had sufficient cause to eject the respondents from the subject property.

The Court's Ruling

We DENY the petition.

Preliminary considerations

As a preliminary matter, we reiterate the rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law.[34] A question that invites a review of the factual findings of the lower tribunals or bodies is beyond the scope of this Court's power of review[35] and generally justifies the dismissal of the petition.

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[32] *Id.* at 170-171.

[33] *Id.* at 171-172.

[34] *Milestone Realty and Co., Inc. v. Court of Appeals,* 431 Phil. 119, 132 (2002); and *Pascual v. Court of Appeals,* 422 Phil. 675, 682 (2001).

[35] See *NGEI Multi-Purpose Cooperative Inc., et al. v. Filipinas Palmoil Plantation Inc., et al.*, G.R. No. 184950, October 11, 2012; and *Pascual v. Court of Appeals, supra,* at 682. See also *Esquivel v. Atty. Reyes,* 457 Phil. 509, 515-517 (2003).

The Court, as a rule, observes this Rule 45 proscription as this Court is not a trier of facts.[36] The resolution of factual issues is the function of the lower tribunals or bodies whose findings, when duly supported by substantial evidence and affirmed by the CA, bind this Court.[37]

The reviewable question sanctioned by a Rule 45 petition is one that lies solely on what the law provides on the given set of circumstances.[38] In the present petition, Ernesto essentially argues that the CA erred in ruling that he failed to sufficiently prove any cause to eject the respondents from the subject property. In effect, Ernesto asks this Court to re-examine and re-evaluate the probative weight of the evidence on record. These are factual inquiries beyond the reach of this petition.[39]

Under exceptional circumstances, however, we have deviated from the above rules. In the present case, the PARAD gave credit to Ernesto's claim that the respondents did not pay the lease rentals. The DARAB, in contrast, found Ernesto's claim unsubstantiated. This conflict in the factual conclusions of the PARAD and the DARAB on the alleged non-payment by the respondents of the lease rentals is one such exception to the rule that only questions of law are to be resolved in a Rule 45 petition.[40] Thus, we set aside the above rules under the circumstances of this case, and resolve it on the merits.

On the issue of the DARAB's grant of the respondents' appeal; Doctrine of immutability of judgments

We cannot blame Ernesto for insisting that the PARAD decision can no longer be altered. The doctrine of immutability of final

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[36] *Perez-Rosario v. Court of Appeals*, 526 Phil. 562, 575 (2006).

[37] *Ibid. Maylem v. Ellano*, G.R. No. 162721, July 13, 2009, 592 SCRA 440, 448-449.

[38] See *Cando v. Sps. Olazo*, 547 Phil. 630, 636 (2007).

[39] See *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010; 638 SCRA 660, 666.

[40] See *Esquivel v. Atty. Reyes*, *supra* note 35, at 516.

judgments, grounded on the fundamental principle of public policy and sound practice, is well settled. Indeed, once a decision has attained finality, it becomes immutable and unalterable and may no longer be modified in any respect,[41] whether the modification is to be made by the court that rendered it or by the highest court of the land.[42] The doctrine holds true even if the modification is meant to correct erroneous conclusions of fact and law.[43] The judgment of courts and the award of quasi-judicial agencies must, on some definite date fixed by law, become final even at the risk of occasional errors.[44] The only accepted exceptions to this general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[45]

This doctrine of immutability of judgments notwithstanding, we are not persuaded that the DARAB and the CA erred in reopening, and ruling on the merits of the case. The broader interests of justice and equity demand that we set aside procedural rules as they are, after all, intended to promote rather than defeat substantial justice.[46] If the rigid and pedantic application of procedural norms would frustrate rather than promote justice, the Court always has the power to suspend the rules or except a particular case from its operation,[47] particularly if defects of

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[41] *Berboso v. Court of Appeals,* 527 Phil. 167, 189 (2006).

[42] *Heirs of Maura So v. Obliosca,* G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418.

[43] *Ibid.*

[44] *Ibid. Sofio v. Valenzuela,* G.R. No. 157810, February 15, 2012, 666 SCRA 55, 65.

[45] *Mercado v. Mercado,* G.R. No. 178672, March 19, 2009, 582 SCRA 11, 16-17.

[46] *Heirs of Maura So v. Obliosca, supra* note 42, at 418-419.

[47] *Ibid.*

jurisdiction appear to be present. This is the precise situation that we presently find before this Court.

In the present petition, the DARAB granted the respondents' appeal, despite the lapse of ten months from the respondents' notice of the PARAD's decision, because the PARAD denied the respondents' petition for relief from judgment simply on a sweeping declaration that none of the grounds for the grant of the petition exists and that the petition had been filed out of time. The records, however, sufficiently contradict the PARAD's reasons for denying the respondents' petition for relief; not only do we find justifiable grounds for its grant, we also find that the respondents filed their petition well within the prescriptive period. Thus, the PARAD effectively and gravely abused its discretion and acted without jurisdiction in denying the petition for relief from judgment.

A petition for relief from the judgment of the PARAD is governed by Section 4, Rule IX of the 1994 DARAB Rules of Procedure[48] (the governing DARAB rules at the time Ernesto filed his complaint). It reads in part:

> SECTION 4. *Relief from Judgment*. A petition for relief from judgment must be verified and **must be based on grounds of fraud, accident, mistake and excusable neglect** x x x; Provided, **that the petition is filed** with the Adjudicator *a quo* **within three (3) months from the time the** fraud, accident, mistake or **excusable neglect was discovered and six (6) months from notice** of order, resolution or **decision from which relief is sought**[.] [italics supplied; emphasis ours]

A reading of Section 4 shows that four grounds justify the grant of the petition for relief from judgment, namely: fraud, accident, mistake and excusable negligence. The same provision also presents two periods that must be observed for such grant – 90 days and six months.

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[48] Now Sections 1 and 2, Rule XVI of the 2003 DARAB Rules of Procedure.

In their first and second petitions, the respondents invoked the ground of excusable negligence. They alleged that they failed to appear before the PARAD due to their inexperience and ignorance of agrarian reform laws and of the DARAB Rules of Procedure, as well as indigence. These circumstances – their averred ignorance coupled with financial constraints if not outright poverty - taken altogether sufficiently convince us that the respondents' negligence is more than excusable and constitutes a justifiable ground for the grant of their petition for relief.

We are also convinced that the respondents complied with the twin period requirement set by Section 4, Rule IX of the 1994 DARAB Rules of Procedure. *First,* the records show that the respondents received a copy of the PARAD's October 27, 1999 decision on December 10, 1999, at the earliest; they filed their first petition on May 4, 2000 or five months after. *Second*, following our above discussion that the respondents had sufficiently shown grounds for the grant of their petition, we perforce count the 90-day period from the respondents' discovery of their excusable negligence. We construe this date as the time when the respondents discovered the adverse consequence of their failure to answer, seek reconsideration or appeal the PARAD's decision, which was when they were evicted from the subject property on June 9, 2000[49] or 35 days before they filed their first petition. Clearly, the respondents filed their petition well within 6 months from their notice of the PARAD's decision and within 90 days from the discovery of their excusable negligence.

Based on these considerations, we are convinced that the DARAB did not err in granting the respondents' appeal despite the procedural lapses. Under Section 3, Rule I of the 1994 DARAB Rules of Procedure,[50] the DARAB and its adjudicators "shall not be bound by technical rules of procedure and evidence

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[49] Per the Implementation Report dated June 13, 2000; *rollo*, p. 133.

[50] Also Section 3, Rule I of the 2003 DARAB Rules of Procedure.

as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity." The same provision is essentially embodied in R.A. No. 3844 upon which Ernesto heavily relied. In our view, considerations of equity, justice and jurisdiction surround this case, justifying the relaxation of the rules and the DARAB's grant of the respondents' appeal.

In sum, we rule that the DARAB correctly allowed the respondents' appeal despite the lapse of the reglementary period. Accordingly, we cannot impute error on the CA in not reversing the DARAB's decision simply under the doctrine of immutability of judgments.

Non-payment of lease rentals as ground for eviction of tenants; Landowner with burden to prove sufficient cause for eviction

Section 7 of R.A. No. 3844 ordains that once the tenancy relationship is established, a tenant or agricultural lessee is entitled to security of tenure.[51] Section 36 of R.A. No. 3844 strengthens this right by providing that the agricultural lessee has the right to continue the enjoyment and possession of the landholding and shall not be disturbed in such possession except only upon court authority in a final and executory judgment, after due notice and hearing, and only for the specifically enumerated causes.[52] The subsequent R.A. No. 6657 further reiterates, under its Section 6, that the security of tenure previously acquired shall be respected. Finally, in order to protect this right, Section 37 of R.A. No. 3844 rests the burden of proving the existence of a lawful cause for the ejectment of the agricultural lessee on the agricultural lessor.[53]

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[51] See *Galope v. Bugarin,* G.R. No. 185669, February 1, 2012, 664 SCRA 733, 740.

[52] *Sta. Ana v. Carpo,* G.R. No. 164340, November 28, 2008, 572 SCRA 463-485. See also *Perez-Rosario v. Court of Appeals, supra* note 36, at 576-577.

[53] See *Galope v. Bugarin, supra* note 51, at 739-740; and *Pascual v. Court of Appeals, supra,* note 34, at 683.

Ernesto's petition for ejectment against the respondents was anchored precisely on the latter's alleged non-payment of the lease rentals beginning 1988 until 1998 despite his repeated verbal demands. When contfronted with the respondents' defense of due payment with supporting documentary evidence of it, Ernesto countered that their payments should not be considered as he did not authorize Corazon and Laureano to receive the payments on his behalf.

These allegations pose to us three essential points that we need to address. *First,* whether Ernesto indeed made demands on the respondents for the payment of the lease rentals; *second,* assuming that Ernesto made such demands, whether the respondents deliberately failed or continuously refuse to pay the lease rentals; and *third,* whether the lease rentals paid by the respondents to Corazon and Laureano are valid.

We rule in the **NEGATIVE** on the ***first*** point.

Our review of the records shows that Ernesto did not present any evidence, such as the affidavit of the person or persons present at that time, to prove that he demanded from the respondents the payment of the lease rentals. We, therefore, cannot accord any merit to his claim that he made such demands. His allegation, absent any supporting evidence, is nothing more than a hollow claim under the rule that he who alleges a fact has the burden of proving it as mere allegation is not evidence.[54] Thus, Ernesto should be deemed to have made his demand only at the time he filed the petition for ejectment before the PARAD. At this point, the respondents were not yet in delay[55] and could not be deemed to have failed in the payment of their lease rentals.

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[54] *Concerned Citizen v. Divina,* A.M. No. P-07-2369, November 16, 2011, 660 SCRA 167, 176.

[55] Article 1169 of the Civil Code of the Philippines. The pertinent portion reads:

"Art. 1169. Those obliged to deliver or to do something **incur in delay from the time the obligee judicially or extrajudicially demands** from them the fulfillment of their obligation." (emphasis ours)

We again rule in the **NEGATIVE** on the ***second*** point.

Non-payment of the lease rentals whenever they fall due is a ground for the ejectment of an agricultural lessee under paragraph 6, Section 36 of R.A. No. 3844.[56] In relation to Section 2 of Presidential Decree *(P.D.)* No. 816,[57] deliberate refusal or continued refusal to pay the lease rentals by the agricultural lessee for a period of two (2) years shall, upon hearing and final judgment, result in the cancellation of the CLT issued in the agricultural lessee's favor.

The agricultural lessee's failure to pay the lease rentals, in order to warrant his dispossession of the landholding, must be **willful and deliberate and must have lasted for at least two (2) years**. The term "deliberate" is characterized by or results from slow, careful, thorough calculation and consideration of effects and consequences, while the term "willful" is defined, as one governed by will without yielding to reason or without regard to reason.[58] Mere failure of an agricultural lessee to pay the agricultural lessor's share does not necessarily give the

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[56] Section 36(6) of R.A. No. 3844 reads:

"**Section 36.** *Possession of Landholding; Exceptions* – x x x

x x x x x x x x x

(6) The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished[.]" (emphasis and italics supplied)

[57] Presidential Decree No. 816 promulgated on October 21, 1975, entitled "PROVIDING THAT TENANT-FARMERS/AGRICULTURAL LESSEES SHALL PAY THE LEASEHOLD RENTALS WHEN THEY FALL DUE AND PROVIDING PENALTIES THEREFOR."

[58] *Sta. Ana v. Carpo, supra* note 52, at 485-486; and *Antonio v. Manahan,* G.R. No. 176091, August 24, 2011, 656 SCRA 190, 200.

latter the right to eject the former **absent a deliberate intent** on the part of the agricultural lessee to pay.[59]

In the present petition, we do not find the respondents' alleged non-payment of the lease rentals sufficient to warrant their dispossession of the subject property. The respondents' alleged non-payment did not last for the required two-year period. To reiterate our discussion above, the respondents' rental payments were not yet due and the respondents were not in default at the time Ernesto filed the petition for ejectment as Ernesto failed to prove his alleged prior verbal demands. Additionally, assuming *arguendo* that the respondents failed to pay the lease rentals, we do not consider the failure to be deliberate or willful. The receipts on record show that the respondents had paid the lease rentals for the years 1988-1998. To be deliberate or willful, the **non-payment of lease rentals must be absolute**, *i.e.*, marked by complete absence of any payment. This cannot be said of the respondents' case. Hence, without any deliberate and willful refusal to pay lease rentals for two years, the respondents' ejectment from the subject property, based on this ground, is baseless and unjustified.

Finally, we rule in the **AFFIRMATIVE** on the ***third*** point.

Ernesto purchased the subject property in 1988. However, he only demanded the payment of the lease rentals in 1998. All the while, the respondents had been paying the lease rentals to Corazon and Laureano. With no demand coming from Ernesto for the payment of the lease rentals for ten years, beginning from the time he purchased the subject property, the respondents thus cannot be faulted for continuously paying the lease rentals to Corazon and Laureano. Ernesto should have demanded from the respondents the payment of the lease rental soon after he purchased the subject property. His prolonged inaction, whether by intention or negligence, in demanding the payment of the

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[59] *Sta. Ana v. Carpo, supra* note 52, at 485, citing *Roxas y Cia v. Cabatuando, et al.*, G.R. No. L-16963, April 26, 1961, 1 SCRA 1106, 1108. See also *Antonio v. Manahan, supra*, at 199-200.

lease rentals or asserting his right to receive such rentals, at the very least, led the respondents to consider Corazon and Laureano to still be the authorized payees of the lease rentals, given the absence of any objection on his part.

Import of the respondents' CLT

Diego and respondent Doroteo were undoubtedly awarded CLTs over the subject property pursuant to P.D. No. 27. Thus, we agree with their position that they have acquired rights over the subject property and are in fact deemed owners of it.

A CLT is a document that evidences an agricultural lessee's **inchoate ownership** of an agricultural land primarily devoted to rice and corn production.[60] It is the **provisional title of ownership**[61] issued to facilitate the agricultural lessee's acquisition of ownership over the landholding. The transfer of the landholding to the agricultural lessee under P.D. No. 27 is accomplished in two stages: (1) **issuance of a CLT** to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is a "deemed owner"; and (2) **issuance of an Emancipation Patent** as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary.[62]

The CLTs of Diego and of respondent Doroteo were issued in 1973. Thus, as of 1973, Diego and respondent Doroteo were deemed the owners of the subject property pursuant to P.D. No. 27, but subject to the compliance with certain conditions and requirements, one of which was the full payment of the monthly amortization or lease rentals to acquire absolute ownership.[63]

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[60] *Del Castillo v. Orciga,* 532 Phil. 204, 214 (2006).

[61] *Ibid.*

[62] *Ibid.*

[63] *Coruña v. Cinamin,* 518 Phil. 649, 662 (2006).

In the event the tenant-farmer defaults in the payment of the amortization, P.D. No. 27 ordains that the amortization due shall be paid by the farmer's cooperative where the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against the farmer. Thus, if the tenant-farmer defaults, the landowner is assured of payment since the farmers' cooperative will assume the obligation. In the present petition, the records show that the respondents were members of a *Samahang Nayon*. Pursuant to P.D. No. 27, Ernesto should have claimed the unpaid lease rentals or amortizations from the respondents' *Samahang Nayon*.

Executive Order *(E.O.)* No. 228, issued on July 17, 1987, modified P.D. No. 27 on the manner of payment and provided for different modes of payment of the value of the land to the landowner. The pertinent portion reads:

> SECTION 3. Compensation shall be paid to the landowners in any of the following modes, at the option of the landowners:
>
> (a) **Bond payment** over ten (10) years, with ten percent (10%) of the value of the land payable immediately in cash, and the balance in the form of LBP bonds[;]
>
> (b) **Direct payment in cash or in kind** by the farmer-beneficiaries with the terms to be mutually agreed upon by the beneficiaries and landowners and subject to the approval of the Department of Agrarian Reform; and
>
> (c) **Other modes of payment** as may be prescribed or approved by the Presidential Agrarian Reform Council. [emphases supplied]

In the event a dispute arises between the landowner and the tenant-farmer on the amount of the lease rentals, Section 2 of E.O. No. 228 provides that the DAR and the concerned BCLP shall resolve the dispute. In any case, the Land Bank of the Philippines shall still process the payment of the landowner's compensation claim, which it shall hold in trust for the landowner, pending resolution of the dispute. Thus, under this scheme, as with P.D. No. 27, the landowner is assured of payment of the full value of the land under E.O. No. 228.

With the enactment of R.A. No. 6657 on June 10, 1988, the manner and the mode of payment were further modified with the options available to the landowner, provided as follows:

> "SECTION 18. *Valuation and Mode of Compensation*. — x x x
>
> x x x x x x x x x
>
> (1) **Cash payment**, x x x;
>
> (2) **Shares of stock** in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;
>
> (3) **Tax credits** which can be used against any tax liability;
>
> (4) **LBP bonds**[.]" (emphases ours; italics supplied)

Following these guarantees to the landowner under P.D. No. 27 and E.O No. 228, as well as R.A. No. 6657, the clear rule is that notwithstanding the non-payment of the amortization to the landowner, the tenant-farmer retains possession of the landholding.[64] In addition, we point out that under P.D. No. 27 and R.A. No. 6657, the transfer or waiver of the landholding acquired by virtue of P.D. No. 27 is prohibited, save only by hereditary succession or to the Government; effectively, reversion of the landholding to the landholder is absolutely proscribed. In light of this decree, we hold that the DARAB correctly reversed the decision of the PARAD, which ordered the respondents to surrender the possession of the subject property to Ernesto as this was in clear contravention of the objectives of the agrarian reform laws.

Nevertheless, we cannot agree with the DARAB's ruling that the MARO should assist the parties in executing a new leasehold contract. To recall, Diego and respondent Doroteo are valid holders of CLTs. Also, as of the year 2000, the concerned BCLP has already issued an approved valuation for the subject property. Under these circumstances, the proper procedure is

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[64] *Del Castillo v. Orciga, supra* note 60, at 218.

for Ernesto and the DAR to agree on the manner of processing the compensation payment for the subject property. Hence, pursuant to R.A. No. 6657, E.O. No. 228, in relation to Department Memorandum Circular No. 26, series of 1973, and the related issuances and regulation of the DAR, we must remand the case to the DAR for the proper determination of the manner and mode of payment of the full value of the subject property to Ernesto.

As a final note, we observe that on April 11, 1988, Diego waived his right over the 3-hectare lot covered by his CLT (which formed part of the subject property) in favor of his two sons, Andres and Fernando, with each obtaining an equal half interest. This arrangement directly contravenes Ministry Memorandum Circular No. 19, series of 1978. This memorandum circular specifically proscribes the partition of the landholding; should the farmer-beneficiary have several heirs, as in this case, the ownership and cultivation of the landholding must ultimately be consolidated in **one heir** who possesses the requisite qualifications.[65] Thus, under paragraph 2 of the memorandum

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[65] See Ministry Memorandum Circular No. 19-78. The pertinent portion reads:

"1. Succession to the farmholding covered by Operation Land Transfer, shall be governed by the pertinent provisions of the New Civil Code of the Philippines subject to the following limitations:

a. The farmholding **shall not be petitioned or fragmented**.

b. The **ownership and cultivation of the farmholding shall ultimately be consolidated in one heir** who possesses the following qualifications:

(1) being a full-fledged member of a duly recognized farmers' cooperative;

(2) capable of personally cultivating the farmholding; and

(3) willing to assume the obligations and responsibilities of a tenant-beneficiary." (emphasis ours)

circular, Andres and Fernando must agree on one of them to be the sole owner and cultivator of the lot covered by Diego's CLT.

WHEREFORE, in view of these considerations, we **AFFIRM** with **MODIFICATION** the decision dated November 28, 2006 and the resolution dated August 10, 2007 of the Court of Appeals in CA-G.R. Sp No. 89365. Petitioner Ernesto L. Natividad is **ORDERED** to immediately surrender possession of the subject property to the respondents, and the DARAB is directed to ensure the immediate restoration of possession of the subject property to the respondents. We **REMAND** the case to the Department of Agrarian Reform for the: (1) proper determination of the manner and mode of payment of the full value of the land to petitioner Ernesto L. Natividad in accordance with R.A. No. 6657, Executive Order No. 228, Department Memorandum Circular No. 26, series of 1973, and other related issuances and regulation of the Department of Agrarian Reform; and (2) proper determination of the successor-in-interest of Diego Mariano as the farmer-beneficiary to the landholding covered by his CLT, in accordance with the provisions of Ministry Memorandum Circular No. 19, series of 1978. No costs.

SO ORDERED.

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

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013.

THIRD DIVISION

[G.R. No. 182963. June 3, 2013]

SPOUSES DEO AGNER and MARICON AGNER, *petitioners, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE COURT IS NOT A TRIER OF FACTS AND GENERALLY DOES NOT WEIGH ANEW EVIDENCE WHICH LOWER COURTS HAVE PASSED UPON.— An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. Time and again, We stress that this Court is not a trier of facts and generally does not weigh anew evidence which lower courts have passed upon.

2. CIVIL LAW; OBLIGATIONS; NATURE AND EFFECT; PROVISION ON WAIVER OF NOTICE OR DEMAND, VALID.— A provision on waiver of notice or demand has been recognized as legal and valid in *Bank of the Philippine Islands v. Court of Appeals*, wherein We held: since the co-signors expressly waived demand in the promissory notes, demand was unnecessary for them to be in default.

3. ID.; ID.; EXTINGUISHMENT; IN CIVIL CASES, THE ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING IT; APPLICATION IN CASE AT BAR.— Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed. Respondent's possession of the Promissory Note with Chattel Mortgage strongly buttresses its claim that the obligation has

> not been extinguished. x x x Indeed, when the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

APPEARANCES OF COUNSEL

YF Lim & Associates for petitioners.
Benedicto Verzosa Felipe & Burkley Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the April 30, 2007 Decision[1] and May 19, 2008 Resolution[2] of the Court of Appeals in CA–G.R. CV No. 86021, which affirmed the August 11, 2005 Decision[3] of the Regional Trial Court, Branch 33, Manila City.

On February 15, 2001, petitioners spouses Deo Agner and Maricon Agner executed a Promissory Note with Chattel Mortgage in favor of Citimotors, Inc. The contract provides, among others, that: for receiving the amount of Php834,768.00, petitioners shall pay Php17,391.00 every 15th day of each succeeding month until fully paid; the loan is secured by a 2001 Mitsubishi Adventure Super Sport; and an interest of 6% per month shall be imposed for failure to pay each installment on or before the stated due date.[4]

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring; *rollo*, pp. 49-54.

[2] *Id.* at 56.

[3] Records, pp. 149-151.

[4] *Id.* at 28.

On the same day, Citimotors, Inc. assigned all its rights, title and interests in the Promissory Note with Chattel Mortgage to ABN AMRO Savings Bank, Inc. (ABN AMRO), which, on May 31, 2002, likewise assigned the same to respondent BPI Family Savings Bank, Inc.[5]

For failure to pay four successive installments from May 15, 2002 to August 15, 2002, respondent, through counsel, sent to petitioners a demand letter dated August 29, 2002, declaring the entire obligation as due and demandable and requiring to pay Php576,664.04, or surrender the mortgaged vehicle immediately upon receiving the letter.[6] As the demand was left unheeded, respondent filed on October 4, 2002 an action for Replevin and Damages before the Manila Regional Trial Court (RTC).

A writ of replevin was issued.[7] Despite this, the subject vehicle was not seized.[8] Trial on the merits ensued. On August 11, 2005, the Manila RTC Br. 33 ruled for the respondent and ordered petitioners to jointly and severally pay the amount of Php576,664.04 plus interest at the rate of 72% per annum from August 20, 2002 until fully paid, and the costs of suit.

Petitioners appealed the decision to the Court of Appeals (CA), but the CA affirmed the lower court's decision and, subsequently, denied the motion for reconsideration; hence, this petition.

Before this Court, petitioners argue that: (1) respondent has no cause of action, because the Deed of Assignment executed in its favor did not specifically mention ABN AMRO's account receivable from petitioners; (2) petitioners cannot be considered to have defaulted in payment for lack of competent proof that they received the demand letter; and (3) respondent's remedy

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[5] *Id.* at 29, 33-35.

[6] *Id.* at 36.

[7] *Id.* at 40.

[8] TSN, November 23, 2004, p. 15.

of resorting to both actions of replevin and collection of sum of money is contrary to the provision of Article 1484[9] of the Civil Code and the *Elisco Tool Manufacturing Corporation v. Court of Appeals*[10] ruling.

The contentions are untenable.

With respect to the first issue, it would be sufficient to state that the matter surrounding the Deed of Assignment had already been considered by the trial court and the CA. Likewise, it is an issue of fact that is not a proper subject of a petition for review under Rule 45. An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[11] Time and again, We stress that this Court is not a trier of facts and generally does not weigh anew evidence which lower courts have passed upon.

As to the second issue, records bear that both verbal and written demands were in fact made by respondent prior to the institution of the case against petitioners.[12] Even assuming, for

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[9] ART. 1484. In a contract of sale of personal property, the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be *void*.

[10] G.R. No. 109966, May 31, 1999, 307 SCRA 731.

[11] *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, G.R. No. 158621, December 10, 2008, 573 SCRA 414, 421.

[12] TSN, November 23, 2004, p. 11.

argument's sake, that no demand letter was sent by respondent, there is really no need for it because petitioners legally waived the necessity of notice or demand in the Promissory Note with Chattel Mortgage, which they voluntarily and knowingly signed in favor of respondent's predecessor-in-interest. Said contract expressly stipulates:

> In case of my/our failure to pay when due and payable, any sum which I/We are obliged to pay under this note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this note or to any other party whether as principal or guarantor x x x then the entire sum outstanding under this note shall, **without prior notice or demand,** immediately become due and payable. (Emphasis and underscoring supplied)

A provision on waiver of notice or demand has been recognized as legal and valid in *Bank of the Philippine Islands v. Court of Appeals*,[13] wherein We held:

> The Civil Code in Article 1169 provides that one incurs in delay or is in default from the time the obligor demands the fulfillment of the obligation from the obligee. However, the law expressly provides that demand is not necessary under certain circumstances, and one of these circumstances is when the parties expressly waive demand. Hence, since the co-signors expressly waived demand in the promissory notes, demand was unnecessary for them to be in default.[14]

Further, the Court even ruled in *Navarro v. Escobido*[15] that prior demand is not a condition precedent to an action for a writ of replevin, since there is nothing in Section 2, Rule 60 of the Rules of Court that requires the applicant to make a demand on the possessor of the property before an action for a writ of replevin could be filed.

Also, petitioners' representation that they have not received a demand letter is completely inconsequential as the mere act

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[13] 523 Phil. 548 (2006).

[14] *Id.* at 560.

[15] G.R. No. 153788, November 27, 2009, 606 SCRA 1, 20-21.

of sending it would suffice. Again, We look into the Promissory Note with Chattel Mortgage, which provides:

> All correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extrajudicial action shall be sent to the MORTGAGOR at the address indicated on this promissory note with chattel mortgage or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE or his/its assignee. **The mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the mortgagor for all legal purposes and the fact that any communication is not actually received by the MORTGAGOR** or that it has been returned unclaimed to the MORTGAGEE or that no person was found at the address given, or that the address is fictitious or cannot be located **shall not excuse or relieve the MORTGAGOR from the effects of such notice.**[16] (Emphasis and underscoring supplied)

The Court cannot yield to petitioners' denial in receiving respondent's demand letter. To note, their postal address evidently remained unchanged from the time they executed the Promissory Note with Chattel Mortgage up to time the case was filed against them. Thus, the presumption that "a letter duly directed and mailed was received in the regular course of the mail"[17] stands in the absence of satisfactory proof to the contrary.

Petitioners cannot find succour from *Ting v. Court of Appeals*[18] simply because it pertained to violation of *Batas Pambansa Blg. 22* or the Bouncing Checks Law. As a higher quantum of proof – that is, proof beyond reasonable doubt – is required in view of the criminal nature of the case, We found insufficient the mere presentation of a copy of the demand letter allegedly sent through registered mail and its corresponding registry receipt as proof of receiving the notice of dishonor.

Perusing over the records, what is clear is that petitioners did not take advantage of all the opportunities to present their

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[16] Records, p. 31.

[17] RULES OF COURT, Rule 131, Sec. 3 (v).

[18] 398 Phil. 481 (2000).

evidence in the proceedings before the courts below. They miserably failed to produce the original cash deposit slips proving payment of the monthly amortizations in question. Not even a photocopy of the alleged proof of payment was appended to their Answer or shown during the trial. Neither have they demonstrated any written requests to respondent to furnish them with official receipts or a statement of account. Worse, petitioners were not able to make a formal offer of evidence considering that they have not marked any documentary evidence during the presentation of Deo Agner's testimony.[19]

Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[20] When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed.[21] Respondent's possession of the Promissory Note with Chattel Mortgage strongly buttresses its claim that the obligation has not been extinguished. As held in *Bank of the Philippine Islands v. Spouses Royeca*:[22]

> x x x The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment. In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid. Likewise,

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[19] Records, p. 145.

[20] *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, *supra* note 11, at 422; *Bank of the Philippine Islands v. Spouses Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 216; *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board*, G.R. No. 163101, February 13, 2008, 545 SCRA 196, 213; *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 419 (2006); *Keppel Bank Philippines, Inc. v. Adao*, 510 Phil. 158, 166-167 (2005); and *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 730-731 (2002).

[21] *Tai Tong Chuache & Co. v. Insurance Commission*, 242 Phil. 104, 112 (1988).

[22] *Supra* note 20.

an uncanceled mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.[23]

Indeed, when the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.[24] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[25]

Lastly, there is no violation of Article 1484 of the Civil Code and the Court's decision in *Elisco Tools Manufacturing Corporation v. Court of Appeals*.[26]

In *Elisco*, petitioner's complaint contained the following prayer:

> WHEREFORE, plaintiffs [pray] that judgment be rendered as follows:
>
> *ON THE FIRST CAUSE OF ACTION*
>
> Ordering defendant Rolando Lantan to pay the plaintiff the sum of ₱39,054.86 plus legal interest from the date of demand until the whole obligation is fully paid;
>
> *ON THE SECOND CAUSE OF ACTION*
>
> To forthwith issue a Writ of Replevin ordering the seizure of the motor vehicle more particularly described in paragraph 3 of the Complaint, from defendant Rolando Lantan and/or defendants Rina Lantan, John Doe, Susan Doe and other person or persons in whose possession the said motor vehicle may be found, complete with accessories and

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[23] *Bank of the Philippine Islands v. Spouses Royeca, id.* at 219.

[24] *Id.* at 216; *Citibank, N.A. v. Sabeniano*, *supra* note 20; and *Coronel v. Capati*, 498 Phil. 248, 255 (2005).

[25] *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, *supra* note 11, at 422; *Bank of the Philippine Islands v. Spouses Royeca*, *supra* note 20; *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board, supra* note 20; *Citibank, N.A. v. Sabeniano*, *supra* note 20; *Coronel v. Capati*, *supra* note 24, at 256; and *Far East Bank and Trust Company v. Querimit*, *supra* note 20.

[26] *Supra* note 10.

equipment, and direct deliver thereof to plaintiff in accordance with law, and after due hearing to confirm said seizure and plaintiff's possession over the same;

ON THE ALTERNATIVE CAUSE OF ACTION

In the event that manual delivery of the subject motor vehicle cannot be effected for any reason, to render judgment in favor of plaintiff and against defendant Rolando Lantan ordering the latter to pay the sum of SIXTY THOUSAND PESOS (₱60,000.00) which is the estimated actual value of the above-described motor vehicle, plus the accrued monthly rentals thereof with interests at the rate of fourteen percent (14%) per annum until fully paid;

PRAYER COMMON TO ALL CAUSES OF ACTION

1. Ordering the defendant Rolando Lantan to pay the plaintiff an amount equivalent to twenty-five percent (25%) of his outstanding obligation, for and as attorney's fees;

2. Ordering defendants to pay the cost or expenses of collection, repossession, bonding fees and other incidental expenses to be proved during the trial; and

3. Ordering defendants to pay the costs of suit.

Plaintiff also prays for such further reliefs as this Honorable Court may deem just and equitable under the premises.[27]

The Court therein ruled:

The remedies provided for in Art. 1484 are alternative, not cumulative. The exercise of one bars the exercise of the others. This limitation applies to contracts purporting to be leases of personal property with option to buy by virtue of Art. 1485. The condition that the lessor has deprived the lessee of possession or enjoyment of the thing for the purpose of applying Art. 1485 was fulfilled in this case by the filing by petitioner of the complaint for replevin to recover possession of movable property. By virtue of the writ of seizure issued by the trial court, the deputy sheriff seized the vehicle on August 6, 1986 and thereby deprived private respondents of its

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[27] *Elisco Tool Manufacturing Corporation v. Court of Appeals, id.* at 735-736.

use. The car was not returned to private respondent until April 16, 1989, after two (2) years and eight (8) months, upon issuance by the Court of Appeals of a writ of execution.

Petitioner prayed that private respondents be made to pay the sum of ₱39,054.86, the amount that they were supposed to pay as of May 1986, plus interest at the legal rate. At the same time, it prayed for the issuance of a writ of replevin or the delivery to it of the motor vehicle "complete with accessories and equipment." In the event the car could not be delivered to petitioner, it was prayed that private respondent Rolando Lantan be made to pay petitioner the amount of ₱60,000.00, the "estimated actual value" of the car, "plus accrued monthly rentals thereof with interests at the rate of fourteen percent (14%) per annum until fully paid." This prayer of course cannot be granted, even assuming that private respondents have defaulted in the payment of their obligation. This led the trial court to say that petitioner wanted to eat its cake and have it too.[28]

In contrast, respondent in this case prayed:

(a) Before trial, and upon filing and approval of the bond, to [forthwith] issue a Writ of Replevin ordering the seizure of the motor vehicle above-described, complete with all its accessories and equipments, together with the Registration Certificate thereof, and direct the delivery thereof to plaintiff in accordance with law and after due hearing, to confirm the said seizure;

(b) Or, in the event that manual delivery of the said motor vehicle cannot be effected to render judgment in favor of plaintiff and against defendant(s) ordering them to pay to plaintiff, jointly and severally, the sum of ₱576,664.04 plus interest and/or late payment charges thereon at the rate of 72% per annum from August 20, 2002 until fully paid;

c) In either case, to order defendant(s) to pay jointly and severally:

(1) the sum of ₱297,857.54 as attorney's fees, liquidated damages, bonding fees and other expenses incurred in the seizure of the said motor vehicle; and

(2) the costs of suit.

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[28] *Id.* at 743-744.

Plaintiff further prays for such other relief as this Honorble Court may deem just equitable in the premises.

Compared with *Elisco*, the vehicle subject matter of this case was never recovered and delivered to respondent despite the issuance of a writ of replevin. As there was no seizure that transpired, it cannot be said that petitioners were deprived of the use and enjoyment of the mortgaged vehicle or that respondent pursued, commenced or concluded its actual foreclosure. The trial court, therefore, rightfully granted the alternative prayer for sum of money, which is equivalent to the remedy of "[e]xact[ing] fulfillment of the obligation." Certainly, there is no double recovery or unjust enrichment[30] to speak of.

All the foregoing notwithstanding, We are of the opinion that the interest of 6% per month should be equitably reduced to one percent (1%) per month or twelve percent (12%) per annum, to be reckoned from May 16, 2002 until full payment and with the remaining outstanding balance of their car loan as of May 15, 2002 as the base amount.

Settled is the principle which this Court has affirmed in a number of cases that stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant.[31] While Central Bank Circular No. 905-82, which

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[30] In *Cabrera v. Ameco Contractors Rental, Inc.* (G.R. No. 201560, June 20, 2012 Second Division Minute Resolution), We held:

> The principle of unjust enrichment is provided under Article 22 of the Civil Code which provides:
>
> Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
>
> There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

[31] *Arthur F. Menchavez v. Marlyn M. Bermudez*, G.R. No. 185368, October 11, 2012.

took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets.[32] Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest rate may be reduced as reason and equity demand.[33]

WHEREFORE, the petition is **DENIED** and the Court **AFFIRMS WITH MODIFICATION** the April 30, 2007 Decision and May 19, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 86021. Petitioners spouses Deo Agner and Maricon Agner are **ORDERED** to pay, jointly and severally, respondent BPI Family Savings Bank, Inc. (1) the remaining outstanding balance of their auto loan obligation as of May 15, 2002 with interest at one percent (1%) per month from May 16, 2002 until fully paid; and (2) costs of suit.

SO ORDERED.

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

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[32] *Macalinao v. Bank of the Philippine Islands*, G.R. No. 175490, September 17, 2009, 600 SCRA 67, 77, citing *Chua v. Timan*, G.R. No. 170452, August 13, 2008, 562 SCRA 146, 149-150.

[33] *Arthur F. Menchavez v. Marlyn M. Bermudez*, G.R. No. 185368, October 11, 2012, citing *Macalinao v. Bank of the Philippine Islands*, *supra*, at 77, and *Chua v. Timan, supra, at* 150.

FIRST DIVISION

[G.R. No. 192601. June 3, 2013]

PHILIPPINE JOURNALISTS, INC., *petitioner, vs.* **JOURNAL EMPLOYEES UNION (JEU), FOR ITS UNION MEMBER, MICHAEL ALFANTE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); THE LITERAL MEANING OF THE STIPULATIONS OF THE CBA CONTROL IF THEY ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES.— The nature and force of a CBA are delineated in *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda* x x x Accordingly, the stipulations, clauses, terms and conditions of the CBA, being the law between the parties, must be complied with by them. The literal meaning of the stipulations of the CBA, as with every other contract, control if they are clear and leave no doubt upon the intention of the contracting parties.

2. ID.; ID.; ID.; GRANT OF FUNERAL AND BEREAVEMENT AID TO A REGULAR EMPLOYEE; LEGAL DEPENDENT, CONSTRUED.— Here, a conflict has arisen regarding the interpretation of the term *legal dependent* in connection with the grant of funeral and bereavement aid to a regular employee under Section 4, Article XIII of the CBA. Social legislations contemporaneous with the execution of the CBA have given a meaning to the term *legal dependent*. First of all, Section 8(*e*) of the *Social Security Law* x x x Secondly, Section 4(*f*) of R.A. No. 7875, as amended by R.A. No. 9241. x x x And, thirdly, Section 2(*f*) of Presidential Decree No. 1146, as amended by R.A. No. 8291. x x x It is clear from these statutory definitions of *dependent* that the civil status of the employee as either married or single is not the controlling consideration in order that a person may qualify as the employee's legal dependent. What is rather decidedly controlling is the fact that the spouse,

child, or parent is actually dependent for support upon the employee. x x x Considering that existing laws always form part of any contract, and are deemed incorporated in each and every contract, the definition of *legal dependents* under the aforecited social legislations applies herein in the absence of a contrary or different definition mutually intended and adopted by the parties in the CBA. Accordingly, the concurrence of a legitimate spouse does not disqualify a child or a parent of the employee from being a legal dependent provided substantial evidence is adduced to prove the actual dependency of the child or parent on the support of the employee. In this regard, the differentiation among the legal dependents is significant only in the event the CBA has prescribed a hierarchy among them for the granting of a benefit; hence, the use of the terms *primary beneficiaries* and *secondary beneficiaries* for that purpose. But considering that Section 4, Article XIII of the CBA has not included that differentiation, petitioner had no basis to deny the claim for funeral and bereavement aid of Alfante for the the death of his parent whose death and fact of legal dependency on him could be substantially proved.

3. ID.; CONDITIONS OF EMPLOYMENT; WAGES; THE APPLICATION OF THE PROHIBITION AGAINST DIMINUTION OF BENEFITS PRESUPPOSES THAT A COMPANY PRACTICE, POLICY, OR TRADITION FAVORABLE TO THE EMPLOYEES HAS BEEN CLEARLY ESTABLISHED; CASE AT BAR.— Pursuant to Article 100 of the *Labor Code*, petitioner as the employer could not reduce, diminish, discontinue or eliminate any benefit and supplement being enjoyed by or granted to its employees. This prohibition against the diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection. The application of the prohibition against the diminution of benefits presupposes that a company practice, policy or tradition favorable to the employees has been clearly established; and that the payments made by the employer pursuant to the practice, policy, or tradition have ripened into benefits enjoyed by them. To be considered as a practice, policy or tradition, however, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. x x x It is further worthy to note that

petitioner granted claims for funeral and bereavement aid as early as 1999, then issued a memorandum in 2000 to correct its erroneous interpretation of *legal dependent* under Section 4, Article XIII of the CBA. This notwithstanding, the 2001-2004 CBA still contained the same provision granting funeral or bereavement aid in case of the death of a legal dependent of a regular employee without differentiating the legal dependents according to the employee's civil status as married or single. The continuity in the grant of the funeral and bereavement aid to regular employees for the death of their legal dependents has undoubtedly ripened into a company policy. With that, the denial of Alfante's qualified claim for such benefit pursuant to Section 4, Article XIII of the CBA violated the law prohibiting the diminution of benefits.

APPEARANCES OF COUNSEL

Cruz Law Firm for petitioner.
Cesar F. Maravilla, Jr. for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The coverage of the term *legal dependent* as used in a stipulation in a collective bargaining agreement (CBA) granting funeral or bereavement benefit to a regular employee for the death of a legal dependent, if the CBA is silent about it, is to be construed as similar to the meaning that contemporaneous social legislations have set. This is because the terms of such social legislations are deemed incorporated in or adopted by the CBA.

The decision of the Court of Appeals (CA) under review summarizes the factual and procedural antecedents, as follows:

Complainant Judith Pulido alleged that she was hired by respondent as proofreader on 10 January 1991; that she was receiving a monthly basic salary of ₱15,493.66 plus ₱155.00 longevity pay plus other benefits provided by law and their Collective Bargaining Agreement; that on 21 February 2003, as union president, she sent two letters to President

Gloria Arroyo, regarding their complaint of mismanagement being committed by PIJ executive; that sometime in May 2003, the union was furnished with a letter by Secretary Silvestre Afable, Jr. head of Presidential Management Staff (PMS), endorsing their letter-complaint to Ombudsman Simeon V. Marcelo; that respondents took offense and started harassments to complainant union president; that on 30 May 2003, complainant received a letter from respondent Fundador Soriano, International Edition managing editor, regarding complainant's attendance record; that complainant submitted her reply to said memo on 02 June 2003; that on 06 June 2003, complainant received a memorandum of reprimand; that on 04 July 2003, complainant received another memo from Mr. Soriano, for not wearing her company ID, which she replied the next day 05 July 2003; that on 04 August 2003, complainant again received a memo regarding complainant's tardiness; that on 05 August 2003, complainant received another memorandum asking her to explain why she should not be accused of fraud, which she replied to on 07 August 2003; and that on the same day between 3:00 to 4:00 P.M., Mr. Ernesto "Estong" San Agustin, a staff of HRD handed her termination paper.

Complainant added that in her thirteen (13) years with the company and after so many changes in its management and executives, she had never done anything that will cause them to issue a memorandum against her or her work attitude, more so, reasons to terminate her services; that she got dismissed because she was the Union President who was very active in defending and pursuing the rights of her union members, and in fighting against the abuses of respondent Corporate Officers; and that she got the ire of respondents when the employees filed a complaint against the Corporate Officers before Malacañang and which was later indorsed to the Office of the Ombudsman.

The second complainant Michael L. Alfante alleged that he started to work with respondents as computer technician at Management Information System under manager Neri Torrecampo on 16 May 2000; that on 15 July 2001, he was regularized receiving a monthly salary of ₱9,070.00 plus other monetary benefits; that sometime in 2001, Rico Pagkalinawan replaced Torrecampo, which was opposed by complainant and three other co-employees; that Pagkalinawan took offense of their objection; that on 22 October 2002, complainant Alfante received a memorandum from Pagkalinawan regarding his excessive tardiness; that on 10 June 2003, complainant Alfante received a memorandum from Executive Vice-President Arnold Banares, requiring

him to explain his side on the evaluation of his performance submitted by manager Pagkalinawan; that one week after complainant submitted his explanation, he was handed his notice of dismissal on the ground of "poor performance"; and that complainant was dismissed effective 28 July 2003.

Complainant Alfante submitted that he was dismissed without just cause.

Respondents, in their position paper, averred that complainants Pulido and Alfante were dismissed for cause and with due process.

With regard to complainant Pulido, respondents averred that in a memorandum dated 30 May 2003, directed complainant to explain her habitual tardiness, at least 75 times from January to May of 2003. In a memorandum, dated 06 June 2003, directed complainant to observe the 3 p.m. rule to avoid grammatical lapses, use of stale stories just to beat the 10:00 p.m. deadline. In the same memorandum complainant was given the warning that any repeated violation of the rules shall be dealt with more severely. Once again, in a memorandum, dated 04 August 2003, complainant Pulido was required to explain why no disciplinary action should be taken against her for habitual tardiness – 18 times out of the 23 reporting days during the period from 27 June – 27 July 2003 and on 05 August 2003, complainant was directed to explain in writing why complainant should not be administratively sanctioned for committing fraud or attempting to commit fraud against respondents. Respondents found complainant's explanations unsatisfactory. On 07 August 2003, respondents dismissed complainant Pulido for habitual tardiness, gross insubordination, utter disrespect for superiors, and committing fraud or attempting to commit fraud which led to the respondents' loss of confidence upon complainant Pulido.

In case of complainant Alfante, respondents averred in defense that complainant was dismissed for "poor performance" after an evaluation by his superior, and after being forewarned that complainant may be removed if there was no showing of improvement in his skills and knowledge on current technology.

In both instances, respondents maintained that they did not commit any act of unfair labor practices; that they did not commit acts tantamount to interfering, restraining, or coercing employees in the exercise of their right to self-organization.

Respondents deny liabilities as far as complainants' monetary claims are concerned. Concerning violations of the provision on wage distortion under Wage Order No. 9, respondents stressed that complainants were not affected since their salary is way over the minimum wage.

With respect to the alleged non-adjustment of longevity pay and burial aid, respondent PJI pointed out that it complies with the provisions of the CBA and that both complainants have not claimed for the burial aid.

Respondents put forward the information that the alleged non-payment of rest days – every Monday for the past three (3) years is a matter that is still at issue in NLRC Case No. 02-0402973-93, which case is still pending before this Commission.

Respondents asserted that the respondents Arturo Dela Cruz, Bobby Capco, Arnold Banares, Ruby Ruiz-Bruno and Fundador Soriano should not be held liable on account of complainants' dismissal as they merely acted as agents of respondent PJI.[1]

Upon the foregoing backdrop, Labor Arbiter Corazon C. Borbolla rendered her decision on March 29, 2006, disposing thusly:

WHEREFORE, foregoing premises considered, judgment is hereby rendered, finding complainant Judith Pulido to have been illegally dismissed. As such, she is entitled to reinstatement and backwages from 07 August 2003 up to her actual or payroll reinstatement. To date, complainant's backwages is ₱294,379.54.

Respondent Philippine Journalist, Inc. is hereby ordered to pay complainant Judith Pulido her backwages from 07 August 2003 up to her actual or payroll reinstatement and to reinstate her to her former position without loss of seniority right.

Respondent is further ordered to submit a report to this Office on complainant's reinstatement ten (10) days from receipt of this decision.

The charge of illegal dismissal by Michael Alfante is hereby dismissed for lack of merit.

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[1] *Rollo,* pp. 243-248.

The charge of unfair labor practice is dismissed for lack of basis.

SO ORDERED.[2]

Complainant Michael Alfante (Alfante), joined by his labor organization, Journal Employees Union (JEU), filed a partial appeal in the National Labor Relations Commission (NLRC).[3]

In the meantime, on May 10, 2006, petitioner and Judith Pulido (Pulido), the other complainant, jointly manifested to the NLRC that the decision of March 29, 2006 had been fully satisfied as to Pulido under the following terms, namely: (*a*) she would be reinstated to her former position as editorial staffmember, or an equivalent position, without loss of seniority rights, effective May 15, 2006; (*b*) she would go on maternity leave, and report to work after giving birth; (*c*) she would be entitled to backwages of ₱130,000.00; and (*d*) she would execute the quitclaim and release on May 11, 2006 in favor of petitioner.[4] This left Alfante as the remaining complainant.

On January 31, 2007, the NLRC rendered its decision dismissing the partial appeal for lack of merit.[5]

JEU and Alfante moved for the reconsideration of the decision, but the NLRC denied their motion on April 24, 2007.[6]

Thereafter, JEU and Alfante assailed the decision of the NLRC before the CA on *certiorari* (C.A.-G.R. SP No. 99407).

On February 5, 2010, the CA promulgated its decision in C.A.-G.R. SP No. 99407,[7] decreeing:

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[2] *Id.* at 252.

[3] *Id.* at 253-276.

[4] *Id.* at 292-294.

[5] *Id.* at 295-301.

[6] *Id.* at 321-322.

[7] *Id.* at 54-65; penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justice Mario L. Guariña III (retired) and Associate Justice Sesinando E. Villon.

WHEREFORE, premises considered, the instant petition is PARTLY GRANTED.

The twin Resolutions dated January 31, 2007 and April 24, 2007, respectively, of the Third Division of the National Labor Relations Commission (NLRC), in NLRC NCR CA No. 048785-06 (NLRC NCR Case No. 00-10-11413-04), are MODIFIED insofar as the funeral or bereavement aid is concerned, which is hereby GRANTED, but only after submission of conclusive proofs that the deceased is a parent, either father or mother, of the employees concerned, as well as the death certificate to establish the fact of death of the deceased legal dependent.

The rest of the findings of fact and law in the assailed Resolutions are hereby AFFIRMED.

SO ORDERED.

Both parties moved for reconsideration, but the CA denied their respective motions for reconsideration on June 2, 2010.[8]

JEU and Alfante appealed to the Court (G.R. No. 192478) to challenge the CA's dispositions regarding the legality of: (*a*) Alfante's dismissal; (*b*) the non-compliance with Minimum Wage Order No. 9; and (*c*) the non-payment of the rest day.[9]

On August 18, 2010, the Court denied due course to the petition in G.R. No. 192478 for failure of petitioners to sufficiently show that the CA had committed any reversible error to warrant the Court's exercise of its discretionary appellate jurisdiction.[10]

The Court denied with finality JEU and Alfante's ensuing motion for reconsideration through the resolution of December 8, 2010.[11] The entry of judgment in G.R. No. 192478 issued in due course on February 1, 2011.[12]

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[8] *Id.* at 66-68.

[9] *Rollo* (G.R. No. 192478), p. 13.

[10] *Id.* at 390.

[11] *Id.* at 405.

[12] *Id.* at 406.

On its part, petitioner likewise appealed (G.R. No. 192601), seeking the review of the CA's disposition in the decision of February 5, 2010 on the granting of the funeral and bereavement aid stipulated in the CBA.

In its petition for review, petitioner maintained that under Section 4, Article XIII of the CBA, funeral and bereavement aid should be granted upon the death of a legal dependent of a regular employee; that consistent with the definition provided by the Social Security System (SSS), the term *legal dependent* referred to the spouse and children of a married regular employee, and to the parents and siblings, 18 years old and below, of a single regular employee;[13] that the CBA considered the term *dependents* to have the same meaning as *beneficiaries*, as provided in Section 5, Article XIII of the CBA on the payment of death benefits;[14] that its earlier granting of claims for funeral and bereavement aid without regard to the foregoing definition of the *legal dependents* of married or single regular employees did not ripen into a company policy whose unilateral withdrawal would constitute a violation of Article 100 of the *Labor Code*,[15] the law disallowing the non-diminution of benefits;[16] that it had approved only four claims from 1999 to 2003 based on its mistaken interpretation of the term *legal dependents*, but later corrected the same in 2000;[17] that the grant of funeral and bereavement aid for the death of an employee's legal dependent, regardless of the employee's civil status, did not occur over a long period of time, was not consistent and deliberate, and was partly due to its mistake in appreciating a doubtful question of

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[13] *Rollo,* p. 41.

[14] *Id.* at 41-42.

[15] Article 100. *Prohibition against elimination or diminution of benefits*. – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[16] *Rollo,* p. 43.

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

law; and that its denial of subsequent claims did not amount to a violation of the law against the non-diminution of benefits.[18]

In their comment,[19] JEU and Alfante countered that the CBA was a bilateral contractual agreement that could not be unilaterally changed by any party during its lifetime; and that the grant of burial benefits had already become a company practice favorable to the employees, and could not anymore be reduced, diminished, discontinued or eliminated by petitioner.

Issue

In view of the entry of judgment issued in G.R. No. 192478, JEU and Alfante's submissions on the illegality of his dismissal, the non-payment of his rest days, and the violation of Minimum Wage Order No. 9 shall no longer be considered and passed upon.

The sole remaining issue is whether or not petitioner's denial of respondents' claims for funeral and bereavement aid granted under Section 4, Article XIII of their CBA constituted a diminution of benefits in violation of Article 100 of the *Labor Code*.

Ruling

The petition for review lacks merit.

The nature and force of a CBA are delineated in *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*,[20] thuswise:

> A collective bargaining agreement (or CBA) refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy.

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[18] *Id.* at 45.

[19] *Id.* at 473-490.

[20] G.R. No. 145561, June 15, 2005, 460 SCRA 186, 190-191.

Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.

Accordingly, the stipulations, clauses, terms and conditions of the CBA, being the law between the parties, must be complied with by them.[21] The literal meaning of the stipulations of the CBA, as with every other contract, control if they are clear and leave no doubt upon the intention of the contracting parties.[22]

Here, a conflict has arisen regarding the interpretation of the term *legal dependent* in connection with the grant of funeral and bereavement aid to a regular employee under Section 4, Article XIII of the CBA,[23] which stipulates as follows:

SECTION 4. *Funeral/Bereavement Aid*. The COMPANY agrees to grant a funeral/bereavement aid in the following instances:

a. Death of a regular employee in line of duty – ₱50,000

b. Death of a regular employee not in line of duty – ₱40,000

c. Death of legal dependent of a regular employee – ₱15,000.
(Emphasis supplied)

Petitioner insists that notwithstanding the silence of the CBA, the term *legal dependent* should follow the definition of it under Republic Act (R.A.) No. 8282 (*Social Security Law*),[24] so that in the case of a married regular employee, his or her legal dependents include only his or her spouse and children, and in the case of a single regular employee, his or her legal

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[21] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, citing *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals*, G.R. No. 165486, May 31, 2006, 490 SCRA 61, 72.

[22] Article 1370, *Civil Code*.

[23] *Rollo*, p. 134.

[24] *An Act Further Strengthening the Social Security System Thereby Amending for this Purpose Republic Act No. 1161, As Amended, Otherwise Known as the Social Security Law*.

dependents include only his or her parents and siblings, 18 years old and below; and that the term *dependents* has the same meaning as *beneficiaries* as used in Section 5, Article XIII of the CBA.

We cannot agree with petitioner's insistence.

Social legislations contemporaneous with the execution of the CBA have given a meaning to the term *legal dependent*. First of all, Section 8(*e*) of the *Social Security Law* provides that a dependent shall be the following, namely: (*a*) the legal spouse entitled by law to receive support from the member; (*b*) the legitimate, legitimated, or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached 21 of age, or, if over 21 years of age, is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and (*c*) the parent who is receiving regular support from the member. Secondly, Section 4(*f*) of R.A. No. 7875, as amended by R.A. No. 9241,[25] enumerates who are the legal dependents, to wit: (*a*) the legitimate spouse who is not a member; (*b*) the unmarried and unemployed legitimate, legitimated, illegitimate, acknowledged children as appearing in the birth certificate; legally adopted or step-children below 21 years of age; (*c*) children who are 21 years old and older but suffering from congenital disability, either physical or mental, or any disability acquired that renders them totally dependent on the member of our support; and (*d*) the parents who are 60 years old or older whose monthly income is below an amount to be determined by the Philippine Health Insurance Corporation in accordance with the guiding principles set forth in Article I of R.A. No. 7875. And, thirdly, Section 2(*f*) of Presidential Decree No. 1146, as amended by R.A. No. 8291,[26] states that dependents shall

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[25] *An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose*.

[26] *An Act Amending Presidential Decree No. 1146, as amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes*

include: (*a*) the legitimate spouse dependent for support upon the member or pensioner; (*b*) the legitimate, legitimated, legally adopted child, including the illegitimate child, who is unmarried, not gainfully employed, not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect acquired prior to age of majority; and (*c*) the parents dependent upon the member for support.

It is clear from these statutory definitions of *dependent* that the civil status of the employee as either married or single is not the controlling consideration in order that a person may qualify as the employee's legal dependent. What is rather decidedly controlling is the fact that the spouse, child, or parent is actually dependent for support upon the employee. Indeed, the Court has adopted this understanding of the term *dependent* in *Social Security System v. De Los Santos*,[27] *viz*:

> *Social Security System v. Aguas* is instructive in determining the extent of the required "dependency" under the SS Law. In *Aguas*, the Court ruled that although a husband and wife are obliged to support each other, whether one is actually dependent for support upon the other cannot be presumed from the fact of marriage alone.
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> Further, *Aguas* pointed out that a wife who left her family until her husband died and lived with other men, was **not** dependent upon her husband for support, financial or otherwise, during the entire period.
>
> Said the Court:
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> > In a parallel case involving a claim for benefits under the GSIS law, the Court defined a *dependent* as "one who derives his or her main support from another. Meaning, relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else." It should be noted that the GSIS law likewise defines a *dependent spouse* as "the legitimate spouse dependent for support upon the member or pensioner." In that case, the Court found it obvious that a wife who abandoned the family

[27] G.R. No. 164790, August 29, 2008, 563 SCRA 693, 703-704.

> for more than 17 years until her husband died, and lived with other men, was not dependent on her husband for support, financial or otherwise, during that entire period. Hence, the Court denied her claim for death benefits.
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> The obvious conclusion then is that a wife who is already separated *de facto* from her husband cannot be said to be "dependent for support" upon the husband, absent any showing to the contrary. Conversely, if it is proved that the husband and wife were still living together at the time of his death, it would be safe to presume that she was dependent on the husband for support, unless it is shown that she is capable of providing for herself.

Considering that existing laws always form part of any contract, and are deemed incorporated in each and every contract,[28] the definition of *legal dependents* under the aforecited social legislations applies herein in the absence of a contrary or different definition mutually intended and adopted by the parties in the CBA. Accordingly, the concurrence of a legitimate spouse does not disqualify a child or a parent of the employee from being a legal dependent provided substantial evidence is adduced to prove the actual dependency of the child or parent on the support of the employee.

In this regard, the differentiation among the legal dependents is significant only in the event the CBA has prescribed a hierarchy among them for the granting of a benefit; hence, the use of the terms *primary beneficiaries* and *secondary beneficiaries* for that purpose. But considering that Section 4, Article XIII of the CBA has not included that differentiation, petitioner had no basis to deny the claim for funeral and bereavement aid of Alfante for the death of his parent whose death and fact of legal dependency on him could be substantially proved.

Pursuant to Article 100 of the *Labor Code*, petitioner as the employer could not reduce, diminish, discontinue or eliminate any benefit and supplement being enjoyed by or granted to its

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[28] *Sulo sa Nayon, Inc. v. Nayong Pilipino Foundation*, G.R. No. 170923, January 20, 2009, 576 SCRA 655, 666.

employees. This prohibition against the diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection.[29] The application of the prohibition against the diminution of benefits presupposes that a company practice, policy or tradition favorable to the employees has been clearly established; and that the payments made by the employer pursuant to the practice, policy, or tradition have ripened into benefits enjoyed by them.[30] To be considered as a practice, policy or tradition, however, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate.[31] It is relevant to mention that we have not yet settled on the specific minimum number of years as the length of time sufficient to ripen the practice, policy or tradition into a benefit that the employer cannot unilaterally withdraw.[32]

The argument of petitioner that the grant of the funeral and bereavement benefit was not voluntary but resulted from its mistaken interpretation as to who was considered a legal dependent of a regular employee deserves scant consideration. To be sure, no doubtful or difficult question of law was involved inasmuch as the several cogent statutes existing at the time the CBA was entered into already defined who were qualified as the legal dependents of another. Moreover, the voluntariness of the grant of the benefit became even manifest from petitioner's

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[29] *Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union,* G.R. No. 185665, February 8, 2012, 665 SCRA 516, 533.

[30] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU),* G.R. No. 162716, September 27, 2006, 503 SCRA 611, 628.

[31] *Metropolitan Bank and Trust Company v. National Labor Relations Commission,* G.R. No. 152928, June 18, 2009, 589 SCRA 376, 384.

[32] *Sevilla Trading Company v. Semana,* G.R. No. 152456, April 28, 2004, 428 SCRA 239, 249.

admission that, despite the memorandum it issued in 2000[33] in order to "correct" the interpretation of the term *legal dependent*, it still approved in 2003 the claims for funeral and bereavement aid of two employees, namely: (*a*) Cecille Bulacan, for the death of her father; and (*b*) Charito Cartel, for the death of her mother, based on its supposedly mistaken interpretation.[34]

It is further worthy to note that petitioner granted claims for funeral and bereavement aid as early as 1999, then issued a memorandum in 2000 to correct its erroneous interpretation of *legal dependent* under Section 4, Article XIII of the CBA. This notwithstanding, the 2001-2004 CBA[35] still contained the same provision granting funeral or bereavement aid in case of the death of a legal dependent of a regular employee without differentiating the legal dependents according to the employee's civil status as married or single. The continuity in the grant of the funeral and bereavement aid to regular employees for the death of their legal dependents has undoubtedly ripened into a company policy. With that, the denial of Alfante's qualified claim for such benefit pursuant to Section 4, Article XIII of the CBA violated the law prohibiting the diminution of benefits.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 5, 2010; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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

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[33] *Rollo,* p. 41

[34] *Id.* at 40.

[35] *Id.* at 121-140.

FIRST DIVISION

[G.R. No. 198789. June 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REGGIE BERNARDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ALIBI AND DENIAL AS DEFENSES; ALIBI AND DENIAL CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED MADE BY THE WITNESS; APPLICATION IN CASE AT BAR.— Bernardo asserts alibi and denial as defenses. He argues that he was in jail when the crime was committed. Such alibi, while corroborated by the testimonies of some of Batac District Jail guards, cannot prevail over the positive identification made by Reah pinpointing Bernardo as one of the malefactors who shot Efren to death. The identification of Bernardo as an assailant was positively and credibly established by the prosecution in this case. It has been settled that affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Absent clear and convincing evidence, alibi and denial are negative and self-serving evidence undeserving of weight in law.

2. ID.; ID.; ALIBI; FOR ALIBI TO PROSPER, PHYSICAL IMPOSSIBILITY FOR THE COMMISSION OF CRIME MUST BE PROVED; NOT ESTABLISHED IN CASE AT BAR.— [F]or alibi to prosper, it must be proved, not only that the assailant was in another place when the crime was committed, but that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission altogether. In this case, Bernardo claims the physical impossibility of having committed the crime for the reason that he was still in jail when it was perpetrated. He was ordered released by the RTC of Batac on July 21, 2006; hence, he was no longer a detention prisoner during the commission of the crime. The Batac District Jail is in the same province where the crime was committed and could be easily reached within thirty to forty five minutes from *Barangay* San Marcos, Sarrat,

Ilocos Norte. Having been discharged from jail, Bernardo was also free to move around and was not subject to strict monitoring. This was bolstered by the finding of the RTC that there was no record that Bernardo stayed in jail on the day the crime was perpetrated. Undisputedly, there was no physical impossibility for Bernardo to leave his cell and be present at the shooting incident.

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; PRESENT IN CASE AT BAR.— There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof that tend directly and specially to insure its execution eliminating the risk to himself, arising from the defense which the offended party might make. The presence of two conditions is necessary to constitute treachery, to wit: (1) that the victim was not in the position to defend himself at the time of the attack; and (2) the means of execution were deliberately or consciously adopted. The prosecution established that Reah and Efren were unarmed aboard a motorcycle when another motorcycle suddenly appeared and shot them several times. This clearly showed that Reah and Efren were totally defenseless when they were fired upon by Bernardo.

4. ID.; ATTEMPTED MURDER; IF THE VICTIM'S WOUNDS ARE NOT FATAL, THE CRIME IS ONLY IN ITS ATTEMPTED STAGE; CASE AT BAR.— It was also proven that Bernardo committed attempted murder against Reah. It is settled that if the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide. Such fact was established by the medical certificate issued by Dr. Corpuz.

5. ID.; COMPLEX CRIME; WHEN COMMITTED; IMPOSABLE PENALTY, EXPLAINED.— A complex crime is only one crime. Although two or more crimes are actually committed, there is only one crime in the eyes of the law as well as in the conscience of the offender when it comes to complex crimes. Hence, there is only one penalty imposed for the commission of a complex crime. Under Article 48 of the Revised Penal Code (RPC), when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. In this case, the

most serious crime committed was Murder and Article 248 of the RPC provides for the penalty of *reclusion perpetua* to death. Meanwhile, Article 63 of the RPC provides that if the penalty prescribed is composed of two indivisible penalties and there is an aggravating circumstance, the higher penalty should be imposed. As previously discussed, treachery was proven and correctly appreciated to have attended the commission of the crime, qualifying the killing to the highest penalty, which is death. In view, however, of the enactment of Republic Act No. 9346, which prohibits the imposition of the death penalty, the penalty for crime should, therefore, be reduced to *reclusion perpetua* without eligibility FOR PAROLE. Thus, the RTC was correct in imposing, and the CA, in affirming, the penalty of *reclusion perpetua.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

Before the Court is an appeal from the Decision[1] dated March 4, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02805 entitled *People of the Philippines v. Reggie Bernardo and John Does,* which affirmed with modification the Judgment[2] dated April 27, 2007 of the Regional Trial Court (RTC) of Laoag City, Ilocos Norte, Branch 14, in Criminal Case No. 13134-14. The RTC found accused-appellant Reggie Bernardo (Bernardo) guilty of the complex crime of Murder with Attempted Murder.

The Facts

Bernardo was charged under the following Information:[3]

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Rodil V. Zalameda, concurring; CA *rollo,* pp. 119-132.

[2] Penned by Presiding Judge Francisco R.D. Quilala; records, pp. 74-87.

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

That in the morning of July 27, 2006 along the national highway within the vicinity of Brgy. 21, San Marcos, Sarrat, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with John Does whose true names and identities are not yet certain at this time, with intent to kill, with treachery and evident premeditation and with the use of an illegally possessed firearm, did then and there willfully, unlawfully and feloniously shoot to death one EFREN CALUMAG *y* ANTONIO and inflict grazing gunshot wounds (abrasion) upon REAH B. CALUMAG, thus, commencing the execution of the crime of Murder by overt acts but did not perform all the acts that would produce the same by reason of some cause other than their own spontaneous desistance.

CONTRARY TO LAW.[4]

On September 5, 2006, Bernardo pleaded "not guilty" to the charge.[5] Thereafter, trial on the merits ensued.

During trial, the prosecution offered as witnesses Dr. Ruth Ann Corpuz (Dr. Corpuz), Reah Calumag (Reah) and Police Inspector Samuel Ofilas. On the other hand, the defense witnesses were Jail Senior Inspector Jun Melchor Boadilla, JO1 Joel Gabutan, JO1 Julieta Valenzuela, SJO1 Virgilio Bagay, *Barangay* Chairman Elmer Pungtilan (Chairman Pungtilan), and Bernardo himself.[6]

Reah testified that the incident transpired on July 27, 2006 along the National Highway in Sarrat, Ilocos Norte around 11:45 a.m. while she was aboard a motorcycle driven by her father, Efren Calumag (Efren). Three men on a motorcycle going in the same direction as the Calumags appeared beside them and shot them several times. Reah and Efren fell down. While Reah survived and was treated for her wounds, Efren eventually died. It was while being treated at the hospital that Reah described one of the assailants to the investigating policemen and told them that she could recognize him if she would see him again.[7]

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[4] *Id.* at 1.

[5] CA *rollo*, p. 120.

[6] Records, p. 74.

[7] *Id.* at 74-75.

Dr. Corpus, a physician at Dingras District Hospital where Reah and Efren were brought after the shooting incident, issued a medical certificate to Reah and a medico legal report on the injuries sustained by Efren.[8]

On July 29, 2006, Reah went to the Sarrat Police Station upon being informed by the Dingras police chief that they had in their custody a person who fitted the description of one of the assailants as given by her. They then proceeded to the provincial jail where a police line-up was conducted, during which she pointed to Bernardo as the shooter.[9]

Bernardo interposed the defense of denial and alibi. He alleged that he was inside the District Jail of Batac, Ilocos Norte when the crime was committed on July 27, 2006. He was originally a prisoner of the district jail and was ordered to be released on July 21, 2006. He claimed that because he had nowhere to go, he asked and was permitted by the Jail Warden to stay in jail. With the Jail Warden's permission, he went to Cabugao, Ilocos Sur on July 22, 2006 but returned to the district jail the following morning. He narrated that on the day of the incident, he washed his clothes in the morning and later on helped in preparing lunch. Afterwards, three jail guards accompanied him to the Pag-IBIG Office in Laoag City using the district jail service. They even dropped by Chairman Pungtilan's residence to request for a certification and there they were told that a shooting incident was reported over the radio. The self-imposed extension of his stay allegedly lasted until July 28, 2006.[10]

The RTC Decision

The RTC rendered its Decision dated April 27, 2007 finding Bernardo guilty beyond reasonable doubt of the complex crime of Murder with Attempted Murder. The decretal portion reads:

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[8] CA *rollo*, p. 41.

[9] *Id.* at 91-92.

[10] *Id.* at 122.

WHEREFORE, the accused Reggie Bernardo is found GUILTY beyond reasonable doubt of the complex crime of murder with attempted murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the heirs of the deceased the following: (1) ₱50,000.00 as civil indemnity for his death; (2) ₱50,000.00 as moral damages; (3) ₱25,000.00 as temperate damages; and (4) ₱25,000.00 as exemplary damages. He is further ordered to pay Reah Calumag an indemnity of ₱30,000.00. Costs against the accused.

SO ORDERED.[11]

The RTC gave credence to Reah's narration of facts over Bernardo's defense of denial and alibi. The RTC refused to give merit to the circumstances postulated by Bernardo, which he claimed to have impaired Reah's ability to identify the assailant. During the shooting incident, the motorcycle where Bernardo was riding was only about a meter beside Reah and Efren.[12] Though Bernardo was wearing a bull cap, Reah can still see the face of the perpetrator because it was only the hair that was hidden. Substantially, the RTC considered Reah's testimony as reliable, credible and sufficient to convict Bernardo.

The CA Decision

On March 4, 2011, the CA affirmed with modification the judgment of conviction of the trial court, the dispositive portion of which reads:

WHEREFORE, the appealed Decision of the Regional Trial Court of Laoag City, Branch 14, dated April 27, 2007, that convicted accused-appellant for the complex crime of **MURDER** with **ATTEMPTED MURDER,** except for the award of temperate damages which is hereby deleted, is hereby **AFFIRMED** in all other aspect.

SO ORDERED.[13]

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[11] Records, pp. 86-87.

[12] *Id.* at 79.

[13] CA *rollo*, p. 131.

The CA upheld the RTC's ruling of the insufficiency of Bernardo's alibi in overcoming Reah's positive identification.[14] The CA, however, deleted the award of temperate damages.

Aggrieved, Bernardo elevated the case to this Court. Both parties manifested that they are no longer filing supplemental briefs and they are adopting their respective main briefs before the CA.[15] Bernardo mainly argues that the prosecution failed to establish his guilt beyond reasonable doubt and that there is no basis for the award of the damages.[16]

The Court's Ruling

The Court sustains Bernardo's conviction.

Bernardo asserts alibi and denial as defenses. He argues that he was in jail when the crime was committed. Such alibi, while corroborated by the testimonies of some of Batac District Jail guards, cannot prevail over the positive identification made by Reah pinpointing Bernardo as one of the malefactors who shot Efren to death. The identification of Bernardo as an assailant was positively and credibly established by the prosecution in this case. It has been settled that affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.[17] Absent clear and convincing evidence, alibi and denial are negative and self-serving evidence undeserving of weight in law.[18]

Further, for alibi to prosper, it must be proved, not only that the assailant was in another place when the crime was committed, but that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its

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[14] *Id.* at 124-125.

[15] *Rollo*, pp. 24-26 and 27-31.

[16] CA *rollo*, p. 40.

[17] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 510.

[18] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 574.

commission altogether.[19] In this case, Bernardo claims the physical impossibility of having committed the crime for the reason that he was still in jail when it was perpetrated. He was ordered released by the RTC of Batac on July 21, 2006; hence, he was no longer a detention prisoner during the commission of the crime. The Batac District Jail is in the same province where the crime was committed and could be easily reached within thirty to forty five minutes from *Barangay* San Marcos, Sarrat, Ilocos Norte.[20] Having been discharged from jail, Bernardo was also free to move around and was not subject to strict monitoring. This was bolstered by the finding of the RTC that there was no record that Bernardo stayed in jail on the day the crime was perpetrated.[21] Undisputedly, there was no physical impossibility for Bernardo to leave his cell and be present at the shooting incident.

The alleged minor discrepancies in the testimony of Reah, the main prosecution witness, identifying Bernardo as one of the perpetrators in the shooting incident were, indeed, negligible. As the CA correctly emphasized, Reah was not only able to relate a detailed story of what transpired on July 27, 2006 but more importantly, her testimony was sufficient to convict Bernardo for the crime charged, to wit:

Q: While you were traversing at that part of the national highway, what happened if there was any?
A: There was sir.

Q: What was that?
A: That was the time that we were fired upon with my father, sir.

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[19] *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583, citing *Campos v. People*, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 335.

[20] CA *rollo*, p. 128.

[21] Records, p. 82.

Q: Can you tell this Honorable Court how come that incident happened?
A: Men riding on a motorcycle suddenly came beside us and shot us immediately for several times, sir.

Q: Where is that motorcycle when you noticed the same in relation to where you were?
A: At the national highway, sir.

Q: In relation to the place where were you?
A: While we were traversing the national highway the motorcycle riding men suddenly went beside us and shot us several times, sir.

Q: When you said they were beside you, is it at your right or at your left?
A: Left side, sir.

Q: Now you mentioned of persons riding in that motorcycle, how many persons did you see, if any?
A: Three (3) persons, sir.

Q: And you said that the motorcycle was then beside you at the left side, how far was the motorcycle they were riding and the motorcycle that you were riding?
A: About one meter, sir

Q: And do you know who fired the shots?
A: Yes, sir.

Q: Who among the three (3) who were then riding in that motorcycle?
A: The one who sat at the back portion of the motorcycle, sir.

Q: Why are you saying that it is the one at the back who fired the shot?
A: He was the one whom I saw holding a gun and fired upon us with my father, sir.

Q: And you said that he fired upon you, how many gun reports did you hear?
A: Several times, sir.

Q: And after the gun reports, what happened next?
A: The motorcycle which we were then riding with my father skidded and I was thrown at a hole and my father suffered gun shot wounds already at that time, sir.

Q: And what happened next?
A: When I was able to climb out from the hole somebody came to help me and he told me that I was hit, sir.

Q: So, when somebody told you that you were hit, what happened next?
A: I was brought to the hospital, sir.

Q: How about your father?
A: He was lying prostrate, sir.

Q: And what next after that?
A: I was treated with my wounds, sir.

Q: Do you know, what happened to your father?
A: He died, sir.[22]

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Q: What happened after that after looking of the inmates who were positioned?
A: When I looked at the inmates I was able to recognize one of the assailants and I told Officer Ofilas, sir.

Q: What is your basis in pointing to him as one who shot your father?
A: Because he was the one whom I saw shooting us with my father, sir.

Q: So what happened after you have pointed to him as the one who shot your father?
A: Officer Ofilas and Magno went to ask from the jail guard the identity of the person that I earlier pointed to, sir.

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[22] TSN, October 10, 2006, pp. 10-12.

Q: Madam Witness, you said that you recognized by the way, if the said person is inside the courtroom, will you be able to identify him again?
A: Yes, sir.

Q: Can you please identify him?
A: That one sir (Witness pointing to a man wearing a red shirt when asked his name he gave the name Reggie Bernardo).[23]

The Court also finds no reason to deviate from the ruling of the RTC and CA as to the crime committed. The presence of treachery qualifying the killing was clearly manifested in the facts of this case. There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof that tend directly and specially to insure its execution eliminating the risk to himself, arising from the defense which the offended party might make.[24] The presence of two conditions is necessary to constitute treachery, to wit: (1) that the victim was not in the position to defend himself at the time of the attack; and (2) the means of execution were deliberately or consciously adopted.[25] The prosecution established that Reah and Efren were unarmed aboard a motorcycle when another motorcycle suddenly appeared and shot them several times. This clearly showed that Reah and Efren were totally defenseless when they were fired upon by Bernardo.

It was also proven that Bernardo committed attempted murder against Reah. It is settled that if the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide.[26] Such fact was established by the medical certificate issued by Dr. Corpuz.[27]

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[23] *Id.* at 21.

[24] THE REVISED PENAL CODE, Article 14(16).

[25] *People v. Mabuhay*, 264 Phil. 277, 283 (1990), citing *People v. Samonte, Jr.*, 159-A Phil. 593, 599-600 (1975).

[26] *Colinares v. People*, G.R. No. 182748, December 13, 2011, 662 SCRA 266, 276.

[27] Records, pp. 10-11.

Bernardo, however, can only be convicted of the complex crime of murder with attempted murder. On this point, the Court concurs and adopts the ratiocination of the RTC, to wit:

> Nonetheless, he may be convicted only of the complex crime of murder with attempted murder, not of the two separate crimes of murder and attempted murder. To be sure, Reah Calumag's testimony that the accused shot her and her father several times shows that the he was actuated by more than one criminal impulse, ruling out the application of the concept of complex crime. The evidence however, does not conform to the Information, which contains no allegation that the accused was so actuated. In fact, the Information merely alleges that the accused shot the victim, but it does not allege that he did so several times. In the absence of such a clear statement in the Information, the accused may be convicted only of the complex crime of murder with attempted murder. Afterall, the concept of complex crimes is intended to favor the accused by imposing a single penalty irrespective of the number of crimes committed.
>
> To rule that the accused should be convicted of two separate offenses of murder and attempted murder pursuant to the evidence presented but contrary to the allegations in the Information is to violate the right of the accused to be informed of the nature and cause of the accusation against him. It is well-settled that an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information.[28] (Citations omitted)

A complex crime is only one crime. Although two or more crimes are actually committed, there is only one crime in the eyes of the law as well as in the conscience of the offender when it comes to complex crimes. Hence, there is only one penalty imposed for the commission of a complex crime.[29]

Under Article 48 of the Revised Penal Code (RPC), when a single act constitutes two or more grave or less grave felonies,

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[28] *Id.* at 85-86.

[29] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 435, citing *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.

or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. In this case, the most serious crime committed was Murder and Article 248 of the RPC provides for the penalty of *reclusion perpetua* to death. Meanwhile, Article 63 of the RPC provides that if the penalty prescribed is composed of two indivisible penalties and there is an aggravating circumstance, the higher penalty should be imposed. As previously discussed, treachery was proven and correctly appreciated to have attended the commission of the crime, qualifying the killing to the highest penalty, which is death. In view, however, of the enactment of Republic Act No. 9346,[30] which prohibits the imposition of the death penalty, the penalty for crime should, therefore, be reduced to *reclusion perpetua* without eligibility for parole. Thus, the RTC was correct in imposing, and the CA, in affirming, the penalty of *reclusion perpetua*.

The Court, however, modifies the award of damages.

First, we reinstate the award of temperate damages in favor of Efren's heirs. Article 2224 of the New Civil Code provides that "(t)emperate or moderate damages, which are more than nominal but less than compensatory damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, proved with certainty." In this case, it cannot be denied that the Calumags suffered pecuniary loss for the wake, funeral and burial of Efren, although the exact amount thereof was not proved with certainty.

Second, in light of our ruling in *People v. Malicdem*[31] and *People v. Laurio*,[32] the civil indemnity awarded to the heirs

[30] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[31] G.R. No. 184601, November 12, 2012, 685 SCRA 193.

[32] G.R. No. 182523, September 13, 2012, 680 SCRA 560.

of Efren is increased from ₱50,000.00 to ₱75,000.00, while the exemplary damages is increased from ₱25,000.00 to ₱30,000.00.

Third, the civil indemnity awarded to Reah is reduced from ₱30,000.00 to ₱25,000.00, to conform to our ruling in *People v. Adallom*.[33] However, Reah is declared also entitled to ₱40,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages, consistent with our ruling in *People v. Nelmida*[34] and *People v. Punzalan*.[35]

WHEREFORE, the appeal is **DENIED**. The Court of Appeals' Decision dated March 4, 2011 in CA-G.R. CR-H.C. No. 02805 is **AFFIRMED WITH MODIFICATION** in that accused-appellant Reggie Bernardo is ordered: (a) to pay the heirs of Efren A. Calumag the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages; and (b) to pay Reah B. Calumag the amount of ₱25,000.00 as civil indemnity, ₱40,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[33] G.R. No. 182522, March 7, 2012, 667 SCRA 652.

[34] G.R. No. 184500, September 11, 2012, 680 SCRA 386.

[35] G.R. No. 199892, December 10, 2012.

THIRD DIVISION

[G.R. No. 201701. June 3, 2013]

UNILEVER PHILIPPINES, INC., *petitioner, vs.* **MARIA RUBY M. RIVERA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; AS A RULE, EMPLOYEE WHO HAS BEEN DISMISSED FOR ANY OF THE JUST CAUSES ENUMERATED UNDER ARTICLE 282 OF THE LABOR CODE IS NOT ENTITLED TO SEPARATION PAY; EXCEPTION; NOT PRESENT IN CASE AT BAR.— As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay. x x x In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee. x x x In this case, Rivera was dismissed from work because she intentionally circumvented a strict company policy, manipulated another entity to carry out her instructions without the company's knowledge and approval, and directed the diversion of funds, which she even admitted doing under the guise of shortening the laborious process of securing funds for promotional activities from the head office. These transgressions were serious offenses that warranted her dismissal from employment and proved that her termination from work was for a just cause. Hence, she is not entitled to a separation pay.

2. REMEDIAL LAW; APPEALS; DUE PROCESS PREVENTS THE GRANT OF ADDITIONAL AWARDS TO PARTIES WHO DID NOT APPEAL.— It is axiomatic that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief. Due process prevents the grant of additional awards to parties who did not appeal. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of

the judgment or claim affirmative relief unless he has also appealed. It was, therefore, erroneous for the CA to grant an affirmative relief to Rivera who did not ask for it.

3. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; WHEN VIOLATION OF RIGHT TO STATUTORY DUE PROCESS WARRANTS THE PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES; ESTABLISHED IN CASE AT BAR.— *King of Kings Transport, Inc. v. Mamac* detailed the steps on how procedural due process can be satisfactorily complied with. Thus: To clarify, the following should be considered in terminating the services of employees: (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. x x x (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. x x x (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. In this case, Unilever was not direct and specific in its first notice to Rivera. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages.

APPEARANCES OF COUNSEL

De La Rosa & Nograles for petitioner.
Marisue A. Llanes for respondent.

D E C I S I O N

MENDOZA, *J.*:

Subject of this disposition is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Unilever Philippines, Inc. *(Unilever)* questioning the June 22, 2011 Decision[2] and the April 25, 2012 Resolution[3] of the Court of Appeals (*CA*)-Cagayan de Oro City, in CA-G.R. SP No. 02963-MIN, an Illegal Dismissal case filed by respondent Maria Ruby M. Rivera *(Rivera).* The CA affirmed with modification the March 31, 2009 Resolution of the National Labor Relations Commission *(NLRC)* finding Rivera's dismissal from work to be valid as it was for a just cause and declaring that she was not entitled to any retirement benefit. The CA, however, awarded separation pay in her favor as a measure of social justice.

The Facts

Unilever is a company engaged in the production, manufacture, sale, and distribution of various food, home and personal care products, while Rivera was employed as its Area Activation Executive for Area 9 South in the cities of Cotabato and Davao. She was primarily tasked with managing the sales, distribution and promotional activities in her area and supervising Ventureslink International, Inc. *(Ventureslink)*, a third party service provider for the company's activation projects. Unilever enforces a strict policy that every trade activity must be accompanied by a Trade Development Program *(TDP)* and that the allocated budget for a specific activity must be used for such activity only.[4]

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[1] *Rollo*, pp. 15-52.

[2] *Id.* at 54-71. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Pamela Ann Abella Maxino and Associate Justice Zenaida T. Galapate-Laguilles, concurring.

[3] *Id.* at 73-74.

[4] *Id.* at 20.

Sometime in 2007, Unilever's internal auditor conducted a random audit and found out that there were fictitious billings and fabricated receipts supposedly from Ventureslink amounting to ₱11,200,000.00. It was also discovered that some funds were diverted from the original intended projects. Upon further verification, Ventureslink reported that the fund deviations were upon the instruction of Rivera.

On July 16, 2007, Unilever issued a show-cause notice to Rivera asking her to explain the following charges, to wit: a) Conversion and Misappropriation of Resources; b) Breach of Fiduciary Trust; c) Policy Breaches; and d) Integrity Issues.

Responding through an email, dated July 16, 2007, Rivera admitted the fund diversions, but explained that such actions were mere resourceful utilization of budget because of the difficulty of procuring funds from the head office.[5] She insisted that the diverted funds were all utilized in the company's promotional ventures in her area of coverage.

Through a letter, dated August 23, 2007, Unilever found Rivera guilty of serious breach of the company's Code of Business Principles compelling it to sever their professional relations. In a letter, dated September 20, 2007, Rivera asked for reconsideration and requested Unilever to allow her to receive retirement benefits having served the company for fourteen (14) years already. Unilever denied her request, reasoning that the forfeiture of retirement benefits was a legal consequence of her dismissal from work.

On October 19, 2007, Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever.

On April 28, 2008, the Labor Arbiter *(LA)* dismissed her complaint for lack of merit and denied her claim for retirement benefits, but ordered Unilever to pay a proportionate 13th month pay and the corresponding cash equivalent of her unused leave credits. The decretal portion of the LA decision reads:

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[5] *Id.* at 58.

WHEREFORE, premises considered, judgment is hereby rendered dismissing for lack of merit the illegal dismissal complaint. However, UNILEVER PHILIPPINES, INC. is hereby ordered to pay complainant the total amount of PESOS: FIFTY SEVEN THOUSAND EIGHTY TWO & 90/100 ONLY (₱57,082.90) representing proportionate 13th month pay and unused leave credits.

The complaint against individual respondents Recto Sampang and Alejandro Concha are likewise dismissed for it was not shown that they acted in bad faith in the dismissal of complainant. Moreover, their legal personality is separate and distinct from that of the corporation.

All other money claims are dismissed for lack of basis.[6]

On appeal, the NLRC partially granted Rivera's prayer. In its Resolution, dated November 28, 2008, the NLRC held that although she was legally dismissed from the service for a just cause, Unilever was guilty of violating the twin notice requirement in labor cases. Thus, Unilever was ordered to pay her ₱30,000.00 as nominal damages, retirement benefits and separation pay. The dispositive portion reads:

WHEREFORE, foregoing premises considered, the appeal is PARTIALLY GRANTED. The assailed Decision dated 28 April 2008 is hereby MODIFIED in the sense that respondent UNILEVER PHILIPPINES, INC. is hereby ordered *to pay* the following *sums*:

1. The amount of ₱30,000.00 representing nominal damages for violation of complainant's right to procedural due process;

2. Retirement benefits under the company's applicable retirement policy or written agreement, and in the absence of which, *to pay* complainant her retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year;

3. Separation pay under the company's applicable policy or written agreement, and in the absence of which, *to pay* separation pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

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[6] *Id.* at 24.

The *rest* of the Decision is hereby AFFIRMED.

SO ORDERED.[7]

Unilever asked for a reconsideration of the NLRC decision. In its Resolution, dated March 31, 2009, the NLRC modified its earlier ruling by deleting the award of separation pay and reducing the nominal damages from ₱30,000.00 to ₱20,000.00, but affirmed the award of retirement benefits to Rivera. The *fallo* reads:

WHEREFORE, foregoing premises considered, the instant Motion for Partial Reconsideration is PARTLY GRANTED. The Resolution dated 28 November 2008 of the Commission is hereby RECONSIDERED as follows:

(1) The award of separation pay is hereby *deleted* for lack of factual and legal basis; and

(2) The award of nominal damages is hereby *tempered and reduced* to the amount of ₱20,000.00.

The rest of the award for retirement benefits is *affirmed in toto*.

SO ORDERED.[8]

Unsatisfied with the ruling, Unilever elevated the case to CA-Cagayan de Oro City *via* a petition for *certiorari* under Rule 65 of the Rules of Court.

On June 22, 2011, the CA affirmed with modification the NLRC resolution. Justifying the deletion of the award of retirement benefits, the CA explained that, indeed, under Unilever's Retirement Plan, a validly dismissed employee cannot claim any retirement benefit regardless of the length of service. Thus, Rivera is not entitled to any retirement benefit. It stated, however, that there was no proof that she personally gained any pecuniary benefit from her infractions, as her instructions were aimed at increasing the sales efficiency of the company

[7] *Id.* at 25.

[8] *Id.* at 26.

and competing in the local market. For said reason, the CA awarded separation pay in her favor as a measure of social justice.[9] The decretal portion of the CA decision reads:

> WHEREFORE, the assailed *Resolution* dated March 31, 2009 of the NLRC (Branch 5), Cagayan De Oro City is hereby **AFFIRMED with MODIFICATION**. Consequently, UNILEVER is directed to pay MARIA RUBY M. RIVERA the following:
>
> a) Separation pay, to be computed based on the company's applicable policy or written agreement, or in the absence thereof, the equivalent of at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year;
>
> b) ₱20,000.00 as nominal damages; and
>
> c) Proportionate 13th month pay and unused leave credits, to be computed based on her salary during the period relevant to the case.
>
> The award of retirement benefits is hereby **DELETED**.
>
> SO ORDERED.[10]

Unilever filed a motion for partial reconsideration,[11] but it was denied in a Resolution, dated April 25, 2012.

Hence, this petition.[12]

In support of its position, Unilever submits for consideration the following

GROUNDS

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN GRANTING AFFIRMATIVE RELIEFS IN FAVOR OF RIVERA EVEN IF SHE DID NOT FILE ANY

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[9] *Id.* at 64-67.

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

[11] *Id.* at 75-94.

[12] *Id.* at 15-52.

PETITION FOR *CERTIORARI* TO CHALLENGE THE NLRC RESOLUTIONS.

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AWARDING SEPARATION PAY IN FAVOR OF RIVERA CONSIDERING THAT THE LATTER WAS VALIDLY DISMISSED FROM EMPLOYMENT BASED ON JUST CAUSES UNDER THE LAW.

III.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE COMPANY VIOLATED RIVERA'S RIGHT TO PROCEDURAL DUE PROCESS BEFORE TERMINATING HER EMPLOYMENT, AND CONSEQUENTLY, IN AWARDING NOMINAL DAMAGES.[13]

Unilever argues that Rivera did not file any separate petition for *certiorari* before the CA. Neither did she file any comment on its petition. Hence, it was erroneous for the CA to grant an affirmative relief because it was inconsistent with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. The petitioner stresses that Rivera misappropriated company funds amounting to millions of pesos and that granting her separation pay undermines the serious misdeeds she committed against the company. Moreover, the length of her service with Unilever does not mitigate her offense, but even aggravates the depravity of her acts.[14]

The petition is partly meritorious.

The pivotal issue in the case at bench is whether or not a validly dismissed employee, like Rivera, is entitled to an award of separation pay.

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[13] *Id.* at 28.

[14] *Id.* at 35.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[15] of the Labor Code is not entitled to a separation pay.[16] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

> Sec. 7. *Termination of employment by employer*. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.[17] The leading case of *Philippine Long Distance Telephone Co. vs. NLRC*[18] is instructive on this point:

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[15] ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

e. Other causes analogous to the foregoing.

[16] *Tirazona v. Philippine Eds Techno-Service Inc. (PWT, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 628-629.

[17] *Yrasuegui v. Philippine Airlines, Inc.*, G.R. No. 168081, October 17, 2008, 569 SCRA 467, 502.

[18] 247 Phil. 641 (1988).

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best, it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[19]

In the subsequent case of *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. National Labor Relations Commission*,[20] it was further elucidated that "in addition

[19] *Philippine Long Distance Telephone Co. vs. NLRC*, 247 Phil. 641, 649-650 (1988).

[20] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee."[21] In *Reno Foods, Inc, v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*,[22] the Court wrote that "separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause."[23]

In this case, Rivera was dismissed from work because she intentionally circumvented a strict company policy, manipulated another entity to carry out her instructions without the company's knowledge and approval, and directed the diversion of funds, which she even admitted doing under the guise of shortening the laborious process of securing funds for promotional activities from the head office. These transgressions were serious offenses that warranted her dismissal from employment and proved that her termination from work was for a just cause. Hence, she is not entitled to a separation pay.

More importantly, Rivera did not appeal the March 31, 2009 ruling of the NLRC disallowing the award of separation pay to her. It was Unilever who elevated the case to the CA. It is axiomatic that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief.[24] Due

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[21] *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 223.

[22] G.R. No. 164016, March 15, 2010, 615 SCRA 240.

[23] *Reno Foods, Inc, v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*, G.R. No. 164016, March 15, 2010, 615 SCRA 240, 249.

[24] *Corinthian Gardens Association Inc. v. Tanjangco*, G.R. No. 160795, June 27, 2008, 556 SCRA 154, 166, citing *Alauya, Jr v. Commission on Elections*, 443 Phil. 893, 907 (2003).

process prevents the grant of additional awards to parties who did not appeal.[25] An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed.[26] It was, therefore, erroneous for the CA to grant an affirmative relief to Rivera who did not ask for it.

Lastly, Unilever questions the grant of nominal damages in favor of Rivera for its alleged non-observance of the requirements of procedural due process. It insists that she was given ample opportunity "to explain her side, interpose an intelligent defense and adduce evidence on her behalf."[27]

The Court is not persuaded. Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:

> Section 2. *Standard of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

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[25] *Aklan College, Inc. v. Enero,* G.R. No. 178309, January 27, 2009, 577 SCRA 64, 79-80.

[26] *Corinthian Gardens Association Inc. v. Tanjangco*, *supra* note 25, citing *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 976 (2000).

[27] *Rollo*, pp. 44

(c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

King of Kings Transport, Inc. v. Mamac[28] detailed the steps on how procedural due process can be satisfactorily complied with. Thus:

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance

[28] 553 Phil. 108 (2007).

of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[29]

In this case, Unilever was not direct and specific in its first notice to Rivera. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages. Hence, the Court finds no compelling reason to reverse the award of nominal damages in her favor. The Court, however, deems it proper to increase the award of nominal damages from ₱20,000.00 to ₱30,000.00, as initially awarded by the NLRC, in accordance with existing jurisprudence.[30]

WHEREFORE, the petition is hereby **PARTIALLY GRANTED**. The June 22, 2011 Decision and the April 25, 2012 Resolution of the Court of Appeals (*CA*)-Cagayan de Oro City in CA-G.R. SP No. 02963-MIN are **AFFIRMED with MODIFICATION**. The dispositive portion should read as follows:

WHEREFORE, the March 31, 2009 Resolution of the NLRC (Branch 5), Cagayan de Oro City, is hereby **AFFIRMED with MODIFICATION**. UNILEVER PHILIPPINES, INC., is hereby directed to pay MARIA RUBY M. RIVERA the following:

a) ₱30,000.00 as nominal damages; and

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[29] *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007).

[30] *Agabon v. NLRC*, 485 Phil. 248, 287-288 (2004).

b) Proportionate 13th month pay and unused leave credits, to be computed based on her salary during the period relevant to the case.

The award of retirement benefit is **DELETED**.

SO ORDERED.

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

EN BANC

[A.M. No. P-10-2741. June 4, 2013]

JUDGE ANTONIO C. REYES, *complainant, vs.* **EDWIN FANGONIL, Process Server, Regional Trial Court, Branch 61 of Baguio City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROCESS SERVER; THE ACT OF COLLECTING OR RECEIVING MONEY FROM LITIGANT CONSTITUTES GRAVE MISCONDUCT IN OFFICE; PRESENT IN CASE AT BAR.— A process server is not authorized to collect or receive any amount of money from any party-litigant, or in this case, the accused. The fact that Fangonil accepted money from a litigant is evident in this case. Sungduan's letters and Tamingo's testimony showed Fangonil's corrupt practice in soliciting money in exchange for a favorable verdict. She had the impression that Fangonil was acting as an agent of the judge handling her case. This explained why she wrote directly to the judge after her conviction instead of addressing Fangonil. Moreover, the judge was shocked to hear from a litigant whom he had just convicted. The mention of Edwin Fangonil's name initiated the investigation of the anomalies occurring in Judge Reyes' court. As such, the pieces of evidence from the investigation were substantial, the quantum of evidence required

in administrative cases. A reasonable mind will conclude that Fangonil accepted cash from accused individuals and got away with the act for every acquittal from the judge. Unfortunately, his last victim, Agnes Sungduan, was convicted, and that exposed his illicit acts. The act of collecting or receiving money from a litigant constitutes grave misconduct in office. Thus, this kind of gross misconduct by those charged with administering and rendering justice erodes the respect for law and the courts.

R E S O L U T I O N

***PER CURIAM*:**

This is a case of Gross Misconduct and Graft and Corruption committed by a court officer. The complainant, Judge Antonio C. Reyes, discovered inadvertently that his court's process server, Edwin Fangonil, had been soliciting money from litigants in exchange for favorable results.

These are the facts based on the investigation:

Agnes Sungduan was charged for violation of the Comprehensive Dangerous Drugs Act of 2002. Pending her case's trial at the Regional Trial Court (RTC), Branch 61 of Baguio City, she was detained at the Baguio City Jail. She befriended a fellow inmate, Malou Hernandez, who referred Sungduan to Edwin Fangonil (**Fangonil**). Hernandez was acquitted eventually, and she told Sungduan the acquittal happened with Fangonil's assistance.[1]

Thus, Sungduan sought the help of her uncle, Donato Tamingo, to negotiate with Fangonil for a favorable verdict. She gave Tamingo a sealed envelope containing twenty thousand pesos (₱20,000) in cash. Tamingo went to the RTC Branch 61 of Baguio City, met with the court's process server, Fangonil, and told him he was there in behalf of Sungduan. Fangonil

[1] *Rollo*, p. 63.

invited him to a restaurant along Session Road. After ordering two bottles of soft drinks, Tamingo handed the very envelope containing twenty thousand pesos (₱20,000) to Fangonil.[2]

Two weeks later, Sungduan handed Tamingo another envelope, this time containing thirty thousand pesos (₱30,000) in cash. Tamingo proceeded to RTC to meet with Fangonil. The turnover of the money occurred at the third-floor canteen of the Hall of Justice in Baguio City.[3]

On January 29, 2007, Judge Antonio C. Reyes (**Judge Reyes**) promulgated a decision convicting Sungduan for violation of the Comprehensive Dangerous Drugs Act of 2002. After the promulgation of the decision, rumors reached Judge Reyes that Sungduan had paid someone from RTC Branch 61 in exchange for an acquittal. He learned that she became hysterical after her conviction, but the judge ignored the rumors initially because these were unverified.[4]

On February 4, 2007, Judge Reyes received a letter at his residence.[5] The letter was from Sungduan requesting the judge to grant the Motion for Reconsideration filed by her counsels.[6] This portion of the letter particularly disturbed the judge:

> Your honor, my family will be more than willing to give you **an additional amount to add to the ₱50,000 they gave to Edwin** if you consider my motion for reconsideration.[7] (Emphasis provided).

As a result, Judge Reyes asked two of his court employees to verify if the letter was indeed from Sungduan.[8] She sent a

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[2] TSN, March 29, 2009, pp. 5-6.

[3] *Id.* at 7.

[4] *Rollo*, p. 57.

[5] *Id*.

[6] *Id.* at 62.

[7] *Id.*, cited portion marked as Exhibit "B-1".

[8] *Id.* at 58-59.

second letter dated February 5, 2007 that admitted the veracity of her first letter under oath.[9]

An administrative complaint against Fangonil was filed by Judge Reyes through the Office of the Court Administrator (OCA) on February 6, 2007.[10]

In a Resolution dated July 9, 2007, the Court assigned the case to Executive Judge Edilberto Claravall for investigation, report, and recommendation.[11] However, Judge Claravall inhibited himself since he is a relative of Judge Reyes. The Court then reassigned the case to Vice Executive Judge Iluminada P. Cabato for investigation, report, and recommendation, in a Resolution dated July 23, 2007.[12]

Judge Cabato submitted her Report on July 30, 2008.[13] This Court, however, returned the case to the investigating judge to obtain additional testimonies.[14] Judge Cabato complied with the directives and filed an Additional Report on July 16, 2009.[15] Both of Judge Cabato's reports found the respondent Fangonil guilty of gross misconduct and violation of Republic Act No. 6713. A penalty of one (1) year suspension from service was recommended by Judge Cabato as penalty against Fangonil.

In a Resolution dated September 14, 2009, the Court referred the case to OCA for additional report, findings, and recommendations. In a Memorandum dated October 21, 2009 submitted by former Court Administrator Jose P. Perez who is now a member of this Court, it was recommended that "respondent Fangonil be **FOUND** guilty for gross misconduct and be

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[9] *Id.* at 63.

[10] *Id.* at 57.

[11] *Id.* at 1.

[12] *Id.* at 13.

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

[14] *Id.* at 123.

[15] *Id.* at 125-127.

DISMISSED from the service with forfeiture of all benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporation."[16]

We affirm the findings of OCA and Judge Iluminada P. Cabato.

In this case, the respondent is a process server whose duty is vital to the administration of justice, and one's primary task is to serve court notices. A process server is not authorized to collect or receive any amount of money from any party-litigant, or in this case, the accused.[17]

The fact that Fangonil accepted money from a litigant is evident in this case. Sungduan's letters and Tamingo's testimony showed Fangonil's corrupt practice in soliciting money in exchange for a favorable verdict. She had the impression that Fangonil was acting as an agent of the judge handling her case. This explained why she wrote directly to the judge after her conviction instead of addressing Fangonil. Moreover, the judge was shocked to hear from a litigant whom he had just convicted. The mention of Edwin Fangonil's name initiated the investigation of the anomalies occurring in Judge Reyes' court.

As such, the pieces of evidence from the investigation were substantial,[18] the quantum of evidence required in administrative cases. A reasonable mind will conclude that Fangonil accepted cash from accused individuals and got away with the act for every acquittal from the judge. Unfortunately, his last victim, Agnes Sungduan, was convicted, and that exposed his illicit acts.

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[16] *Memorandum* dated October 21, 2009, p. 4.

[17] *Office of the Court Administrator v. Panganiban,* A.M. No. P-04-1916, August 11, 2008, 561 SCRA 507, 514.

[18] Substantial evidence is the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This is the quantum of evidence required in administrative proceeding. RULES OF COURT, Rule 133, Sec. 5. See also, *Dela Cruz v. Malunao,* A.M. No. P-11-3019, March 20, 2012.

The act of collecting or receiving money from a litigant constitutes grave misconduct in office. Thus, this kind of gross misconduct by those charged with administering and rendering justice erodes the respect for law and the courts.[19]

The OCA correctly cites the violations of Fangonil:

> Respondent's act of receiving ₱50,000 from a party in a criminal case pending before the sala of the court where he is a Process Server constitutes gross misconduct x x x. Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct, being in the nature of grave offenses, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from re-employment in government service.
>
> Respondent likewise violated Canon 1, Section 2 of the Code of Conduct of Court Personnel which provides that court personnel shall not solicit or accept any gifts, favor or benefit of any explicit or implicit understanding that such gift shall influence their official actions.[20]

WHEREFORE, premises considered, this Court finds Edwin Fangonil, process server of Regional Trial Court, Branch 61, Baguio City, **GUILTY** for grave misconduct and is **DISMISSED** from the service with forfeiture of all benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporation.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Perez, J., no part. Acted on matter as Court Administrator.

Carpio, J., on leave.

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[19] *Office of the Court Administrator v. Panganiban, supra.*

[20] *Supra* note 16 at 3-4.

EN BANC

[A.M. No. P-13-3115. June 4, 2013]
(Formerly A.M. No. 13-3-41-RTC)

***RE*: DROPPING FROM THE ROLLS OF JOYLYN R. DUPAYA, Court Stenographer III, Regional Trial Court, Branch 10, Aparri, Cagayan.**

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; AN OFFICIAL OR EMPLOYEE WHO IS GIVEN TWO CONSECUTIVE UNSATISFACTORY RATINGS MAY BE DROPPED FROM THE ROLLS AFTER DUE NOTICE; CASE AT BAR.— Section 2, Rule XII of the Omnibus Rules on Appointments and other Personnel Actions provides that: x x x 2.2 Unsatisfactory or Poor Performance a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation. x x x In this case, records show that there was proper compliance with the requirements stated in the rule. The Memorandum, dated May 8, 2012, issued by Judge Agustin contained sufficient warning and information that her frequent absences and poor performance would warrant an unsatisfactory performance rating. Dupaya, however, failed to proffer an explanation or to improve her performance.

R E S O L U T I O N

PER CURIAM:

Judge Pablo M. Agustin *(Judge Agustin)*, Presiding Judge of Branch 10, Regional Trial Court, Aparri, Cagayan, referred

to the Office of the Court Administrator (*OCA*) the case of Ms. Joylyn R. Dupaya (*Dupaya*), Court Stenographer III, whose performance was rated as "unsatisfactory" for two consecutive periods, from January to June 2011 and from July to December 2011.

In his Memorandum, dated May 8, 2012,[1] Judge Agustin directed Dupaya to explain her continuous absence despite written and verbal warnings and her failure to transcribe the stenographic notes in numerous instances, thus, causing delay in the preparation of decisions. Judge Agustin mentioned that Dupaya received two (2) consecutive "unsatisfactory" performance ratings, and that despite the poor rating given to her for the period, January to June 2011, she did not show any initiative to improve her performance.

Despite the notice, however, Dupaya failed not only to submit a written explanation, but also to show improvement in her work in the subsequent semester.

Thus, in a letter dated October 25, 2012[2] to the OCA, Judge Agustin recommended that Dupaya be dropped from the rolls for obtaining "unsatisfactory" performance ratings for two (2) consecutive rating periods.

In its Memorandum, dated January 29, 2013,[3] the OCA agreed with the report of Judge Agustin on Dupaya's unsatisfactory ratings and recommended that she be dropped from the rolls and her position be declared vacant.

The Court agrees.

Section 2, Rule XII of the Omnibus Rules on Appointments and other Personnel Actions provides that:[4]

2.2 Unsatisfactory or Poor Performance

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[1] *Rollo*, p. 8.

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

[3] *Id.* at 1-3.

[4] Civil Service Commission Memorandum Circular No. 40-98.

a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation. x x x

In this case, records show that there was proper compliance with the requirements stated in the rule. The Memorandum, dated May 8, 2012, issued by Judge Agustin contained sufficient warning and information that her frequent absences and poor performance would warrant an unsatisfactory performance rating. Dupaya, however, failed to proffer an explanation or to improve her performance.

It is worthy to note that in its Resolution, dated July 30, 2007, in A.M. No. 07-0-327-RTC,[5] the Court had the occasion to direct Dupaya to explain why no administrative sanction should be imposed on her for her failure to transcribe the stenographic notes in Criminal Case No. 9184 within the prescribed period. On March 17, 2008, she was admonished and warned by the Court[6] that a repetition of the same offense would be dealt with accordingly. Again, on July 26, 2010,[7] the Court issued a reprimand against Dupaya for violation of Section 2 of Administrative Circular No. 2-99,[8] and for her failure to comply with the rules on her application for sick leave, with a stern warning that a repetition of the same or similar infraction would be dealt with more severely.

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[5] *Rollo*, pp. 17-18. Entitled *Re: Request of Judge Pablo M. Agustin, Regional Trial Court, Branch 10, Aparri, Cagayan, for extension of time to decide Criminal Case No. 9184.*

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

[7] *Id.* at 14.

[8] Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness (1999).

Public accountability essentially includes discharging one's duties as a public officer with utmost responsibility, integrity, competence, loyalty, and efficiency. Incompetence and inefficiency have no place in public service, especially in the dispensation of justice.[9]

Accordingly, the Court **RESOLVES** to:

1) **ADOPT** and **APPROVE** the findings of facts, conclusions of law and recommendation of the Office of the Court Administrator relative to the unsatisfactory ratings of Joylyn R. Dupaya;

2) **DROP** the name of Joylyn R. Dupaya, Court Stenographer III, Regional Trial Court, Branch 10, Aparri, Cagayan from the rolls for obtaining "Unsatisfactory" performance ratings for the periods from January to June 2011 and from July to December 2011. She is, however, still qualified to receive the benefits she may be entitled to under existing laws, and may still be reemployed in the government; and

3) **DECLARE** her position **VACANT**.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, J., on official leave.

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[9] *Re: Dropping From the Rolls of Ms. Lolita B. Batadlan, Court Stenographer III, Regional Trial Court of Surallah, South Cotabato, Branch 26,* 549 Phil. 537 (2007).

SECOND DIVISION

[A.M. No. P-12-3048. June 5, 2013]
(Formerly A.M. No. 11-3-29-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **NELSON P. MAGBANUA, Process Server, 3rd Municipal Circuit Trial Court, Patnongon, Antique,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; DUTIES; THE CLERK OF COURT IS TASKED TO MAINTAIN A REGISTRY BOOK IN WHICH ALL EMPLOYEES OF THE COURT SHALL INDICATE THEIR DAILY TIME OF ARRIVAL AND DEPARTURE FROM OFFICE.— OCA Circular No. 7-2003 requires every Clerk of Court to maintain a registry book (logbook) in which all employees of that court shall indicate their daily time of arrival in and departure from the office. He shall also check the accuracy of the DTRs prepared by the court employees by comparing them with the entries in the logbook. She had complied with these duties. In keeping track of the respondent's attendance, Ms. Valente may be legally presumed, in the absence of any evidence to the contrary, to have acted in the regular performance of her official duties. x x x Office logbooks are placed in a conspicuous place for easy access to employees. We find meritorious Ms. Valente's assertion that "there is no logical reason why he failed to enter his time of arrival in the morning before serving the said notice because the office logbook has all the while been there lying on its table for him to record his time of arrival. The office logbook had never been denied access to him, or to any other court personnel during office hours, on weekdays."

2. ID.; ID.; CIVIL SERVICE COMMISSION; MEMORANDUM CIRCULAR NO. 21, SERIES OF 1991 RECOGNIZES OTHER MEANS OF RECORDING EMPLOYEE ATTENDANCE; REQUIREMENTS; PRIVATE RECORD OF EMPLOYEE IS NOT ACCEPTABLE AND CANNOT BE GIVEN PROBATIVE

VALUE; CASE AT BAR.— CSC Memorandum Circular No. 21, series of 1991, recognizes other means of recording the employees' attendance. x x x While it is true that attendance of government employees may be recorded by means other than the bundy clock, the respondent's assertion that he maintains a record book to record his own attendance is not acceptable and his private record cannot be given probative value. CSC Memorandum Circular No. 21, series of 1991, "requires that these records must (1) provide the respective names and signatures of the employees; (2) indicate their time of arrival and departure; and (3) be subject to verification." Clearly, an employee's personal record book cannot be accepted as a means to record one's attendance in his office, which in the present case, the respondent "secretly" maintained without the knowledge of his co-employees. The entries therein are not only self -serving but also not subjected to verification by his immediate supervisor.

3. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES; DISCIPLINING AUTHORITY IS ALLOWED THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF THE APPROPRIATE PENALTY; APPLICATION IN CASE AT BAR.— Clearly, the respondent had made false entries in his DTR by indicating therein that he was present in the office although he had been elsewhere. He should be made administratively liable for committing irregularities in the keeping of his DTRs; false entries in the respondent's DTR constitute dishonesty. x x x Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service *(Rules)* classifies dishonesty as a grave offense penalized by dismissal from the service even for the first offense. Section 53, Rule IV of the Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty. Many times, the Court has mitigated the imposable penalty for humanitarian reasons. We also considered length of service in the judiciary and family circumstances, among others, in determining the proper penalty. This approach is not only because of the law's concern for the workingman; there are, in addition, his family and the family interests to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner. The respondent, who has been with the judiciary since 1985, is a

family man with children in college. His family would certainly suffer if he is imposed the penalty prescribed for his offense.

APPEARANCES OF COUNSEL

Fortaleza and Alagus Office for Ethelda Valente.

D E C I S I O N

BRION,* *J.*:

In an undated report[1] filed with the Leave Division of the Office of the Court Administrator (*OCA*) on January 27, 2011, Ms. Ethelda B. Valente, then Clerk of Court, 3rd Municipal Circuit Trial Court, Patnongon-Bugasong-Valderrama, Antique, reported the irregularities in the Daily Time Record (*DTR*) of Nelson P. Magbanua (*respondent*), a Process Server of the same court, for the month of November 2010. Ms. Valente claimed that the entries in the respondent's DTR for the month of November 2010 do not tally with the entries in the logbook of their office. In support of her allegations, Ms. Valente submitted photocopies of the respondent's DTR and of their office logbook.[2]

In a 1st Indorsement[3] dated April 12, 2011, the respondent was required to comment on Ms. Valente's allegations against him. In his Comment[4] dated May 16, 2011, the respondent explained that he secretly maintained a record book[5] to record the actual time of his arrival in and departure from the office without the knowledge of his co-employees. It started in August

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] *Rollo*, p. 2.

[2] *Id.* at 2a-9.

[3] *Id.* at 11.

[4] *Id.* at 12-17.

[5] *Id.* at 18.

2010 when Ms. Valente became hostile and antagonistic towards him after a case filed with the court was dismissed for non-appearance of the plaintiff Anecita Panaligan. An administrative case was filed by Panaligan against Ms. Valente on the ground that she failed to attend the hearing of her case because she was not sent a copy of the Notice of Hearing. Ms. Valente blamed the respondent for the failure to serve a copy of the notice of hearing on plaintiff Panaligan. The respondent further asserted that he was not given an opportunity to explain the alleged irregularities in his DTR. Ms. Valente forwarded his DTR and the logbook to the OCA without his knowledge.

The respondent explained that although he has no entries in the logbook of the time of his arrival in and departure from the office in the afternoon of November 2, 2010, he recorded them in his own record book. On November 8 and 9, 2010, he mistakenly copied in his DTR the entries of his arrival in their office logbook due to his poor eyesight. In the morning of November 22, 2010, he went to San Jose, Antique on official business to serve the Notice of Hearing of a criminal case on the Office of the Provincial Prosecutor and on the Public Attorney's Office. In the afternoon, he recorded his time of arrival and departure in his own record book because he could not find the logbook. The following day, or on November 23, 2010, he logged in before he went to Bugasong, Antique to serve the notice of hearing of the criminal case on the accused and the witnesses for the prosecution. He returned to the office before 12:00 noon but again he could not find the logbook. He recorded his time of arrival and departure in the afternoon in his own record book. On November 24 and 25, 2010, he recorded his time of arrival and departure in his own record book because Ms. Valente kept the office logbook.

In an Agenda Report[6] dated January 10, 2012, the OCA confirmed that the entries in the DTR of the respondent and in the logbook do not tally. These records show the following:

[6] *Id.* at 47-51.

	DTR		Logbook	
	IN	OUT	IN	OUT
November 2, 2010				
morning	8:02	12:00	8:02	12:00
afternoon	12:15	5:00	no entry	
November 8, 2010				
morning	8:08	12:00	8:18	12:00
afternoon	12:15	5:00	12:15	5:00
November 9, 2010				
morning	7:23	12:00	8:23	12:00
afternoon	12:15	5:00	12:15	5:00
November 22, 2010				
morning	8:00	12:00	no entry	
afternoon	12:15	5:00	no entry	
November 23, 2010				
morning	7:52	12:00	7:52	no entry
afternoon	12:15	5:00	no entry	
November 24, 2010				
morning	8:37	12:00	8:37	no entry
afternoon	12:15	5:00	no entry	
November 25, 2010				
morning	8:08	12:00	8:08	12:00
afternoon	12:15	5:00	no entry	

The OCA recommended: (1) that the matter be re-docketed as a regular administrative matter; (2) that the respondent be found guilty of dishonesty and that a fine of ₱5,000.00 be imposed with the warning that a repetition of the same or any similar act shall be dealt with more severely; and (3) that Ms. Valente be ordered to show cause, within ten (10) days from notice, why no disciplinary action should be taken against her for her failure to properly supervise the employees in her office,

particularly in their use of the logbook, the preparation of the DTR and the observance of OCA Circular No. 7-2003.

Thereafter, the Court issued Resolution[7] dated February 27, 2012: (1) ordering the re-docketing of the complaint as a regular administrative matter; (2) requiring the respondent to manifest to the Court whether he was willing to submit this matter for resolution on the basis of the pleadings filed; and (3) requiring Ms. Valente to show cause, within ten (10) days from notice, why no disciplinary action should be taken against her for failure to properly supervise the employees in her branch, particularly in their use of logbook, the preparation of the DTR, and the observance of OCA Circular No. 7-2003.

In a letter[8] dated April 16, 2012, the respondent manifested that he was submitting the complaint against him for resolution, based on the pleadings already filed. He further promised to be more careful and circumspect in filling up his DTR.

Ms. Valente, who is now retired from the service, filed her compliance through her lawyer.[9] She alleged that she is aware of OCA Circular No. 7-2003 which lodged with the Clerk of Court the duty to supervise the personnel of the court, especially with regard to their use of the logbook and in the preparation of the DTR. However, the duty to sign the DTR of the court personnel was removed from her and was assumed by Judge Felixberto P. Barte. It is not true that she had been keeping the logbook. This has always been at its designated table inside the court premises, where court personnel have ready access during office hours.

Ms. Valente has her own explanations on the discrepancies in the respondent's DTR and in the office logbook for the month of November —

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

[8] *Id.* at 58.

[9] *Id.* at 61-75.

17. For November 2, Mr. Magbanua failed to report back to the office, that is why the Office Logbook does not contain entries for his afternoon arrival and departure. The incorrect morning arrival entries for November 8 and 9, may have been due to inadvertence, indeed;

18. For November 22, it may be true that Mr. Magbanua was out of the office to serve the NOTICE OF HEARING in Criminal Case No. 4051-B, but since the Office Logbook does not contain any entry for the day, Mr. Magbanua did not pass by the office before he went out to serve the said NOTICE. Otherwise, there is no logical reason why he failed to enter his time of arrival in the morning before serving the said NOTICE because the Office Logbook has all the while been just there lying on its table for him to record his time of arrival. The Office Logbook had never been denied access to him, or to any other court personnel, during office hours, on weekdays;

19. For November 23, Mr. Magbanua must have gone to Bugasong to serve the foregoing NOTICE, but he reported first to the office in the morning, before going to Bugasong, thus, the morning arrival entry. This negates his allegation that he failed to log on November 22 because he could not find the Office Logbook. This only goes to prove that on November 22, Mr. Magbanua did not report to the office before serving the NOTICE, nor did he report back after having served the same[.][10]

The Court finds Ms. Valente's explanation satisfactory. OCA Circular No. 7-2003 requires every Clerk of Court to maintain a registry book (logbook) in which all employees of that court shall indicate their daily time of arrival in and departure from the office. He shall also check the accuracy of the DTRs prepared by the court employees by comparing them with the entries in the logbook. She had complied with these duties. In keeping track of the respondent's attendance, Ms. Valente may be legally presumed, in the absence of any evidence to the contrary, to have acted in the regular performance of her official duties.[11]

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

[11] *Palecpec, Jr. v. Hon. Davis,* 555 Phil. 675, 690 (2007).

The OCA issued Circular No. 7-2003, dated January 9, 2003, enjoining every official and employee of each court to submit, after the end of each month, a DTR or Bundy Card indicating therein truthfully and accurately the time of arrival in and departure from their station or office. Later, on December 23, 2003, the Court issued Memorandum Order No. 49-003 dated December 1, 2003, enjoining the use of bundy clocks to ensure that the employees' official time is properly observed and that the employees' tardiness and absences are faithfully recorded. In courts where there are still no bundy cards, the employees use registry books (logbooks) to record their time of arrival in and departure from the office. CSC Memorandum Circular No. 21, series of 1991, recognizes other means of recording the employees' attendance. According to this memorandum circular, "[a]ll officers and employees shall record their daily attendance on the proper form or whenever possible, have them registered in the bundy clock. Any other means of recording attendance may be allowed provided their respective names and signatures as well as the time of their arrival in and departure from the office are indicated, subject to verification."

While it is true that attendance of government employees may be recorded by means other than the bundy clock, the respondent's assertion that he maintains a record book to record his own attendance is not acceptable and his private record cannot be given probative value. CSC Memorandum Circular No. 21, series of 1991, "requires that these records must (1) provide the respective names and signatures of the employees; (2) indicate their time of arrival and departure; and (3) be subject to verification."[12] Clearly, an employee's personal record book cannot be accepted as a means to record one's attendance in his office, which in the present case, the respondent "secretly" maintained without the knowledge of his co-employees. The entries therein are not only self-serving but also not subjected to verification by his immediate supervisor.

The respondent's excuse that there are occasions that he cannot find the office logbook to record his time of arrival in and departure

[12] *Id.* at 689.

from the office is unworthy of consideration. Office logbooks are placed in a conspicuous place for easy access to employees.[13] We find meritorious Ms. Valente's assertion that "there is no logical reason why he failed to enter his time of arrival in the morning before serving the said notice because the office logbook has all the while been there lying on its table for him to record his time of arrival. The office logbook had never been denied access to him, or to any other court personnel during office hours, on weekdays."[14]

Section 4, Rule XVII of the Omnibus Rules on Leave provides:

> Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

Clearly, the respondent had made false entries in his DTR by indicating therein that he was present in the office although he had been elsewhere. He should be made administratively liable for committing irregularities in the keeping of his DTRs; false entries in the respondent's DTR constitute dishonesty.[15] Dishonesty refers to 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."[16] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (*Rules*) classifies dishonesty as a grave offense penalized by dismissal from the service even for the first offense.

Section 53, Rule IV of the Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty. Many times, the Court has mitigated

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[13] Paragraph C1, CSC Memorandum Circular No. 21, June 24, 1991.

[14] *Id.* at 64.

[15] *Marquez v. Pacariem,* A.M. No. P-06-2249, October 8, 2008, 568 SCRA 77, pp. 91-92.

[16] *Office of the Court Administrator v. Jotic,* A.M. No. P-08-2542, November 28, 2008, 572 SCRA 361, 370.

the imposable penalty for humanitarian reasons. We also considered length of service in the judiciary and family circumstances, among others, in determining the proper penalty. This approach is not only because of the law's concern for the workingman; there are, in addition, his family and the family interests to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner.[17] The respondent, who has been with the judiciary since 1985,[18] is a family man with children in college. His family would certainly suffer if he is imposed the penalty prescribed for his offense.

WHEREFORE, the Court finds respondent Nelson P. Magbanua, Process Server, 3rd Municipal Circuit Trial Court, Patnongon, Antique, **GUILTY** of **DISHONESTY** for making false and inaccurate entries in his Daily Time Record/Bundy Card for the month of November 2010. He is hereby imposed a fine equivalent to his one (1) month salary, with a **WARNING** that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

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

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[17] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, 507 Phil. 546, 550 (2005).

[18] See the respondent's Affidavit, *rollo,* p. 19.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013.

FIRST DIVISION

[A.M. No. MTJ-11-1778. June 5, 2013]
(Formerly OCA IPI No. 08-1966-MTJ)

MARICOR L. GARADO, *complainant, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIARY; LOWER COURTS ARE MANDATED TO DECIDE OR RESOLVE CASES OR MATTERS FILED WITHIN THREE MONTHS FROM THE DATE THEY ARE SUBMITTED FOR DECISION OR RESOLUTION.— Section 15(1), Article VIII of the 1987 Constitution, mandates that cases or matters filed with the lower courts must be decided or resolved within three months from the date they are submitted for decision or resolution. With respect to cases falling under the 1991 Revised Rule on Summary Procedure, first level courts are only allowed 30 days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment. Section 6 of the said Rule also requires first level courts to render judgment *motu proprio* or upon motion of the plaintiff if the defendant fails to file an answer to the complaint within the allowable period.

2. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES ARE DIRECTED TO DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND DECIDE CASES WITHIN THE REQUIRED PERIODS; RATIONALE.— Judges are oft-reminded of their duty to act promptly upon cases and matters pending before their courts. Rule 3.05, Canon 3 of the Code of Judicial Conduct directs judges to "dispose of the court's business promptly and decide cases within the required periods." Canons 6 and 7 of the Canons of Judicial Ethics further exhort judges to be prompt and punctual in the disposition and resolution of cases and matters pending before their courts: x x x Administrative Circular No. 1 dated January 28, 1988 likewise reminds all judges to observe scrupulously the periods prescribed in Section 15, Article VIII of the 1987 Constitution and to act promptly on all motions and interlocutory matters pending before their courts.

Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If judges do not possess those traits, delay in the disposition of cases is inevitable to the prejudice of litigants. Accordingly, judges should be imbued with a high sense of duty and responsibility in the discharge of their obligation to administer justice promptly.

3. REMEDIAL LAW; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING A DECISION IS CONSIDERED AS LESS SERIOUS CHARGE; APPLICATION IN CASE AT BAR; IMPOSABLE PENALTY.— In this case, respondent judge failed to live up to the exacting standards of duty and responsibility that her position required. Upon the failure of the defendant Estor to file her Answer in Civil Case No. 20129, respondent was then required under Section 6 of the 1991 Revised Rule on Summary Procedure to render judgment in Civil Case No. 20129 within 30 days. She failed to do so contrary to the rationale behind the said Rule, which was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases. Section 9, Rule 140 of the Rules of Court, as amended, classifies undue delay in rendering a decision and violation of Supreme Court directives as less serious charges which are punishable with the penalty of suspension from office without salary and other benefits for one month to three months, or a fine of ₱10,000 to ₱20,000. Given that respondent had been previously dismissed from the service in *Lugares v. Gutierrez-Torres*, however, the penalty of suspension is already inapplicable. Thus, the Court imposes upon respondent for her undue delay in resolving Civil Case No. 20129 a fine in the maximum amount of ₱20,000, and another fine of ₱10,000 for her repeated failure to obey this Court's directives, both amounts to be deducted from her accrued leave credits.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is a Verified Complaint-Affidavit,[1] filed by complainant Maricor L. Garado charging respondent Judge

[1] *Rollo*, pp. 6-9.

Lizabeth Gutierrez-Torres, Presiding Judge, Metropolitan Trial Court, Branch 60, Mandaluyong City, with violation of Rule 3.05,[2] Canon 3 of the Code of Judicial Conduct in connection with Civil Case No. 20129 entitled "*Maricor Garado v. Rose Virgie Estor.*"

Complainant alleges that she is the plaintiff in the aforesaid civil case for sum of money and damages. She complains that the case is covered by the 1991 Revised Rule on Summary Procedure and only involves a claim for the payment of a loan amounting to ₱50,000 plus interest and a claim for damages amounting to ₱30,000, but the case has remained unresolved for more than 20 months from the time it was filed.

Complainant narrates that her complaint against defendant Rose Virgie Estor was filed on August 22, 2005. After respondent judge denied defendant Estor's motion to dismiss on July 3, 2006, Estor thereafter filed an Urgent *Ex-parte* Motion for Extension of Time (To File Responsive Pleading) followed by a second motion to dismiss on November 16, 2006. Complainant, meanwhile, filed a motion to render judgment with an opposition to the second motion to dismiss on November 27, 2006. The two motions were submitted for resolution on November 27, 2006 and January 15, 2007, respectively, but both motions remained unresolved as of the date of the filing of the complaint on May 9, 2007.

In a 1st Indorsement[3] dated May 17, 2007, the Office of the Court Administrator (OCA) directed Judge Torres to file her Comment on the complaint within ten days. Respondent judge received the 1st Indorsement on May 25, 2007, but failed to comply with the directive. Thus, the OCA issued a 1st Tracer[4] against respondent judge on July 24, 2007 requiring her to file

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[2] RULE 3.05. - A judge shall dispose of the court's business promptly and decide cases within the required periods.

[3] *Rollo,* p. 4.

[4] *Id.* at 3.

the required Comment within five days from notice. Respondent judge also received the 1st Tracer on August 3, 2007, but still failed to comply.

On March 10, 2008, this Court's Third Division issued a Resolution[5] directing respondent judge to: (1) show cause why she should not be administratively sanctioned in view of her refusal to submit her Comment despite the two directives, and (2) file her Comment within five days from receipt of notice, otherwise, an administrative case will be filed against her. Respondent judge received a copy of the Resolution on April 16, 2008, but again ignored the same. Consequently, the Court issued another Resolution[6] on July 14, 2008 imposing upon Judge Torres a fine of ₱1,000, to be paid within ten days from receipt, or imprisonment of five days if the fine is not paid within the period of ten days. The July 14, 2008 Resolution also directed respondent judge to comply with the Court's Show Cause Resolution dated March 10, 2008. Despite receipt of the Resolution, however, Judge Torres neither complied with the Resolution nor paid the fine.

Thus, on April 21, 2010, the Court issued a Resolution[7] and resolved to await the payment of the fine by respondent judge; to consider the filing of her Comment as waived; and to refer this administrative matter to the OCA for final evaluation, report and recommendation.

On November 11, 2010, the OCA submitted its Memorandum[8] to the Court finding respondent judge administratively liable and recommending that the Court:

> **1.** **RE-DOCKET** th[e] case as a regular administrative matter against respondent Judge Lizabeth G. Torres;

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[5] *Id.* at 62.

[6] *Id.* at 66-67.

[7] *Id.* at 70.

[8] *Id.* at 81-89. Signed by Court Administrator Jose Midas P. Marquez and Assistant Court Administrator Jenny Lind R. Aldecoa-Delorino.

2. **DISMISS** respondent Judge Lizabeth G. Torres from the service and impose upon her all the attendant penalties; and

3. **IMPOSE** upon respondent Judge Lizabeth G. Torres the penalty of FIVE (5) days imprisonment for her failure to pay the FINE of ₱1,000.00 within the required period, pursuant to the Court's Resolution dated 14 July 2008.[9]

In recommending the penalty of dismissal, the OCA noted that in five previous administrative cases,[10] respondent was found liable for undue delay in rendering a decision, resolution or order, and sternly warned that the commission of the same or similar offense will be dealt with more severely. The OCA also noted eight other pending administrative cases[11] filed by

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[9] *Id.* at 89.

[10] *Id.* at 84. The OCA stated that respondent judge was found guilty on September 30, 2005 of Gross Inefficiency and fined ₱20,000 in **A.M. No. MTJ-05-1611**. On July 30, 2007, she was found guilty of Undue Delay in Resolving a Demurrer to Evidence and fined ₱20,000 in **A.M. No. MTJ-06-1653**. On October 24, 2008, she was found administratively liable of Undue Delay in Resolving a Motion to Withdraw Information in **A.M. No. MTJ-08-1721** and fined ₱10,000 with an additional fine of ₱10,000 for repeated failure to comply with the Court's directives to file comment. On February 24, 2009, she was found guilty of Undue Delay in Resolving Motion to Withdraw Informations and suspended for one month without pay and other benefits in **A.M. No. MTJ-09-1733.** Lastly, on September 15, 2010, she was found guilty of Gross Inefficiency for Failing to Resolve Motion to Withdraw Information and fined ₱20,000 in **A.M. No. MTJ-10-1764**.

[11] *Id.* at 86-87. The OCA enumerated the following cases:

1. A.M. No. MTJ-08-1722 (07-1944-MTJ) for Violation of the Code of Judicial Conduct, where the OCA states that it recommended a penalty of suspension for 6 months in its Agenda Report dated July 28, 2008;

2. A.M. No. MTJ-08-1723 (08-2031-MTJ) for Undue Delay in Deciding Case, where the OCA states that it recommended a penalty of suspension for 6 months in its Agenda Report dated July 28, 2008;

3. A.M. No. MTJ-08-1719 (08-2030-MTJ) for Gross Inefficiency, Undue Delay, Manifest Partiality, Gross Ignorance of the Law, Willful Disobedience and Defiance of Authority, where the OCA recommended a penalty of suspension for 6 months in its Agenda Report dated September 10, 2008;

different litigants against respondent judge involving offenses of similar nature. As well, the OCA noted the four instances under the present administrative case where respondent judge failed to comply with directives/orders issued by this Court.

We agree with the OCA that respondent judge should be held administratively liable.

At the outset, the Court notes that respondent had been given ample opportunity to address the complaint against her. The OCA sent and respondent judge received the 1st Indorsement dated May 17, 2007 and 1st Tracer dated July 24, 2007, both of which explicitly required her to file her Comment on the complaint. However, up until her dismissal from the service by the Court on November 23, 2010,[12] respondent had not complied with the OCA directives. Moreover, respondent also failed to comply, despite due notice, with the Resolutions dated March 10, 2008 and July 14, 2008 of the Court itself.

Respondent's failure to submit her Comment and compliance as required by the OCA and this Court is tantamount to

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4. A.M. No. MTJ-10-1758 (09-3-45 MeTC) where the OCA recommended dismissal from service, forfeiture of all benefits and disqualification from reinstatement in its Memorandum Report dated March 15, 2010;
5. A.M. OCA IPI No. 09-2115-MTJ for Undue Delay in Deciding a Case and Violation of Court Directive;
6. A.M. OCA IPI No. 09-2131-MTJ for Gross Neglect of Duty, Gross Inefficiency and Manifest Partiality;
7. A.M. OCA IPI No. 10-2279-MTJ for Undue Delay in Deciding Case where the OCA also notes that respondent judge failed to file her Comment as required in the OCA's 1st Indorsement dated June 10, 2010; and
8. A.M. OCA IPI No. 10-2291-MTJ for Dereliction of Duty and Grave Abuse of Authority where respondent judge failed to file the required Comment as directed by the OCA in its 1st Indorsement dated August 4, 2010.

[12] *Lugares v. Gutierrez-Torres*, A.M. Nos. MTJ-08-1719, MTJ-08-1722 and MTJ-08-1723, November 23, 2010, 635 SCRA 716.

insubordination,[13] gross inefficiency, and neglect of duty.[14] It was respondent's duty then not only to obey the lawful orders of her superiors, but also to defend herself against complainant's charges and prove her fitness to remain a member of the bench. By her failure to comply with the OCA and this Court's directives, respondent judge has completely lost her chance to defend herself.

As to the merits of the administrative complaint, the pleadings and evidence on record clearly establish respondent's liability for undue delay in resolving Civil Case No. 20129.

Section 15(1), Article VIII of the 1987 Constitution, mandates that cases or matters filed with the lower courts must be decided or resolved within three months from the date they are submitted for decision or resolution. With respect to cases falling under the 1991 Revised Rule on Summary Procedure, first level courts are only allowed 30 days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment. Section 6 of the said Rule also requires first level courts to render judgment *motu proprio* or upon motion of the plaintiff if the defendant fails to file an answer to the complaint within the allowable period.

Judges are oft-reminded of their duty to act promptly upon cases and matters pending before their courts. Rule 3.05, Canon 3 of the Code of Judicial Conduct directs judges to "dispose of the court's business promptly and decide cases within the required periods." Canons 6 and 7 of the Canons of Judicial Ethics further exhort judges to be prompt and punctual in the disposition and resolution of cases and matters pending before their courts:

> 6. PROMPTNESS
>
> He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.

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[13] See *Tan v. Sermonia*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 13.

[14] See *Sabado v. Cajigal*, A.M. No. RTJ-91-666, March 12, 1993, 219 SCRA 800, 805.

7. PUNCTUALITY

> He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value and that if the judge is unpunctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

Administrative Circular No. 1 dated January 28, 1988 likewise reminds all judges to observe scrupulously the periods prescribed in Section 15, Article VIII of the 1987 Constitution and to act promptly on all motions and interlocutory matters pending before their courts.

Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If judges do not possess those traits, delay in the disposition of cases is inevitable to the prejudice of litigants. Accordingly, judges should be imbued with a high sense of duty and responsibility in the discharge of their obligation to administer justice promptly.[15] In this case, respondent judge failed to live up to the exacting standards of duty and responsibility that her position required. Upon the failure of the defendant Estor to file her Answer in Civil Case No. 20129, respondent was then required under Section 6 of the 1991 Revised Rule on Summary Procedure to render judgment in Civil Case No. 20129 within 30 days. She failed to do so contrary to the rationale behind the said Rule, which was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases.[16]

Section 9, Rule 140 of the Rules of Court, as amended, classifies undue delay in rendering a decision and violation of Supreme Court directives as less serious charges which are punishable with the penalty of suspension from office without salary and

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[15] *Valdez v. Torres,* A.M. No. MTJ-11-1796, June 13, 2012, 672 SCRA 89, 96.

[16] *Sevilla v. Lindo,* A.M. No. MTJ-08-1714, February 9, 2011, 642 SCRA 277, 284-285.

other benefits for one month to three months, or a fine of ₱10,000 to ₱20,000. Given that respondent had been previously dismissed from the service in *Lugares v. Gutierrez-Torres*,[17] however, the penalty of suspension is already inapplicable. Thus, the Court imposes upon respondent for her undue delay in resolving Civil Case No. 20129 a fine in the maximum amount of ₱20,000, and another fine of ₱10,000 for her repeated failure to obey this Court's directives, both amounts to be deducted from her accrued leave credits.

WHEREFORE, respondent Lizabeth Gutierrez-Torres is found **LIABLE** of the less serious charges of undue delay in resolving Civil Case No. 20129 and violation of Supreme Court directives. She is **FINED** the amount of ₱20,000 for the first offense and another ₱10,000 for the second offense, both amounts to be deducted from her accrued leave credits. To effect the penalties imposed, the Employee's Leave Division, Office of Administrative Services-OCA, is **DIRECTED** to ascertain respondent Lizabeth Gutierrez-Torres's total earned leave credits. Thereafter, the Finance Division, Fiscal Management Office-OCA, is **DIRECTED** to compute the monetary value of respondent Lizabeth Gutierrez-Torres's total accrued leave credits and deduct therefrom the amount of the fines imposed, without prejudice to whatever penalty the Court may impose on other remaining and/or pending administrative cases against her, if any.

SO ORDERED.

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

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[17] *Supra* note 12.

FIRST DIVISION

[G.R. No. 156759. June 5, 2013]

ALLEN A. MACASAET, NICOLAS V. QUIJANO, JR., ISAIAS ALBANO, LILY REYES, JANET BAY, JESUS R. GALANG, and RANDY HAGOS, *petitioners, vs.* **FRANCISCO R. CO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; SUMMONS; THE PURPOSE OF SUMMONS IN AN ACTION *IN REM* OR *QUASI IN REM* IS NOT THE ACQUISITION OF JURISDICTION OVER THE DEFENDANT BUT MAINLY TO SATISFY THE CONSTITUTIONAL REQUIREMENT OF DUE PROCESS.— Jurisdiction over the person, or jurisdiction *in personam* –the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*. Jurisdiction over the defendant in an action *in rem* or *quasi in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action. The purpose of summons in such action is not the acquisition of jurisdiction over the defendant but mainly to satisfy the constitutional requirement of due process. The distinctions that need to be perceived between an action *in personam*, on the one hand, and an action *in rem* or *quasi in rem*, on the other hand, are aptly delineated in *Domagas v. Jensen*, thusly: x x x An action *in personam* is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the prop[er]ty to determine its state. It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person. x x x Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible

claimants. The judgments therein are binding only upon the parties who joined in the action.

2. ID.; ID.; ID.; EXTRATERRITORIAL SERVICE OF SUMMONS; THE PURPOSE THEREOF IS NOT FOR VESTING THE COURT WITH JURISDICTION BUT FOR COMPLYING WITH THE REQUIREMENT OF FAIR PLAY AND DUE PROCESS.— As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court; but when the case is an action *in rem* or *quasi in rem* enumerated in Section 15, Rule 14 of the *Rules of Court*, Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res*, and jurisdiction over the person of the non-resident defendant is not essential. In the latter instance, extraterritorial service of summons can be made upon the defendant, and such extraterritorial service of summons is not for the purpose of vesting the court with jurisdiction, but for the purpose of complying with the requirements of fair play or due process, so that the defendant will be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff, and he can thereby take steps to protect his interest if he is so minded. On the other hand, when the defendant in an action *in personam* does not reside and is not found in the Philippines, our courts cannot try the case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court.

3. ID.; ID.; ID.; TWO FUNDAMENTAL OBJECTIVES OF THE SERVICE OF SUMMONS, EXPLAINED.— The service of the summons fulfills two fundamental objectives, namely: (*a*) to vest in the court jurisdiction over the person of the defendant; and (*b*) to afford to the defendant the opportunity to be heard on the claim brought against him. As to the former, when jurisdiction *in personam* is not acquired in a civil action through the proper service of the summons or upon a valid waiver of such proper service, the ensuing trial and judgment are void. If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself

to the jurisdiction of the court. As to the latter, the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of his defense.With the proper service of the summons being intended to afford to him the opportunity to be heard on the claim against him, he may also waive the process. In other words, compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.

4. ID.; ID.; ID.; SERVICE OF SUMMONS; THE RULE ON PERSONAL SERVICE IS TO BE RIGIDLY ENFORCED; SUBSTITUTED SERVICE MAY BE USED ONLY AS PRESCRIBED AND IN THE CIRCUMSTANCES AUTHORIZED BY STATUTE.— Under the *Rules of Court*, the service of the summons should firstly be effected on the defendant himself *whenever practicable*. Such personal service consists either in handing a copy of the summons to the defendant in person, or, if the defendant refuses to receive and sign for it, in tendering it to him. The rule on personal service is to be rigidly enforced in order to ensure the realization of the two fundamental objectives earlier mentioned. If, for justifiable reasons, the defendant cannot be served in person within a reasonable time, the service of the summons may then be effected either (*a*) by leaving a copy of the summons at his residence with some person of suitable age and discretion then residing therein, or (*b*) by leaving the copy at his office or regular place of business with some competent person in charge thereof. The latter mode of service is known as substituted service because the service of the summons on the defendant is made through his substitute. It is no longer debatable that the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective. This is because substituted service, being in derogation of the usual method of service, is extraordinary in character and may be used only as prescribed and in the circumstances authorized by statute. Only when the defendant cannot be served personally within a reasonable time may substituted service be resorted to. Hence, the impossibility of prompt personal service should be shown by stating the efforts made to find the defendant himself and the fact that such efforts failed, which statement should be

found in the proof of service or sheriff's return. Nonetheless, the requisite showing of the impossibility of prompt personal service as basis for resorting to substituted service may be waived by the defendant either expressly or impliedly.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioners.
Noe-Lacsamana Maglalang Matibag & Associates Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

To warrant the substituted service of the summons and copy of the complaint, the serving officer must first attempt to effect the same upon the defendant in person. Only after the attempt at personal service has become futile or impossible within a reasonable time may the officer resort to substituted service.

The Case

Petitioners – defendants in a suit for libel brought by respondent – appeal the decision promulgated on March 8, 2002[1] and the resolution promulgated on January 13, 2003,[2] whereby the Court of Appeals (CA) respectively dismissed their petition for *certiorari*, prohibition and *mandamus* and denied their motion for reconsideration. Thereby, the CA upheld the order the Regional Trial Court (RTC), Branch 51, in Manila had issued on March 12, 2001 denying their motion to dismiss because the substituted service of the summons and copies of the complaint on each of them had been valid and effective.[3]

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[1] *Rollo*, pp. 53-59; penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justice Teodoro P. Regino (retired) and Associate Justice Rebecca De Guia-Salvador concurring.

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

[3] *Id.* at 134-136.

Antecedents

On July 3, 2000, respondent, a retired police officer assigned at the Western Police District in Manila, sued Abante Tonite, a daily tabloid of general circulation; its Publisher Allen A. Macasaet; its Managing Director Nicolas V. Quijano; its Circulation Manager Isaias Albano; its Editors Janet Bay, Jesus R. Galang and Randy Hagos; and its Columnist/Reporter Lily Reyes (petitioners), claiming damages because of an allegedly libelous article petitioners published in the June 6, 2000 issue of Abante Tonite. The suit, docketed as Civil Case No. 00-97907, was raffled to Branch 51 of the RTC, which in due course issued summons to be served on each defendant, including Abante Tonite, at their business address at Monica Publishing Corporation, 301-305 3rd Floor, BF Condominium Building, Solana Street corner A. Soriano Street, Intramuros, Manila.[4]

In the morning of September 18, 2000, RTC Sheriff Raul Medina proceeded to the stated address to effect the personal service of the summons on the defendants. But his efforts to personally serve each defendant in the address were futile because the defendants were then out of the office and unavailable. He returned in the afternoon of that day to make a second attempt at serving the summons, but he was informed that petitioners were still out of the office. He decided to resort to substituted service of the summons, and explained why in his sheriff's return dated September 22, 2000,[5] to wit:

SHERIFF'S RETURN

This is to certify that on September 18, 2000, I caused the service of summons together with copies of complaint and its annexes attached thereto, upon the following:

1. Defendant Allen A. Macasaet, President/Publisher of defendant Abante Tonite, at Monica Publishing Corporation, Rooms 301-305 3rd Floor, BF Condominium Building, Solana corner A. Soriano Streets,

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[4] *Id.* at 108.

[5] *Id.* at 109.

Intramuros, Manila, thru his secretary Lu-Ann Quijano, a person of sufficient age and discretion working therein, who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendant were made, but the same were ineffectual and unavailing on the ground that per information of Ms. Quijano said defendant is always out and not available, thus, substituted service was applied;

2. Defendant Nicolas V. Quijano, at the same address, thru his wife Lu-Ann Quijano, who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendant were made, but the same were ineffectual and unavailing on the ground that per information of (sic) his wife said defendant is always out and not available, thus, substituted service was applied;

3. Defendants Isaias Albano, Janet Bay, Jesus R. Galang, Randy Hagos and Lily Reyes, at the same address, thru Rene Esleta, Editorial Assistant of defendant Abante Tonite, a person of sufficient age and discretion working therein who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendants were made, but the same were ineffectual and unavailing on the ground that per information of (sic) Mr. Esleta said defendants is (sic) always roving outside and gathering news, thus, substituted service was applied.

Original copy of summons is therefore, respectfully returned duly served.

Manila, September 22, 2000.

On October 3, 2000, petitioners moved for the dismissal of the complaint through counsel's special appearance in their behalf, alleging lack of jurisdiction over their persons because of the invalid and ineffectual substituted service of summons. They contended that the sheriff had made no prior attempt to serve the summons personally on each of them in accordance with Section 6 and Section 7, Rule 14 of the *Rules of Court*. They further moved to drop Abante Tonite as a defendant by virtue of its being neither a natural nor a juridical person that could be impleaded as a party in a civil action.

At the hearing of petitioners' motion to dismiss, Medina testified that he had gone to the office address of petitioners in the

morning of September 18, 2000 to personally serve the summons on each defendant; that petitioners were out of the office at the time; that he had returned in the afternoon of the same day to again attempt to serve on each defendant personally but his attempt had still proved futile because all of petitioners were still out of the office; that some competent persons working in petitioners' office had informed him that Macasaet and Quijano were always out and unavailable, and that Albano, Bay, Galang, Hagos and Reyes were always out roving to gather news; and that he had then resorted to substituted service upon realizing the impossibility of his finding petitioners in person within a reasonable time.

On March 12, 2001, the RTC denied the motion to dismiss, and directed petitioners to file their answers to the complaint within the remaining period allowed by the *Rules of Court*,[6] relevantly stating:

> Records show that the summonses were served upon Allen A. Macasaet, President/Publisher of defendant Abante Tonite, through Lu-Ann Quijano; upon defendants Isaias Albano, Janet Bay, Jesus R. Galang, Randy Hagos and Lily Reyes, through Rene Esleta, Editorial Assistant of defendant Abante Tonite (p. 12, records). It is apparent in the Sheriff's Return that on several occasions, efforts to served (sic) the summons personally upon all the defendants were ineffectual as they were always out and unavailable, so the Sheriff served the summons by substituted service.
>
> Considering that summonses cannot be served within a reasonable time to the persons of all the defendants, hence substituted service of summonses was validly applied. Secretary of the President who is duly authorized to receive such document, the wife of the defendant and the Editorial Assistant of the defendant, were considered competent persons with sufficient discretion to realize the importance of the legal papers served upon them and to relay the same to the defendants named therein (Sec. 7, Rule 14, 1997 Rules of Civil Procedure).

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[6] *Id.* at 134-136.

WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby DENIED for lack of merit..

Accordingly, defendants are directed to file their Answers to the complaint within the period still open to them, pursuant to the rules.

SO ORDERED.

Petitioners filed a motion for reconsideration, asserting that the sheriff had immediately resorted to substituted service of the summons upon being informed that they were not around to personally receive the summons, and that Abante Tonite, being neither a natural nor a juridical person, could not be made a party in the action.

On June 29, 2001, the RTC denied petitioners' motion for reconsideration.[7] It stated in respect of the service of summons, as follows:

> The allegations of the defendants that the Sheriff immediately resorted to substituted service of summons upon them when he was informed that they were not around to personally receive the same is untenable. During the hearing of the herein motion, Sheriff Raul Medina of this Branch of the Court testified that on September 18, 2000 in the morning, he went to the office address of the defendants to personally serve summons upon them but they were out. So he went back to serve said summons upon the defendants in the afternoon of the same day, but then again he was informed that the defendants were out and unavailable, and that they were always out because they were roving around to gather news. Because of that information and because of the nature of the work of the defendants that they are always on field, so the sheriff resorted to substituted service of summons. There was substantial compliance with the rules, considering the difficulty to serve the summons personally to them because of the nature of their job which compels them to be always out and unavailable. Additional matters regarding the service of summons upon defendants were sufficiently discussed in the Order of this Court dated March 12, 2001.

Regarding the impleading of Abante Tonite as defendant, the RTC held, *viz*:

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[7] *Id.* at 149-150.

"Abante Tonite" is a daily tabloid of general circulation. People all over the country could buy a copy of "Abante Tonite" and read it, hence, it is for public consumption. The persons who organized said publication obviously derived profit from it. The information written on the said newspaper will affect the person, natural as well as juridical, who was stated or implicated in the news. All of these facts imply that "Abante Tonite" falls within the provision of Art. 44 (2 or 3), New Civil Code. Assuming *arguendo* that "Abante Tonite" is not registered with the Securities and Exchange Commission, it is deemed a corporation by estoppels considering that it possesses attributes of a juridical person, otherwise it cannot be held liable for damages and injuries it may inflict to other persons.

Undaunted, petitioners brought a petition for *certiorari*, prohibition, *mandamus* in the CA to nullify the orders of the RTC dated March 12, 2001 and June 29, 2001.

Ruling of the CA

On March 8, 2002, the CA promulgated its questioned decision,[8] dismissing the petition for *certiorari*, prohibition, *mandamus*, to wit:

We find petitioners' argument without merit. The rule is that *certiorari* will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction committed by the respondent Judge. A judicious reading of the questioned orders of respondent Judge would show that the same were not issued in a capricious or whimsical exercise of judgment. There are factual bases and legal justification for the assailed orders. From the Return, the sheriff certified that "effort to serve the summons personally x x x were made, but the same were ineffectual and unavailing x x x.

and upholding the trial court's finding that there was a substantial compliance with the rules that allowed the substituted service.

Furthermore, the CA ruled:

Anent the issue raised by petitioners that "Abante Tonite is neither a natural or juridical person who may be a party in a civil case," and

[8] *Supra* note 1, at 56.

therefore the case against it must be dismissed and/or dropped, is untenable.

The respondent Judge, in denying petitioners' motion for reconsideration, held that:

xxx xxx xxx

Abante Tonite's newspapers are circulated nationwide, showing ostensibly its being a corporate entity, thus the doctrine of corporation by estoppel may appropriately apply.

An unincorporated association, which represents itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relies in good faith on such representation.

There being no grave abuse of discretion committed by the respondent Judge in the exercise of his jurisdiction, the relief of prohibition is also unavailable.

WHEREFORE, the instant petition is **DENIED**. The assailed Orders of respondent Judge are **AFFIRMED**.

SO ORDERED.[9]

On January 13, 2003, the CA denied petitioners' motion for reconsideration.[10]

Issues

Petitioners hereby submit that:

1. THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER HEREIN PETITIONERS.
2. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY SUSTAINING THE INCLUSION OF ABANTE TONITE AS PARTY IN THE INSTANT CASE.[11]

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

[10] *Supra* note 2.

[11] *Rollo*, p. 33.

Ruling

The petition for review lacks merit.

Jurisdiction over the person, or jurisdiction *in personam* – the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*. Jurisdiction over the defendant in an action *in rem* or *quasi in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action. The purpose of summons in such action is not the acquisition of jurisdiction over the defendant but mainly to satisfy the constitutional requirement of due process.[12]

The distinctions that need to be perceived between an action *in personam*, on the one hand, and an action *in rem* or *quasi in rem*, on the other hand, are aptly delineated in *Domagas v. Jensen*,[13] thusly:

> The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. A proceeding in *personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. An action *in personam* is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the prop[er]ty to

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[12] *Gomez v. Court of Appeals*, G.R. No. 127692, March 10, 2004, 425 SCRA 98, 104.

[13] G.R. No. 158407, January 17, 2005, 448 SCRA 663, 673-674.

determine its state. It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person. As far as suits for injunctive relief are concerned, it is well-settled that it is an injunctive act *in personam.* In *Combs v. Combs*, the appellate court held that proceedings to enforce personal rights and obligations and in which personal judgments are rendered adjusting the rights and obligations between the affected parties is in *personam*. Actions for recovery of real property are *in personam*.

On the other hand, a proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.

As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court; but when the case is an action *in rem* or *quasi in rem* enumerated in Section 15, Rule 14 of the *Rules of Court*, Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res*, and jurisdiction over the person of the non-resident defendant is not essential. In the latter instance, extraterritorial service of summons can be made upon the defendant, and such extraterritorial service of summons is not for the purpose of vesting the court with jurisdiction, but for the purpose of complying with the requirements of fair play or due process, so that the defendant will be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff, and he can thereby take steps to protect his interest if he is so minded. On the other hand, when the defendant in an action *in personam*

does not reside and is not found in the Philippines, our courts cannot try the case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court.[14]

As the initiating party, the plaintiff in a civil action voluntarily submits himself to the jurisdiction of the court by the act of filing the initiatory pleading. As to the defendant, the court acquires jurisdiction over his person either by the proper service of the summons, or by a voluntary appearance in the action.[15]

Upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court forthwith issues the corresponding summons to the defendant.[16] The summons is directed to the defendant and signed by the clerk of court under seal. It contains the name of the court and the names of the parties to the action; a direction that the defendant answers within the time fixed by the *Rules of Court*; and a notice that unless the defendant so answers, the plaintiff will take judgment by default and may be granted the relief applied for.[17] To be attached to the original copy of the summons and all copies thereof is a copy of the complaint (and its attachments, if any) and the order, if any, for the appointment of a guardian *ad litem*.[18]

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[14] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 187-188; *Romualdez-Licaros v. Licaros*, G.R. No. 150656, April 29, 2003, 401 SCRA 762, 769-770; *Valmonte v. Court of Appeals*, G.R. No. 108538, January 22, 1996, 252 SCRA 92.

[15] Pursuant to Section 20, Rule 14 of the *Rules of Court*, the defendant's voluntary appearance in the action is equivalent to the service of summons; see also *Davao Light and Power Co., Inc. v. Court of Appeals*, G.R. No. 93262, November 29, 1991, 204 SCRA 343, 347; *Munar v. Court of Appeals*, 238 SCRA 372, 379; *Minucher v. Court of Appeals*, G.R. No. 97765, September 24, 1992, 214 SCRA 242, 250.

[16] Section 1, Rule 14, *Rules of Court*.

[17] Section 2, Rule 14, *Rules of Court*.

[18] *Id*.

The significance of the proper service of the summons on the defendant in an action *in personam* cannot be overemphasized. The service of the summons fulfills two fundamental objectives, namely: (*a*) to vest in the court jurisdiction over the person of the defendant; and (*b*) to afford to the defendant the opportunity to be heard on the claim brought against him.[19] As to the former, when jurisdiction *in personam* is not acquired in a civil action through the proper service of the summons or upon a valid waiver of such proper service, the ensuing trial and judgment are void.[20] If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court.[21] As to the latter, the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of his defense. With the proper service of the summons being intended to afford to him the opportunity to be heard on the claim against him, he may also waive the process.[22] In other words, compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.[23]

Under the *Rules of Court*, the service of the summons should firstly be effected on the defendant himself *whenever practicable*.

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[19] *Umandap vs. Sabio, Jr.*, G.R. No. 140244, August 29, 2000, 339 SCRA 243, 247.

[20] *Vda. de Macoy v. Court of Appeals*, G.R. No. 95871, February 13, 1992, 206 SCRA 244, 251; *Venturanza v. Court of Appeals*, G.R. No. 77760, December 11, 1987, 156 SCRA 305, 311-312; *Filmerco Commercial Co., Inc. v. Intermediate Appellate Court*, G.R. No. 70661, April 9, 1987, 149 SCRA 193, 198-199; *Consolidated Plywood Industries, Inc. v. Breva*, G.R. No. 82811, October 18, 1988, 166 SCRA 589, 593-594; *Philippine National Construction Corp. v. Ferrer-Calleja*, G.R. No. 80485, November 11, 1988, 167 SCRA 294, 301.

[21] *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 86.

[22] *Keister v. Navarro*, G.R. No. 29067, May 31, 1977, 77 SCRA 209, 214-215; *Vda. de Macoy v. Court of Appeals, supra* note 20.

[23] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 670.

Such personal service consists either in handing a copy of the summons to the defendant in person, or, if the defendant refuses to receive and sign for it, in tendering it to him.[24] The rule on personal service is to be rigidly enforced in order to ensure the realization of the two fundamental objectives earlier mentioned. If, for justifiable reasons, the defendant cannot be served in person within a reasonable time, the service of the summons may then be effected either (*a*) by leaving a copy of the summons at his residence with some person of suitable age and discretion then residing therein, or (*b*) by leaving the copy at his office or regular place of business with some competent person in charge thereof.[25] The latter mode of service is known as substituted service because the service of the summons on the defendant is made through his substitute.

It is no longer debatable that the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.[26] This is because substituted service, being in derogation of the usual method of service, is extraordinary in character and may be used only as prescribed and in the circumstances authorized by statute.[27] Only when the defendant cannot be served personally within a reasonable time may substituted service be resorted to. Hence, the impossibility of prompt personal service should be shown by stating the efforts made to find the defendant himself and the fact that such efforts failed, which statement should be found in the proof of service or sheriff's return.[28] Nonetheless, the requisite showing of the impossibility of prompt

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[24] Section 6, Rule 14, *Rules of Court*.

[25] Section 7, Rule 14, *Rules of Court*.

[26] *Keister v. Navarro*, *supra* note 22, at 215.

[27] *Ang Ping v. Court of Appeals*, G.R. No. 126947, July 15, 1999, 310 SCRA 343, 350.

[28] *Keister v. Navarro*, *supra*, note 22; see also *Wong v. Factor-Koyama*, G.R. No. 183802, September 17, 2009, 600 SCRA 256, 268; *Jose v. Boyon*, G.R. No. 147369, October 23, 2003, 414 SCRA 216, 222; *Casimina v. Legaspi*, G.R. No. 147530. June 29, 2005, 462 SCRA 171, 177-178; *Oaminal v. Castillo*, G.R. No. 152776, October 8, 2003, 413 SCRA 189, 196-197; *Laus v. Court of Appeals*, G.R. No. 101256, March 8, 1993, 219 SCRA 688, 699.

personal service as basis for resorting to substituted service may be waived by the defendant either expressly or impliedly.[29]

There is no question that Sheriff Medina twice attempted to serve the summons upon each of petitioners in person at their office address, the first in the morning of September 18, 2000 and the second in the afternoon of the same date. Each attempt failed because Macasaet and Quijano were "always out and not available" and the other petitioners were "always roving outside and gathering news." After Medina learned from those present in the office address on his second attempt that there was no likelihood of any of petitioners going to the office during the business hours of that or any other day, he concluded that further attempts to serve them in person within a reasonable time *would be* futile. The circumstances fully warranted his conclusion. He was not expected or required as the serving officer to effect personal service *by all means* and *at all times*, considering that he was expressly authorized to resort to substituted service should he be unable to effect the personal service *within a reasonable time*. In that regard, what was a reasonable time was dependent on the circumstances obtaining. While we are strict in insisting on personal service on the defendant, we do not cling to such strictness should the circumstances already justify substituted service instead. It is the spirit of the procedural rules, not their letter, that governs.[30]

In reality, petitioners' insistence on personal service by the serving officer was demonstrably superfluous. They had actually received the summonses served through their substitutes, as borne out by their filing of several pleadings in the RTC, including an answer

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[29] *E.g.*, in *Orosa v. Court of Appeals*, G.R. No. 118696, September 3, 1996, 261 SCRA 376, 379, where the substituted service was sustained notwithstanding that the requirement for the showing of impossibility of personal service of summons was not complied with by the sheriff before resorting to substituted service, because the defendants subsequently filed a motion for additional time to file answer, which was deemed a waiver of objection to the personal jurisdiction of the trial court.

[30] *Robinson v. Miralles*, G.R. No. 163584, December 12, 2006, 510 SCRA 678, 684.

with compulsory counterclaim *ad cautelam* and a pre-trial brief *ad cautelam*. They had also availed themselves of the modes of discovery available under the *Rules of Court*. Such acts evinced their voluntary appearance in the action.

Nor can we sustain petitioners' contention that Abante Tonite could not be sued as a defendant due to its not being either a natural or a juridical person. In rejecting their contention, the CA categorized Abante Tonite as a corporation by estoppel as the result of its having represented itself to the reading public as a corporation despite its not being incorporated. Thereby, the CA concluded that the RTC did not gravely abuse its discretion in holding that the non-incorporation of Abante Tonite with the Securities and Exchange Commission was of no consequence, for, otherwise, whoever of the public who would suffer any damage from the publication of articles in the pages of its tabloids would be left without recourse. We cannot disagree with the CA, considering that the editorial box of the daily tabloid disclosed that although Monica Publishing Corporation had published the tabloid on a daily basis, nothing in the box indicated that Monica Publishing Corporation had owned Abante Tonite.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on March 8, 2002; and **ORDERS** petitioners to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161878. June 5, 2013]

PHILWORTH ASIA, INC., SPOUSES LUISITO and ELIZABETH MACTAL, and SPOUSES LUIS and ELOISA REYES, *petitioners, vs.* **PHILIPPINE COMMERCIAL INTERNATIONAL BANK,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; THE RIGHT TO BE HEARD IS THE MOST BASIC TENET OF DUE PROCESS; PARTIES WHO DO NOT SEIZE THE OPPORTUNITY TO PARTICIPATE IN THE PROCEEDINGS HAVE NO GROUNDS TO COMPLAIN OF DEPRIVATION OF DUE PROCESS; SUSTAINED IN CASE AT BAR.— It is true, indeed, that the most basic tenet of due process is the right to be heard. Every litigant should have his day in court, which means that he be afforded the opportunity to ventilate his side of the dispute, and to adduce evidence thereon. The opportunity becomes meaningless and ineffectual if he is not given fair and reasonable notice of adversarial proceedings. x x x Here, however, they apparently stretched the limits of the RTC's liberality, to the point of abusing it. A review of the proceedings has given the Court the impression that they deliberately delayed the presentation of their evidence by asking postponements of the hearings. The pattern of delay that followed indicated that they did not intend to present any evidence in their favor, and that they were simply temporizing as a way of avoiding the inevitable adverse outcome of the case. Otherwise, they and their counsel would have easily completed the task of presenting their evidence and shunned the delays. x x x Parties like them who do not seize the opportunity to participate in the proceedings have no grounds to complain of deprivation of due process. It is not amiss to note that the trial judge had actually warned them of the dire consequence to be surely visited upon them should they persist on not presenting their evidence. That they ignored the warnings demonstrated their low regard of the judicial proceedings. We

reiterate that an opportunity not availed of is deemed forfeited without violating the Bill of Rights. x x x The trial judge had the clear duty to ensure that the trial of the case would proceed despite the deliberate delays and refusal to proceed on their part. It is worth stressing, too, that the ruling of the trial judge did not rest on mere technicality, considering that PCIB as the adverse party was legally entitled to the trial of its case that was free of undue and unreasonable delays.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; A PARTY AND ITS COUNSEL WHO DELIBERATELY OR NEGLECTFULLY DELAY THE PROMPT TERMINATION OF THEIR CASE MAY BE CITED FOR INDIRECT CONTEMPT OF COURT; RATIONALE.— A party and its counsel who deliberately or neglectfully delay the prompt termination of their court case are further guilty of abuse of court processes and of impeding the smooth administration of justice, rendering them amenable to being cited for indirect contempt of court under Section 3, (*c*) and (*d*), Rule 71 of the *Rules of Court*. Petitioners and their counsel should then show cause why they should not be adjudged guilty of contempt of court. The trial judge's tolerance of the delays or liberality did not exonerate them and their counsel from their impeding the smooth administration of justice. On the part of petitioners' counsel, he was expectedly aware of Canon 12 of the *Code of Professional Responsibility*, which required him as an attorney to exert every effort and to consider it his duty to assist in the speedy and efficient administration of justice. He should not ever ignore such duty, even upon the pretext of giving his entire devotion to the interest of his clients. He ought not to forget that as an attorney, he was, first and foremost, an officer of the court, bound to exert every effort to comply with the requirement under Canon 12.

APPEARANCES OF COUNSEL

Oscar L. Karaan for petitioners.

Divina Matibag Magturo Banzon Buenaventura & Yusi for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Parties and their counsel are enjoined to avoid undue and excessive delay in presenting their own evidence. Their failure to obey this injunction surely contributes to the clogging of court dockets and expands the burdens of the entire Judiciary. It may justify a trial court into declaring them to have waived the right to present their evidence. The permissiveness and tolerant attitude of the trial judge should not give them the license to cause undue and excessive delay.

The Case

On final appeal by defendants is the decision in this collection suit promulgated on October 14, 2002,[1] whereby the Court of Appeals (CA) affirmed the judgment of the Regional Trial Court (RTC), Branch 61, in Makati City pronouncing them liable to respondent for various sums as principal and interest, attorney's fees and costs of suit.

On May 31, 1991, the former Philippine Commercial International Bank (PCIB) sued petitioners in the RTC to recover upon an unpaid debt (Civil Case No. 91-1536),[2] alleging that on September 22, 1988, petitioner Philworth Asia, Inc. (Philworth) had borrowed ₱270,000.00 from PCIB to be paid on or before November 8, 1988 in accordance with a promissory note; that petitioners Spouses Luisito and Elizabeth Mactal (Mactals) and Spouses Luis and Eloisa Reyes (Reyeses) had executed a deed of suretyship binding themselves to pay Philworth's obligations under the promissory note should Philworth refuse to perform its obligation; that Philworth had paid only partially, leaving an unpaid balance of ₱225,533.33, inclusive of interest and penalty

[1] *Rollo*, pp. 57-66; penned by Associate Justice Bennie A. Adefuin-De la Cruz (retired), with Associate Justice Eliezer R. Delos Santos (retired/deceased) and Associate Justice Jose C. Mendoza (now a Member of the Court) concurring.

[2] Records, pp. 1-3.

charges; that Philworth had not paid its balance despite repeated demands; and that attempts to collect from the Mactals and Reyeses had likewise failed.

On July 5, 1991, the Reyeses filed their answer with special and affirmative defenses,[3] specifically countering that PCIB had no cause of action against them; that Luis Reyes had signed the promissory note as an employee of Philworth, but had not signed the deed of suretyship in November 1988 because he had already resigned from Philworth on October 16, 1988; that Luisito Mactal, the President and General Manager of Philworth, should be the person liable under the deed of suretyship; that PCIB had not made demands upon all the parties; and that PCIB did not exhaust all the available properties of Philworth before bringing the suit also against them.

In their answer filed on August 20, 1991,[4] the Mactals averred that the defendants had substantially paid their obligation, but that PCIB had unreasonably refused to properly account for and credit the payments; that PCIB had been charging exorbitant and unconscionable interest, penalties and other charges; and that if the previous payments were duly credited, the unpaid balance would only be minimal.

The first pre-trial conference, which was set on May 19, 1994, was moved several times afterwards,[5] until the parties were notified that the conference would finally be held on April 25, 1995.[6] On April 3, 1995, petitioners sought the transfer of the conference of April 25, 1995 to May 2, 1995. They later on further moved for the conference to be held on May 12, 1995.[7] But no conference was held on May 12, 1995. Instead,

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[3] *Id.* at 21-23.

[4] *Id.* at 42-43

[5] *Rollo,* pp. 60-61.

[6] *Id.* at 61.

[7] *Id.*

the conference was reset on two later dates, *i.e.*, June 2, 1995 and July 21, 1995.[8]

Although petitioners again moved to reset the conference on June 1, 1995,[9] the RTC denied petitioners' motion for postponement on June 2, 1995, and declared them as in default because of their non-appearance and allowed PCIB to present evidence *ex parte*.[10]

On July 3, 1995, petitioners moved for the reconsideration of the June 2, 1995 order. Over PCIB's vigorous opposition, the RTC magnanimously granted the motion, but directed petitioners to present their evidence on October 24, 1995.

On October 24, 1995, however, the RTC reset the conference on December 5, 1995 because only PCIB's counsel had appeared in court.[11]

On October 30, 1995, petitioners requested either to call the hearing set on December 5, 1995 at 11:00 a.m., or to set it at an earlier date – in either case for them to be allowed to cross-examine the witnesses of PCIB.[12] Acting on the request of petitioners, the RTC partially granted petitioners' motion on November 23, 1995, and reset the hearing but disallowed the cross-examination of PCIB's witnesses.[13]

Yet, on December 5, 1995, PCIB's counsel appeared, while only Luisito Mactal was in court on the side of defendants, and he was without counsel. As an act of fairness, the RTC directed petitioners to submit their statement of accounts, and transferred the hearing to January 9, 1996 and January 11, 1996.[14]

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[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

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

[13] *Id.* at 62.

[14] *Id*.

In the hearing held on January 11, 1996, petitioners' counsel manifested that he would be presenting Ms. Lilian Garcia, already a witness for PCIB. With that, the RTC issued a subpoena *duces tecum/ad testificandum* for Ms. Garcia, and reset the hearing to February 20, 1996 for the purpose of receiving her testimony.[15] On February 20, 1996, Ms. Garcia testified as a witness for petitioners. Her cross-examination was re-scheduled on April 23, 1996.[16]

On April 23, 1996, only PCIB's counsel appeared in court. Consequently, the RTC cancelled the hearing and transferred it to July 16, 1996 with the warning that it would act accordingly should petitioners still fail to continue presenting their evidence.[17]

On June 21, 1996, petitioners sought the postponement of the July 16, 1996 hearing. The RTC obliged, and reset the hearing on July 30, 1996 with a reiteration of the warning.[18] Ultimately, the July 30, 1996 hearing was also reset to August 2, 1996.

On July 31, 1996, petitioners again moved for the postponement of the August 2, 1996 hearing.[19]

On August 2, 1996, petitioners and counsel did not appear in court. Upon the motion of PCIB's counsel, the RTC declared petitioners to have waived their right to present their evidence, and required the parties to submit their memoranda.[20]

On October 2, 1996, petitioners moved for the reconsideration of the August 2, 1996 order.[21] The RTC set a clarificatory hearing on their motion for reconsideration, but the clarificatory hearing was reset several times for reasons attributable to either

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[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id.* at 63.

[20] *Id*.

[21] *Id*.

or both of the parties. Although the clarificatory hearing was later on finally set on June 19, 1997,[22] the RTC benevolently granted petitioners' motion for reconsideration, and set the date for the presentation of petitioners' evidence on July 22, 1997 with the same warning of dire consequences.[23] As it turned out, the hearing of July 22, 1997 had to be cancelled and reset to August 15, 1997 after it was established that petitioners had not received the notice for the hearing.

On August 15, 1997, both sides did not appear, forcing the RTC to unilaterally move the hearing to September 9, 1997. Even that hearing was reset to September 18, 1997 due to problems of locating the records.[24]

The resetting to September 18, 1997 notwithstanding, PCIB filed its motion to resolve the case and to declare petitioners to have waived their right to present their evidence.[25]

On September 15, 1997, the RTC declared petitioners to have waived their right to present evidence, and directed the parties to submit their respective memoranda, after which the case would be deemed submitted for decision.[26]

On October 20, 1997, the RTC rendered its decision, disposing:

WHEREFORE, premises above considered, judgment is hereby rendered for plaintiff as against defendants, who are ordered as follows:

FOR DEFENDANT PHILWORTH:

1. To pay plaintiff PCIB the amount of ₱150,000.00 with interest at the rate of 12% per annum from the date the amount was due on 28 February 1991 until fully paid;

2. To pay plaintiff the amount equivalent to 15% of the total indebtedness for and as attorney's fees; and

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[22] *Id*.

[23] *Id*.

[24] *Id.* at 64.

[25] *Id*.

[26] *Id*.

3. To pay the costs of the proceedings.

FOR DEFENDANTS MACTAL AND REYES:

In case of default of PHILWORTH to pay the obligation, said defendants MACTAL and REYES, to jointly and solidarily pay the unpaid obligation of PHILWORTH, including costs, and except for attorney's fees which is exacted at 10% of the total indebtedness.

SO ORDERED.[27]

Petitioners appealed to the CA, claiming that the RTC had thereby violated their right to substantive and procedural due process mainly due to its decision being solely based on the evidence of PCIB.

On October 14, 2002, the CA affirmed the RTC, ruling thusly:

Defendants-appellants were not deprived of their day in court. They were given by the court *a quo* more than ample opportunity to be heard and to present evidence in their behalf, but, for reasons known only to them, they opted not to be heard, they chose not to present evidence in support of their defense.

Scrutiny of the records shows that the court *a quo* has been very lenient in granting the series of motions for postponement filed by the defendants-appellants which have dragged this case for years. The court *a quo* was even more liberal when after the defendants-appellants have been declared to have waived their right to present their evidence, they were still given another opportunity to present their evidence when the court *a quo* granted their motion for reconsideration. Hence, defendants-appellants cannot feign that they were denied of their right to due process.

It is basic that as long as a party is given the opportunity to defend his interest in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. Where opportunity to be heard, either through oral argument or through pleadings, is accorded there can be no denial of procedural due process. The most basic tenet of due process is the right to be heard. Where a party had been afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of

[27] Records, pp. 712-713.

deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the Bill of Rights.

The court *a quo,* therefore, has judiciously exercised its discretion when it considered the defendants-appellants to have waived their right to present evidence on their behalf and decided the case based on the evidence presented by the PCIB.

WHEREFORE, premises considered, the appeal is hereby DISMISSED for lack of merit, and the assailed decision is hereby AFFIRMED *in toto*. Costs against defendants-appellants.

SO ORDERED.[28]

Issues

In this appeal, petitioners insist that the RTC violated their right to due process of law by deciding the case on the merits based solely on the evidence of PCIB; that the delay could not be blamed exclusively on petitioners; and that substance should take precedence over mere technicalities.[29]

In its comment,[30] PCIB counters that due process had not been denied to petitioners; that technicalities had not been resorted to in deciding the case; and that petitioners had abused the liberality of the RTC.

Through their reply,[31] petitioners aver that PCIB shared the blame for the delay; that the RTC should have granted them ample opportunities to present their evidence; and that the RTC should have decided the case on the merits rather than on pure technicalities.

Ruling

The appeal is absolutely devoid of any merit.

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[28] *Rollo,* pp. 64-65.

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

[30] *Id.* at 77-87.

[31] *Id.* at 89-90.

It is true, indeed, that the most basic tenet of due process is the right to be heard. Every litigant should have his day in court, which means that he be afforded the opportunity to ventilate his side of the dispute, and to adduce evidence thereon. The opportunity becomes meaningless and ineffectual if he is not given fair and reasonable notice of adversarial proceedings.

Were petitioners denied their right to be heard?

Petitioners were not denied their right to be heard. As outlined above, the RTC set the case several times for the pre-trial and the trial. In so doing, the RTC undeniably relaxed the rigid application of the rules of procedure out of its desire to afford to petitioners the opportunity to fully ventilate their side on the merits of the case. The RTC thereby acted with liberality. This was in line with the time-honored principle that cases should be decided only after giving all the parties the chance to argue and prove their respective sides.[32] Here, however, they apparently stretched the limits of the RTC's liberality, to the point of abusing it. A review of the proceedings has given the Court the impression that they deliberately delayed the presentation of their evidence by asking postponements of the hearings. The pattern of delay that followed indicated that they did not intend to present any evidence in their favor, and that they were simply temporizing as a way of avoiding the inevitable adverse outcome of the case. Otherwise, they and their counsel would have easily completed the task of presenting their evidence and shunned the delays. They did present Ms. Garcia on direct examination, but they thereafter did not see to the completion of her testimony.

Petitioners' assertion that PCIB was equally to blame for the delay in the case was improbable. There was really no reason for PCIB to cause a delay. PCIB had already been allowed by the RTC to adduce its evidence *ex parte* as early as in June 1995. They and their counsel were fully aware that

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[32] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, G.R. No. 164668, February 18, 2005, 451 SCRA 294, 301.

it then became their sole obligation to adduce their evidence in support of their defense. Indeed, they should blame no one else but themselves for losing their right to adduce their evidence.

We have set forth in detail the various instances in which they benefitted from the liberality of the RTC in its desire to enable them to prove their side. Contrary to their unworthy representations, therefore, petitioners were afforded more than ample opportunity to adduce their evidence. That the RTC ultimately declared them to have waived their right to present evidence was warranted.[33] They should not be allowed to waste the trial court's time and attention through dilatory tactics that have no place in the fair administration of justice. Parties like them who do not seize the opportunity to participate in the proceedings have no grounds to complain of deprivation of due process. It is not amiss to note that the trial judge had actually warned them of the dire consequence to be surely visited upon them should they persist on not presenting their evidence. That they ignored the warnings demonstrated their low regard of the judicial proceedings. We reiterate that an opportunity not availed of is deemed forfeited without violating the Bill of Rights.[34]

We also state that the ruling of the trial judge to bar petitioners' right to present their evidence was not based on mere technicality. On the contrary, the ruling was the just treatment by the trial judge whose liberality they had unreasonably abused. The trial judge had the clear duty to ensure that the trial of the case would proceed despite the deliberate delays and refusal to proceed on their part.[35] It is worth stressing, too, that the ruling of the trial judge did not rest on mere technicality, considering that

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[33] *Five Star Bus Company, Inc. v. Court of Appeals*, G.R. No. 127064, August 31, 1999, 313 SCRA 367, 375.

[34] *R Transport Corporation v. Philhino Sales Corporation*, G.R. No. 148150, July 12, 2006, 494 SCRA 630, 638; *Bautista v. Court of Appeals*, G.R. No. 157219, May 28, 2004, 430 SCRA 353, 357.

[35] *Gohu v. Goho*, G.R. No. 128230, October 13, 2000, 343 SCRA 114, 120-122.

PCIB as the adverse party was legally entitled to the trial of its case that was free of undue and unreasonable delays.

A party and its counsel who deliberately or neglectfully delay the prompt termination of their court case are further guilty of abuse of court processes and of impeding the smooth administration of justice, rendering them amenable to being cited for indirect contempt of court under Section 3, (*c*) and (*d*), Rule 71 of the *Rules of Court*. Petitioners and their counsel should then show cause why they should not be adjudged guilty of contempt of court. The trial judge's tolerance of the delays or liberality did not exonerate them and their counsel from their impeding the smooth administration of justice.

On the part of petitioners' counsel, he was expectedly aware of Canon 12 of the *Code of Professional Responsibility*, which required him as an attorney to exert every effort and to consider it his duty to assist in the speedy and efficient administration of justice. He should not ever ignore such duty, even upon the pretext of giving his entire devotion to the interest of his clients. He ought not to forget that as an attorney, he was, first and foremost, an officer of the court, bound to exert every effort to comply with the requirement under Canon 12.[36]

The Court upholds the liability of petitioners as laid down by the RTC and affirmed without modification by the CA, considering that petitioners did not present evidence in refutation.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on October 14, 2003; and **DIRECTS** petitioners to pay costs of suit.

The Court **ORDERS** petitioners and their counsel Atty. Oscar L. Karaan to show cause in writing within ten days from notice why they should not be punished for indirect contempt of court for impeding the smooth administration of justice in the manner stated in the body of this decision.

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[36] *Foronda v. Atty. Guerrero*, A.C. No. 5469, August 10, 2004, 436 SCRA 9, 23-24.

Atty. Oscar L. Karaan is further commanded to explain within the same period why he should not be disciplinarily dealt with for violating Canon 12 of the *Code of Professional Responsibility*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172334. June 5, 2013]

DR. ZENAIDA P. PIA, *petitioner, vs.* **HON. MARGARITO P. GERVACIO, JR., Overall Deputy Ombudsman, Formerly Acting Ombudsman, Office of the Ombudsman, Dr. OFELIA M. CARAGUE, Formerly PUP President, Dr. ROMAN R. DANNUG, Formerly Dean, College of Economics, Finance and Politics (CEFP), now Associate Professor, CEFP Polytechnic University of the Philippines (PUP), Sta. Mesa, Manila,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM THE DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES SHOULD BE TAKEN TO THE COURT OF APPEALS UNDER RULE 43; MOTION FOR EXTENSION OF TIME TO FILE PETITION WITHIN THE 15-DAY PERIOD IS CONSIDERED TIMELY FILED; CASE AT BAR.— In *Fabian v. Hon. Desierto,* the Court declared unconstitutional the provisions in Republic Act (R.A.) No. 6770, otherwise known as The Ombudsman Act of 1989, that mandates a direct appeal to the Supreme Court from the decisions of the Office of the Ombudsman in

administrative cases. We then declared categorically that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the [CA] under the provisions of Rule 43." x x x As the Court explained in *Dimagiba v. Espartero,* "[c]onsidering that the *Fabian* ruling stated that Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for a reglementary period of 15 days from receipt of the order appealed from, a motion for extension of time to file petition within the 15-day period is considered timely filed." Between the 10-day period under R.A. No. 6770 and Section 4 of Rule 43, the latter shall apply. In the present case, Pia filed with the CA her motion for extension of time within the allowed 15-day period.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; THE QUANTUM OF EVIDENCE NECESSARY TO FIND AN INDIVIDUAL ADMINISTRATIVELY LIABLE IS SUBSTANTIAL EVIDENCE; SUSTAINED.— In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The settled rule provides that factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA.

3. POLITICAL LAW; PUBLIC OFFICERS; ACTS MAY CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AS LONG AS THEY TARNISH THE IMAGE AND INTEGRITY OF HIS/HER OFFICE; PRESENT IN CASE AT BAR.— In *Avenido v. Civil Service Commission*, we explained that acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that "[public officials and employees] shall at all times respect the rights of

others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." In affirming the finding that the act imputed upon Pia amounts to Conduct Prejudicial to the Best Interest of the Service, we take into account her moral ascendancy over her students. Dannug's complaint also indicates that the book/compilation was overpriced, and that the students' refusal to buy the book/compilation could result in their failure in the subject. In addition, Pia was found to have directly violated memoranda issued by officials of PUP. It then appeared that she allowed her personal interests to adversely affect the proper performance of her official functions, to the disadvantage of her students and in patent violation of a policy in the state-run university where she was teaching.

4. ID.; OFFICE OF THE OMBUDSMAN; A DECISION OF THE OFFICE OF THE OMBUDSMAN IS IMMEDIATELY EXECUTORY EVEN PENDING APPEAL; RATIONALE.— A decision of the Office of the Ombudsman is immediately executory even pending appeal. The issue was fully explained by the Court in *Office of the Ombudsman v. Court of Appeals, viz*: x x x The Court held in *Lapid v. Court of Appeals* that the Rules of Procedure of the Office of the Ombudsman "mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary are still appealable and hence, not final and executory." Subsequently, on 17 August 2000, the Ombudsman issued Administrative Order No. 14-A (AO 14-A), amending Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The amendment aims to provide uniformity with other disciplining authorities in the execution or implementation of judgments and penalties in administrative disciplinary cases involving public officials and employees. x x x [l]n the 2007 case of *Buencamino v. Court of Appeals,* the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. The Court held that the pertinent ruling in *Lapid v. Court of Appeals* has already been superseded by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH,* which clearly held that

decisions of the Ombudsman are immediately executory even pending appeal.

APPEARANCES OF COUNSEL

Lamberto V. Pia for petitioner.

D E C I S I O N

REYES, *J.*:

This resolves the Petition for Review on *Certiorari*[1] filed by petitioner Zenaida P. Pia (Pia) to assail the following:

(1) the Decision[2] dated June 29, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 75648, which affirmed the Office of the Ombudsman's decision finding Pia guilty of Conduct Prejudicial to the Best Interest of the Service; and

(2) the CA Resolution[3] dated March 28, 2006, which denied Pia's motion for reconsideration of the Decision dated June 29, 2005.

The Antecedents

The petition stems from a complaint[4] filed in December 2001 by respondent Dr. Roman Dannug (Dannug), in his capacity as Dean of the College of Economics, Finance and Politics (CEFP) of the Polytechnic University of the Philippines (PUP), against Pia who was then a professor at PUP. Dannug claimed that Pia was directly selling to her students a book entitled

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[1] *Rollo*, pp. 9-32.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S. E. Veloso, concurring; *id.* at 38-57.

[3] *Id.* at 35-36.

[4] Docketed as OMB-C-A-02-0022-A.

"Organization Development Research Papers" at a price of ₱120.00 per copy, in violation of Section 3, Article X of the Code of Ethics for Professional Teachers, which reads:

> No teacher shall act, directly or indirectly, as agents of, or be financially interested in any commercial venture, the business of which is to furnish textbooks and other printed matter, stationery, athletic goods, school uniforms, and other materials, in the purchase and disposal of which the teacher's official influence can be exercised, x x x.[5]

Pia's act was also claimed to be violative of several memoranda issued by PUP officials against the sale of books, articles or any items by any faculty member directly to their students.[6] Furthermore, the books were believed to be overpriced at ₱120.00 each, being mere bound machine copies of reports and research papers that were submitted by Pia's former students. Dannug attached to his complaint a list of the students who were allegedly made to buy copies of the book.

For her defense, Pia argued that her students were not forced to buy copies of the book, even submitting a certification to that effect from students who had bought from her. Pia also claimed that the list of students attached to the complaint was a mere attendance sheet of Dannug's students in a research writing class, and not as Dannug claimed it to be.

After preliminary conference and the parties' submission of their respective memoranda, the case was deemed submitted for resolution.

The Ruling of the Ombudsman

In the Office of the Ombudsman's Decision[7] dated September 27, 2002, signed by Graft Investigation Officer II Joselito P. Fangon and approved by herein respondent Margarito P. Gervacio, Jr. as the Overall Deputy Ombudsman and Acting

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[5] *Rollo,* p. 59.

[6] *Id.*

[7] *Id.* at 58-76.

Ombudsman, Pia was declared guilty of Conduct Prejudicial to the Best Interest of the Service. It was explained:

> **It is of no moment that the students were not forced to buy the book. It stands to reason that the respondent [Pia], as teacher, exercises moral ascendancy over her students, such that an offer made by her directed to the students, to buy something from her, operates as a compulsion which the students [cannot] easily avoid.** x x x.
>
> The actuation of the respondent (herein petitioner) appears to constitute a betrayal of the Code of Ethics for Professional Teachers which amounts to **Conduct Prejudicial to the Best Interest of the Service**.[8] (Emphasis ours)

Thus, the dispositive portion of the Office of the Ombudsman's decision reads:

> **WHEREFORE, PREMISES CONSIDERED**, judgment is hereby rendered finding respondent **ZENAIDA P. PIA, GUILTY** of **Conduct Prejudicial to the Best Interest of the Service**, for which the **PENALTY** of **SUSPENSION FOR SIX (6) MONTHS WITHOUT PAY** is hereby imposed, pursuant to Section 10, Rule III of Administrative Order No. 07, in relation to Section 25 of Republic Act No. 6770.
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> The Honorable, the University President, Polytechnic University of the Philippines, Sta. Mesa, Manila, is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken thereon.
>
> **SO RESOLVED.**[9]

Pia's motion for reconsideration was denied *via* an Order[10] dated November 20, 2002.

Feeling aggrieved, Pia filed a petition for review with the CA. Even before she could have filed the petition, respondents Dannug and Dr. Ofelia M. Carague (Carague), former PUP

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[8] *Id.* at 73.

[9] *Id.* at 74-76.

[10] *Id.* at 77-84.

President, implemented the penalty of suspension that was imposed by the Office of Ombudsman.

The Ruling of the CA

On June 29, 2005, the CA rendered its Decision[11] affirming the rulings of the Office of the Ombudsman. For the appellate court, the Office of the Ombudsman has sufficiently established by substantial evidence the culpability of Pia. In addition, the CA explained that the appeal was dismissible on the ground that the Office of the Ombudsman's decision and order had already attained finality when the petition for review was filed with it by Pia on March 20, 2003.

Pia's motion for reconsideration was denied. Hence, this petition for review.

The Issues

From Pia's arguments, the main issues for the Court's determination are:

(1) Whether or not Pia's petition with the CA was filed on time;

(2) Whether or not the CA erred in affirming the Office of the Ombudsman's decision finding Pia guilty of Conduct Prejudicial to the Best Interest of the Service; and

(3) Whether or not Dannug and Carague erred in implementing the Office of the Ombudsman's decision during the time that Pia's period to appeal had not yet expired.

This Court's Ruling

Reglementary period for petitions for review with the CA

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[11] *Id.* at 38-57.

In the assailed CA decision, the appellate court declared that the decision of the Office of the Ombudsman was already final and executory at the time that the petition for review was filed by Pia. It explained:

> The petitioner did not controvert the contention that she received the denial of her motion for reconsideration of the questioned decision on February 18, 2003. Under Sec. 7, Rule III of Administrative Order No. 14-A, Series of 2000, which prescribes the Rules of Procedure of the Office of the Ombudsman, it allows the aggrieved party to appeal the decision of the said Office (in administrative disciplinary cases to the Court of Appeals) within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration. Thus, in accordance with the said procedural rule, the petitioner has only until February 28, 2003 to file her petition for review with this Court as enunciated in the *Fabian* case.
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> Consequently, on her last day to appeal on February 28, 2003, the petitioner filed a motion for extension of time (for an additional fifteen [15] days) to file the said petition or until March 17, 2003. It may be pertinent to state here that the records are bereft of evidence on the status of the said motion whether the same was granted or denied. However, even assuming that the said motion was favorably acted upon in petitioner's favor, her belated filing of her appeal on March 20, 2003 is clearly beyond the reglementary period provided for by law if we consider in the computation the grant of the 15-day extension period as requested in her motion.[12] (Citations omitted)

We reverse such finding of the CA.

In *Fabian v. Hon. Desierto*,[13] the Court declared unconstitutional the provisions in Republic Act (R.A.) No. 6770, otherwise known as The Ombudsman Act of 1989, that mandates a direct appeal to the Supreme Court from the decisions of the Office of the Ombudsman in administrative cases. We then declared categorically that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the [CA] under the provisions of Rule 43."[14]

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[12] *Id.* at 51-52.

[13] 356 Phil. 787 (1998).

[14] *Id.* at 808.

Consistent with the foregoing jurisprudence, Pia claims that her petition for review was timely filed, as her motion for extension of time to file the petition with the CA was filed on February 24, 2003; and she asked through the said motion for an additional period of 15 days from the expiration of her original reglementary period of 15 days within which to file a petition for review. The CA, however, adopted the view of the Office of the Solicitor General (OSG), counsel for respondent Overall Deputy Ombudsman, that the petition with the CA should have been filed within ten days from Pia's notice of her motion for reconsideration's denial, as required under the Office of the Ombudsman's Administrative Order No. 14-A, Series of 2000.

The Court agrees with Pia. As the Court explained in *Dimagiba v. Espartero,*[15] "[c]onsidering that the *Fabian* ruling stated that Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for a reglementary period of 15 days from receipt of the order appealed from, a motion for extension of time to file petition within the 15-day period is considered timely filed."[16] Between the 10-day period under R.A. No. 6770 and Section 4 of Rule 43, the latter shall apply.

In the present case, Pia filed with the CA her motion for extension of time within the allowed 15-day period. She received a copy of the Ombudsman's order on February 18, 2003, then filed her motion on February 24, 2003. Equally important is the fact that her petition for review was filed within the period asked for in her motion, which was 15 days from the expiration of the original period ending March 5, 2003, or until March 20, 2003.

Although the records do not include a particular CA resolution that granted Pia's motion for extension of time, this may be reasonably deduced from the appellate court's reconsideration

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[15] G.R. No. 154952, July 16, 2012, 676 SCRA 420.

[16] *Id.* at 434.

of an earlier dismissal of the petition, coupled with its issuance of a temporary restraining order against the implementation of the Ombudsman's decision that carried a penalty of Pia's suspension.[17]

On the finding that Pia is guilty of Conduct Prejudicial to the Best Interest of the Service

The petition, however, fails on the merits.

In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[18]

The settled rule provides that factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA.[19] Furthermore, only questions of law may be raised in petitions filed under Rule 45 of the Rules of Court; the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof.[20]

Both the Office of the Ombudsman and the CA have sufficiently identified Pia's act that constitutes Conduct Prejudicial to the Best Interest of the Service. Although Pia questions the weight that should be accorded to the list of students attached to the complaint of Dannug, it is significant that she readily admitted having directly sold copies of the book/compilation

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[17] *Rollo*, p. 115.

[18] *Office of the Ombudsman (Visayas) v. Zaldarriaga*, G.R. No. 175349, June 22, 2010, 621 SCRA 373, 379-380.

[19] *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 434.

[20] *Salumbides, Jr. v. Office of the Ombudsman*, G.R. No. 180917, April 23, 2010, 619 SCRA 313, 328.

"Organization Development Research Papers" to her students, an act that is proscribed among PUP faculty members, by the submission of a certification from her students claiming that they were not forced to buy copies of the book.

In asking for the complaint's dismissal, Pia argues that she was not covered by the Code of Ethics of Professional Teachers which was cited by the Office of the Ombudsman to support the decision rendered against her. She contends that the Code only applies to teachers in educational institutions at the pre-school, primary, elementary and secondary levels, but not to professors in the tertiary level.

Our review of the CA decision indicates that such argument has already been sustained by the appellate court. Nonetheless, the finding of Conduct Prejudicial to the Best Interest of the Service remains justified given the standards that are required from Pia as a faculty member in a state-run university. The appellate court correctly explained:

> [W]e sustain the petitioner's contention that she is not covered under R.A. No. 7836 (The Philippine Teachers Professionalization Act of 1994) relative to the definition of "teachers" therein. As we have earlier stated**, the culpability of the petitioner is anchored on her irregular and unjustifiable act being complained of, in violation of an existing regulation of a state-run university** *(the PUP, in this case)* where she is currently employed. Additionally, **the Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State policy of promoting a high standard of ethics and utmost responsibility in the public service**.[21] (Emphasis ours)

In *Avenido v. Civil Service Commission*,[22] we explained that acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of

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[21] *Rollo*, pp. 49-50.

[22] G.R. No. 177666, April 30, 2008, 553 SCRA 711.

ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."[23]

In affirming the finding that the act imputed upon Pia amounts to Conduct Prejudicial to the Best Interest of the Service, we take into account her moral ascendancy over her students. Dannug's complaint also indicates that the book/compilation was overpriced, and that the students' refusal to buy the book/compilation could result in their failure in the subject. In addition, Pia was found to have directly violated memoranda issued by officials of PUP. It then appeared that she allowed her personal interests to adversely affect the proper performance of her official functions, to the disadvantage of her students and in patent violation of a policy in the state-run university where she was teaching.

The certification that was allegedly executed by Pia's students in her defense deserves scant consideration: *first*, her moral ascendancy as a professor could have easily allowed her to obtain such certification, regardless of the circumstances that attended her students' purchase of the book/compilation; and *second*, the certification in fact confirms that she directly sold the book/compilation to her students, in violation of the prohibition imposed by the PUP officials.

Pia's argument that she was not properly charged with the offense for which she was found guilty of committing still does not warrant her exoneration from the offense. In *Avenido*, we emphasized that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt.[24] Citing the case of *Dadubo v. Civil Service Commission*,[25]

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[23] *Id.* at 720-721.

[24] *Id.* at 719.

[25] G.R. No. 106498, June 28, 1993, 223 SCRA 747.

we held in *Avenido* that the charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.[26]

Considering then that the acts alleged and proved to have been committed by Pia amounts to Conduct Prejudicial to the Best Interest of the Service, and that she has been afforded a full opportunity to present her side and refute the act imputed against her, the Court finds no cogent reason to nullify the ruling made by the CA on Pia's guilt.

Implementation of the ruling of the Office of the Ombudsman

The Court also finds no irregularity in Dannug and Caragues's implementation of the rulings of the Office of the Ombudsman, notwithstanding the fact that Pia then still had the remedy of an appeal before the CA.

To support her stance that the Office of the Ombudsman's order of suspension should not have been executed while her period to appeal has not yet lapsed, Pia cites the cases of *Tuzon v. CA*,[27] *Lapid v. CA*[28] and *Lopez v. CA*.[29] Given, however, subsequent jurisprudence on the matter, Pia's argument is misplaced.

A decision of the Office of the Ombudsman is immediately executory even pending appeal. The issue was fully explained by the Court in *Office of the Ombudsman v. Court of Appeals*,[30] *viz*:

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[26] *Id.* at 754; *supra* note 21, at 719-720.

[27] G.R. No. 90107, August 21, 1992, 212 SCRA 739.

[28] 390 Phil. 236 (2000).

[29] 438 Phil. 351 (2002).

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

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

"Section 27 of RA 6770:

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

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

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

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

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

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

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

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

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

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

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

> "Section 7. *Finality and execution of decision.*¯ Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration.
>
> **An appeal shall not stop the decision from being executory**. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal." (Emphasis supplied)

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x x x [I]n the 2007 case of *Buencamino v. Court of Appeals*, the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. The Court held that the pertinent ruling in *Lapid v. Court of Appeals* has already been superseded by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, which clearly held that decisions of the Ombudsman are immediately executory even pending appeal.[31] (Citations omitted)

Clearly from the foregoing, Pia's complaint against Carague and Dannug's immediate implementation of the penalty of suspension imposed by the Office of the Ombudsman deserves no merit.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated June 29, 2005 and Resolution dated March 28, 2006 of the Court of Appeals in CA-G.R. SP No. 75648 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J.(Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 175279-80. June 5, 2013]

SUSAN LIM-LUA, *petitioner, vs.* **DANILO Y. LUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; SUPPORT *PENDENTE LITE;* A COURT DOES NOT NEED TO DELVE

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

FULLY INTO THE MERITS OF THE CASE BEFORE IT CAN SETTLE AN APPLICATION FOR SUPPORT *PENDENTE LITE*; RATIONALE.— As a matter of law, the amount of support which those related by marriage and family relationship is generally obliged to give each other shall be in proportion to the resources or means of the giver and to the needs of the recipient. Such support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon verified application of any of the parties, guardian or designated custodian, may temporarily grant support *pendente lite* prior to the rendition of judgment or final order. Because of its provisional nature, a court does not need to delve fully into the merits of the case before it can settle an application for this relief. All that a court is tasked to do is determine the kind and amount of evidence which may suffice to enable it to justly resolve the application. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record.

2. ID.; ID.; ID.; RULES ON PROVISIONAL ORDERS (A.M. NO. 02-11-12-SC); SUFFICIENCY AND REASONABLENESS OF SUPPORT; DEDUCTIONS MADE IN SETTLING SUPPORT IN ARREARS SHOULD BE LIMITED TO THE BASIC NEEDS AND EXPENSES CONSIDERED BY THE TRIAL COURT AND APPELLATE COURT; APPLICATION IN CASE AT BAR.— Judicial determination of support *pendente lite* in cases of legal separation and petitions for declaration of nullity or annulment of marriage are guided by the following provisions of the Rule on Provisional Orders [A.M. No. 02-11-12-SC]. x x x The dispute concerns the deductions [A.M. No. 02-11-12-SC] made by respondent in settling the support in arrears. x x x Here, the CA should not have allowed *all* the expenses incurred by respondent to be credited against the accrued support *pendente lite*. x x x Hence, the value of two expensive cars bought by respondent for his children plus their maintenance cost, travel expenses of petitioner and Angelli, purchases through credit card of items other than groceries and dry goods (clothing) should have been disallowed, as these bear no relation to the

judgment awarding support *pendente lite*.x x x [T]he deductions should be limited to those basic needs and expenses considered by the trial and appellate courts. The assailed ruling of the CA allowing huge deductions from the accrued monthly support of petitioner and her children, while correct insofar as it commends the generosity of the respondent to his children, is clearly inconsistent with the executory decision in CA-G.R. SP No. 84740. More important, it completely ignores the unfair consequences to petitioner whose sustenance and well-being, was given due regard by the trial and appellate courts. x x x [C]onsidering respondent's financial resources, it is but fair and just that he give a monthly support for the sustenance and basic necessities of petitioner and his children. This would imply that any amount respondent seeks to be credited as monthly support should only cover those incurred for sustenance and household expenses. x x x Suffice it to state that the matter of increase or reduction of support should be submitted to the trial court in which the action for declaration for nullity of marriage was filed, as this Court is not a trier of facts. The amount of support may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.

3. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT OF COURT, DEFINED; TO CONSTITUTE CONTEMPT, THE ACT MUST BE DONE WILLFULLY AND FOR ILLEGITIMATE OR IMPROPER PURPOSE; NOT PRESENT IN CASE AT BAR.— Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. The good faith, or lack of it, of the alleged contemnor should be considered. Respondent admittedly ceased or suspended the giving of monthly support *pendente lite* granted by the trial court, which is immediately executory. However, we agree with the CA that respondent's act was not contumacious considering that he had not been remiss in actually providing for the needs of his children. It is

a matter of record that respondent continued shouldering the full cost of their education and even beyond their basic necessities in keeping with the family's social status. Moreover, respondent believed in good faith that the trial and appellate courts, upon equitable grounds, would allow him to offset the substantial amounts he had spent or paid directly to his children.

APPEARANCES OF COUNSEL

Raymond Fortun Law Office for petitioner.
P.B. Flores & Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

In this petition for review on *certiorari* under Rule 45, petitioner seeks to set aside the Decision[1] dated April 20, 2006 and Resolution[2] dated October 26, 2006 of the Court of Appeals (CA) dismissing her petition for contempt (CA-G.R. SP No. 01154) and granting respondent's petition for *certiorari* (CA-G.R. SP No. 01315).

The factual background is as follows:

On September 3, 2003,[3] petitioner Susan Lim-Lua filed an action for the declaration of nullity of her marriage with respondent Danilo Y. Lua, docketed as Civil Case No. CEB-29346 of the Regional Trial Court (RTC) of Cebu City, Branch 14.

In her prayer for support *pendente lite* for herself and her two children, petitioner sought the amount of ₱500,000.00 as

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[1] *Rollo*, pp. 39-48. Penned by Associate Justice Enrico A. Lanzanas with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr. concurring.

[2] *Id.* at 50-51. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla concurring.

[3] Records, p. 1.

monthly support, citing respondent's huge earnings from salaries and dividends in several companies and businesses here and abroad.[4]

After due hearing, Judge Raphael B. Yrastorza, Sr. issued an Order[5] dated March 31, 2004 granting support *pendente lite,* as follows:

> From the evidence already adduced by the parties, the amount of Two Hundred Fifty (₱250,000.00) Thousand Pesos would be sufficient to take care of the needs of the plaintiff. This amount *excludes the One hundred thirty-five (₱135,000.00) Thousand Pesos for medical attendance expenses* needed by plaintiff for the operation of both her eye[s] which is demandable upon the conduct of such operation. The amounts already extended to the two (2) children, being a commendable act of defendant, should be continued by him considering the vast financial resources at his disposal.
>
> According to Art. 203 of the Family Code, support is demandable from the time plaintiff needed the said support but is payable only from the date of judicial demand. Since the instant complaint was filed on 03 September 2003, the amount of Two Hundred Fifty (₱250,000.00) Thousand should be paid by defendant to plaintiff retroactively to such date until the hearing of the support *pendente lite*. ₱250,000.00 x 7 corresponding to the seven (7) months that lapsed from September, 2003 to March 2004 would tantamount to a total of One Million Seven Hundred Fifty (₱1,750,000.00) Thousand Pesos. Thereafter, starting the month of April 2004, until otherwise ordered by this Court, defendant is ordered to pay a monthly support of *Two Hundred Fifty Thousand (₱250,000.00) Pesos payable within the first five (5) days of each corresponding month* pursuant to the third paragraph of Art. 203 of the Family Code of the Philippines. The monthly support of ₱250,000.00 is without prejudice to any increase or decrease thereof that this Court may grant plaintiff as the circumstances may warrant *i.e*. depending on the proof submitted by the parties during the proceedings for the main action for support.[6]

Respondent filed a motion for reconsideration,[7] asserting that petitioner is not entitled to spousal support considering that she does not maintain for herself a separate dwelling from their

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[4] *Id.* at 16.

[5] *Id.* at 46-B to 50.

[6] *Id.* at 49.

[7] *Id.* at 55-59.

children and respondent has continued to support the family for their sustenance and well-being in accordance with family's social and financial standing. As to the ₱250,000.00 granted by the trial court as monthly support *pendente lite*, as well as the ₱1,750,000.00 retroactive support, respondent found it unconscionable and beyond the intendment of the law for not having considered the needs of the respondent.

In its May 13, 2004 Order, the trial court stated that the March 31, 2004 Order had become final and executory since respondent's motion for reconsideration is treated as a mere scrap of paper for violation of the three-day notice period under Section 4, Rule 15 of the 1997 Rules of Civil Procedure, as amended, and therefore did not interrupt the running of the period to appeal. Respondent was given ten (10) days to show cause why he should not be held in contempt of the court for disregarding the March 31, 2004 order granting support *pendente lite*.[8]

His second motion for reconsideration having been denied, respondent filed a petition for *certiorari* in the CA.

On April 12, 2005, the CA rendered its Decision,[9] finding merit in respondent's contention that the trial court gravely abused its discretion in granting ₱250,000.00 monthly support to petitioner without evidence to prove his actual income. The said court thus decreed:

> WHEREFORE, foregoing premises considered, this petition is given due course. The assailed Orders dated March 31, 2004, May 13, 2004, June 4, 2004 and June 18, 2004 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB No. 29346 entitled "Susan Lim Lua versus Danilo Y. Lua" are hereby nullified and set aside and instead a new one is entered ordering herein petitioner:

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[8] *Id.* at 71.

[9] *Rollo*, pp. 61-69. Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr. concurring.

a) to pay private respondent a monthly support *pendente lite* of ₱115,000.00 beginning the month of April 2005 and every month thereafter within the first five (5) days thereof;

b) to pay the private respondent the amount of ₱115,000.00 a month multiplied by the number of months starting from September 2003 until March 2005 less than the amount supposedly given by petitioner to the private respondent as her and their two (2) children monthly support; and

c) to pay the costs.

SO ORDERED.[10]

Neither of the parties appealed this decision of the CA. In a Compliance[11] dated June 28, 2005, respondent attached a copy of a check he issued in the amount of ₱162,651.90 payable to petitioner. Respondent explained that, as decreed in the CA decision, he deducted from the amount of support in arrears (September 3, 2003 to March 2005) ordered by the CA — ₱2,185,000.00 — plus ₱460,000.00 (April, May, June and July 2005), totalling ₱2,645,000.00, the advances given by him to his children and petitioner in the sum of ₱2,482,348.16 (with attached photocopies of receipts/billings).

In her Comment to Compliance with Motion for Issuance of a Writ of Execution,[12] petitioner asserted that none of the expenses deducted by respondent may be chargeable as part of the monthly support contemplated by the CA in CA-G.R. SP No. 84740.

On September 27, 2005, the trial court issued an Order[13] granting petitioner's motion for issuance of a writ of execution as it rejected respondent's interpretation of the CA decision. Respondent filed a motion for reconsideration and subsequently also filed a motion for inhibition of Judge Raphael B. Yrastorza,

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[10] *Id.* at 68-69.

[11] *Id.* at 70-72.

[12] *Id.* at 186-189.

[13] Records, pp. 265-266.

Sr. On November 25, 2005, Judge Yrastorza, Sr. issued an Order[14] denying both motions.

> WHEREFORE, in view of the foregoing premises, both motions are DENIED. Since a second motion for reconsideration is prohibited under the Rules, this denial has attained finality; let, therefore, a writ of execution be issued in favor of plaintiff as against defendant for the *accumulated support in arrears pendente lite.*
>
> Notify both parties of this Order.
>
> SO ORDERED.[15]

Since respondent still failed and refused to pay the support in arrears *pendente lite*, petitioner filed in the CA a Petition for Contempt of Court with Damages, docketed as CA-G.R. SP No. 01154 (*"Susan Lim Lua versus Danilo Y. Lua").* Respondent, on the other hand, filed CA-G.R. SP No. 01315, a Petition for *Certiorari* under Rule 65 of the Rules of Court (*"Danilo Y. Lua versus Hon. Raphael B. Yrastorza, Sr., in his capacity as Presiding Judge of Regional Trial Court of Cebu, Branch 14, and Susan Lim Lua"*). The two cases were consolidated.

By Decision dated April 20, 2006, the CA set aside the assailed orders of the trial court, as follows:

> **WHEREFORE**, judgment is hereby rendered:
>
> a) DISMISSING, for lack of merit, the case of Petition for Contempt of Court with Damages filed by Susan Lim Lua against Danilo Y. Lua with docket no. SP. CA-GR No. 01154;
>
> b) GRANTING Danilo Y. Lua's Petition for *Certiorari* docketed as SP. CA-GR No. 01315. Consequently, the assailed Orders dated 27 September 2005 and 25 November 2005 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB-29346 entitled "*Susan Lim Lua versus Danilo Y. Lua,* are hereby NULLIFIED and SET ASIDE, and instead a new one is entered:

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[14] *Rollo,* pp. 193-196.

[15] *Id.* at 196.

i. ORDERING the deduction of the amount of PhP2,482,348.16 plus 946,465.64, or a total of PhP3,428,813.80 from the current total support in arrears of Danilo Y. Lua to his wife, Susan Lim Lua and their two (2) children;

ii. ORDERING Danilo Y. Lua to resume payment of his monthly support of PhP115,000.00 pesos starting from the time payment of this amount was deferred by him subject to the deductions aforementioned.

iii. DIRECTING the issuance of a permanent writ of preliminary injunction.

SO ORDERED.[16]

The appellate court said that the trial court should not have completely disregarded the expenses incurred by respondent consisting of the purchase and maintenance of the two cars, payment of tuition fees, travel expenses, and the credit card purchases involving groceries, dry goods and books, which certainly inured to the benefit not only of the two children, but their mother (petitioner) as well. It held that respondent's act of deferring the monthly support adjudged in CA-G.R. SP No. 84740 was not contumacious as it was anchored on valid and justifiable reasons. Respondent said he just wanted the issue of whether to deduct his advances be settled first in view of the different interpretation by the trial court of the appellate court's decision in CA-G.R. SP No. 84740. It also noted the lack of contribution from the petitioner in the joint obligation of spouses to support their children.

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following errors allegedly committed by the CA:

I.

THE HONORABLE COURT ERRED IN NOT FINDING RESPONDENT GUILTY OF INDIRECT CONTEMPT.

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[16] *Id.* at 47.

II.

THE HONORABLE COURT ERRED IN ORDERING THE DEDUCTION OF THE AMOUNT OF PHP2,482,348.16 PLUS 946,465.64, OR A TOTAL OF PHP3,428,813.80 FROM THE CURRENT TOTAL SUPPORT IN ARREARS OF THE RESPONDENT TO THE PETITIONER AND THEIR CHILDREN.[17]

The main issue is whether certain expenses already incurred by the respondent may be deducted from the total support in arrears owing to petitioner and her children pursuant to the Decision dated April 12, 2005 in CA-G.R. SP No. 84740.

The pertinent provision of the Family Code of the Philippines provides:

> Article 194. Support comprises everything **indispensable** for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.
>
> The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (Emphasis supplied.)

Petitioner argues that it was patently erroneous for the CA to have allowed the deduction of the value of the two cars and their maintenance costs from the support in arrears, as these items are not indispensable to the sustenance of the family or in keeping them alive. She points out that in the Decision in CA-G.R. SP No. 84740, the CA already considered the said items which it deemed chargeable to respondent, while the monthly support *pendente lite* (₱115,000.00) was fixed on the basis of the documentary evidence of respondent's alleged income from various businesses and petitioner's testimony that she needed ₱113,000.00 for the maintenance of the household and other miscellaneous expenses *excluding* the ₱135,000.00 medical attendance expenses of petitioner.

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[17] *Id.* at 18.

Respondent, on the other hand, contends that disallowing the subject deductions would result in unjust enrichment, thus making him pay for the same obligation twice. Since petitioner and the children resided in one residence, the groceries and dry goods purchased by the children using respondent's credit card, totalling ₱594,151.58 for the period September 2003 to June 2005 were not consumed by the children alone but shared with their mother. As to the Volkswagen Beetle and BMW 316i respondent bought for his daughter Angelli Suzanne Lua and Daniel Ryan Lua, respectively, these, too, are to be considered advances for support, in keeping with the financial capacity of the family. Respondent stressed that being children of parents belonging to the upper-class society, Angelli and Daniel Ryan had never in their entire life commuted from one place to another, nor do they eat their meals at "*carinderias.*" Hence, the cars and their maintenance are indispensable to the children's day-to-day living, the value of which were properly deducted from the arrearages in support *pendente lite* ordered by the trial and appellate courts.

As a matter of law, the amount of support which those related by marriage and family relationship is generally obliged to give each other shall be in proportion to the resources or means of the giver and to the needs of the recipient.[18] Such support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon verified application of any of the parties, guardian or designated custodian, may temporarily grant support *pendente lite* prior to the rendition of judgment

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[18] FAMILY CODE, Art. 201; *Lacson v. Lacson,* 531 Phil. 277, 287 (2006), citing *Baltazar v. Serfino,* No. L-17315, July 31, 1965, 14 SCRA 820, 821.

or final order.[19] Because of its provisional nature, a court does not need to delve fully into the merits of the case before it can settle an application for this relief. All that a court is tasked to do is determine the kind and amount of evidence which may suffice to enable it to justly resolve the application. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record.[20]

In this case, the amount of monthly support *pendente lite* for petitioner and her two children was determined after due hearing and submission of documentary evidence by the parties. Although the amount fixed by the trial court was reduced on appeal, it is clear that the monthly support *pendente lite* of ₱115,000.00 ordered by the CA was intended primarily for the sustenance of petitioner and her children, *e.g.*, food, clothing, salaries of drivers and house helpers, and other household expenses. Petitioner's testimony also mentioned the cost of regular therapy for her scoliosis and vitamins/medicines.

ATTY. ZOSA:

xxx xxx xxx

Q How much do you spend for your food and your two (2) children every month?

A Presently, Sir?

ATTY. ZOSA:

Yes.

A For the food alone, I spend not over ₱40,000.00 to ₱50,000.00 a month for the food alone.

xxx xxx xxx

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[19] Sec. 1, RULE ON PROVISIONAL ORDERS (A.M. No. 02-11-12-SC) which took effect on March 15, 2003); REVISED RULES OF COURT, Rule 61, Secs. 1 & 4.

[20] *Mangonon v. Court of Appeals*, 526 Phil. 505, 517 (2006), citing *Ramos v. Court of Appeals*, 150-A Phil. 996, 1001 (1972).

ATTY. ZOSA:

Q What other expenses do you incur in living in that place?

A The normal household and the normal expenses for a family to have a decent living, Sir.

Q How much other expenses do you incur?

WITNESS:

A For other expenses, is around over a ₱100,000.00, Sir.

Q Why do you incur that much amount?

A For the clothing for the three (3) of us, for the vitamins and medicines. And also I am having a special therapy to straighten my back because I am scoliotic. I am advised by the Doctor to hire a driver, but I cannot still afford it now. Because my eyesight is not reliable for driving. And I still need another househelp to accompany me whenever I go marketing because for my age, I cannot carry anymore heavy loads.

xxx xxx xxx

ATTY. FLORES:

xxx xxx xxx

Q On the issue of the food for you and the two (2) children, you mentioned ₱40,000.00 to ₱50,000.00?

A Yes, for the food alone.

Q Okay, what other possible expenses that you would like to include in those two (2) items? You mentioned of a driver, am I correct?

A Yes, I might need two (2) drivers, Sir for me and my children.

Q Okay. How much would you like possibly to pay for those two (2) drivers?

A I think ₱10,000.00 a month for one (1) driver. So I need two (2) drivers. And I need another househelp.

Q You need another househelp. The household nowadays would charge you something between ₱3,000.00 to ₱4,000.00. That's quite…

A Right now, my househelp is receiving ₱8,000.00. I need another which I will give a compensation of ₱5,000.00.

x x x x x x x x x

Q Other than that, do you still have other expenses?

A My clothing.

COURT:

How about the schooling for your children?

WITNESS:

A The schooling is shouldered by my husband, Your Honor.

COURT:

Everything?

A Yes, Your Honor.

x x x x x x x x x

ATTY. FLORES:

Q Madam witness, let us talk of the present needs. x x x. What else, what specific need that you would like to add so I can tell my client, the defendant.

WITNESS:

A I need to have an operation both of my eyes. I also need a special therapy for my back because I am scoliotic, three (3) times a week.

Q That is very reasonable. [W]ould you care to please repeat that?

A Therapy for my scoliotic back and then also for the operation both of my eyes. And I am also taking some vitamins from excel that will cost ₱20,000.00 a month.

Q Okay. Let's have piece by piece. Have you asked the Doctor how much would it cost you for the operation of that scoliotic?

A Yes before because I was already due last year. Before, this eye will cost ₱60,000.00 and the other eyes ₱75,000.00.

Q So for both eyes, you are talking of ₱60,000.00 plus ₱75,000.00 is P135,000.00?

A Yes.

xxx xxx xxx

Q You talk of therapy?

A Yes.

Q So how much is that?

A Around ₱5,000.00 a week. [21]

As to the financial capacity of the respondent, it is beyond doubt that he can solely provide for the subsistence, education, transportation, health/medical needs and recreational activities of his children, as well as those of petitioner who was then unemployed and a full-time housewife. Despite this, respondent's counsel manifested during the same hearing that respondent was willing to grant the amount of only ₱75,000.00 as monthly support *pendente lite* both for the children and petitioner as spousal support. Though the receipts of expenses submitted in court unmistakably show how much respondent lavished on his children, it appears that the matter of spousal support was a different matter altogether. Rejecting petitioner's prayer for ₱500,000.00 monthly support and finding the ₱75,000.00 monthly support offered by respondent as insufficient, the trial court fixed the monthly support *pendente lite* at ₱250,000.00. However, since the supposed income in millions of respondent was based merely on the allegations of petitioner in her complaint and registration documents of various corporations which respondent insisted are owned not by him but his parents and siblings, the CA reduced the amount of support *pendente lite* to ₱115,000.00, which ruling was no longer questioned by both parties.

Controversy between the parties resurfaced when respondent's compliance with the final CA decision indicated

[21] TSN, March 31, 2004, pp. 6-11.

that he deducted from the total amount in arrears (₱2,645,000.00) the sum of ₱2,482,348.16, representing the value of the two cars for the children, their cost of maintenance and advances given to petitioner and his children. Respondent explained that the deductions were made consistent with the *fallo* of the CA Decision in CA-G.R. SP No. 84740 ordering him to pay support *pendente lite* in arrears less the amount supposedly given by him to petitioner as her and their two children's monthly support.

The following is a summary of the subject deductions under Compliance dated June 28, 2005, duly supported by receipts:[22]

Car purchases for Angeli Suzanne	-	Php 1,350,000.00
and Daniel Ryan	-	613,472.86
Car Maintenance fees of Ageli Suzanne	-	51,232.50
Credit card statements of Daniel Ryan	-	348,682.28
Car Maintenance fees of Daniel Ryan	-	118,960.52
TOTAL	-	Php 2,482,348.16

After the trial court disallowed the foregoing deductions, respondent filed a motion for reconsideration further asserting that the following amounts, likewise with supporting receipts, be considered as additional advances given to petitioner and the children:[23]

Medical expenses of Susan Lim-Lua		Php 42,450.71
Dental Expenses of Daniel Ryan		11,500.00
Travel expenses of Susan Lim-Lua		14,611.15
Credit card purchases of Angelli Suzanne		408,891.08
Salon and travel expenses of Angelli Suzanne		87,112.70
School expenses of Daniel Ryan Lua		260,900.00
Cash given to Daniel and Angelli		121,000.00
TOTAL	-	Php 946,465.64
GRAND TOTAL	-	**Php 3,428,813.80**

[22] *Rollo*, pp. 74-185.

[23] Records, pp. 278-329; CA Decision dated April 20, 2006, *rollo* p. 44.

The CA, in ruling for the respondent said that all the foregoing expenses already incurred by the respondent should, in equity, be considered advances which may be properly deducted from the support in arrears due to the petitioner and the two children. Said court also noted the absence of petitioner's contribution to the joint obligation of support for their children.

We reverse in part the decision of the CA.

Judicial determination of support *pendente lite* in cases of legal separation and petitions for declaration of nullity or annulment of marriage are guided by the following provisions of the Rule on Provisional Orders[24]

Sec. 2. *Spousal Support*.–In determining support for the spouses, the court may be guided by the following rules:

(a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership.

(b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage.

(c) The court may likewise consider the following factors: (1) whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment; (2) the time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity; (3) the duration of the marriage; (4) the comparative financial resources of the spouses, including their comparative earning abilities in the labor market; (5) the needs and obligations of each spouse; (6) the contribution of each spouse to the marriage, including services rendered in home-making, child care, education, and career building of the other spouse; (7) the age and health of the spouses; (8) the physical and emotional conditions of the spouses; (9) the ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and

[24] A.M. No. 02-11-12-SC.

standard of living; and (10) any other factor the court may deem just and equitable.

(d) The Family Court may direct the deduction of the provisional support from the salary of the spouse.

Sec. 3. *Child Support*.–The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership.

Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

In determining the amount of provisional support, the court may likewise consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the child; (2) the physical and emotional health of the child and his or her special needs and aptitudes; (3) the standard of living the child has been accustomed to; (4) the non-monetary contributions that the parents will make toward the care and well-being of the child.

The Family Court may direct the deduction of the provisional support from the salary of the parent.

Since the amount of monthly support *pendente lite* as fixed by the CA was not appealed by either party, there is no controversy as to its sufficiency and reasonableness. The dispute concerns the deductions made by respondent in settling the support in arrears.

On the issue of crediting of money payments or expenses against accrued support, we find as relevant the following rulings by US courts.

In *Bradford v. Futrell*,[25] appellant sought review of the decision of the Circuit Court which found him in arrears with his child support payments and entered a decree in favor of appellee wife. He complained that in determining the arrearage figure, he should have been allowed full credit for all money and items of personal property given by him to the children themselves, even though he referred

[25] 225 Md. 512; 171 A.2d 493; 1961 Md. LEXIS 686.

to them as gifts. The Court of Appeals of Maryland ruled that in the suit to determine amount of arrears due the divorced wife under decree for support of minor children, the husband (appellant) was not entitled to credit for checks which he had clearly designated as gifts, nor was he entitled to credit for an automobile given to the oldest son or a television set given to the children. Thus, if the children remain in the custody of the mother, the father is not entitled to credit for money paid directly to the children if such was paid without any relation to the decree.

In the absence of some finding of consent by the mother, most courts refuse to allow a husband to dictate how he will meet the requirements for support payments when the mode of payment is fixed by a decree of court. Thus he will not be credited for payments made when he unnecessarily interposed himself as a volunteer and made payments direct to the children of his own accord. *Wills v. Baker, 214 S. W. 2d 748 (Mo. 1948)*; *Openshaw v. Openshaw, 42 P. 2d 191 (Utah 1935)*. In the latter case the court said in part: "The payments to the children themselves do not appear to have been made as payments upon alimony, but were rather the result of his fatherly interest in the welfare of those children. We do not believe he should be permitted to charge them to plaintiff. By so doing he would be determining for Mrs. Openshaw the manner in which she should expend her allowances. It is a very easy thing for children to say their mother will not give them money, especially as they may realize that such a plea is effective in attaining their ends. If she is not treating them right the courts are open to the father for redress."[26]

In *Martin, Jr. v. Martin,*[27] the Supreme Court of Washington held that a father, who is required by a divorce decree to make child support payments directly to the mother, cannot claim credit for payments voluntarily made directly to the children. However, special considerations of an equitable nature may justify a court in crediting such payments on his indebtedness to the mother, when such can be done without injustice to her.

The general rule is to the effect that when a father is required by a divorce decree to pay to the mother money for the support of their

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[26] *Id.* at 519; *id.* at 496-497.

[27] 59 Wn.2d 468; 368 P.2d 170; 1962 Wash. LEXIS 419.

dependent children and the unpaid and accrued installments become judgments in her favor, he cannot, as a matter of law, claim credit on account of payments voluntarily made directly to the children. *Koon v. Koon, supra*; *Briggs v. Briggs, supra*. However, **special considerations of an equitable nature may justify a court in crediting such payments on his indebtedness to the mother, when that can be done without injustice to her.** *Briggs v. Briggs, supra.* The courts are justifiably reluctant to lay down any general rules as to when such credits may be allowed.[28] (Emphasis supplied.)

Here, the CA should not have allowed *all* the expenses incurred by respondent to be credited against the accrued support *pendente lite*. As earlier mentioned, the monthly support *pendente lite* granted by the trial court was intended primarily for food, household expenses such as salaries of drivers and house helpers, and also petitioner's scoliosis therapy sessions. Hence, the value of two expensive cars bought by respondent for his children plus their maintenance cost, travel expenses of petitioner and Angelli, purchases through credit card of items other than groceries and dry goods (clothing) should have been disallowed, as these bear no relation to the judgment awarding support *pendente lite.* While it is true that the dispositive portion of the executory decision in CA-G.R. SP No. 84740 ordered herein respondent to pay the support in arrears "less than the amount supposedly given by petitioner to the private respondent as her and their two (2) children monthly support," the deductions should be limited to those basic needs and expenses considered by the trial and appellate courts. The assailed ruling of the CA allowing huge deductions from the accrued monthly support of petitioner and her children, while correct insofar as it commends the generosity of the respondent to his children, is clearly inconsistent with the executory decision in CA-G.R. SP No. 84740. More important, it completely ignores the unfair consequences to petitioner whose sustenance and well-being, was given due regard by the trial and appellate courts. This is evident from the March 31, 2004 Order granting support *pendente lite* to petitioner and her children, when the trial court observed:

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[28] *Id.* at 473; *id.* at 172-173.

While there is evidence to the effect that defendant is giving some forms of financial assistance to his two (2) children via their credit cards and paying for their school expenses, the same is, however, devoid of any form of spousal support to the plaintiff, for, at this point in time, while the action for nullity of marriage is still to be heard, it is incumbent upon the defendant, considering the physical and financial condition of the plaintiff and the overwhelming capacity of defendant, to extend support unto the latter. x x x[29]

On appeal, while the Decision in CA-G.R. SP No. 84740 reduced the amount of monthly support fixed by the trial court, it nevertheless held that considering respondent's financial resources, it is but fair and just that he give a monthly support for the sustenance and basic necessities of petitioner and his children. This would imply that any amount respondent seeks to be credited as monthly support should only cover those incurred for sustenance and household expenses.

In the case at bar, records clearly show and in fact has been admitted by petitioner that aside from paying the expenses of their two (2) children's schooling, he gave his two (2) children two (2) cars and credit cards of which the expenses for various items namely: clothes, grocery items and repairs of their cars were **chargeable to him** which totaled an amount of more than One Hundred Thousand (₱100,000.00) for each of them and considering that as testified by the private respondent that she needs the total amount of ₱113,000.00 for the maintenance of the household and other miscellaneous expenses and considering further that petitioner can afford to buy cars for his two (2) children, and to pay the expenses incurred by them which are chargeable to him through the credit cards he provided them in the amount of ₱100,000.00 each, it is but fair and just that the monthly support *pendente lite* for his wife, herein private respondent, be fixed as of the present in the amount **of ₱115,000.00 which would be sufficient enough to take care of the household and other needs.** This monthly support *pendente lite* to private respondent in the amount of ₱115,000.00 **excludes the amount of One Hundred Thirty-Five (₱135,000.00) Thousand Pesos for medical attendance expenses needed by private respondent for the operation of both her eye[s]** which is demandable upon the conduct of such operation.

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[29] Records, p. 48.

Likewise, this monthly support of ₱115,000.00 is without prejudice to any increase or decrease thereof that the trial court may grant private respondent as the circumstances may warrant *i.e.* depending on the proof submitted by the parties during the proceedings for the main action for support.

The amounts already extended to the two (2) children, being a commendable act of petitioner, should be continued by him considering the vast financial resources at his disposal.[30] (Emphasis supplied.)

Accordingly, only the following expenses of respondent may be allowed as deductions from the accrued support *pendente lite* for petitioner and her children:

Medical expenses of Susan Lim-Lua	Php 42,450.71
Dental Expenses of Daniel Ryan	11,500.00
Credit card purchases of Angelli (Groceries and Dry Goods)	365,282.20
Credit Card purchases of Daniel Ryan	228,869.38
TOTAL	**Php 648,102.29**

As to the contempt charge, we sustain the CA in holding that respondent is not guilty of indirect contempt.

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice.[31] To constitute contempt, the act must be done willfully and for an illegitimate or

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[30] *Rollo*, p. 68.

[31] *Bank of the Philippine Islands v. Calanza*, G.R. No. 180699, October 13, 2010, 633 SCRA 186, 192-193, citing *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253, 261-262; *Lee v. Regional Trial Court of Quezon City, Br. 85*, 496 Phil. 421, 433 (2005).

improper purpose.[32] The good faith, or lack of it, of the alleged contemnor should be considered.[33]

Respondent admittedly ceased or suspended the giving of monthly support *pendente lite* granted by the trial court, which is immediately executory. However, we agree with the CA that respondent's act was not contumacious considering that he had not been remiss in actually providing for the needs of his children. It is a matter of record that respondent continued shouldering the full cost of their education and even beyond their basic necessities in keeping with the family's social status. Moreover, respondent believed in good faith that the trial and appellate courts, upon equitable grounds, would allow him to offset the substantial amounts he had spent or paid directly to his children.

Respondent complains that petitioner is very much capacitated to generate income on her own because she presently maintains a boutique at the Ayala Center Mall in Cebu City and at the same time engages in the business of lending money. He also claims that the two children have finished their education and are now employed in the family business earning their own salaries.

Suffice it to state that the matter of increase or reduction of support should be submitted to the trial court in which the action for declaration for nullity of marriage was filed, as this Court is not a trier of facts. The amount of support may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[34] As we held in *Advincula v. Advincula*[35]

…Judgment for support does not become final. The right to support is of such nature that its allowance is essentially provisional; for during

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[32] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 350.

[33] *Id.* at 349.

[34] *Montefalcon v. Vasquez*, G.R. No. 165016, June 17, 2008, 554 SCRA 513, 528; FAMILY CODE, Art. 202.

[35] No. L-19065, January 31, 1964, 10 SCRA 189, 191.

the entire period that a needy party is entitled to support, his or her alimony may be modified or altered, in accordance with his increased or decreased needs, and with the means of the giver. It cannot be regarded as subject to final determination.[36]

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated April 20, 2006 of the Court of Appeals in CA-G.R. SP Nos. 01154 and 01315 is hereby **MODIFIED** to read as follows:

"WHEREFORE, judgment is hereby rendered:

a) DISMISSING, for lack of merit, the case of Petition for Contempt of Court with Damages filed by Susan Lim Lua against Danilo Y. Lua with docket no. SP. CA-G.R. No. 01154;

b) **GRANTING IN PART** Danilo Y. Lua's Petition for *Certiorari* docketed as SP. CA-G.R. No. 01315. Consequently, the assailed Orders dated 27 September 2005 and 25 November 2005 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB-29346 entitled "Susan Lim Lua versus Danilo Y. Lua, are hereby NULLIFIED and SET ASIDE, and instead a new one is entered:

   i. ORDERING the deduction of the amount of **Php 648,102.29** from the support ***pendente lite*** in arrears of Danilo Y. Lua to his wife, Susan Lim Lua and their two (2) children;

   ii. ORDERING Danilo Y. Lua to to resume payment of his monthly support to PhP115,000.00 pesos starting from the time payment of his amount was deferred by him subject to the decduction aforementioned.

   iii. DIRECTING **the immediate execution of this judgement.**

SO ORDERED."

No pronouncement as to costs.

SO ORDERED.

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

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[36] As cited in *Lam v. Chua,* 469 Phil. 852, 860-861 (2004).

FIRST DIVISION

[G.R. No. 175542. June 5, 2013]

GREEN ACRES HOLDINGS, INC., *petitioner, vs.* **VICTORIA P. CABRAL, SPS. ENRIQUE T. MORAGA and VICTORIA SORIANO, FILCON READY MIXED, INC., DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), and REGISTRY OF DEEDS OF BULACAN, MEYCAUAYAN BRANCH,** *respondents.*

[G.R. No. 183205. June 5, 2013]

VICTORIA P. CABRAL, *petitioner, vs.* **PROVINCIAL ADJUDICATOR, JOSEPH NOEL C. LONGBOAN/ OFFICE OF THE AGRARIAN REFORM ADJUDICATOR, GREEN ACRES HOLDINGS, INC., SPOUSES ENRIQUE T. MORAGA and VICTORIA SORIANO and FILCON READY MIXED, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ONLY REAL PARTIES IN INTEREST IN AN ACTION ARE BOUND BY THE JUDGMENT THEREIN AND BY THE WRITS OF EXECUTION AND DEMOLITION ISSUED PURSUANT THERETO; APPLICATION IN CASE AT BAR.— The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional guarantee of due process of law. It is beyond dispute that Green Acres was not made a party in the DARAB case. Consequently, the January 17, 2001 DARAB decision cannot bind Green Acres. Likewise, the binding effect of the DARAB decision cannot be extended to Green Acres by the mere issuance of a writ of execution against it. No one shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered

by the court. In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution and demolition issued pursuant thereto.

2. ID.; ID.; ID.; WRIT OF EXECUTION; THE WRIT OF EXECUTION CAN ONLY IMPLEMENT A DECISION EMBODIED IN THE DISPOSITIVE PORTION OF A DECISION.— As correctly ruled by the PARAD and upheld by the appellate court, only the decision of the DARAB as embodied in the dispositive portion of the decision can be implemented by a writ of execution. x x x A reading of the *fallo* of the DARAB decision would show that nothing in it directs the cancellation of the titles issued in favor of Green Acres. To subscribe to Cabral's prayer in her motion is tantamount to modifying or amending a decision that has already attained finality in violation of the doctrine of immutability of judgment.

3. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK; VIOLATION IN CASE AT BAR.— A Torrens title, as a general rule, is irrevocable and indefeasible, and the duty of the court is to see to it that this title is maintained and respected unless challenged in a direct proceeding. Section 48 of P.D. No. 1529 provides: x x x A **certificate of title shall not be subject to collateral attack**. x x x In *Sps. Sarmiento v. Court of Appeals*, this Court explained when an action is a direct attack on a title and when it is collateral: x x x In the instant case, Cabral seeks the execution of a final and executory DARAB decision that directs the cancellation of the TCTs in the name of the Spouses Moraga and Filcon. Nowhere in the said decision is Green Acres or its TCTs mentioned. Nonetheless, in her Motion for Issuance of Writ of Execution, Cabral alleged that Green Acres, like Filcon, "also never acquired valid title to the subject land" and "[h]ence, its present TCTs thereto should likewise be cancelled (together with the respective [Emancipation Patents] and TCTs of Sps. Moraga and Filcon Ready Mixed, Inc. mentioned in the DARAB Decision) and reverted back to [her] TCT." She prayed for the issuance of a writ of execution against the Spouses Moraga and "their

subsequent assigns/successors in interest Filcon Ready Mixed, Inc. and Green Acres Holdings, Inc." Clearly, seeking the cancellation of the titles of Green Acres by a mere Motion for Issuance of Writ of Execution of a decision rendered in a case where said titles were not in issue constitutes a collateral attack on them which this Court cannot allow.

4. ID.; ID.; ID.; INNOCENT PURCHASER FOR VALUE, DEFINED; ESTABLISHED IN CASE AT BAR.— It is settled that a void title may be the source of a valid title in the hands of an innocent purchaser for value. An innocent purchaser for value is one who, relying on the certificate of title, bought the property from the registered owner, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property. x x x Green Acres is considered an innocent purchaser for value. It relied on the certificates of title of Filcon, free from any liens and encumbrances. The only annotation on them was a cancelled real estate mortgage in favor of PCI Bank. Thus, as held by the CA, Green Acres was under no obligation to investigate beyond Filcon's titles as Green Acres had all the reason to believe that said titles were free from any lien, claim or encumbrance. x x x If there is anyone to be blamed for Cabral's failure to recover the subject properties, it is Cabral herself, who, due to her own negligence, failed to annotate a notice of *lis pendens* on the titles of the Spouses Moraga and Filcon and thus give notice to future transferees. Having failed to make such annotation, this Court has no choice but to uphold the titles of Green Acres, an innocent purchaser for value.

5. ID.; PROPERTY; OWNERSHIP; QUIETING OF TITLE; CONSTRUED; REQUISITES.— Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place

things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property. For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

6. ID.; ID.; ID.; ID.; CLOUD ON TITLE; ELEMENTS; PRESENT IN CASE AT BAR.— A cloud on title consists of (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. This Court holds that the DARAB decision in favor of Cabral satisfies all four elements of a cloud on title. As Green Acres correctly points out, the DARAB decision, a final one at that, is both an "instrument" and a "record." x x x It is likewise a "claim" which is defined as a cause of action or a demand for money or property since Cabral is asserting her right over the subject lots. More importantly, it is a "proceeding" which is defined as a regular and orderly progress in form of law including all possible steps in an action from its commencement to the execution of judgment and may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. Also, the DARAB decision is apparently valid and effective. It is a final decision that has not been reversed, vacated or nullified. It is likewise apparently effective and may be prejudicial to Green Acres' titles since it orders the cancellation of the titles of the Spouses Moraga and Filcon all from which Green Acres derived its titles. However, as discussed above, it is ineffective and unenforceable against Green Acres because Green Acres was not properly impleaded in the DARAB proceedings nor was there any notice of *lis pendens* annotated on the title of Filcon so as to serve notice

to Green Acres that the subject properties were under litigation. As such, Green Acres is an innocent purchaser for value.

APPEARANCES OF COUNSEL

Estelito P. Mendoza & Francis H. Tuliao for Green Acres Holdings, Inc.

Bohol Bohol II, Jimenez Law Offices for Victoria P. Cabral.

S.A. Santiago & Santiago Law Offices for Filcon Ready Mixed, Inc.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are two consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

In **G.R. No. 175542**, petitioner Green Acres Holdings, Inc. (hereafter, Green Acres) assails the November 24, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 85766 dismissing its appeal from the November 3, 2004 Order[2] of the Regional Trial Court (RTC) while in **G.R. No. 183205**, petitioner Victoria Cabral seeks to set aside the February 27, 2008 Decision[3] and May 29, 2008 Resolution[4] of the CA in CA-G.R. SP No. 99651.

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[1] *Rollo* (G.R. No. 175542), pp. 163-172. Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Rosalinda Asuncion Vicente and Ramon M. Bato, Jr. concurring.

[2] Records, pp. 670-674. Penned by Presiding Judge Wilfredo T. Nieves.

[3] *Rollo* (G.R. No. 183205), pp. 62-71. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison concurring.

[4] *Id.* at 73-74.

The facts are as follows:

Victoria Cabral was the original owner of a parcel of land in Barangay Pandayan, Meycauayan, Bulacan with an area of 11,432 square meters and covered by Transfer Certificate of Title (TCT) No. T-73737 (M). The land was placed under the coverage of Presidential Decree (P.D.) No. 27, and on March 23, 1993, three Emancipation Patents were issued to the spouses Enrique Moraga and Victoria Soriano (Spouses Moraga) as follows: EP No. 496039 with an area of 861 square meters; EP No. 496040 with an area of 2,159 square meters; and EP No. 496041 with an area of 8,941 square meters. The Spouses Moraga thereafter caused the cancellation of EP No. 496041 and its conversion to TCT No. 256260 (M).

On August 29, 1994, Cabral filed a complaint before the Provincial Agrarian Reform Adjudicator (PARAD) seeking the cancellation of the Emancipation Patents issued to the Spouses Moraga on the grounds that these were obtained through fraud and that the land is not suitable for rice and corn production and has long been classified as residential, commercial, industrial and nonagricultural land by the Zoning Administrator of the Housing and Land Use Regulatory Board. The case was docketed as Reg. Case No. 739-Bul-94.

On December 15, 1995, the PARAD rendered a decision denying the petition for cancellation of the Emancipation Patents and dismissing the complaint for lack of merit. Cabral appealed the decision to the Department of Agrarian Reform Adjudication Board (DARAB).[5]

While the appeal was pending, the Spouses Moraga subdivided the lot covered by TCT No. 256260 (M) into three smaller lots, the properties subject of this case. TCT Nos. T-270125 (M) covering 3,511 square meters, T-270126 (M) covering 2,715 square meters, and T-270127 (M) covering 2,715 square meters were thereafter issued in their names on May 29, 1996. On

[5] The appeal was docketed as DARAB Case No. 5129 (Reg. Case No. 739-Bul-94).

June 19, 1996, the Spouses Moraga sold the lots to Filcon Ready Mixed Inc. (Filcon for brevity) and TCT Nos. T-274486 (M),[6] T-274487 (M)[7] and T-274488 (M)[8] were issued in the name of Filcon on June 24, 1996.

On April 29, 1999, Green Acres purchased[9] five lots from Filcon including the three subject properties covered by TCT Nos. T-274486 (M), T-274487 (M) and T-274488 (M) in the name of Filcon. Except for an already cancelled annotation of a real estate mortgage in favor of Philippine Commercial International Bank (PCI Bank),[10] the titles were free from any annotations, liens, notices, claims or encumbrances.

On April 30, 1999, the titles of Filcon were cancelled by the Register of Deeds of Meycauayan, Bulacan and new titles were issued in the name of Green Acres including TCT Nos. T-345660 (M),[11] T-345661 (M)[12] and T-345662 (M)[13] covering the subject properties. Green Acres then constructed a warehouse building complex on the said lots.

On January 17, 2001, the DARAB resolved Cabral's appeal and rendered judgment ordering the cancellation of the titles issued in the names of the Spouses Moraga and those of Filcon for having been illegally acquired. The dispositive portion of the DARAB decision reads:

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[6] *Rollo* (G.R. No. 183205), p. 397.

[7] *Id.* at 398.

[8] *Id.* at 399.

[9] See Entry No. 418076 (M) annotated on TCT Nos. T-274486 (M), T-274487 (M) and T-274488 (M).

[10] See Entry Nos. 315804 (M) and 418588 (M) on TCT Nos. T-274486 (M), T-274487 (M) and T-274488 (M).

[11] *Rollo* (G.R. No. 183205), p. 402.

[12] *Id.* at 403.

[13] *Id.* at 404.

WHEREFORE, premises considered, the decision is hereby **REVERSED** and **SET ASIDE** and a **NEW JUDGMENT** is rendered disposing as follows:

1. Ordering the cancellation of TCT No. EP-051 (M) (EP No. 496039; TCT No. EP-052 (M) (EP No. 496040); TCT No. EP-052 (M) (EP No. 496041); TCT No. T-270125 (M); TCT No. T-270126 (M); and TCT No. T-270127 (M) – all in the names of defendants spouses Moraga; TCT No. 274486 (M); TCT No. T-[2]74487 (M), and TCT No. T-274488 (M) – all in the name of FILCO[N] READY MIXED INC;

2. Directing the Register of Deeds of Bulacan to restore TCT No. T-73737 (M) in the name of plaintiff Victoria P. Cabral;

3. Ordering defendants Moraga and their assign, FILCO[N] READY MIXED INC., to vacate the premises of the lands in question and turn over their possession to herein plaintiff; and,

4. All claims and counterclaims of both parties are hereby dismissed for insufficiency of evidence.

SO ORDERED.[14]

When Green Acres learned about the DARAB decision, it sent a letter[15] to Filcon on March 15, 2001 advising the latter that it learned that the properties it bought from Filcon were the subject of an adverse decision of the DARAB. Fearing that its titles and possession might be disturbed by the DARAB decision, Green Acres reminded Filcon of its warranties under the deed of sale.

In a letter[16] dated March 30, 2001, Filcon replied that it was also an innocent purchaser for value since at the time it purchased the subject property, it had no knowledge of any legal infirmity in the title of the Spouses Moraga. In fact, it was able to secure a loan from PCI Bank in the amount of ₱12 million with the subject property as collateral. Filcon assured Green Acres that it is coordinating with its predecessor, the Spouses Moraga,

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[14] Records, pp. 52-53.

[15] *Id.* at 54-55.

[16] *Id.* at 56.

to make sure that Green Acres' interest over the property is protected.

On April 19, 2001, Green Acres filed a Complaint[17] for Quieting of Title, Damages with Application for Preliminary Injunction and Writ of Preliminary Attachment before the RTC of Malolos, Bulacan against Cabral, the Spouses Moraga, Filcon, the DARAB and the Registry of Deeds of Meycauayan, Bulacan. The case was docketed as Civil Case No. 279-M-2001. Green Acres sought to quiet its title and alleged that it is a purchaser in good faith and for value, claiming that it had no notice or knowledge of any adverse claim, lien, or encumbrance on the properties. Neither was it a party to the DARAB proceedings nor did it have notice of the said proceedings where the DARAB Decision of January 17, 2001 was issued. Green Acres claimed that the DARAB decision casts a cloud on its titles.

Cabral, in her Answer,[18] denied all the material allegations in the complaint and alleged that Green Acres never acquired valid title to the subject property, much less, can it claim to be an innocent purchaser for value. She further averred that a declaratory judgment in a petition to quiet title will effectively subject the DARAB decision to review.

After Green Acres presented its evidence, Cabral filed a Demurrer to Plaintiff's Evidence[19] arguing that Green Acres failed to prove that it is a purchaser in good faith and for value. She maintains that the complaint is not appropriate for quieting of title since it omitted to assail her titles over the subject property but instead questioned the proceedings held at the DARAB. She likewise insisted that the trial court has no jurisdiction over the subject property since the same is still within the coverage of the Comprehensive Agrarian Reform Law and thus under the jurisdiction of the DARAB.

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[17] *Id.* at 3-22.

[18] *Id.* at 255-271.

[19] *Id.* at 602-621.

In an Order[20] dated November 3, 2004, the trial court granted the demurrer and ordered the case dismissed.

Green Acres' motion for reconsideration having been denied, Green Acres filed with the CA an appeal which was docketed as CA-G.R. CV No. 85766.

In the meantime, the DARAB decision became final and executory on April 13, 2005[21] as no further recourse was sought by the Spouses Moraga from the denial of their motion for reconsideration on February 24, 2005.[22] On July 8, 2005, Cabral filed with the PARAD a Motion for Issuance of Writ of Execution[23] of the DARAB decision.

On January 25, 2006, the PARAD issued a Resolution denying the Motion for Issuance of Writ of Execution for lack of merit. It ruled:

> Only the decision of the Board as embodied in the dispositive portion of the decision can be implemented by virtue of a writ of execution. The January 17, 2001 decision merely orders the cancellation of the Emancipation Patent and Transfer Certificate of Titles issued by the Registry of Deed[s] of Bulacan in favor of Sps. MORAGA and FILCON. Hence, if ever a Writ of Execution will be issued, it will be up to the FILCON which was included in the dispositive portion of the Decision that has become final and executory. Nothing in the body of the decision as well as the dispositive portion thereof directs the cancellation of the title issued in favor of GREEN ACRES. If we subscribe to the prayer of the movant, we will be in effect amending the aforementioned decision because we will be inserting something that has not been directed to be done. x x x
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> Aside from amending the final and executory decision in this case, this Forum will also be violating the generally accepted principle of

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[20] *Id.* at 670-674.
[21] *Rollo* (G.R. No.183205), p. 108.
[22] *Id.* at 95-96.
[23] *Id.* at 97-104.

due process. It is already settled that even the administrative arm of the government exercising quasi-judicial functions are not exempt from observing due process. x x x

xxx xxx xxx

It is clear as the sun rises from the east that GREEN ACRES was never made a party in the case at bar. Much less was it mentioned in the decision sought to be executed itself. GREEN ACRES can not be made to suffer the consequences of a case where it did not participate.

xxx xxx xxx

Lastly, to allow movants[']contention will also render the pending case of quieting of title filed by GREEN ACRES against herein plaintiff movant on April 18, 2001 before the Regional Trial Court, Third Judicial Region, Branch 84 and docketed as Civil Case 279-M-2001 which was appealed to the Court of Appeals, moot and academic.

All told, the titles of Sps. MORAGA and FILCON sought to be cancelled in the decision ha[ve] already been cancelled. Therefore, there is nothing to be done anymore, as the relief prayed for has become *fait accompli*. [24]

Cabral filed a Motion for Recusation[25] and a Motion for Reconsideration.[26] The PARAD, however, denied Cabral's motions on September 11, 2006.[27] Thus, on November 7, 2006, Cabral filed with the PARAD a Notice of Appeal.[28]

In the meantime, the CA, on November 24, 2006, rendered a decision in CA-G.R. CV No. 85766 dismissing Green Acres' appeal. Citing the case of *Foster-Gallego v. Spouses Galang*,[29] the appellate court held that the trial court had no authority to interfere with the proceedings of a court of equal jurisdiction,

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[24] *Id.* at 109-111.

[25] *Id.* at 122-131.

[26] *Id.* at 113-121.

[27] *Id.* at 132-139.

[28] *Id.* at 140-142.

[29] 479 Phil. 148 (2004).

much less to annul the final judgment of a co-equal court. The appellate court further held that the only issue in an action to quiet title is whether there is a cloud in a title to real property because of any instrument, record, claim, encumbrance or a proceeding that has a *prima facie* appearance of validity and the DARAB decision does not fall within said enumeration.

On February 27, 2007, the PARAD issued an Order[30] denying due course to Cabral's Notice of Appeal and held that the resolution denying the motion for execution is an interlocutory order against which the remedy is a petition for *certiorari* under Rule 65, and not an appeal to the DARAB. The PARAD further ruled that Cabral's act of impleading Green Acres as additional defendant only in the execution stage is highly irregular and that to enforce the decision against Green Acres would violate the latter's right to due process.

On June 18, 2007, Cabral filed with the CA a petition for *certiorari* under Rule 65 seeking to annul the January 25, 2006 and September 11, 2006 Resolutions, as well as the February 27, 2007 Order of the PARAD.

On February 27, 2008, the CA denied Cabral's petition. The appellate court ratiocinated as follows:

> An execution can only be issued against a party and not against one who did not have his day in court x x x. Green Acres was never a party to the case nor it was (sic) mentioned in the decision sought to be executed, hence, Green Acres cannot be made to suffer the consequences of a case where it did not participate. To maintain otherwise would be to ignore the constitutional prohibition against depriving a person of his property without due process of law x x x.
>
> Moreover, to apply the decision against Green Acres will amount to collateral attack against its titles because nowhere in the case or decision that it was considered or passed upon. Under the Property Registration Decree, titles issued under the Torrens system can only be altered, modified or cancelled in direct proceeding in accordance with law x x x.

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[30] *Rollo* (G.R. No.183205), pp. 145-149.

Even assuming that spouses Moraga and Filcon fraudulently acquired the disputed lots, still, Green Acres has valid and legitimate titles over the same since it is a purchaser in good faith and for value when it acquired the properties from Filcon. A buyer in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property x x x.[31] (Citations omitted.)

Both Green Acres and Cabral are now before this Court seeking the reversal of the CA decisions adverse to them.

In G.R. No. 175542, Green Acres contends that the CA erred in:

x x x RULING THAT THE DARAB DECISION IS NOT A SOURCE OF A CLOUD THAT IS SUSCEPTIBLE TO AN ACTION FOR QUIETING OF TITLE.

x x x HOLDING THAT THE COURT DOES NOT HAVE AUTHORITY TO QUIET TITLES TO REAL PROPERTY AND REMOVE A CLOUD PRODUCED BY A DARAB DECISION.

x x x AFFIRMING THE ORDER OF THE [REGIONAL TRIAL COURT] DATED NOVEMBER 3, 2004 THEREBY IMPLIEDLY HOLDING THAT GREEN ACRES IS NOT A PURCHASER IN GOOD FAITH FOR VALUE; THUS, ITS TITLE CAN NOT BE QUIETED.[32]

In G.R. No. 183205, Cabral, on the other hand, argues that the CA erred when it:

x x x FAILED TO CORRECTLY APPLY THE PERTINENT PROVISIONS OF THE DARAB 2003 RULES OF PROCEDURE, P.D. 1529 AND THE CIVIL CODE, AMONG OTHERS, AS WELL AS THE APPLICABLE JURISPRUDENCE.

x x x DISMISSED PETITIONER'S PETITION FOR *CERTIORARI*.

x x x FAILED TO RULE THAT THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR ABUSE OF DISCRETION ON THE PART OF PUBLIC RESPONDENT PROVINCIAL ADJUDICATOR LONGBOAN.

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[31] *Id.* at 68-69.

[32] *Rollo* (G.R. No. 175542), pp. 40-41.

x x x DECLARED THAT THE DECISION PROMULGATED ON JANUARY 17, 2001 CANNOT BE MADE TO APPLY TO RESPONDENT GREEN ACRES.

x x x DECLARED THAT (SIC) RESPONDENT GREEN ACRES TO BE AN "INNOCENT PURCHASER FOR VALUE."[33]

Simply put, the issues raised in the two petitions are essentially as follows: (1) Whether the January 17, 2001 DARAB decision may be enforced against Green Acres; and (2) Whether the said DARAB decision in favor of Cabral constitutes a cloud on Green Acres' title over the subject properties.

First Issue: Whether the January 17, 2001 DARAB decision may be enforced against Green Acres.

Cabral contends that the PARAD committed grave abuse of discretion in not issuing the writ of execution to enforce the January 17, 2001 DARAB decision in her favor. She argues that the issuance of a writ of execution is ministerial under Section 1, Rule XX of the 2003 DARAB Rules of Procedure which provides that the execution of a final order or decision shall issue as a matter of course.

Cabral also argues that contrary to the PARAD's ruling, she is not seeking the amendment of the final decision sought to be executed. She contends that the directive to the Register of Deeds to restore TCT No. T-73737 (M) in her name means that it should be done regardless of who holds title to the property at the time of execution. In this case, it is Green Acres. She also points out that the transfer from the Spouses Moraga to Filcon in 1996 and eventually to Green Acres in 1999 transpired after she filed a case with the DARAB in 1994. Therefore, under Section 12.2, Rule XX of the DARAB Rules, Green Acres is considered a successor in interest by title subsequent to the commencement of the action upon whom the final judgment or order of the DARAB is conclusive. Cabral also insists that

[33] *Rollo* (G.R. No. 183205), pp. 35-36.

Green Acres cannot be considered an innocent purchaser for value because the transfers were made to defeat the DARAB ruling.

Green Acres, for its part, submits that the CA did not err in denying Cabral's petition for *certiorari*. Green Acres contends that Cabral, through her motion for execution, sought the amendment of the DARAB decision and did not move merely for its execution. Green Acres points out that Cabral's motion for execution specifically sought the cancellation of Green Acres' titles even though the DARAB decision neither included Green Acres or its titles. Green Acres points out that if the issuance of a writ of execution that conforms to the decision may be denied on the ground that it will be inequitable, moreso should it be denied in the case where the writ of execution prayed for goes beyond the decision. Hence, even if the issuance of a writ of execution to enforce a final and executory decision is a ministerial duty, the PARAD may not issue a writ of execution against Filcon and Green Acres as prayed for by Cabral.

Green Acres also argues that it cannot be bound by the DARAB decision since a writ of execution of a decision can only be issued against a party to the case and not against one who did not have his day in court. Moreover, if granted, the execution sought will constitute a collateral attack against the titles of Green Acres since nowhere in the DARAB decision sought to be executed were they mentioned. Green Acres also adds that Cabral misinterpreted Section 12.2 of the DARAB Rules to mean that a judgment issued in a case is binding upon, and can be executed, even against those parties not impleaded in the case. Green Acres submits that Section 12 is a mere reproduction of Section 47, Rule 39 of the Rules of Court on the principle of *res judicata*. Thus, the cited DARAB rule does not operate to bind Green Acres, either presently or in the future, to the DARAB decision which does not mention Green Acres either in the body or the dispositive portion. Green Acres likewise argues that impleading it as an additional defendant in the execution stage aggravates the violation of its right to due process.

Green Acres further contends that Cabral's argument that it is not a purchaser in good faith and for value may not be considered in the resolution of her petition before this Court as her argument goes into the merits of the case and said matters were not raised in her motion for execution. But even if the argument could be considered, Green Acres claims that the merits of the case show that it is a purchaser in good faith and for value. Green Acres points out that when it purchased the properties from Filcon, the properties were covered by transfer certificates of title, not Emancipation Patents, without any indication that the titles had their origins from the application of any agrarian law. Green Acres also adds that the occupancy or possession of the properties of both Filcon and Green Acres were not clandestine as Cabral claims. Neither can it be true, as Cabral claimed, that its acquisition of the titles to the properties was made through "surreptitious and illegal transfers." Green Acres argues that Cabral must have known about the alleged illegal subdivision of the property and issuance of the transfer certificates of titles or Emancipation Patents, or if she did not know, she is nonetheless deemed to have received constructive notice of the same because the properties were registered under the Torrens System. Yet, despite said notice, Cabral, with gross negligence, failed to annotate a notice of *lis pendens* on said titles.

We find in favor of Green Acres.

The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional guarantee of due process of law.[34] In *Muñoz v. Yabut, Jr.*,[35] this Court ruled:

> An action for declaration of nullity of title and recovery of ownership of real property, or re-conveyance, is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. **Any judgment therein is binding only upon the parties properly impleaded.**

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[34] *Dare Adventure Farm Corporation v. Court of Appeals*, G.R. No. 161122, September 24, 2012, 681 SCRA 580, 588.

[35] G.R. Nos. 142676 & 146718, June 6, 2011, 650 SCRA 344.

Since they were not impleaded as parties and given the opportunity to participate in Civil Case No. Q-28580, the final judgment in said case cannot bind BPI Family and the spouses Chan. The effect of the said judgment cannot be extended to BPI Family and the spouses Chan by simply issuing an *alias* writ of execution against them**. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto.**[36] (Emphasis supplied.)

It is beyond dispute that Green Acres was not made a party in the DARAB case. Consequently, the January 17, 2001 DARAB decision cannot bind Green Acres. Likewise, the binding effect of the DARAB decision cannot be extended to Green Acres by the mere issuance of a writ of execution against it. No one shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution and demolition issued pursuant thereto.[37]

Moreover, a Torrens title, as a general rule, is irrevocable and indefeasible, and the duty of the court is to see to it that this title is maintained and respected unless challenged in a direct proceeding. Section 48 of P.D. No. 1529 provides:

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 proceeding in accordance with law. (Emphasis supplied.)

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[36] *Id.* at 367-368.

[37] *Orquiola v. Court of Appeals,* 435 Phil. 323, 332-333 (2002).

In *Sps. Sarmiento v. Court of Appeals*,[38] this Court explained when an action is a direct attack on a title and when it is collateral:

> An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[39]

In the instant case, Cabral seeks the execution of a final and executory DARAB decision that directs the cancellation of the TCTs in the name of the Spouses Moraga and Filcon. Nowhere in the said decision is Green Acres or its TCTs mentioned. Nonetheless, in her Motion for Issuance of Writ of Execution, Cabral alleged that Green Acres, like Filcon, "also never acquired valid title to the subject land" and "[h]ence, its present TCTs thereto should likewise be cancelled (together with the respective [Emancipation Patents] and TCTs of Sps. Moraga and Filcon Ready Mixed, Inc. mentioned in the DARAB Decision) and reverted back to [her] TCT."[40] She prayed for the issuance of a writ of execution against the Spouses Moraga and "their subsequent assigns/successors in interest Filcon Ready Mixed, Inc. and Green Acres Holdings, Inc."[41] Clearly, seeking the cancellation of the titles of Green Acres by a mere Motion for Issuance of Writ of Execution of a decision rendered in a case where said titles were not in issue constitutes a collateral attack on them which this Court cannot allow.

Furthermore, as correctly ruled by the PARAD and upheld by the appellate court, only the decision of the DARAB as

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[38] 507 Phil. 101 (2005).

[39] *Id.* at 113.

[40] *Rollo* (G.R. No. 183205), p. 102.

[41] *Id.* at 103.

embodied in the dispositive portion of the decision can be implemented by a writ of execution. As held in *Ingles v. Cantos*:[42]

> A writ of execution should conform to the dispositive portion of the decision to be executed, and the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly with every essential particular of the judgment promulgated. It may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the writ of execution is not in harmony with and exceeds the judgment which gives it life, the writ has *pro tanto* no validity.[43]

A reading of the *fallo* of the DARAB decision would show that nothing in it directs the cancellation of the titles issued in favor of Green Acres. To subscribe to Cabral's prayer in her motion is tantamount to modifying or amending a decision that has already attained finality in violation of the doctrine of immutability of judgment.

It is also worth noting that the fact that the DARAB by final judgment ordered the cancellation of the titles of the Spouses Moraga and Filcon does not automatically make the titles of Green Acres null and void. It is settled that a void title may be the source of a valid title in the hands of an innocent purchaser for value.[44] An innocent purchaser for value is one who, relying on the certificate of title, bought the property from the registered owner, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property.[45] The rationale therefor

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[42] 516 Phil. 496 (2006).

[43] *Id.* at 506.

[44] *Tan v. De la Vega*, 519 Phil. 515, 529 (2006).

[45] *San Roque Realty and Development Corporation v. Republic*, G.R. No. 163130, September 7, 2007, 532 SCRA 493, 511-512.

was expressed by this Court in the earlier case of *Republic v. Court of Appeals*,[46] thus:

> Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. x x x[47]

Green Acres is considered an innocent purchaser for value. It relied on the certificates of title of Filcon, free from any liens and encumbrances. The only annotation on them was a cancelled real estate mortgage in favor of PCI Bank. Thus, as held by the CA, Green Acres was under no obligation to investigate beyond Filcon's titles as Green Acres had all the reason to believe that said titles were free from any lien, claim or encumbrance.

We also agree with the CA that Cabral's allegation that the Spouses Moraga, Filcon and Green Acres were parties to illegal contracts cannot be given weight as such goes into the merits of the case and may not be considered in the execution stage.

If there is anyone to be blamed for Cabral's failure to recover the subject properties, it is Cabral herself, who, due to her own negligence, failed to annotate a notice of *lis pendens* on the titles of the Spouses Moraga and Filcon and thus give notice to future transferees. She cannot claim that she was clueless that the subject properties were being transferred. As Green Acres correctly pointed out, the transfers to Filcon and eventually

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[46] G.R. No. 99331, April 21, 1999, 306 SCRA 81.

[47] *Id.* at 88-89.

to Green Acres were made through public documents and procedures. Also, considering the significant size of the properties, occupation of the same cannot be made clandestinely. In fact, the properties were fenced by concrete walls and Filcon had constructed a batch plant while Green Acres erected a warehouse and building on it. Had her adverse claim been annotated on said titles, said notice would have served as a warning to Green Acres or other purchasers of the properties that any right they acquire would be subject to the outcome of the litigation before the DARAB. Having failed to make such annotation, this Court has no choice but to uphold the titles of Green Acres, an innocent purchaser for value.

Whether the DARAB Decision in favor of Cabral constitutes a cloud on Green Acres' title over the subject properties

Green Acres argues that the DARAB decision is among those enumerated in Article 476[48] of the Civil Code as a possible source of a cloud on title to real property. It contends that there can hardly be any doubt that the DARAB Decision is an "instrument," or if not, a "record" and reflects a "claim" on the properties, while the proceedings before the DARAB are "proceedings" directed at the real properties now owned by Green Acres which are "apparently valid or effective" but "unenforceable" against the titles of Green Acres. It also contends that the appellate court's reliance on *Foster-Gallego v. Spouses Galang*[49] is misplaced since nothing in said case

[48] Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[49] *Supra* note 29.

supports the proposition that a decision of a coordinate court cannot be a source of cloud under Article 476 of the Civil Code. Green Acres submits that *Foster-Gallego* is not applicable because the ruling there was that an action to quiet title is not the proper remedy when to remove a cloud on a title, a final and executory decision of the court need to be reviewed or vacated. In the present case, Green Acres does not seek a review or reversal of the DARAB decision.

Cabral, for her part, insists that the DARAB decision is not among those enumerated in Article 476 which may cast a cloud on title to real property. As to the applicability of *Foster-Gallego*, she argues that assuming that the ruling on the main issue in said case is not directly germane, the pronouncements therein on the nature, function, purpose and limitations of a case for quieting of title and the power of the courts in such proceedings are applicable.

Green Acres' arguments are meritorious.

Article 476 of the Civil Code provides:

> Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine

the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.[50]

For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[51]

There is no dispute as to the first requisite since Green Acres has legal title over the subject properties. The issue lies in the second requisite.

A cloud on title consists of (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted.[52]

This Court holds that the DARAB decision in favor of Cabral satisfies all four elements of a cloud on title.

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[50] *Phil-Ville Development and Housing Corporation v. Bonifacio,* G.R. No. 167391, June 8, 2011, 651 SCRA 327, 341, citing *Heirs of Enrique Toring v. Heirs of Teodosia Boquilaga*, G.R. No. 163610, September 27, 2010, 631 SCRA 278, 293-294.

[51] *Eland Philippines, Inc. v. Garcia*, G.R. No. 173289, February 17, 2010, 613 SCRA 66, 92.

[52] *Phil-Ville Development and Housing Corporation v. Bonifacio, supra* note 50, at 347.

As Green Acres correctly points out, the DARAB decision, a final one at that, is both an "instrument" and a "record." Black's Law Dictionary defines an instrument as a document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying or terminating a right.[53] A record, on the other hand, is defined as a written account of some act, court proceeding, transaction or instrument drawn up under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which it relates.[54] It is likewise a "claim" which is defined as a cause of action or a demand for money or property[55] since Cabral is asserting her right over the subject lots. More importantly, it is a "proceeding" which is defined as a regular and orderly progress in form of law including all possible steps in an action from its commencement to the execution of judgment and may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding.[56]

Also, the DARAB decision is apparently valid and effective. It is a final decision that has not been reversed, vacated or nullified. It is likewise apparently effective and may be prejudicial to Green Acres' titles since it orders the cancellation of the titles of the Spouses Moraga and Filcon all from which Green Acres derived its titles. However, as discussed above, it is ineffective and unenforceable against Green Acres because Green Acres was not properly impleaded in the DARAB proceedings nor was there any notice of *lis pendens* annotated on the title of Filcon so as to serve notice to Green Acres that the subject properties were under litigation. As such, Green Acres is an innocent purchaser for value.

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[53] H.C. BLACK, *Black's Law Dictionary* 720 (5th ed., 1979).

[54] *Id.* at 1144.

[55] *Id.* at 224.

[56] *Id.* at 1083.

Furthermore, in the case of *Dare Adventure Farm Corporation v. Court of Appeals*,[57] this Court had the occasion to rule that one of the proper remedies of a person who was not impleaded in the proceedings declaring null and void the title from which his title to the property had been derived, is an action for quieting title. In said case, Dare Adventure Farm Corporation purchased property from the Goc-ongs. Dare later discovered that said property was previously mortgaged by the Goc-ongs to the Ngs. When the Goc-ongs failed to pay their obligation, the mortgage was foreclosed and the Ngs were declared owners of the property. Dare, who was not impleaded in the foreclosure case, filed a petition for annulment of the judgment of the trial court with the appellate court. The Court upheld the appellate court's dismissal of the petition since such remedy may be availed only when other remedies are wanting. We further ruled that Dare's resort to annulment of judgment was unnecessary since it cannot be prejudiced by the judgment as it was not impleaded. Two remedies were suggested to Dare as proper recourse, one of which is an action for quieting of title:

> We agree with the CA's suggestion that the petitioner's proper recourse was either an action for quieting of title or an action for reconveyance of the property. It is timely for the Court to remind that the petitioner will be better off if it should go to the courts to obtain relief through the proper recourse; otherwise, it would waste its own time and effort, aside from thereby unduly burdening the dockets of the courts.
>
> The petitioner may vindicate its rights in the property through an action for quieting of title, a common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property. The action for quieting of title may be brought whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. In the action, the competent court is tasked to determine the respective rights of the plaintiff and the other

[57] *Supra* note 34.

claimants, not only to put things in their proper places, and make the claimant, who has no rights to the immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.[58]

WHEREFORE, the petition in G.R. No. 175542 is **GRANTED**. The Decision dated November 24, 2006 of the Court of Appeals in CA-G.R. CV No. 85766 is **REVERSED and SET ASIDE**. TCT Nos. T-345660 (M), T-345661 (M) and T-345662 (M) registered in the name of Green Acres Holdings, Inc. are declared **VALID** and any cloud over such titles which may have been created by the Decision dated January 17, 2001 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 5129 (Reg. Case No. 739-Bul-94) is hereby **REMOVED**.

The petition in G.R. No. 183205 is **DENIED** for lack of merit. The Decision dated February 27, 2008 and Resolution dated May 29, 2008 of the Court of Appeals in CA-G.R. SP No. 99651 are **AFFIRMED**.

With costs against the petitioner in G.R. No. 183205.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*,

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[58] *Id.* at 590.

SECOND DIVISION

[G.R. No. 176425. June 5, 2013]

HEIRS OF MANUEL UY EK LIONG, represented by BELEN LIM *VDA*. *DE* UY, *petitioners, vs.* **MAURICIA MEER CASTILLO, HEIRS OF BUENAFLOR C. UMALI, represented by NANCY UMALI, VICTORIA H. CASTILLO, BERTILLA C. RADA, MARIETTA C. CAVANEZ, LEOVINA C. JALBUENA and PHILIP M. CASTILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; THE COURT MUST FIRST ACQUIRE JURISDICTION OVER A PARTY, FOR THE LATTER TO BE BOUND BY A COURT DECISION.— Since it is generally accepted that no man shall be affected by any proceeding to which he is a stranger, the rule is settled that a court must first acquire jurisdiction over a party – either through valid service of summons or voluntary appearance – for the latter to be bound by a court decision. The fact that Atty. Zepeda was not properly impleaded in the suit and given a chance to present his side of the controversy before the RTC should have dissuaded the CA from invalidating the Agreement and holding that attorney's fees should, instead, be computed on a *quantum meruit* basis.

2. CIVIL LAW; SALES; CAPACITY TO BUY; LAWYERS ARE PROHIBITED FROM ACQUIRING BY PURCHASE OR ASSIGNMENT THE PROPERTY OR RIGHTS INVOLVED WHICH ARE THE OBJECT OF THE LITIGATION IN WHICH THEY INTERVENE BY VIRTUE OF THEIR PROFESSION; PROHIBITION APPLIES ONLY DURING THE PENDENCY OF THE SUIT.— Article 1491 (5) of the *Civil Code* prohibits lawyers from acquiring by purchase or assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession. The CA lost sight of the fact, however, that the prohibition applies only during the pendency of the suit and generally does not cover contracts

for contingent fees where the transfer takes effect only after the finality of a favorable judgment.

3. ID.; CONTRACTS; DEFINED; REQUISITES.— Defined as a meeting of the minds between two persons whereby one binds himself, with respect to the other to give something or to render some service, a contract requires the concurrence of the following requisites: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and, (c) cause of the obligation which is established.

4. ID.; ID.; COURTS HAVE NO AUTHORITY TO ALTER A CONTRACT BY CONSTRUCTION OR TO MAKE A NEW CONTRACT FOR THE PARTIES.— Obligations arising from contracts, after all, have the force of law between the contracting parties who are expected to abide in good faith with their contractual commitments, not weasel out of them. Moreover, when the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, the rule is settled that the literal meaning of its stipulations should govern. In such cases, courts have no authority to alter a contract by construction or to make a new contract for the parties. Since their duty is confined to the interpretation of the one which the parties have made for themselves without regard to its wisdom or folly, it has been ruled that courts cannot supply material stipulations or read into the contract words it does not contain. Indeed, courts will not relieve a party from the adverse effects of an unwise or unfavorable contract freely entered into.

5. ID.; DAMAGES; IN OBLIGATIONS WITH PENAL CLAUSE THE PENALTY GENERALLY SUBSTITUTES THE INDEMNITY FOR DAMAGES AND THE PAYMENT OF INTERESTS IN CASE OF NON-COMPLIANCE; PRESENT IN CASE AT BAR.— Our perusal of the *Kasunduan* also shows that it contains a penal clause which provides that a party who violates any of its provisions shall be liable to pay the aggrieved party a penalty fixed at ₱50,000.00, together with the attorney's fees and litigation expenses incurred by the latter should judicial resolution of the matter becomes necessary. An accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation, the foregoing stipulation is a penal clause which serves to strengthen the coercive force of the obligation and provides for liquidated damages for such breach. "The obligor would

then be bound to pay the stipulated indemnity without the necessity of proof of the existence and the measure of damages caused by the breach." x x x Since the parties also fixed liquidated damages in the sum of ₱50,000.00 in case of breach, we find that said amount should suffice as petitioners' indemnity, without further need of compensation for moral and exemplary damages. In obligations with a penal clause, the penalty generally substitutes the indemnity for damages and the payment of interests in case of non-compliance. Usually incorporated to create an effective deterrent against breach of the obligation by making the consequences of such breach as onerous as it may be possible, the rule is settled that a penal clause is not limited to actual and compensatory damages.

6. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF IS PROPER UPON PROOF THAT THE SAME IS INCURRED IN ENGAGING THE SERVICES OF A LAWYER TO PURSUE RIGHTS AND PROTECT INTERESTS.— The RTC's award of attorney's fees in the sum of ₱50,000.00 is, however, proper. Aside from the fact that the penal clause included a liability for said award in the event of litigation over a breach of the *Kasunduan*, petitioners were able to prove that they incurred said sum in engaging the services of their lawyer to pursue their rights and protect their interests.

APPEARANCES OF COUNSEL

Jose C. Flores, Jr. for petitioners.
Jeronimo B. Cumigad for respondents.

D E C I S I O N

PEREZ, *J.*:

Assailed in this Petition for Review on *Certiorari* filed pursuant to Rule 45 of the *Rules of Court* is the Decision[1]

[1] Penned by Court of Appeals Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia; CA *rollo*, pp. 153-169.

dated 23 January 2007 rendered by the Fifteenth Division of the Court of Appeals in CA-G.R. CV No. 84687,[2] the dispositive portion of which states:

> WHEREFORE, premises considered, the assailed January 27, 2005 Decision of the Regional Trial Court of Lucena City, Branch 59, in Civil Case No. 93-176, is hereby REVERSED and SET ASIDE and a new one entered declaring the AGREEMENT and the KASUNDUAN *void ab initio* for being contrary to law and public policy, without prejudice to the attorney's filing a proper action for collection of reasonable attorney's fees based on *quantum meruit* and without prejudice also to administrative charges being filed against counsel for counsel's openly entering into such an illegal AGREEMENT in violation of the Canons of Professional Responsibility which action may be instituted with the Supreme Court which has exclusive jurisdiction to impose such penalties on members of the bar.
>
> No pronouncement as to costs.
>
> SO ORDERED.[3] (Italics and Underscore Ours)

The Facts

Alongside her husband, ***Felipe*** Castillo, ***respondent Mauricia*** Meer Castillo was the owner of four parcels of land with an aggregate area of 53,307 square meters, situated in Silangan Mayao, Lucena City and registered in their names under Transfer Certificate of Title (***TCT***) Nos. T-42104, T-32227, T-31752 and T-42103. With the death of Felipe, a deed of extrajudicial partition over his estate was executed by his heirs, namely, Mauricia, ***Buenaflor*** Umali and ***respondents Victoria*** Castillo, ***Bertilla*** Rada, ***Marietta*** Cavanez, ***Leovina*** Jalbuena and ***Philip*** Castillo. Utilized as security for the payment of a tractor purchased by Mauricia's nephew, Santiago Rivera, from ***Bormaheco***, Inc., it appears, however, that the subject properties were subsequently sold at a public auction where Insurance Corporation of the Philippines (***ICP***) tendered the highest bid. Having consolidated its title, ICP likewise sold said parcels in

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[2] *Id*.

[3] *Id.* at 168.

favor of Philippine Machinery Parts Manufacturing Co., Inc. (***PMPMCI***) which, in turn, caused the same to be titled in its name.[4]

On 29 September 1976, respondents and Buenaflor instituted Civil Case No. 8085 before the then Court of First Instance (***CFI***) of Quezon, for the purpose of seeking the annulment of the transactions and/or proceedings involving the subject parcels, as well as the TCTs procured by PMPMCI.[5] Encountering financial difficulties in the prosecution of Civil Case No. 8085, respondents and Buenaflor entered into an ***Agreement*** dated 20 September 1978 whereby they procured the legal services of ***Atty.*** Edmundo ***Zepeda*** and the assistance of ***Manuel*** Uy Ek Liong who, as financier, agreed to underwrite the litigation expenses entailed by the case. In exchange, it was stipulated in the notarized Agreement that, in the event of a favorable decision in Civil Case No. 8085, Atty. Zepeda and Manuel would be entitled to "a share of forty (40%) percent of all the realties and/or monetary benefits, gratuities or damages" which may be adjudicated in favor of respondents.[6]

On the same date, respondents and Buenaflor entered into another notarized agreement denominated as a ***Kasunduan*** whereby they agreed to sell their remaining sixty (60%) percent share in the subject parcels in favor of Manuel for the sum of ₱180,000.00. The parties stipulated that Manuel would pay a downpayment in the sum of ₱1,000.00 upon the execution of the *Kasunduan* and that respondents and Buenaflor would retain and remain the owners of a 1,750-square meter portion of said real properties. It was likewise agreed that any party violating the *Kasunduan* would pay the aggrieved party a penalty fixed in the sum of ₱50,000.00, together with the attorney's fees and litigation expenses incurred should a case be subsequently

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[4] *Umali v. Court of Appeals*, G.R. No. 89561, 13 September 1990, 189 SCRA 529.

[5] *Id*.

[6] Exhibit "A", folder of Exhibits, records, pp. 306-308.

filed in court. The parties likewise agreed to further enter into such other stipulations as would be necessary to ensure that the sale would push through and/or in the event of illegality or impossibility of any part of the *Kasunduan*.[7]

With his death on 19 August 1989,[8] Manuel was survived by ***petitioners***, Heirs of Manuel Uy Ek Liong, who were later represented in the negotiations regarding the subject parcels and in this suit by ***petitioner Belen*** Lim *Vda*. de Uy. The record also shows that the proceedings in Civil Case No. 8085 culminated in this Court's rendition of a 13 September 1990 Decision in G.R. No. 89561[9] in favor of respondents and Buenaflor.[10] Subsequent to the finality of the Court's Decision,[11] it appears

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[7] Exhibit "B", *id*. at 310-312.

[8] Exhibit "K", *id*. at 323.

[9] Exhibit "L" and submarkings, *id*. at 324-348.

[10] WHEREFORE, the decision of respondent Court of Appeals is hereby REVERSED and SET ASIDE, and judgment is hereby rendered declaring the following as null and void: (1) Certificate of Sale, dated September 28, 1973, executed by the Provincial Sheriff of Quezon in favor of the Insurance Corporation of the Philippines; (2) Transfer Certificates of Title Nos. T-23705, T-23706, T-23707 and T-23708 issued in the name of the Insurance Corporation of the Philippines; (3) the sale of Insurance Corporation of the Philippines in favor of Philippine Machinery Parts Manufacturing Co., Inc. of the four (4) parcels of land covered by the aforesaid certificates of title; and (4) Transfer Certificates of Title Nos. T-24846, T-24847, T-24848 and T-24849 subsequently issued by virtue of said sale in the name of the latter corporation.

The Register of Deeds of Lucena City is hereby directed to cancel Transfer Certificates of Title Nos. T-24846, T-24847, T-24848 and T-24849 in the name of Philippine Machinery Parts Manufacturing Co., Inc. and to issue in lieu thereof the corresponding transfer certificates of title in the name of herein petitioners, except Santiago Rivera.

The foregoing dispositions are without prejudice to such other proper legal remedies as may be available to respondent Bormaheco, Inc. against herein petitioners.

SO ORDERED. *Id.* at 346-347.

[11] Exhibit "L-25", records, pp. 349-350.

that the subject parcels were subdivided in accordance with the Agreement, with sixty (60%) percent thereof consisting of 31,983 square meters equally apportioned among and registered in the names of respondents and Buenaflor under TCT Nos. T-72027, T-72028, T-72029, T-72030, T-72031, T-72032 and T-72033.[12] Consisting of 21,324 square meters, the remaining forty (40%) percent was, in turn, registered in the names of petitioners and Atty. Zepeda under TCT No. T-72026.[13]

Supposedly acting on the advice of Atty. Zepeda, respondents wrote petitioners a letter dated 22 March 1993, essentially informing petitioners that respondents were willing to sell their sixty (60%) percent share in the subject parcels for the consideration of ₱500.00 per square meter.[14] Insisting on the price agreed upon in the *Kasunduan*, however, petitioners sent a letter dated 19 May 1993, requesting respondents to execute within 15 days from notice the necessary Deed of Absolute Sale over their 60% share as aforesaid, excluding the 1,750-square meter portion specified in their agreement with Manuel. Informed that petitioners were ready to pay the remaining ₱179,000.00 balance of the agreed price,[15] respondents wrote a 28 May 1993 reply, reminding the former of their purported refusal of earlier offers to sell the shares of Leovina and of Buenaflor who had, in the meantime, died.[16] In a letter dated 1 June 1993, respondents also called petitioners' attention to the fact, among others, that their right to ask for an additional consideration for the sale was recognized under the *Kasunduan*.[17]

On 6 October 1993, petitioners commenced the instant suit with the filing of their complaint for specific performance and

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[12] Exhibits "C" to "I", *id.* at 313-320.

[13] Exhibit "J", *id.* at 321-322.

[14] Exhibit "S" and submarkings, *id.* at 465-466.

[15] Exhibit "M", *id.* at 354.

[16] Exhibit "T" and submarkings, *id.* at 468.

[17] Exhibit "N" and submarkings, *id.* at 355-356.

damages against the respondents and ***respondent*** Heirs of Buenaflor, as then represented by ***Menardo*** Umali. Faulting respondents with unjustified refusal to comply with their obligation under the *Kasunduan*, petitioners prayed that the former be ordered to execute the necessary Deed of Absolute Sale over their shares in the subject parcels, with indemnities for moral and exemplary damages, as well as attorney's fees, litigation expenses and the costs of the suit.[18] Served with summons, respondents filed their Answer with Counterclaim and Motion to File Third Party Complaint on 3 December 1993. Maintaining that the Agreement and the *Kasunduan* were illegal for being unconscionable and contrary to public policy, respondents averred that Atty. Zepeda was an indispensable party to the case. Together with the dismissal of the complaint and the annulment of said contracts and TCT No. T-72026, respondents sought the grant of their counterclaims for moral and exemplary damages, as well as attorney's fees and litigation expenses.[19]

The issues thereby joined, the Regional Trial Court (***RTC***), Branch 54, Lucena City, proceeded to conduct the mandatory preliminary conference in the case.[20] After initially granting respondents' motion to file a third party complaint against Atty. Zepeda,[21] the RTC, upon petitioners' motion for reconsideration,[22] went on to issue the 18 July 1997 Order disallowing the filing of said pleading on the ground that the validity of the Agreement and the cause of action against Atty. Zepeda, whose whereabouts were then unknown, would be better threshed out in a separate action.[23] The denial[24] of their motion for reconsideration of the foregoing order[25] prompted respondents

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[18] Petitioners' 5 October 1993 Complaint, *id*. at 1-5.

[19] Respondents' 29 November 1993 Answer, *id*. at 37-43.

[20] RTC's 10 January 1994 Order, *id*. at 74.

[21] RTC's 5 April 1994 Order, *id*. at 93.

[22] Petitioners' 18 April 1994 Motion for Reconsideration, *id*. at 100-101.

[23] RTC's 18 July 1997 Order, *id*. at 151-153.

[24] RTC's 20 August 1997 Order, *id*. at 157.

[25] RTC's 6 August 1997 Order, *id*. at 154-156.

to file a notice of appeal[26] which was, however, denied due course by the RTC on the ground that the orders sought to be appealed were non-appealable.[27] On 14 December 1997, Menardo died[28] and was substituted by his daughter Nancy as representative of respondent Heirs of Buenaflor.[29]

In the ensuing trial of the case on the merits, petitioners called to the witness stand Samuel Lim Uy Ek Liong[30] whose testimony was refuted by Philip[31] and Leovina[32] during the presentation of the defense evidence. On 27 January 2005, the RTC rendered a decision finding the *Kasunduan* valid and binding between respondents and petitioners who had the right to demand its fulfillment as Manuel's successors-in-interest. Brushing aside Philip's testimony that respondents were forced to sign the *Kasunduan*, the RTC ruled that said contract became effective upon the finality of this Court's 13 September 1990 Decision in G.R. No. 89561 which served as a suspensive condition therefor. Having benefited from the legal services rendered by Atty. Zepeda and the financial assistance extended by Manuel, respondents were also declared estopped from questioning the validity of the Agreement, *Kasunduan* and TCT No. T-72026. With the *Kasunduan* upheld as the law between the contracting parties and their privies,[33] the RTC disposed of the case in the following wise:

WHEREFORE, premises considered, the Court finds for the [petitioners] and hereby:

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[26] Respondents' 27 August 1997 Notice of Appeal, *id*. at 158-160.

[27] RTC's 1 October 1998 Order, *id.* at 197-198.

[28] Respondents' 19 December 1998 Notice of Death of a Party, *id*. at 209-210.

[29] RTC's 18 March 1999 Order, *id*. at 223.

[30] TSNs, 22 October 2001, 16 January 2002, 5 March 2002.

[31] TSNs , 19 November 2002, 19 February 2003, 21 July 2003, 18 August 2003, 20 October 2003.

[32] TSNs, 1 December 2003, 1 March 2004, 26 April 2004.

[33] Records, pp. 522-531.

1. Orders the [respondents] to execute and deliver a Deed of Conveyance in favor of the [petitioners] covering the 60% of the properties formerly covered by Transfer Certificates of Title Nos. T-3175[2], 42104, T-42103, T-32227 and T-42104 which are now covered by Transfer Certificates of Title Nos. T-72027, T-72028, T-72029, T-72030, T-72031, T-72032, T-72033 and T-72026, all of the Registry of Deeds of Lucena City, for and in consideration of the amount of ₱180,000.00 in accordance with the provisions of the *KASUNDUAN*, and

2. Orders the [petitioners] to pay and deliver to the [respondents] upon the latter's execution of the Deed of Conveyance mentioned in the preceding paragraph, the amount of ₱179,000.00 representing the balance of the purchase price as provided in the *KASUNDUAN*, and

3. Orders the [respondents] to pay the [petitioners] the following amounts:

a). ₱50,000.00 as and for moral damages;

b). ₱50,000.00 as and for exemplary damages; and

c). ₱50,000.00 as and for attorney's fees.

and to pay the costs.

SO ORDERED.[34]

Dissatisfied with the RTC's decision, both petitioners[35] and respondents perfected their appeals[36] which were docketed before the CA as CA-G.R. CV No. 84687. While petitioners prayed for the increase of the monetary awards adjudicated *a quo*, as well as the further grant of liquidated damages in their favor,[37] respondents sought the complete reversal of the appealed decision on the ground that the Agreement and the *Kasunduan* were null and void.[38] On 23 January 2007, the CA rendered

[34] *Id.* at 530-531.

[35] Respondents' 10 February 2005 Notice of Appeal, *id*. at 532.

[36] Petitioners' 3 February 2005 Notice of Appeal, *id*. at 533.

[37] Petitioners' 5 July 2005 Appellants' Brief, CA *rollo*, pp. 56-80.

[38] Respondents' 29 July 2005 Appellants' Brief *id*. 93-122.

the herein assailed decision, setting aside the RTC's decision, upon the following findings and conclusions, to wit: (a) the Agreement and *Kasunduan* are byproducts of the partnership between Atty. Zepeda and Manuel who, as a non-lawyer, was not authorized to practice law; (b) the *Agreement* is void under Article 1491 (5) of the *Civil Code of the Philippines* which prohibits lawyers from acquiring properties which are the objects of the litigation in which they have taken part; (c) jointly designed to completely deprive respondents of the subject parcels, the Agreement and the *Kasunduan* are invalid and unconscionable; and (d) without prejudice to his liability for violation of the Canons of Professional Responsibility, Atty. Zepeda can file an action to collect attorney's fees based on *quantum meruit*.[39]

The Issue

Petitioners seek the reversal of the CA's decision on the following issue:

WHETHER [OR NOT] THE HONORABLE COURT OF APPEALS, FIFTEENTH DIVISION, COMITTED A REVERSIBLE ERROR WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE RTC BRANCH 59, LUCENA CITY, IN CIVIL CASE NO. 93-176 DECLARING THE AGREEMENT AND KASUNDUAN *VOID AB INITIO* FOR BEING CONTRARY TO LAW AND PUBLIC POLICY FOR BEING VIOLATIVE OF ART. 1491 OF THE NEW CIVIL CODE AND THE CANONS OF PROFESSIONAL RESPONSIBILITY.[40]

The Court's Ruling

We find the petition impressed with partial merit.

At the outset, it bears pointing out that the complaint for specific performance filed before the RTC sought only the enforcement of petitioners' rights and respondents' obligation under the *Kasunduan*. Although the answer filed by respondents also assailed the validity of the Agreement and TCT No. T-72026, the record shows that the RTC, in its order dated 18

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[39] CA's 23 January 2007 Decision, *id*. at 153-169.

[40] *Rollo*, p. 27.

July 1997, disallowed the filing of a third-party complaint against Atty. Zepeda on the ground that the causes of action in respect to said contract and title would be better threshed out in a separate action. As Atty. Zepeda's whereabouts were then unknown, the RTC also ruled that, far from contributing to the expeditious settlement of the case, the grant of respondents' motion to file a third-party complaint would only delay the proceedings in the case.[41] With the 1 October 1998 denial of their motion for reconsideration of the foregoing order, respondents subsequently filed a notice of appeal which was, however, denied due course on the ground that the orders denying their motion to file a third-party complaint and their motion for reconsideration were interlocutory and non-appealable.[42]

Absent a showing that the RTC's ruling on the foregoing issues was reversed and set aside, we find that the CA reversibly erred in ruling on the validity of the Agreement which respondents executed not only with petitioners' predecessor-in-interest, Manuel, but also with Atty. Zepeda. Since it is generally accepted that no man shall be affected by any proceeding to which he is a stranger,[43] the rule is settled that a court must first acquire jurisdiction over a party – either through valid service of summons or voluntary appearance – for the latter to be bound by a court decision.[44] The fact that Atty. Zepeda was not properly impleaded in the suit and given a chance to present his side of the controversy before the RTC should have dissuaded the CA from invalidating the Agreement and holding that attorney's fees should, instead, be computed on a *quantum meruit* basis. Admittedly, Article 1491 (5)[45] of the *Civil Code* prohibits lawyers from acquiring by purchase or

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[41] Records, pp. 151-153.

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

[43] *Orquiola v. Court of Appeals*, 435 Phil. 323, 332 (2002).

[44] *Padilla v. Court of Appeals*, 421 Phil. 883, 893 (2001).

[45] Art. 1491. The following persons cannot acquire by purchase, even at public or judicial auction, either in person or thru the mediation of another:

x x x x x x x x x

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration

assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession. The CA lost sight of the fact, however, that the prohibition applies only during the pendency of the suit[46] and generally does not cover contracts for contingent fees where the transfer takes effect only after the finality of a favorable judgment.[47]

Although executed on the same day, it cannot likewise be gainsaid that the Agreement and the *Kasunduan* are independent contracts, with parties, objects and causes different from that of the other. Defined as a meeting of the minds between two persons whereby one binds himself, with respect to the other to give something or to render some service,[48] a contract requires the concurrence of the following requisites: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and, (c) cause of the obligation which is established.[49] Executed in exchange for the legal services of Atty. Zepeda and the financial assistance to be extended by Manuel, the Agreement concerned respondents' transfer of 40% of the avails of the suit, in the event of a favorable judgment in Civil Case No. 8085. While concededly subject to the same suspensive condition, the *Kasunduan* was, in contrast, concluded by respondents with Manuel alone, for the purpose of selling in favor of the latter 60% of their share in the subject parcels for the agreed price of ₱180,000.00. Given these clear distinctions, petitioners correctly argue that the CA reversibly erred in not determining the validity of the *Kasunduan* independent from that of the Agreement.

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of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and *shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.*

[46] *Ramos v. Atty. Ngaseo*, 487 Phil. 40, 47 (2004).

[47] *Biascan v. Atty. Lopez*, 456 Phil. 173, 180 (2003).

[48] *Perez v. Court of Appeals*, 380 Phil. 592, 598 (2000).

[49] *Jardine Davies, Inc. v. Court of Appeals*, 389 Phil. 204, 211 (2000).

Viewed in the light of the autonomous nature of contracts enunciated under Article 1306[50] of the *Civil Code*, on the other hand, we find that the *Kasunduan* was correctly found by the RTC to be a valid and binding contract between the parties. Already partially executed with respondents' receipt of ₱1,000.00 from Manuel upon the execution thereof, the *Kasunduan* simply concerned the sale of the former's 60% share in the subject parcel, less the 1,750-square meter portion to be retained, for the agreed consideration of ₱180,000.00. As a notarized document that carries the evidentiary weight conferred upon it with respect to its due execution,[51] the *Kasunduan* was shown to have been signed by respondents with full knowledge of its contents, as may be gleaned from the testimonies elicited from Philip[52] and Leovina.[53]

Although Philip had repeatedly claimed that respondents had been forced to sign the Agreement and the *Kasunduan*, his testimony does not show such vitiation of consent as would warrant the avoidance of the contract. He simply meant that respondents felt constrained to accede to the stipulations insisted upon by Atty. Zepeda and Manuel who were not otherwise willing to push through with said contracts.[54]

At any rate, our perusal of the record shows that respondents' main objection to the enforcement of the *Kasunduan* was the perceived inadequacy of the ₱180,000.00 which the parties had fixed as consideration for 60% of the subject parcels. Rather than claiming vitiation of their consent in the answer they filed *a quo*, respondents, in fact, distinctly averred that the *Kasunduan* was tantamount to unjust enrichment and "a clear source of speculative profit" at their expense since their remaining share

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[50] Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[51] *Potenciano v. Reynoso*, 449 Phil. 396, 406 (2003).

[52] TSN, 21 July 2003, pp. 4-18.

[53] TSN, 1 December 2003, pp. 8-16.

[54] TSN, 21 July 2003, pp. 6-9.

in said properties had "a current market value of ₱9,594,900.00, more or less."[55] In their 22 March 1993 letter to petitioners, respondents also cited prices then prevailing for the sale of properties in the area and offered to sell their 60% share for the price of ₱500.00 per square meter[56] or a total of ₱15,991,500.00. In response to petitioners' insistence on the price originally agreed upon by the parties,[57] respondents even invoked the last paragraph[58] of the *Kasunduan* to the effect that the parties agreed to enter into such other stipulations as would be necessary to ensure the fruition of the sale.[59]

In the absence of any showing, however, that the parties were able to agree on new stipulations that would modify their agreement, we find that petitioners and respondents are bound by the original terms embodied in the *Kasunduan*. Obligations arising from contracts, after all, have the force of law between the contracting parties[60] who are expected to abide in good faith with their contractual commitments, not weasel out of them.[61] Moreover, when the terms of the contract are clear and leave no doubt as to the intention of the contracting parties,

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[55] Records, p. 40.

[56] Folder of Exhibits, Exhibit "S", *id.* at 465-466.

[57] Exhibit "M", *id*. at 354.

[58] *Na may laya ang bawa't panig sa kasulatang ito na magkaisa at magkasundo na madagdagan ang alinmang tuntunin na mababasa sa itaas nito upang ang kanilang kasunduan ukol sa pagbibilhang ito ay matupad at maganap, gayundin, sakaling ang alinmang tuntunin sa Kasunduang ito ay hindi masusunod sa dahilang labag sa batas o dili kaya ay hindi masusunod dahil sa pangyayaring hindi inaasahan at wala sa kapangyarihan ng bawa't panig dito, ay hindi sapat na dahilan upang mawalan ng bisa ang Kasunduang ito, kaya't ang magkabilang panig ay may laya na gumawa ng dagdag na tuntunin upang ang naulit na kasunduan ay matuloy at matupad.* Exhibit "B-1", *id.* at 311.

[59] Exhibit "N", *id.* at 355-357.

[60] *Sarmiento v. Sps. Sun-Cabrido*, 449 Phil. 108, 115 (2003).

[61] *Metropolitan Manila Devt. Authority v. Jancom Environmental Corp.*, 425 Phil. 961, 981 (2002).

the rule is settled that the literal meaning of its stipulations should govern. In such cases, courts have no authority to alter a contract by construction or to make a new contract for the parties. Since their duty is confined to the interpretation of the one which the parties have made for themselves without regard to its wisdom or folly, it has been ruled that courts cannot supply material stipulations or read into the contract words it does not contain.[62] Indeed, courts will not relieve a party from the adverse effects of an unwise or unfavorable contract freely entered into.[63]

Our perusal of the *Kasunduan* also shows that it contains a penal clause[64] which provides that a party who violates any of its provisions shall be liable to pay the aggrieved party a penalty fixed at ₱50,000.00, together with the attorney's fees and litigation expenses incurred by the latter should judicial resolution of the matter becomes necessary.[65] An accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation, the foregoing stipulation is a penal clause which serves to strengthen the coercive force of the obligation and provides for liquidated damages for such breach.[66] "The obligor would then be bound to pay the stipulated indemnity without the necessity of proof of the existence and

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[62] *Sps.Barrera v. Sps. Lorenzo*, 438 Phil. 42, 49 (2002).

[63] *William Golangco Construction Corp. v. PCIB*, 520 Phil. 167, 172 (2006).

[64] *Ang kasulatang ito ay isinagawa ng kusang loob ng bawa't panig dala ng kanilang malinis na hangarin at hindi upang ipanlinlang sa kaninoman, at ang alinmang panig na hindi susunod at lalabag sa kasunduang ito ay pananagutan ang lahat ng purwisyo ng panig na walang kasalanan, magbabayad ng halagang ₱50,000.00 bilang multa at babayaran pa rin ang gastos sa abogado at usapin ng walang tutol kung sakaling ang bagay na ito ay makaaabot sa Hukuman.*

[65] Records, p. 310.

[66] *Ligutan v. Court of Appeals*, 427 Phil. 42, 51 (2002).

the measure of damages caused by the breach."[67] Articles 1226 and 1227 of the *Civil Code* state:

> Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.
>
> The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.
>
> Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfilment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted to him. However, if after the creditor has decided to require the fulfilment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced."

In the absence of a showing that they expressly reserved the right to pay the penalty in lieu of the performance of their obligation under the *Kasunduan*, respondents were correctly ordered by the RTC to execute and deliver a deed of conveyance over their 60% share in the subject parcels in favor of petitioners. Considering that the *Kasunduan* stipulated that respondents would retain a portion of their share consisting of 1,700 square meters, said disposition should, however, be modified to give full effect to the intention of the contracting parties. Since the parties also fixed liquidated damages in the sum of ₱50,000.00 in case of breach, we find that said amount should suffice as petitioners' indemnity, without further need of compensation for moral and exemplary damages. In obligations with a penal clause, the penalty generally substitutes the indemnity for damages and the payment of interests in case of non-compliance.[68] Usually

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[67] *Florentino v. Supervalue, Inc.*, G.R. No. 172384, 12 September 2007, 533 SCRA 156, 166.

[68] *Country Bankers Insurance Corporation v. Court of Appeals*, G.R. No. 85161, 9 September 1991, 201 SCRA 458, 465.

incorporated to create an effective deterrent against breach of the obligation by making the consequences of such breach as onerous as it may be possible, the rule is settled that a penal clause is not limited to actual and compensatory damages.[69]

The RTC's award of attorney's fees in the sum of ₱50,000.00 is, however, proper. Aside from the fact that the penal clause included a liability for said award in the event of litigation over a breach of the *Kasunduan*, petitioners were able to prove that they incurred said sum in engaging the services of their lawyer to pursue their rights and protect their interests.[70]

WHEREFORE, premises considered, the Court of Appeals' assailed 23 January 2007 Decision is **REVERSED** and **SET ASIDE**. In lieu thereof, the RTC's 27 January 2005 Decision is **REINSTATED** subject to the following **MODIFICATIONS**: (a) the exclusion of a 1,750-square meter portion from the 60% share in the subject parcel respondents were ordered to convey in favor of petitioners; and (b) the deletion of the awards of moral and exemplary damages. The rights of the parties under the Agreement may be determined in a separate litigation.

SO ORDERED.

Brion[*] *(Acting Chairperson) del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[69] *Yulo v. Chan Pe*, 101 Phil. 134, 138 (1957).

[70] Exhibit "W", records, pp. 474-475.

[*] As per Special Order No. 1460 dated 29 March 2013.

[**] As per Special Order No. 1461 dated 29 March 2013.

THIRD DIVISION

[G.R. No. 179492. June 5, 2013]

REPUBLIC OF THE PHILIPPINES, represented by ABUSAMA M. ALID, Officer-in-Charge, DEPARTMENT OF AGRICULTURE-REGIONAL FIELD UNIT XII (DA-RFU XII), *petitioner, vs.* **ABDULWAHAB A. BAYAO, OSMEÑA I. MONTAÑER, RAKMA B. BUISAN, HELEN M. ALVARES, NEILA P. LIMBA, ELIZABETH B. PUSTA, ANNA MAE A. SIDENO, UDTOG B. TABONG, JOHN S. KAMENZA, DELIA R. SUBALDO, DAYANG W. MACMOD, FLORENCE S. TAYUAN, in their own behalf and in behalf of the other officials and employees of DA-RFU XII,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A DISMISSAL BY THE COURT OF APPEALS OF A SPECIAL CIVIL ACTION FOR *CERTIORARI* FOR FAILURE TO FILE A MOTION FOR RECONSIDERATION MAY BE ASSAILED *VIA* PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT.— A dismissal by the Court of Appeals of a Petition via Rule 65 for failure to file a Motion for Reconsideration may be assailed via Rule 45. Unlike a Petition via Rule 45 that is a continuation of the appellate process over the original case, a special civil action for *certiorari* under Rule 65 is an original or independent action. Consequently, the March 21, 2007. Resolution of the Court of Appeals dismissing the Petition via Rule 65 as well as its August 16, 2007 Resolution denying reconsideration are the final Resolutions contemplated under Rule 45. As correctly pointed out by petitioner, these Resolutions would attain finality if these are not elevated on appeal via Rule 45. As a result, the trial court Order dated October 9, 2006 would also become unassailable.

2. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILLING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS, ENUMERATED.— The settled rule is that a Motion for Reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. x x x The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) **where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

3. POLITICAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; THE POWER OF THE PRESIDENT TO REORGANIZE ADMINISTRATIVE REGIONS CARRIES WITH IT THE POWER TO DETERMINE THE REGIONAL CENTER; APPLICATION IN CASE AT BAR.— This Court has held that while the power to merge administrative regions is not provided for expressly in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the power of general supervision over local governments. This power of supervision is found in the Constitution as well as in the Local Government Code of 1991. x x x The judiciary cannot inquire into the wisdom or expediency of the acts of the executive. When the trial court issued its October 9, 2006 Order granting preliminary injunction on the transfer of the regional center to Koronadal City when such transfer was mandated by E.O. No. 304, the lower court did

precisely that. The principle of separation of powers ordains that each of the three great government branches has exclusive cognizance of and is supreme in concerns falling within its own constitutionally allocated sphere. The judiciary as Justice Laurel emphatically asserted "will neither direct nor restrain executive [or legislative] action x x x."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jimenea & Associates Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

Before us is a Petition for Review on *Certiorari* filed under Rule 45. This Petition prays for the reversal and setting aside of the Court of Appeals' (1) Resolution dated March 21, 2007 that dismissed the Petition for *Certiorari* under Rule 65 filed by petitioner for failure to resort to a Motion for Reconsideration of the assailed trial court Order dated October 9, 2006 and (2) Resolution dated August 16, 2007 denying petitioner's Motion for Reconsideration.

Petitioner Department of Agriculture–Regional Field Unit XII (DA-RFU XII) is a government office mandated to implement the laws, policies, plans, programs, rules, and regulations of the Department of Agriculture in its regional area, while respondents are officials and employees of DA-RFU XII.[1]

On March 30, 2004, Executive Order (E.O.) No. 304 was passed designating Koronadal City as the regional center and seat of SOCCSKSARGEN Region.[2] It provides that all departments, bureaus, and offices of the national government in the SOCCSKSARGEN Region shall transfer their regional seat of operations to Koronadal City.[3]

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[1] *Rollo*, pp. 15-16.

[2] *Id.* at 85.

[3] *Id*.

In an April 1, 2005 Memorandum, the Department of Agriculture (DA) Undersecretary for Operations Edmund J. Sana directed Officer-in-Charge (OIC) and Regional Executive Director of DA-RFU XII Abusama M. Alid as follows:

> In compliance with Executive Order No. 304 of which Section 2 states "Transfer of Regional Offices. All departments, bureaus and offices of the National Government on the SOCCSKSARGEN Region shall transfer their regional seat of operations to Koronadal City," you are hereby directed to immediately effect the transfer of the administrative, finance and operations base of RFU XII from Cotabato City to Koronadal City. On the interim, part of the staff can temporarily hold office at either or both the ATI building in Tantangan and Tupi Seed Farm, but the main office shall be within Koronadal City.
>
> The action plan for transfer should be submitted to my office not later than 6 April 2005 so that appropriate funding can be processed soonest. Further, execution of the plan should commence by 16 April 2005 or earlier so that concerned personnel can benefit from the summer break to make personal arrangements for the transfer of their work base.
>
> For strict compliance.[4]

In a Memorandum dated April 22, 2005 addressed to DA Secretary Arthur Yap, private respondents opposed the implementation of the April 1, 2005 Memorandum.[5]

They alleged that in 2004, former President Gloria Macapagal-Arroyo made a pronouncement during one of her visits in Cotabato City that the regional seat of Region 12 shall remain in Cotabato City.[6] Only three departments were not covered by the suspension of E.O. No. 304, namely, the Department of Trade and Industry (DTI), Department of Tourism (DOT), and Department of Labor and Employment (DOLE).[7]

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[4] *Id.* at 86.

[5] *Id.* at 88.

[6] *Id*.

[7] *Id.* at 92.

Respondents alleged further in their Memorandum to the DA Secretary that on March 7, 2005, they appealed to the Secretary of Agriculture that the implementation of E.O. No. 304 be held in abeyance. A copy of the Petition was attached to the Memorandum. It cited reasons such as the huge costs the physical transfer will entail and the plight of employees who have already settled and established their homes in Cotabato City.[8]

On March 8, 2005, their Petition was endorsed by Department of Agriculture Employees Association-12 (DAEAS-12) President Osmeña I. Motañer to then President Macapagal-Arroyo, and on April 12, 2005, this was referred to DA Secretary Yap for his information and appropriate action.[9] Respondents justified their appeal saying that a building was constructed in Cotabato City that can accommodate the whole staff of DA-RFU XII. On the other hand, there is no building yet in Koronadal City where rent is very expensive.[10] Moreover, if the regional office remains in Cotabato City, the government need not spend over ₱7,200,000.00 as dislocation pay as well as other expenses for equipment hauling and construction.[11] Finally, respondents alleged that the proposed third floor of the ATI Building in Tantangan has a sub-standard foundation and will not be issued a certificate of occupancy by the City Engineering Office of Koronadal City as per information from an auditor.[12]

On May 17, 2005, OIC Abusama M. Alid held a meeting and ordered the transfer of the regional office to ATI Building in Tantangan and Tupi Seed Farm in Tupi, both located in South Cotabato and Uptown, Koronadal City, to be carried out on May 21, 2005.[13]

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[8] *Id*.

[9] *Id.* at 88.

[10] *Id.* at 89.

[11] *Id*.

[12] *Id.* at 90.

[13] *Id.* at 17.

This prompted respondents to file on May 18, 2005 a Complaint for Injunction with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order with the Regional Trial Court, Branch 14 of Cotabato City.[14]

By Order dated October 9, 2006, the trial court granted respondents' Prayer for a Writ of Preliminary Injunction.[15]

In a petition dated December 17, 2006,[16] petitioner went to the Court of Appeals via Rule 65 on the ground that the assailed Order of the trial court is contrary to the pronouncement of this Court in *DENR v. DENR Region 12 Employees.*

Through the March 21, 2007 Resolution, the Court of Appeals dismissed the Petition for *Certiorari* for failure of petitioner to resort to a Motion for Reconsideration of the assailed trial court Order.[17]

Hence, the present Petition under Rule 45.

Petitioner argues that (1) this case falls under the exceptions for filing a Motion for Reconsideration prior to filing a Petition under Rule 65; (2) the trial court Order enjoining the transfer is contrary to *DENR v. DENR Region 12 Employees*[18] that upheld the separation of powers between the executive and judiciary on the wisdom of transfer of regional offices; (3) the trial court interfered into this wisdom of the executive in the management of its affairs; and (4) the trial court disregarded basic rules on amendment and revocation of administrative issuances and the propriety of injunction as a remedy.[19]

In their Comment, respondents counter that a Petition via Rule 45 is not the proper remedy to assail the disputed

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[14] *Id.* at 189.

[15] *Id.* at 18.

[16] *Id.* at 182.

[17] *Id.* at 43-46.

[18] *DENR v. DENR Region 12 Employees,* 456 Phil. 635 (2003).

[19] *Rollo,* p. 359.

Resolutions.[20] They allege that the assailed Court of Appeals Resolution dismissing the Petition for *Certiorari* for failure of the petitioners to file a Motion for Reconsideration is not a "final order or resolution" contemplated by Rule 45.[21] It is not an adjudication on the merits.[22] In fact, the Court of Appeals did not even attempt to resolve the propriety of the issuance of the assailed trial court Order.[23] In any case, respondents argue that petitioner's failure to file a Motion for Reconsideration is fatal. They contend that this is a condition *sine qua non* for a Petition under Rule 65, and none of the exceptions are present in this case.[24]

Based on both parties' contentions, the issues involved in this case may be summarized as follows:

I. Whether a Petition via Rule 45 is the proper remedy to assail the disputed Resolutions

II. Whether the present case falls within the exceptions on the requisite for filing a Motion for Reconsideration prior to filing a Petition for *Certiorari* under Rule 65

III. Whether petitioner can raise other issues not addressed in the assailed Resolutions

IV. Whether the issuance by the RTC of a preliminary injunction against the transfer of the DA Regional Office to Koronadal City violates the separation of powers between the executive department and the judiciary as to the wisdom behind the transfer

First, we discuss the procedural issues.

Respondents contend that a Petition via Rule 45 is not the proper remedy to assail the disputed Resolutions.[25] They allege

[20] *Id.* at 316.
[21] *Id.* at 317.
[22] *Id.* at 317-318.
[23] *Id.* at 318.
[24] *Id.* at 318-321.
[25] *Id.* at 316.

that the assailed Court of Appeals Resolution dismissing the Petition for *Certiorari* for failure of the petitioners to file a Motion for Reconsideration is not a "final order or resolution" contemplated by Rule 45.[26]

On the other hand, petitioner argues that if the assailed Resolutions are not elevated via Rule 45, they would attain finality and consequently, the trial court Order dated October 9, 2006 would become unassailable as well.[27]

A dismissal by the Court of Appeals of a Petition via Rule 65 for failure to file a Motion for Reconsideration may be assailed via Rule 45.

Unlike a Petition via Rule 45 that is a continuation of the appellate process over the original case, a special civil action for *certiorari* under Rule 65 in an original or independent action.[28] Consequently, the March 21, 2007 Resolution of the Court of Appeals of Appeals dismissing the Petition via Rule 65 as well as its August 16, 2007 Resolution denying reconsideration are the final Resolutions contemplated under Rule 45. As correctly pointed out by petitioner, these Resolutions would attain finality if these are not elevated on appeal via Rule 45. As a result, the trial court Order dated October 9, 2006 would also become unassailable.[29]

Respondents also argue that petitioner's failure to file a Motion for Reconsideration of the assailed Regional Trial Court Order dated October 9, 2006 is fatal.[30] They contend that the reasons raised by petitioner do not justify dispensing with the prerequisite of filing a Motion for Reconsideration.[31]

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[26] *Id.* at 317.

[27] *Id.* at 330.

[28] *De Mendez v. Court of Appeals, et al.*, G.R. No. 174937, June 13, 2012, 672 SCRA 200, 207 citing *Chua v. Santos*, 483 Phil. 392, 400 (2004); G.R. No. 132467, October 18, 2004, 440 SCRA 365, 373.

[29] *Rollo*, p. 330.

[30] *Id.* at 318.

[31] *Id.* at 386.

For its part, petitioner argues that its Petition for *Certiorari* filed before the Court of Appeals falls under the exceptions to the necessity of filing a Motion for Reconsideration.[32] In its Petition with the Court of Appeals, petitioners explained its reasons for no longer filing a Motion for Reconsideration of the assailed order in that (a) the questions to be raised in the motion have already been duly raised and passed upon by the lower court[33] and (b) there is urgent necessity for the resolution of the questions or issues raised.[34] Petitioners allege that the trial court presiding judge was not acting on the disposition of the case with dispatch and that any further delay would unduly prejudice the interests of the government in pursuing its economic development strategies in the region.[35]

The settled rule is that a Motion for Reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*.[36] Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.[37]

This rule admits well-defined exceptions as follows:

> Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) **where the questions**

[32] *Id.* at 360.

[33] *Id.* at 169. *See also* p. 360.

[34] *Id. See also* p. 362.

[35] *Id. See also* p. 362.

[36] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 190680, September 13, 2012; *Medado v. Heirs of Consing*, G.R. No. 186720, February 8, 2012, 665 SCRA 534, 548 citing *Pineda v. Court of Appeals*, G.R. No. 181643, November 17, 2010, 635 SCRA 274, 281-282.

[37] *Commissioner of Internal Revenue v. Court of Tax Appeals*, *supra*.

raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[38] (Emphasis provided)

The second exception is present in this case.

In *Siok Ping Tang v. Subic Bay Distribution, Inc.*,[39] this Court found that the non-filing of a Motion for Reconsideration in the case was not fatal since the questions raised in the *certiorari* proceedings have already been duly raised and passed upon by the lower court, *viz*:

Respondent explained their omission of filing a motion for reconsideration before resorting to a petition for *certiorari* based on exceptions (b), (c) and (i). The CA brushed aside the filing of the motion for reconsideration based on the ground that the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court. We agree.

Respondent had filed its position paper in the RTC stating the reasons why the injunction prayed for by petitioner should not be granted. However, the RTC granted the injunction. Respondent filed a petition

[38] *Siok Ping Tang v. Subic Bay Distribution, Inc.*, G.R. No. 162575, December 15, 2010, 638 SCRA 457, 469-470. See also *Republic v. Pantranco North Express et al.*, G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205-206. See also *Domdom v. Sandiganbayan*, G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528, 532-533 citing *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997).

[39] *Siok Ping Tang v. Subic Bay Distribution, Inc., supra*.

for *certiorari* with the CA and presented the same arguments which were already passed upon by the RTC. The RTC already had the opportunity to consider and rule on the question of the propriety or impropriety of the issuance of the injunction. We found no reversible error committed by the CA for relaxing the rule since respondent's case falls within the exceptions.[40]

Similarly, the various issues raised in the Petition with the Court of Appeals have already been raised by petitioner on several occasions through its pleadings with the trial court. The lower court, therefore, passed upon them prior to its issuance of its Order dated October 9, 2006. Specifically, the table below summarizes the issues and arguments raised by petitioner before the trial court *vis a vis* those raised in the Petition for *Certiorari* filed with the Court of Appeals:

TRIAL COURT			**COURT OF APPEALS**
Motion to Dismiss[41] dated June 27, 2005	**Memorandum**[42] dated September 1, 2006	**Manifestation and Reply**[43] dated September 5, 2006	**Petitioner for *Certiorari***[44] dated December 17, 2006
The Honorable Supreme Court had already ruled that the propriety or wisdom of the transfer of government agencies or offices from Cotabato City to Koronadal, South Cotabato is beyond judicial inquiry.[45]	The instamt complaint filed by plaintiffs for injunction is an indirect way of preventing the transfer of the regional seat of DA RFU XII which has been upheld by the Supreme Court in *DENR v. DENR Region 12 Employees (409 SCRA 359 [2003])*. If this Honorable Court cannot countermand	To reiterate, the Supreme Court has held in the applicable case of *DENR v. DENR Region 12 Employees (409 SCRA 359 [2003])* that respondent DENR employees "cannot, by means of an injunction, force the DENR XII Regional Offices to remain in Cotobato City, as the exercise	Respondent judge committed grave abuse of discretion to lack or excess of jurisdiction when he enjoined petitioner from transferring DA-RFU XII from Cotabato City to South Cotabato and Koronadal City. The assailed order of the lower court enjoning etitioner from transferring the seat of the DA-RFU

[40] *Id.* at 470-471.

[41] *Rollo*, pp. 98-114.

[42] *Id.* at 132-154.

[43] *Id.* at 160-166.

[44] *Id.* at 167-184.

[45] *Id.* at 99.

	the Supreme Court's ruling directly, it cannot do so indirectly.[46]	of the authority to transfer the same is executive in nature." The Supreme Court further stated in said case that "the judiciary cannot inquire into the wisdom or expediency of the acts of the executive or the legislative department."[47]	XII office to Koronadal City in South Cotabato is contrary to the pronouncement of the Supreme Court in *DENR v. DENR Region 12 Employees (409 SCRA 359 [2003]).*[48]
	Corollary to the above, the Order dated May 31, 2005 of this Honorable Court enjoining defendants from transferring the seat of the DA-RFU XII office to Koronadal City in South Cotabato is contrary to the above pronouncement of the Supreme Court. Perforce, the Order must be set aside accordingly.[49]		
The allegation under Paragraph 4 of the Complaint that her Excellency, President Gloria Macapagal-Arroyo only made a public pronouncement that the effect of E.O. No. 304 is suspended is hearsay and contrary to the procedure on the repeal, amendment or modification of rules and regulations.[50]	Executive orders are amended, modified or revoked by subsequent ones. The alleged public pronouncement of the President suspending the implementation of Executive Order No. 304 is contrary to the ordinance power of the President as provided under the Administrative Code of 1987.[51]		Respondent judge acted arbitrarily, whimsically and in a very bias[ed] manner when he concluded that the President of the Republic has suspended the implementation of Executive Order No. 304.[52]

[46] *Id.* at 136.
[47] *Id.* at 161.
[48] *Id.* at 173.
[49] *Id.* at 138.
[50] *Id.* at 108.
[51] *Id.* at 144-145.
[52] *Id.* at 174.

By the nature of their appointment as Regional Officials and Employees, plaintiffs can be reassigned anywhere within Region XII in the exignecy of the service.[53]			Respondent judge committed grave abuse of discretion when he concluded that the transfer of DA-RFU XII to Koronadal City will affect seriously the studies of respondents' children and the there will be no buildings to house respondents.[54]
	The allegation of possible injury to plaintiffs and their families as a consequence of the planned transfer of the regional seat of DA-RFU XII of Koronadal City had been ruled upon by the Supreme Court in *DENR v. DENR Region 12 Employees (409 SCRA 359 [2003])* to be beyond judicial inquiry because it involves concerns that are more on the propriety or wisdom of the transfer rather than on its legality.[55]	If the plight and conditions of the families of the DENR employees are worth considering, like the dislocation of schooling of their children, which without doubt has more adverse impact than the supposed absence of allowances for the transfer, the Supreme Court should have granted the njunction prayed for by said DENR employees. Apparently, the Supreme Court did not find it compelling to grnat the injunction over and above the wisdom of the transfer.[56]	
	The families of the employees can still stay in Cotabato City		

[53] *Id.* at 104.

[54] *Id.* at 176.

[55] *Id.* at 149.

[56] *Id.* at 163.

	in as much as they have established residences in the area. It must be em[phasized that the employees derive salaries and benefits from their government work from which they support their families. The movement of employees thus would not cause much financial dislocation as long as the e mployees received their salaries and benefits.[57]		
		The Honorable Court must further realize that the employees are being paid their salaries. In the given order of things, such salaries are enough to provide for their basic necessities. The Regional Office can simply provide for transportation to effectuate the minimum required for the transfer to Koronadal City and expect the employees to live on their salaries. Any allowances due and owing the employees connected with the transfer can be given to them later as back payments. This is not to forget that the Regional Office has provided temporary housing for said employees to alleviate any inconvenience that they may suffer.[58]	Respondent judge committed grave abuse of discretion when he concluded that the transfer of DA-RFU XII would stretch out the meager salaries of respondents and that it would cause them economic strangulation.[59]

[57] *Id.* at 144.

[58] *Id.* at 163.

[59] *Id.* at 177.

There is absolutely no technical malversation in the realignment of budgetary allocation for the intended transfer of DA-RFU XII to Koronadal City.[60]	The issues on the alleged illegal realigment of funds, unauthorized issuance of memorandum and the alleged unjust transfer of employees of DA-RFU XII are acts that are executive in nature x x x.[61]		Respondent judge committed grave abuse of discretion preliminary issuance of a writ of when he ordered the injunction based on the absence of appropriation for the transfer to Koronadal City in the amoount of ₱9,250,000.00.[62]
	x x x the funds needed for the transfer can be sourced and met by the DA from sources such as the discretionary administrative fund of the Offcie of the Secretary. Respondent's computation of the amount required for the transfer to the amount of ₱9,222,000.00 is bloated or exaggerated.[63]		
	Respondent who are accountable officers cannot be coerced to transfer funds that are deemed illegal or improper. Hence, no personal liability or irreparable inquiry would be caused		Respondent judge committed grave abuse of discretion when he concluded that respondents would suffer irreparable damage if the transfer of DA-RFU XII from

[60] *Id.* at 106-107.

[61] *Id.* at 140.

[62] *Id.* at 178.

[63] *Id.* at 143.

	upon them. On the other hand, the rest of respondents who are ordinary employees would not suffer any irreparable injury. This is due to the fact that they have no privity to the alleged illegal trransfer of funds.[64]		Cotabato City to Koronadal City is not enjoined.[65]

Thus, the present case falls under the second exception in that a Motion for Reconsideration need not be filed where questions raised in the *certiorari* proceedings are the same as those raised and passed upon in the lower court.

In any case, this Court disregards the presence of procedural flaws when there is necessity to address the issues because of the demands of public interest, including the need for stability in the public service and the serious implications the case may cause on the effective administration of the executive department.[66]

The instant Petition involves the effective administration of the executive department and would similarly warrant relaxation of procedural rules if need be. Specifically, the fourth clause of E.O. No. 304 states as follows: "WHEREAS, the political and socio-economic conditions in SOCCSKSARGEN Region point to the need for designating the regional center and seat of the region to improve government operations and services."[67]

Respondents' final contention is that the disputed Resolutions issued by the Court of Appeals dwell solely on the indispensability

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

[65] *Id.* at 181.

[66] *DENR v. DENR Region 12 Employees*, *supra* note 18, at 643. Similarly, this involves an Order by the trial court to cease and desist the transfer of DENR XII regional office from Cotabato City to Koronadal. In this case, although no appeal was made within the reglementary period to appeal, the Court found that "departure from the general rule that the extraordinary writ of *certiorari* cannot be a substitute for the lost remedy of appeal is justified because the execution of the assailed decision would amount to an oppressive exercise of judicial authority."

[67] Executive Order No. 304 (2004).

of the filing of a Motion for Reconsideration with the trial court before filing a Petition via Rule 65; thus, the other grounds in the present Petition need not be addressed.[68]

Considering that the Petition has overcome the procedural issues as discussed above, we can now proceed to discuss the substantive issues raised by petitioner.

Petitioner argues that the assailed Order of the trial court enjoining it from transferring the seat of the DA-RFU XII Regional Office to Koronadal City is contrary to this Court's pronouncement in *DENR v. DENR Region 12 Employees* upholding the separation of powers of the executive department and the judiciary when it comes to the wisdom of transfer of regional offices.[69]

This Court has held that while the power to merge administrative regions is not provided for expressly in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the power of general supervision over local governments.[70] This power of supervision is found in the Constitution[71] as well as in the Local Government Code of 1991, as follows:

Section 25 – National Supervision over Local Government Units –

(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the

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[68] *Rollo*, p. 389.

[69] *Id.* at 362-363.

[70] *Abbas v. COMELEC*, 258-A Phil. 870, 884 (1989).

[71] CONSTITUTION, Art. X, Sec. 4.

Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component *barangays*, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

province with respect to component cities and municipalities; and through the city and municipality with respect to *barangays*.[72]

In *Chiongbian v. Orbos*, we held further that the power of the President to reorganize administrative regions carries with it the power to determine the regional center.[73]

The case of *DENR v. DENR Region 12 Employees* is in point. This Court held that the DENR Secretary can reorganize validly the DENR by ordering the transfer of the DENR XII Regional Offices from Cotabato City to Koronadal, South Cotabato.[74] We also found as follows:

> It may be true that the transfer of the offices may not be timely considering that: (1) there are no buildings yet to house the regional offices in Koronadal, (2) the transfer falls on the month of Ramadan, (3) the children of the affected employees are already enrolled in schools in Cotabato City, (4) the Regional Development Council was not consulted, and (5) the Sangguniang Panglungsod, through a resolution, requested the DENR Secretary to reconsider the orders. However, **these concern issues addressed to the wisdom of the transfer rather than to its legality. It is basic in our form of government that the judiciary cannot inquire into the wisdom or expediency of the acts of the executive** or the legislative department, for each department is supreme and independent of the others, and each is devoid of authority not only to encroach upon the powers or field of action assigned to any of the other department, but also to inquire into or pass upon the advisability or wisdom of the acts performed, measures taken or decisions made by the other departments.[75] (Emphasis provided)

The transfer of the regional center of the SOCCSKSARGEN region to Koronadal City is an executive function.

Similar to *DENR v. DENR Region 12 Employees*, the issues in the present case are addressed to the wisdom of the transfer rather than to its legality. Some of these concerns are the lack of a proper and suitable building in Koronadal to house the DA regional

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[72] Republic Act No. 7160 (1991), Chap. III, Art. I, Sec. 25.

[73] *Chiongbian v. Orbos*, 315 Phil. 251, 269 (1995).

[74] *DENR v. DENR Region 12 Employees, supra* at 645-646.

[75] *Id.*

office, the inconvenience of the transfer considering that the children of respondent-employees are already enrolled in Cotabato City schools, and other similar reasons.

The judiciary cannot inquire into the wisdom or expediency of the acts of the executive.[76] When the trial court issued its October 9, 2006 Order granting preliminary injunction on the transfer of the regional center to Koronadal City when such transfer was mandated by E.O. No. 304, the lower court did precisely that.

The principle of separation of powers ordains that each of the three great government branches has exclusive cognizance of and is supreme in concerns falling within its own constitutionally allocated sphere.[77] The judiciary as Justice Laurel emphatically asserted "will neither direct nor restrain executive [or legislative] action x x x."[78]

Finally, a verbal pronouncement to the effect that E.O. No. 304 is suspended should not have been given weight. An executive order is valid when it is not contrary to the law or Constitution.[79]

WHEREFORE, the Petition is **GRANTED**. The Resolutions of the Court of Appeals dated March 21, 2007 and August 16, 2007 in CA-G.R. SP No. 01457-MIN, as well as the Decision dated October 9, 2006 of the Regional Trial Court, Branch 14 of Cotabato City are **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

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[76] *DENR v. DENR Region 12 Employees, supra* at 648.

[77] *Santiago v. Guingona,* 359 Phil. 276, 284 (1998).

[78] *Tan et al. v. Macapagal,* 150 Phil. 778, 784 (1972) citing *Planas v. Gil,* 67 Phil. 62, 73 (1939).

[79] CIVIL CODE, Art. 7.

"Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution."

FIRST DIVISION

[G.R. No. 182855. June 5, 2013]

MR. ALEXANDER "LEX" ADONIS, represented by the CENTER FOR MEDIA FREEDOM AND RESPONSIBILITY (CMFR), through its Executive Director, MRS. MELINDA QUINTOS-DE JESUS; and the NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES (NUJP), through its Chairperson, MR. JOSE TORRES, JR., *petitioners, vs.* **SUPERINTENDENT VENANCIO TESORO, DIRECTOR, DAVAO PRISONS AND PENAL FARM, PANABO CITY, DIGOS, DAVAO DEL NORTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; THE LONE PURPOSE FOR THE ISSUANCE OF THE WRIT OF *HABEAS CORPUS* IS TO OBTAIN RELIEF FOR THOSE ILLEGALLY CONFINED OR IMPRISONED WITHOUT SUFFICIENT LEGAL BASIS; NOT APPLICABLE IN CASE AT BAR.— The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom. It is issued only for the lone purpose of obtaining relief for those illegally confined or imprisoned without sufficient legal basis. It is not issued when the person is in custody because of a judicial process or a valid judgment. x x x In the instant case, Adonis was convicted for libel by the RTC Branch 17, in Criminal Case No. 48679-2001. Since his detention was by virtue of a final judgment, he is not entitled to the Writ of *Habeas Corpus*. He was serving his sentence when the BPP granted him parole, along with six (6) others, on December 11, 2007. While it is true that a convict may be released from prison on parole when he had served the minimum period of his sentence; the pendency of another criminal case, however, is a ground for the disqualification of such convict from being released on parole.

Notably, at the time he was granted the parole, the second libel case was pending before the RTC Branch 14. In fact, even when the instant petition was filed, Criminal Case No. 48719-01 was still pending. The issuance of the writ under such circumstance was, therefore, proscribed. There was basis for the respondent to deny his immediate release at that time.

2. CRIMINAL LAW; ADMINISTRATIVE CIRCULAR NO. 08-2008; GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES; BENEFITS THEREOF NOT GIVEN RETROACTIVE APPLICATION TO A CRIMINAL CASE WHICH HAS ALREADY BECOME FINAL AND EXECUTORY; CASE AT BAR.— Adonis seeks the retroactive application of Administrative Circular No. 08-2008, citing *Fermin v. People,* where the Court preferred the imposition of the fine rather than imprisonment under the circumstances of the case. Administrative Circular No. 08-2008, was issued on January 25, 2008 and provides the "guidelines in the observance of a rule of preference in the imposition of penalties in libel cases." A clear reading of' the Administrative Circular No. 08-2008 and considering the attendant circumstances of the case, the benefits of the administrative circular cannot be given retroactive effect in Criminal Case No. 48679-2001. It is too late in the day for Adonis to raise such argument considering that Criminal Case No. 48679-2001 has already become final and executory; and he had, in fact, already commenced serving his sentence. Eventually, he was released from confinement on December 23, 2008 after accepting the conditions of the parole granted to him.

APPEARANCES OF COUNSEL

*Roque & Butuyan Law Office*s for petitioners.

R E S O L U T I O N

REYES, *J.*:

This is a Petition for the Issuance of the Writ of *Habeas Corpus*[1] under Rule 102 of the 1997 Rules of Court filed by

[1] *Rollo,* pp. 3-21.

petitioner Alexander Adonis (Adonis), praying that the Court directs respondent Superintendent Venancio Tesoro (respondent), Director of the Davao Prisons and Penal Farm, to have the body of the former brought before this Court and in the alternative, praying for the application of the Supreme Court Administrative Circular No. 08-2008,[2] which imposes the penalty of a fine instead of imprisonment in Criminal Case No. 48679-2001.[3]

Antecedent Facts

In Criminal Case No. 48679-2001, Adonis was convicted by the Regional Trial Court of Davao City (RTC), Branch 17 for Libel, filed against him by then Representative Prospero Nograles. He was sentenced to an indeterminate sentence of five (5) months and one (1) day of *arresto mayor* maximum, as minimum penalty, to four (4) years, six (6) months and one (1) day of *prision correccional* medium, as maximum penalty.[4] He began serving his sentence at the Davao Prisons and Penal Farm on February 20, 2007.[5]

A second libel case, docketed as Criminal Case No. 48719-2001 was likewise filed against Adonis by Jeanette L. Leuterio, pending before the RTC of Davao City, Branch 14.[6]

On December 11, 2007, the Board of Pardons and Parole (BPP) issued an order for the Discharge on Parole of seven (7) inmates in various jails in the country, which included Adonis. The said document was received by the City Parole and Probation Office of Davao on May 2, 2008.[7]

Meanwhile, on January 25, 2008, this Court issued Administrative Circular No. 08-2008, the subject of which is

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

[3] *Id.* at 15.

[4] *Id.* at 4.

[5] *Id.* at 5.

[6] *Id.*

[7] *Id.* at 5, 22-23.

the "Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases."

In view of these developments, Adonis, on April 18, 2008 filed with the RTC Branch 17 a Motion to Reopen Case (With Leave of Court),[8] praying for his immediate release from detention and for the modification of his sentence to payment of fine pursuant to the said Circular.

On May 26, 2008, in Criminal Case No. 48719-2001 before the RTC Branch 14, Adonis moved for his provisional release from detention. The motion was granted by Presiding Judge George Omelio in open court and he was allowed to post bail in the amount of ₱5,000.[9] Subsequently on even date and after Adonis filed a cash bond and an undertaking,[10] the trial court issued an Order directing the Chief of Davao Penal Colony "to release the accused Alexis Adonis unless he is being held for some other crimes or offenses."[11] On the same date, the said order was served to the respondent,[12] but the release of Adonis was not effected.

On May 30, 2008, Adonis filed the instant petition for the issuance of a writ of *habeas corpus* alleging that his liberty was restrained by the respondent for no valid reason.[13]

The respondent consequently filed his Comment.[14] Adonis then filed on October 27, 2008 an Urgent Motion to Resolve[15] and on November 7, 2008 a Manifestation and Motion,[16] reiterating all his previous prayers.

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[8] *Id.* at 27-35.

[9] *Id.* at 24.

[10] *Id.* at 26.

[11] *Id.* at 25.

[12] *Id.* at 6.

[13] *Id.* at 3-21.

[14] *Id.* at 62-73.

[15] *Id.* at 81-85.

[16] *Id.* at 86-89.

On February 11, 2009, the Court received the letter from the respondent, informing the Court that Adonis had been released from confinement on December 23, 2008 after accepting the conditions set forth in his parole and with the advise to report to the City Parole and Probation Officer of Davao.[17]

The Court's Ruling

The petition is without merit.

The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom. It is issued only for the lone purpose of obtaining relief for those illegally confined or imprisoned without sufficient legal basis. It is not issued when the person is in custody because of a judicial process or a valid judgment.[18]

Section 4, Rule 102 of the Revised Rules of Court provides when a writ must not be allowed or discharge authorized, to wit:

> **SEC. 4.** *When writ not allowed or discharge authorized.*– If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In the instant case, Adonis was convicted for libel by the RTC Branch 17, in Criminal Case No. 48679-2001. Since his

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[17] *Id.* at 92.

[18] *Fletcher v. Director of Bureau of Corrections,* UDK-14071, July 17, 2009, 593 SCRA 265, 270, citing *Barredo v. Hon. Vinarao,* 555 Phil. 823, 827 (2007).

detention was by virtue of a final judgment, he is not entitled to the Writ of *Habeas Corpus*. He was serving his sentence when the BPP granted him parole, along with six (6) others, on December 11, 2007.[19] While it is true that a convict may be released from prison on parole when he had served the minimum period of his sentence; the pendency of another criminal case, however, is a ground for the disqualification of such convict from being released on parole.[20] Notably, at the time he was granted the parole, the second libel case was pending before the RTC Branch 14.[21] In fact, even when the instant petition was filed, Criminal Case No. 48719-01 was still pending. The issuance of the writ under such circumstance was, therefore, proscribed. There was basis for the respondent to deny his immediate release at that time.

Further, Adonis seeks the retroactive application of Administrative Circular No. 08-2008, citing *Fermin v. People*,[22] where the Court preferred the imposition of the fine rather than imprisonment under the circumstances of the case. Administrative Circular No. 08-2008, was issued on January 25, 2008 and provides the "guidelines in the observance of a rule of preference in the imposition of penalties in libel cases." The pertinent portions read as follows:

All courts and judges concerned should **henceforth** take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime libel under Article 355 of the Revised Penal Code;
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar

[19] *Rollo*, pp. 5, 22-23.

[20] *Supra* note 18, at 271.

[21] *Rollo*, p. 5.

[22] G.R. No. 157643, March 28, 2008, 550 SCRA 132.

circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice;

3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provision on subsidiary imprisonment.[23] (Emphasis ours)

A clear reading of the Administrative Circular No. 08-2008 and considering the attendant circumstances of the case, the benefits of the administrative circular can not be given retroactive effect in Criminal Case No. 48679-2001. It is too late in the day for Adonis to raise such argument considering that Criminal Case No. 48679-2001 has already become final and executory; and he had, in fact, already commenced serving his sentence. Eventually, he was released from confinement on December 23, 2008 after accepting the conditions of the parole granted to him.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

[23] *Rollo,* p. 37.

SECOND DIVISION

[G.R. No. 185830. June 5, 2013]

ECOLE DE CUISINE MANILLE (CORDON BLEU OF THE PHILIPPINES), INC., *petitioner, vs.* **RENAUD COINTREAU & CIE and LE CORDON BLEU INT'L., B.V.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY; TRADEMARK; REGISTRATION REQUIREMENTS; FOREIGN MARKS WHICH ARE NOT REGISTERED ARE STILL ACCORDED PROTECTION AGAINST INFRINGEMENT AND/OR UNFAIR COMPETITION, SUSTAINED.— Under Section 2 of R.A. No. 166, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for two (2) months prior to the application for registration. Section 2-A of the same law sets out to define how one goes about acquiring ownership thereof. Under Section 2-A, it is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Additionally, it is significant to note that Section 2-A does not require that the actual use of a trademark must be within the Philippines. Thus, as correctly mentioned by the CA, under R.A. No. 166, one may be an owner of a mark due to its actual use but may not yet have the right to register such ownership here due to the owner's failure to use the same in the Philippines for two (2) months prior to registration. Nevertheless, foreign marks which are not registered are still accorded protection against infringement and/or unfair competition. At this point, it is worthy to emphasize that the Philippines and France, Cointreau's country of origin, are both signatories to the Paris Convention for the Protection of Industrial Property (Paris Convention). x x x In view of the foregoing obligations under the Paris Convention, the Philippines is obligated to assure nationals of the signatory-countries that they are afforded an effective protection against violation of

their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals. "Thus, under Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected "without the obligation of filing or registration."

2. ID.; ID.; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE); THE PRESENT LAW ON TRADEMARKS DISPENSED WITH THE REQUIREMENT OF PRIOR ACTUAL USE AT THE TIME OF REGISTRATION; RATIONALE.— The present law on trademarks, Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended, has already dispensed with the requirement of prior actual use at the time of registration. Thus, there is more reason to allow the registration of the subject mark under the name of Cointreau as its true and lawful owner. As a final note, "the function of a trademark is to point out distinctly the origin or ownership of the goods (or services) to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product." As such, courts will protect trade names or marks, although not registered or properly selected as trademarks, on the broad ground of enforcing justice and protecting one in the fruits of his toil.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

Perucles R. Casuela for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the December 23, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 104672 which affirmed *in toto* the Intellectual Property Office (IPO) Director General's April 21, 2008 Decision[3] that declared respondent Renaud Cointreau & Cie (Cointreau) as the true and lawful owner of the mark "LE CORDON BLEU & DEVICE" and thus, is entitled to register the same under its name.

The Facts

On June 21, 1990, Cointreau, a partnership registered under the laws of France, filed before the (now defunct) Bureau of Patents, Trademarks, and Technology Transfer (BPTTT) of the Department of Trade and Industry a trademark application for the mark "LE CORDON BLEU & DEVICE" for goods falling under classes 8, 9, 16, 21, 24, 25, 29, and 30 of the International Classification of Goods and Services for the Purposes of Registrations of Marks ("Nice Classification") (subject mark). The application was filed pursuant to Section 37 of Republic Act No. 166, as amended (R.A. No. 166), on the basis of Home Registration No. 1,390,912, issued on November 25, 1986 in France. Bearing Serial No. 72264, such application was published for opposition in the March-April 1993 issue of the BPTTT Gazette and released for circulation on May 31, 1993.[4]

On July 23, 1993, petitioner Ecole De Cuisine Manille, Inc. (Ecole) filed an opposition to the subject application, averring

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[1] *Rollo*, pp. 10-33.

[2] *Id.* at 127-137. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. (†) and Jose C. Reyes Jr., concurring.

[3] *Id.* at 48-55. Penned by Director General Adrian S. Cristobal, Jr.

[4] *Id.* at 128.

that: (*a*) it is the owner of the mark "LE CORDON BLEU, ECOLE DE CUISINE MANILLE," which it has been using since 1948 in cooking and other culinary activities, including in its restaurant business; and (*b*) it has earned immense and invaluable goodwill such that Cointreau's use of the subject mark will actually create confusion, mistake, and deception to the buying public as to the origin and sponsorship of the goods, and cause great and irreparable injury and damage to Ecole's business reputation and goodwill as a senior user of the same.[5]

On October 7, 1993, Cointreau filed its answer claiming to be the true and lawful owner of the subject mark. It averred that: (*a*) it has filed applications for the subject mark's registration in various jurisdictions, including the Philippines; (*b*) Le Cordon Bleu is a culinary school of worldwide acclaim which was established in Paris, France in 1895; (*c*) Le Cordon Bleu was the first cooking school to have set the standard for the teaching of classical French cuisine and pastry making; and (*d*) it has trained students from more than eighty (80) nationalities, including Ecole's directress, Ms. Lourdes L. Dayrit. Thus, Cointreau concluded that Ecole's claim of being the exclusive owner of the subject mark is a fraudulent misrepresentation.[6]

During the pendency of the proceedings, Cointreau was issued Certificates of Registration Nos. 60631 and 54352 for the marks "CORDON BLEU & DEVICE" and "LE CORDON BLEU PARIS 1895 & DEVICE" for goods and services under classes 21 and 41 of the Nice Classification, respectively.[7]

The Ruling of the Bureau of Legal Affairs

In its Decision[8] dated July 31, 2006, the Bureau of Legal Affairs (BLA) of the IPO sustained Ecole's opposition to the subject mark, necessarily resulting in the rejection of Cointreau's

[5] *Id.* at 37-38, 42.

[6] *Id.* at 38-39.

[7] *Id.* at 133.

[8] *Id.* at 36-46. Penned by Director Estrellita Beltran-Abelardo.

application.[9] While noting the certificates of registration obtained from other countries and other pertinent materials showing the use of the subject mark outside the Philippines, the BLA did not find such evidence sufficient to establish Cointreau's claim of prior use of the same in the Philippines. It emphasized that the adoption and use of trademark must be in commerce in the Philippines and not abroad. It then concluded that Cointreau has not established any proprietary right entitled to protection in the Philippine jurisdiction because the law on trademarks rests upon the doctrine of nationality or territoriality.[10]

On the other hand, the BLA found that the subject mark, which was the predecessor of the mark "LE CORDON BLEU MANILLE" has been known and used in the Philippines since 1948 and registered under the name "ECOLE DE CUISINE MANILLE (THE CORDON BLEU OF THE PHILIPPINES), INC." on May 9, 1980.[11]

Aggrieved, Cointreau filed an appeal with the IPO Director General.

The Ruling of the IPO Director General

In his Decision dated April 21, 2008, the IPO Director General reversed and set aside the BLA's decision, thus, granting Cointreau's appeal and allowing the registration of the subject mark.[12] He held that while Section 2 of R.A. No. 166 requires actual use of the subject mark in commerce in the Philippines for at least two (2) months before the filing date of the application, only the owner thereof has the right to register the same, explaining that the user of a mark in the Philippines is not *ipso facto* its owner. Moreover, Section 2-A of the same law does not require actual use in the Philippines to be able to acquire ownership of a mark.[13]

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[9] *Id.* at 46.

[10] *Id.* at 43-46.

[11] *Id.* at 42.

[12] *Id.* at 55.

[13] *Id.* at 52.

In resolving the issue of ownership and right to register the subject mark in favor of Cointreau, he considered Cointreau's undisputed use of such mark since 1895 for its culinary school in Paris, France (in which petitioner's own directress, Ms. Lourdes L. Dayrit, had trained in 1977). Contrarily, he found that while Ecole may have prior use of the subject mark in the Philippines since 1948, it failed to explain how it came up with such name and mark. The IPO Director General therefore concluded that Ecole has unjustly appropriated the subject mark, rendering it beyond the mantle of protection of Section 4 (d)[14] of R.A. No. 166.[15]

Finding the IPO Director General's reversal of the BLA's Decision unacceptable, Ecole filed a Petition for Review[16] dated June 7, 2008 with the CA.

Ruling of the CA

In its Decision dated December 23, 2008, the CA affirmed the IPO Director General's Decision *in toto*.[17] It declared Cointreau as the true and actual owner of the subject mark

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[14] Section 4 (d) of R.A. 166 provides:

Section 4. *Registration of trademarks, trade names and service marks on the principal register*. — There is hereby established a register of trademarks, trade names and service marks, which shall be known as the principal register. The owner of a trademark, a trade name or service mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

xxx xxx xxx

(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade name registered in the Philippines or a mark or trade name registered in previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers.

[15] *Rollo*, pp. 52-55.

[16] *Id.* at 56-76.

[17] *Id.* at 136.

with a right to register the same in the Philippines under Section 37 of R.A. No. 166, having registered such mark in its country of origin on November 25, 1986.[18]

The CA likewise held that Cointreau's right to register the subject mark cannot be barred by Ecole's prior use thereof as early as 1948 for its culinary school "LE CORDON BLEU MANILLE" in the Philippines because its appropriation of the mark was done in bad faith. Further, Ecole had no certificate of registration that would put Cointreau on notice that the former had appropriated or has been using the subject mark. In fact, its application for trademark registration for the same which was just filed on February 24, 1992 is still pending with the IPO.[19]

Hence, this petition.

Issues Before the Court

The sole issue raised for the Court's resolution is whether the CA was correct in upholding the IPO Director General's ruling that Cointreau is the true and lawful owner of the subject mark and thus, entitled to have the same registered under its name.

At this point, it should be noted that the instant case shall be resolved under the provisions of the old Trademark Law, R.A. No. 166, which was the law in force at the time of Cointreau's application for registration of the subject mark.

The Court's Ruling

The petition is without merit.

In the petition, Ecole argues that it is the rightful owner of the subject mark, considering that it was the first entity that used the same in the Philippines. Hence, it is the one entitled to its registration and not Cointreau.

Petitioner's argument is untenable.

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[18] *Id.* at 134-135.

[19] *Id.* at 133-136.

Under Section 2[20] of R.A. No. 166, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for two (2) months prior to the application for registration. Section 2-A[21] of the same law sets out to define how one goes about acquiring ownership thereof. Under Section 2-A, it is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Additionally, it is significant to note that Section 2-A does not require that the actual use of a trademark must be within the Philippines. Thus, as correctly

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[20] Section 2 of R.A. No. 166 provides:

Section 2. *What are registrable*. — Trademarks, trade names and service marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in accordance with the provisions of this Act: Provided, That said trademarks, trade names, or service marks are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed; And provided, further, That the country of which the applicant for registration is a citizen grants by law substantially similar privileges to citizens of the Philippines, and such fact is officially certified, with a certified true copy of the foreign law translated into the English language, by the government of the foreign country to the Government of the Republic of the Philippines.

[21] Section 2-A, which was added by R.A. No. 638 to R.A. No. 166, provides:

Section 2-A. *Ownership of trademarks, trade names and service marks; how acquired*. — Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trademark, a trade name, or a service mark from the merchandise, business, or service of others. The ownership or possession of a trademark, trade name or service mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trademark, trade name, service mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to this law.

mentioned by the CA, under R.A. No. 166, one may be an owner of a mark due to its actual use but may not yet have the right to register such ownership here due to the owner's failure to use the same in the Philippines for two (2) months prior to registration.[22]

Nevertheless, foreign marks which are not registered are still accorded protection against infringement and/or unfair competition. At this point, it is worthy to emphasize that the Philippines and France, Cointreau's country of origin, are both signatories to the Paris Convention for the Protection of Industrial Property (Paris Convention).[23] Articles 6*bis* and 8 of the Paris Convention state:

ARTICLE 6*bis*

(1) The countries of the Union undertake, *ex officio* if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country **as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.**

ARTICLE 8

A trade name shall be protected in all the countries of the Union **without the obligation of filing or registration**, whether or not it forms part of a trademark. (Emphasis and underscoring supplied)

In this regard, Section 37 of R.A. No. 166 incorporated Article 8 of the Paris Convention, *to wit*:

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[22] *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, 520 Phil. 935, 936 (2006).

[23] See <http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=2> (last visited May 9, 2013).

Section 37. *Rights of foreign registrants.* — Persons who are nationals of, domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or trade-names, or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties so long as the Philippines shall continue to be a party thereto, except as provided in the following paragraphs of this section.

xxx xxx xxx

Trade-names of persons described in the first paragraph of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

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In view of the foregoing obligations under the Paris Convention, the Philippines is obligated to assure nationals of the signatory-countries that they are afforded an effective protection against violation of their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals.[24] "Thus, under Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected 'without the obligation of filing or registration.'"[25]

In the instant case, it is undisputed that Cointreau has been using the subject mark in France since 1895, prior to Ecole's averred first use of the same in the Philippines in 1948, of which the latter was fully aware thereof. In fact, Ecole's present directress, Ms. Lourdes L. Dayrit (and even its foundress, Pat Limjuco Dayrit), had trained in Cointreau's Le Cordon Bleu

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[24] *Fredco Manufacturing Corporation v. President and Fellows of Harvard College (Harvard University)*, G.R. No. 185917, June 1, 2011, 650 SCRA 232, 247, citing *La Chemise Lacoste, S.A. v. Hon. Fernandez*, G.R. Nos. 63796-97, May 21, 1984, 129 SCRA 373, 389.

[25] *Id.* at 248.

culinary school in Paris, France. Cointreau was likewise the first registrant of the said mark under various classes, both abroad and in the Philippines, having secured Home Registration No. 1,390,912 dated November 25, 1986 from its country of origin, as well as several trademark registrations in the Philippines.[26]

On the other hand, Ecole has no certificate of registration over the subject mark but only a pending application covering services limited to Class 41 of the Nice Classification, referring to the operation of a culinary school. Its application was filed only on February 24, 1992, or after Cointreau filed its trademark application for goods and services falling under different classes in 1990. Under the foregoing circumstances, even if Ecole was the first to use the mark in the Philippines, it cannot be said to have validly appropriated the same.

It is thus clear that at the time Ecole started using the subject mark, the same was already being used by Cointreau, albeit abroad, of which Ecole's directress was fully aware, being an alumna of the latter's culinary school in Paris, France. Hence, Ecole cannot claim any tinge of ownership whatsoever over the subject mark as Cointreau is the true and lawful owner thereof. As such, the IPO Director General and the CA were correct in declaring Cointreau as the true and lawful owner of the subject mark and as such, is entitled to have the same registered under its name.

In any case, the present law on trademarks, Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended, has already dispensed with the requirement of prior actual use at the time of registration.[27] Thus, there is more reason to allow the registration of the subject mark under the name of Cointreau as its true and lawful owner.

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[26] *Rollo*, p. 176.

[27] See *Shangri-la Int'l. Hotel Management, Ltd. v. Developers Group of Companies*, *supra* note 22, at 954.

As a final note, "the function of a trademark is to point out distinctly the origin or ownership of the goods (or services) to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product."[28] As such, courts will protect trade names or marks, although not registered or properly selected as trademarks, on the broad ground of enforcing justice and protecting one in the fruits of his toil.[29]

WHEREFORE, the petition is **DENIED**. Accordingly, the December 23, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 104672 is hereby **AFFIRMED** *in toto.*

SO ORDERED.

Sereno,[*] *C.J., Brion,*[**] *Perez,* and *Leonen,*[***] *JJ.,* concur.

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[28] *Mirpuri v. CA*, G.R. No. 114508, November 19, 1999, 318 SCRA 516, 532.

[29] Harry D. Nims, *The Law of Unfair Competition and Trademarks* 28 (1917), citing *Sartor v. Schaden*, 125 Iowa 696- at p. 700, 1904; 101 N.W. 511.

[*] Designated Additional Member in lieu of Justice Mariano C. del Castillo per Raffle dated February 18, 2013.

[**] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[***] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

FIRST DIVISION

[G.R. No. 187587. June 5, 2013]

NAGKAKAISANG MARALITA NG SITIO MASIGASIG, INC., *petitioner, vs.* **MILITARY SHRINE SERVICES — PHILIPPINE VETERANS AFFAIRS OFFICE, DEPARTMENT OF NATIONAL DEFENSE,** *respondent.*

[G.R. No. 187654. June 5, 2013]

WESTERN BICUTAN LOT OWNERS ASSOCIATION, INC., represented by its Board of Directors, *petitioner, vs.* **MILITARY SHRINE SERVICES-PHILIPPINE VETERANS AFFAIRS OFFICE, DEPARTMENT OF NATIONAL DEFENSE,** *respondent.*

SYLLABUS

CIVIL LAW; EFFECTIVITY OF LAWS; THE REQUIREMENT OF PUBLICATION IS INDISPENSABLE TO GIVE EFFECT TO THE LAW; APPLICATION IN CASE AT BAR.— The resolution of whether the subject lots were declared as reclassified and disposable lies in the determination of whether the handwritten addendum of President Marcos has the force and effect of law. x x x Under Article 2 of the Civil Code, the requirement of publication is indispensable to give effect to the law, unless the law itself has otherwise provided. The phrase "unless otherwise provided" refers to a different effectivity date other than after fifteen days following the completion of the law's publication in the Official Gazette, but does not imply that the requirement of publication may be dispensed with. The issue of the requirement of publication was already settled in the landmark case *Tañada v. Hon. Tuvera,* in which we had the occasion to rule x x x [t]his Court cannot rely on a handwritten note that was not part of Proclamation No. 2476 as published. Without publication, the note never had any legal force and effect. Furthermore, under Section 24, Chapter 6, Book I of the Administrative Code, "[t]he publication of any law, resolution or other official documents in the Official Gazette

> shall be *prima facie* evidence of its authority." Thus, whether or not President Marcos intended to include Western Bicutan is not only irrelevant but speculative. Simply put, the courts may not speculate as to the probable intent of the legislature apart from the words appearing in the law. This Court cannot rule that a word appears in the law when, evidently, there is none. x x x The courts exist for interpreting the law, not for enacting it. To allow otherwise would be violative of the principle of separation of powers, inasmuch as the sole function of our courts is to apply or interpret the laws, particularly where gaps or *lacunae* exist or where ambiguities becloud issues, but it will not arrogate unto itself the task of legislating." The remedy sought in these Petitions is not judicial interpretation, but another legislation that would amend the law to include petitioners' lots in the reclassification.

APPEARANCES OF COUNSEL

Randy G. Serrano for WBLOAI.
Simbillo and Santos for WBLOAI (Masangkay Group)
Floyd P. Lalwet for Nagkakaisang Maralita ng Sitio Masigasig, Inc.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J*:

Before us are consolidated Petitions for Review under Rule 45 of the Rules of Court assailing the Decision[1] promulgated on 29 April 2009 of the Court of Appeals in CA-G.R. SP No. 97925.

THE FACTS

The facts, as culled from the records, are as follows:

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[1] Penned by Presiding Justice Conrado M. Vasquez, Jr., with Associate Justices Jose C. Mendoza (now a member of this Court) and Ramon M. Bato, Jr., concurring, *rollo* (G.R. No. 187587), pp. 62-82.

On 12 July 1957, by virtue of Proclamation No. 423, President Carlos P. Garcia reserved parcels of land in the Municipalities of Pasig, Taguig, Parañaque, Province of Rizal and Pasay City for a military reservation. The military reservation, then known as Fort William McKinley, was later on renamed Fort Andres Bonifacio (Fort Bonifacio).

On 28 May 1967, President Ferdinand E. Marcos (President Marcos) issued Proclamation No. 208, amending Proclamation No. 423, which excluded a certain area of Fort Bonifacio and reserved it for a national shrine. The excluded area is now known as *Libingan ng mga Bayani*, which is under the administration of herein respondent Military Shrine Services – Philippine Veterans Affairs Office (MSS-PVAO).

Again, on 7 January 1986, President Marcos issued Proclamation No. 2476, further amending Proclamation No. 423, which excluded *barangays* Lower Bicutan, Upper Bicutan and Signal Village from the operation of Proclamation No. 423 and declared it open for disposition under the provisions of Republic Act Nos. (R.A.) 274 and 730.

At the bottom of Proclamation No. 2476, President Marcos made a handwritten addendum, which reads:

"P.S. – This includes Western Bicutan

(SGD.) Ferdinand E. Marcos"[2]

The crux of the controversy started when Proclamation No. 2476 was published in the *Official Gazette*[3] on 3 February 1986, without the above-quoted addendum.

Years later, on 16 October 1987, President Corazon C. Aquino (President Aquino) issued Proclamation No. 172 which substantially reiterated Proclamation No. 2476, as published, but this time excluded Lots 1 and 2 of Western Bicutan from

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[2] CA *rollo*, p. 664.

[3] Vol. 82, No. 5, pp. 801-805.

the operation of Proclamation No. 423 and declared the said lots open for disposition under the provisions of R.A. 274 and 730.

Memorandum Order No. 119, implementing Proclamation No. 172, was issued on the same day.

Through the years, informal settlers increased and occupied some areas of Fort Bonifacio including portions of the *Libingan ng mga Bayani*. Thus, Brigadier General Fredelito Bautista issued General Order No. 1323 creating Task Force Bantay (TFB), primarily to prevent further unauthorized occupation and to cause the demolition of illegal structures at Fort Bonifacio.

On 27 August 1999, members of petitioner Nagkakaisang Maralita ng Sitio Masigasig, Inc. (NMSMI) filed a Petition with the Commission on Settlement of Land Problems (COSLAP), where it was docketed as COSLAP Case No. 99-434. The Petition prayed for the following: (1) the reclassification of the areas they occupied, covering Lot 3 of SWO-13-000-298 of Western Bicutan, from public land to alienable and disposable land pursuant to Proclamation No. 2476; (2) the subdivision of the subject lot by the Director of Lands; and (3) the Land Management Bureau's facilitation of the distribution and sale of the subject lot to its bona fide occupants.[4]

On 1 September 2000, petitioner Western Bicutan Lot Owners Association, Inc. (WBLOAI) filed a Petition-in-Intervention substantially praying for the same reliefs as those prayed for by NMSMI with regard to the area the former then occupied covering Lot 7 of SWO-00-001302 in Western Bicutan.[5]

Thus, on 1 September 2006, COSLAP issued a Resolution[6] granting the Petition and declaring the portions of land in question alienable and disposable, with Associate Commissioner Lina Aguilar-General dissenting.[7]

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[4] *Supra* note 2, at 68-69.

[5] *Id.* at 72-76.

[6] *Id.* at 205-212.

[7] *Id.* at 213-218.

The COSLAP ruled that the handwritten addendum of President Marcos was an integral part of Proclamation No. 2476, and was therefore, controlling. The intention of the President could not be defeated by the negligence or inadvertence of others. Further, considering that Proclamation No. 2476 was done while the former President was exercising legislative powers, it could not be amended, repealed or superseded, by a mere executive enactment. Thus, Proclamation No. 172 could not have superseded much less displaced Proclamation No. 2476, as the latter was issued on October 16, 1987 when President Aquino's legislative power had ceased.

In her Dissenting Opinion, Associate Commissioner Lina Aguilar-General stressed that pursuant to Article 2 of the Civil Code, publication is indispensable in every case. Likewise, she held that when the provision of the law is clear and unambiguous so that there is no occasion for the court to look into legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.[8] Finally, she maintained that the Commission had no authority to supply the addendum originally omitted in the published version of Proclamation No. 2476, as to do so would be tantamount to encroaching on the field of the legislature.

Herein respondent MSS-PVAO filed a Motion for Reconsideration,[9] which was denied by the COSLAP in a Resolution dated 24 January 2007.[10]

MSS-PVAO filed a Petition with the Court of Appeals seeking to reverse the COSLAP Resolutions dated 1 September 2006 and 24 January 2007.

Thus, on 29 April 2009, the then Court of Appeals First Division rendered the assailed Decision granting MSS-PVAO's Petition, the dispositive portion of which reads:

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[8] *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981).

[9] CA *rollo*, pp. 112-113.

[10] *Id.* at pp. 219-222.

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **GRANTED**. The Resolutions dated September 1, 2006 and January 24, 2007 issued by the Commission on the Settlement of Land Problems in COSLAP Case No. 99-434 are hereby **REVERSED and SET ASIDE**. In lieu thereof, the petitions of respondents in COSLAP Case No. 99-434 are **DISMISSED**, for lack of merit, as discussed herein. Further, pending urgent motions filed by respondents are likewise **DENIED**.

SO ORDERED.[11] (Emphasis in the original)

Both NMSMI[12] and WBLOAI[13] appealed the said Decision by filing their respective Petitions for Review with this Court under Rule 45 of the Rules of Court.

THE ISSUES

Petitioner NMSMI raises the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PROCLAMATION NO. 2476 DID NOT INCLUDE ANY PORTION OF WESTERN BICUTAN AS THE HANDWRITTEN NOTATION BY PRESIDENT MARCOS ON THE SAID PROCLAMATION WAS NOT PUBLISHED IN THE OFFICIAL GAZETTE.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PROCLAMATION NO. 172 LIKEWISE EXCLUDED THE PORTION OF LAND OCCUPIED BY MEMBER OF HEREIN PETITIONER.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE HON. COSLAP HAS BROAD POWERS TO RECOMMEND TO THE PRESIDENT

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[11] *Id.* at 1285.

[12] *Rollo (*G.R. No. 187587), pp. 39-61.

[13] *Rollo* (G.R. No. 187654), pp. 3-26.

INNOVATIVE MEASURES TO RESOLVE EXPEDITIOUSLY VARIOUS LAND CASES.[14]

On the other hand, petitioner WBLOAI raises this sole issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE SUBJECT PROPERTY WAS NOT DECLARED ALIENABLE AND DISPOSABLE BY VIRTUE OF PROCLAMATION NO. 2476 BECAUSE THE HANDWRITTEN ADDENDUM OF PRESIDENT FERDINAND E. MARCOS INCLUDING WESTERN BICUTAN IN PROCLAMATION NO. 2476 WAS NOT INCLUDED IN THE PUBLICATION.[15]

Both Petitions boil down to the principal issue of whether the Court of Appeals erred in ruling that the subject lots were not alienable and disposable by virtue of Proclamation No. 2476 on the ground that the handwritten addendum of President Marcos was not included in the publication of the said law.

THE COURT'S RULING

We deny the Petitions for lack of merit.

Considering that petitioners were occupying Lots 3 and 7 of Western Bicutan (subject lots), their claims were anchored on the handwritten addendum of President Marcos to Proclamation No. 2476. They allege that the former President intended to include all Western Bicutan in the reclassification of portions of Fort Bonifacio as disposable public land when he made a notation just below the printed version of Proclamation No. 2476.

However, it is undisputed that the handwritten addendum was not included when Proclamation No. 2476 was published in the *Official Gazette*.

The resolution of whether the subject lots were declared as reclassified and disposable lies in the determination of whether the handwritten addendum of President Marcos has the force

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[14] *Rollo (*G.R. No. 187587), p. 47.

[15] *Rollo* (G.R. No. 187654), pp. 15-16.

and effect of law. In relation thereto, Article 2 of the Civil Code expressly provides:

> ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.

Under the above provision, the requirement of publication is indispensable to give effect to the law, unless the law itself has otherwise provided. The phrase "unless otherwise provided" refers to a different effectivity date other than after fifteen days following the completion of the law's publication in the Official Gazette, but does not imply that the requirement of publication may be dispensed with. The issue of the requirement of publication was already settled in the landmark case *Tañada v. Hon. Tuvera*,[16] in which we had the occasion to rule thus:

> **Publication is indispensable in every case, but the legislature may in its discretion provide that the usual fifteen-day period shall be shortened or extended**. An example, as pointed out by the present Chief Justice in his separate concurrence in the original decision, is the Civil Code which did not become effective after fifteen days from its publication in the Official Gazette but "one year after such publication." The general rule did not apply because it was "otherwise provided."
>
> It is not correct to say that under the disputed clause publication may be dispensed with altogether. The reason is that such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it. Surely, if the legislature could validly provide that a law shall become effective immediately upon its approval notwithstanding the lack of publication (or after an unreasonably short period after publication), it is not unlikely that persons not aware of it would be prejudiced as a result; and they would be so not because of a failure to comply with it but simply because they did not know of its existence. Significantly, this is not true only of penal laws as is commonly supposed. One

[16] 230 Phil. 528, 533-538 (1986).

can think of many non-penal measures, like a law on prescription, which must also be communicated to the persons they may affect before they can begin to operate.

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The term "laws" should refer to all laws and not only to those of general application, for strictly speaking all laws relate to the people in general albeit there are some that do not apply to them directly. An example is a law granting citizenship to a particular individual, like a relative of President Marcos who was decreed instant naturalization. It surely cannot be said that such a law does not affect the public although it unquestionably does not apply directly to all the people. **The subject of such law is a matter of public interest which any member of the body politic may question in the political forums or, if he is a proper party, even in the courts of justice.** In fact, a law without any bearing on the public would be invalid as an intrusion of privacy or as class legislation or as an *ultra vires* act of the legislature. To be valid, the law must invariably affect the public interest even if it might be directly applicable only to one individual, or some of the people only, and not to the public as a whole.

We hold therefore that **all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature**.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.

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Accordingly, even the charter of a city must be published notwithstanding that it applies to only a portion of the national territory and directly affects only the inhabitants of that place. **All presidential decrees must be published**, including even, say, those naming a public place after a favored individual or exempting him from certain prohibitions or requirements. The circulars issued by the Monetary Board must be published if they are meant not merely to interpret

but to "fill in the details" of the Central Bank Act which that body is supposed to enforce.

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We agree that the publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws. As correctly pointed out by the petitioners, the mere mention of the number of the presidential decree, the title of such decree, its whereabouts (*e.g.*, "with Secretary Tuvera"), the supposed date of effectivity, and in a mere supplement of the Official Gazette cannot satisfy the publication requirement. This is not even substantial compliance. This was the manner, incidentally, in which the General Appropriations Act for FY 1975, a presidential decree undeniably of general applicability and interest, was "published" by the Marcos administration. The evident purpose was to withhold rather than disclose information on this vital law.

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Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. **Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people**. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn. (Emphases supplied)

Applying the foregoing ruling to the instant case, this Court cannot rely on a handwritten note that was not part of Proclamation No. 2476 as published. Without publication, the note never had any legal force and effect.

Furthermore, under Section 24, Chapter 6, Book I of the Administrative Code, "[t]he publication of any law, resolution or other official documents in the Official Gazette shall be *prima facie* evidence of its authority." Thus, whether or not President Marcos intended to include Western Bicutan is not only irrelevant but speculative. Simply put, the courts may not speculate as to the probable intent of the legislature apart from the words appearing in the law.[17] This Court cannot rule that a word appears

[17] *Aparri v. CA*, 212 Phil. 215, 224 (1984).

in the law when, evidently, there is none. In *Pagpalain Haulers, Inc. v. Hon. Trajano*,[18] we ruled that "[u]nder Article 8 of the Civil Code, '[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' This does not mean, however, that courts can create law. The courts exist for interpreting the law, not for enacting it. To allow otherwise would be violative of the principle of separation of powers, inasmuch as the sole function of our courts is to apply or interpret the laws, particularly where gaps or *lacunae* exist or where ambiguities becloud issues, but it will not arrogate unto itself the task of legislating." The remedy sought in these Petitions is not judicial interpretation, but another legislation that would amend the law to include petitioners' lots in the reclassification.

WHEREFORE, in view of the foregoing, the instant petitions are hereby **DENIED** for lack of merit. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 97925 dated 29 April 2009 is **AFFIRMED** *in toto*. Accordingly, this Court's *status quo* order dated 17 June 2009 is hereby **LIFTED**. Likewise, all pending motions to cite respondent in contempt is **DENIED,** having been rendered moot.

No costs.

SO ORDERED.

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

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[18] 369 Phil. 617, 626 (1999).

FIRST DIVISION

[G.R. No. 188024. June 5, 2013]

RODRIGO RONTOS *y* DELA TORRE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; THE ACCUSED IS ESTOPPED FROM ASSAILING IRREGULARITY OF HIS ARREST IF HE FAILS TO RAISE THIS ISSUE BEFORE HIS ARRAIGNMENT; APPLICATION IN CASE AT BAR.— The CA correctly ruled that his failure to question the legality of his arrest before entering his plea during arraignment operated as a waiver of that defense. "It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment." In his arraignment before the trial court, petitioner never raised any issue and instead "freely and voluntarily pleaded Not Guilty to the offense charged." Thus, he was estopped from raising the issue of the legality of his arrest before the trial court, more so on appeal before the CA or this Court.

2. CRIMINAL LAW; REPUBLIC ACT (R.A.) NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); POSSESSION OF DANGEROUS DRUGS (VIOLATION OF SECTION 11); PROCEDURE SET FORTH IN SECTION 21 OF R.A. 9165 IS INTENDED PRECISELY TO ENSURE IDENTITY AND INTEGRITY OF DANGEROUS DRUGS SEIZED; FAILURE TO OBSERVE IN CASE AT BAR.— In illegal drugs cases, the identity and integrity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt. The case against the accused hinges on the ability of the prosecution to prove that the illegal drug presented in court is the same one that was recovered from the accused upon his arrest. The procedure set forth in Section 21 of R.A. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items,

the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. This Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. It was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified. Here, the procedure was not observed at all. Where it is clear that Section 21 was not observed, as in this case, such noncompliance brings to the fore the question of whether the illegal drug items were the same ones that were allegedly seized from petitioner.

3. ID.; ID.; ID.; ID.; JUSTIFIABLE GROUNDS MAY EXCUSE NONCOMPLIANCE WITH THE REQUIREMENT OF SECTION 21, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; NOT PRESENT IN CASE AT BAR.— We are not unaware of the rule that justifiable grounds may excuse noncompliance with the requirements of Section 21 as long as the integrity and evidentiary value of the seized items are properly preserved. The problem in this case is that the police officers presented no justifiable reason why they neglected to observe the proper procedure. Considering that PO1 Pacis himself expressed misgivings on the identity of the envelope shown to him in court, with the envelope that he had placed the confiscated illegal drug items in, neither can we confirm that the chain of custody had been sufficiently established. *Corpus delicti* is the "actual commission by someone of the particular crime charged." In illegal drug cases, it refers to the illegal drug item itself. When courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime charged is put into serious question. In those cases, courts have no alternative but to acquit on the ground of reasonable doubt.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 28 October 2008 and Resolution[2] dated 29 May 2009 of the Court of Appeals (CA) in CA-G.R. CR No. 30412. The CA Decision affirmed the Decision[3] in Criminal Case No. C-69394 of the Regional Trial Court of Caloocan City, Branch 123 (RTC) finding petitioner guilty beyond reasonable doubt of the crime of violation of Section 11, Article II of Republic Act No. (R.A.) 9165 (Comprehensive Dangerous Drugs Act).

At 4:00 p.m. on 19 October 2003, PO2 Emil Masi (PO2 Masi) of the Caloocan North City Police Station dispatched PO1 Joven Pacis (PO1 Pacis) and PO1 Greg Labaclado (PO1 Labaclado) of the Station Anti-Illegal Drugs Task Force to conduct surveillance in Sampaloc St., Camarin, Caloocan City because of reports of illegal drug activity in the said area.[4] When they got there around 5:00 p.m., PO1 Pacis and PO1 Labaclado noticed petitioner standing about five meters away from them, apparently preoccupied with scrutinizing two plastic sachets in his hand.

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[1] *Rollo*, pp. 100-111. The Decision of the Court of Appeals (CA) Special Tenth Division in CA-G.R. CR No. 30412 dated 28 October 2008 was penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia-Salvador and Arcangelita M. Romilla-Lontok concurring.

[2] *Id.* at 123-124.

[3] *Id.* at 74-81.

[4] *Id.* at 102.

Upon coming closer, they saw that the plastic sachets appeared to contain a white crystalline substance similar to *shabu*.[5] PO1 Pacis approached petitioner and confiscated the plastic sachets. Thereafter, he introduced himself as a police officer and informed petitioner of the offense the latter had committed.[6] The two police officers informed petitioner of his constitutional rights, while he just remained silent.[7] PO1 Pacis marked the plastic sachets with his initials "JCP-1" and JCP-2" and placed them in a makeshift envelope.[8]

They then brought petitioner to the station and turned him over to PO2 Masi together with the plastic sachets.[9] PO2 Masi conducted an investigation and prepared a request for a laboratory examination[10] of the contents of the plastic sachets.[11] PO1 Pacis brought the request and the plastic sachets to the crime laboratory, and forensic chemist Police Inspector Jessie dela Rosa (P/Insp. dela Rosa) conducted the examination.[12] The tests on the contents of the plastic sachets yielded a positive result for methylamphetamine hydrochloride, a dangerous drug more commonly known as *shabu*.[13]

A Complaint[14] for violation of Section 11 (possession of dangerous drugs), Article II of R.A. 9165, was drawn up and referred[15] to the city prosecutor for the filing of charges before the court.

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[5] *Id*.

[6] *Id.* at 75.

[7] *Id*.

[8] TSN, 15 August 2005, p. 7.

[9] *Rollo*, p. 102.

[10] Exhibit "A", folder of exhibits, p. 2.

[11] *Rollo*, p. 75.

[12] *Id*.

[13] Exhibit "C", folder of exhibits, p. 1.

[14] Records, p. 4.

[15] *Id.* at 3.

On the other hand, petitioner narrated a different version of the incident. According to him, on the date and time mentioned, he was at home with his parents, sister, nephews and a visitor named Cassandra Francisco (Cassandra) when PO1 Pacis and PO1 Labaclado suddenly barged in.[16] The police officers searched the house, claiming that they were looking for something.[17] When the search proved fruitless, they arrested petitioner and Cassandra and detained them at the Drug Enforcement Unit in Camarin, Caloocan City.[18] Cassandra was later released when her uncle allegedly gave money to the police officers.[19]

After trial on the merits, the RTC rendered a Decision[20] dated 23 August 2006, the dispositive portion of which states:

> Wherefore, premises considered, judgment is hereby rendered finding accused **RODRIGO RONTOS *Y* DELA TORRE** guilty beyond reasonable doubt of the crime of Violation of Section 11, Article II, RA 9165 and hereby sentencing him to suffer imprisonment of **TWELVE YEARS AND ONE DAY TO THIRTEEN YEARS, NINE MONTHS AND TEN DAYS** and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency.[21]

Through the testimonies of PO1 Pacis, PO1 Labaclado and P/Insp. dela Rosa, the RTC ruled that the prosecution was able to establish the concurrence of all the elements of possession of dangerous drugs: (a) an item or object identified to be a dangerous drug was in a person's possession; (b) the possession was not authorized by law; and (c) the person freely and consciously possessed the dangerous drug. The RTC also found no evil motive on the part of the police officers to testify falsely against petitioner. Despite the defenses of denial, frame-up

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[16] *Rollo*, p. 103.

[17] *Id.* at 76.

[18] *Id*.

[19] *Id*.

[20] *Id.* at 74-81.

[21] *Id.* at 81.

and evidence-planting interposed by petitioner, the RTC held that his guilt was proven beyond reasonable doubt.

On appeal to the CA, petitioner contended that, since his warrantless arrest was illegal, the allegedly confiscated items were inadmissible in evidence. He further claimed that the police officers failed to faithfully comply with the procedure for ensuring the identity and integrity of the plastic sachets containing *shabu*.

The CA ruled[22] that the question over the legality of the arrest was deemed waived by petitioner when he voluntarily submitted himself to the jurisdiction of the court by entering a plea of "Not Guilty" and participating in the trial of the case.[23] In any case, the CA explained that while the arrest was without a warrant, it was with probable cause since petitioner was arrested in *flagrante delicto*. He committed a crime in plain view of the police officers, as he was spotted in the act of holding and examining plastic sachets containing *shabu*.

While the CA admitted that no photograph or inventory of the confiscated items was taken or made, it entertained no doubt that the dangerous drugs presented in court were the same ones confiscated from petitioner. Furthermore, the failure of the police officers to observe the proper procedure for handling confiscated dangerous drugs may only result in administrative liability on their part. That failure does not cast doubt on the identity and integrity of the illegal drugs.[24]

Thus, the CA affirmed the Decision of the RTC with the modification that the fine imposed was reduced from ₱500,000 to ₱300,000.[25] As the motion for reconsideration[26] of petitioner was denied,[27] he now comes before us raising the same issues presented before the CA.

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[22] *Id.* at 100-111.

[23] *Id.* at 105.

[24] *Id.* at 107-108.

[25] *Id.* at 110.

[26] *Id.* at 112-116.

[27] *Id.* at 123-124.

OUR RULING

We acquit petitioner on the ground of reasonable doubt.

We cannot uphold the contention of petitioner that his warrantless arrest was illegal. The CA correctly ruled that his failure to question the legality of his arrest before entering his plea during arraignment operated as a waiver of that defense. "It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment."[28]

In his arraignment before the trial court, petitioner never raised any issue and instead "freely and voluntarily pleaded Not Guilty to the offense charged."[29] Thus, he was estopped from raising the issue of the legality of his arrest before the trial court, more so on appeal before the CA or this Court.

However, on the basis of the nonobservance of the rules of procedure for handling illegal drug items, we resolve to acquit petitioner on the ground of reasonable doubt.

In illegal drugs cases, the identity and integrity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt.[30] The case against the accused hinges on the ability of the prosecution to prove that the illegal drug presented in court is the same one that was recovered from the accused upon his arrest.

The procedure set forth in Section 21 of R.A. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized.[31] This provision requires that upon seizure of illegal

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[28] *People v. Tan*, G.R. No. 191069, 15 November 2010, 634 SCRA 773, 786.

[29] Records, p. 8.

[30] *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619.

[31] *People v. Martinez*, G.R. No. 191366, 13 December 2010, 637 SCRA 791, 817-818.

drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

This Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance.[32] It was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[33] Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified.[34]

Here, the procedure was not observed at all. Where it is clear that Section 21 was not observed, as in this case, such noncompliance brings to the fore the question of whether the illegal drug items were the same ones that were allegedly seized from petitioner.

The direct testimony of PO1 Pacis in connection with his identification of the envelope where he placed the two plastic sachets allegedly confiscated from petitioner does not really inspire confidence, to wit:

Q: What did you do with the plastic sachet that you have confiscated from the accused?
A: After confiscating them, I marked them and placed them in an envelope in order to preserve the evidence, ma[‘a]m.

Q: I am showing toy [sic] you this white envelope, will you please have a look at it and tell the Honorable Court if this

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[32] *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324, 351-355.

[33] *Id*.

[34] *Id*.

is the same envelope which contained the two plastic sachets?

A: I am not sure, ma[‘a]m, it is not actually an envelope but an improvised envelope.[35]

We cannot, in good conscience, affirm the conviction of petitioner for possession of illegal drugs if the police officer charged with the preservation of the evidence cannot even be certain in the identification of the envelope that was presented in court. As held in *Dolera v. People*,[36] there also exists in the present case a reasonable likelihood of substitution, in that the two plastic sachets that tested positive for *shabu* and were presented in court were not the items allegedly seized from petitioner. This possibility of substitution is fatal for the prosecution,[37] for there is then a failure to prove the identity of the *corpus delicti* beyond reasonable doubt.[38]

We are not unaware of the rule that justifiable grounds may excuse noncompliance with the requirements of Section 21 as long as the integrity and evidentiary value of the seized items are properly preserved.[39] The problem in this case is that the police officers presented no justifiable reason why they neglected to observe the proper procedure. Considering that PO1 Pacis himself expressed misgivings on the identity of the envelope shown to him in court, with the envelope that he had placed the confiscated illegal drug items in, neither can we confirm that the chain of custody had been sufficiently established.

Corpus delicti is the “actual commission by someone of the particular crime charged.”[40] In illegal drug cases, it refers to

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[35] TSN, 15 August 2005, p. 7.

[36] G.R. No. 180693, 4 September 2009, 598 SCRA 484, 487.

[37] *Id.* at 496.

[38] *People v. Morales*, G.R. No. 172873, 19 March 2010, 616 SCRA 223, 236-237 citing *People v. Orteza*, G.R. No. 173051, 31 July 2007, 528 SCRA 750, 758-759.

[39] Implementing Rules and Regulations of R.A. 9165, Section 21(a).

[40] *People v. Roble*, G.R. No. 192188, 11 April 2011, 647 SCRA 593, 603.

the illegal drug item itself.[41] When courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime charged is put into serious question. In those cases, courts have no alternative but to acquit on the ground of reasonable doubt.

WHEREFORE, the Decision dated 28 October 2008 in CA-G.R. CR No. 30412 of the Court of Appeals is **REVERSED** and **SET ASIDE**. **RODRIGO RONTOS *y* DELA TORRE** is hereby **ACQUITTED** of the crime of Violation of Section 11, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act) on the ground of reasonable doubt.

The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** petitioner from custody, unless he is detained for some other lawful cause.

SO ORDERED.

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

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[41] *People v. Alejandro,* G.R. No. 176350, 10 August 2011, 655 SCRA 279, 287-288.

SECOND DIVISION

[G.R. No. 189297. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GUILLERMO LOMAQUE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT AND RESPECT; APPLICATION IN CASE AT BAR.— It is now too well-settled to require extensive documentation that where the issue is the extent of credence to be properly given to the declaration made by witnesses, the findings of the trial court are accorded great weight and respect. Such findings can only be discarded or disturbed when it appears in the records that the trial court overlooked, ignored or disregarded some facts or circumstances of weight or significance which if considered would have altered the result. Here, we find no plausible ground to disturb the findings of the trial court, as sustained by the CA, respecting the credibility of "AAA." Her testimony indeed bears the earmarks of truth and sincerity which contains details only a real victim could remember and reveal. "AAA" was really positive and firm in pointing an accusing finger on appellant as the very person who sexually assaulted her on different dates.

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE FAILURE OF THE VICTIM TO IMMEDIATELY REPORT THE RAPE IS NOT NECESSARILY AN INDICATION OF FABRICATED CHARGE; CASE AT BAR.— "The filing of complaints of rape months, even years, after their commission may or may not dent the credibility of witness and of testimony, depending on the circumstances attendant thereto." "It does not diminish the complainant's credibility or undermine the charges of rape when the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercises moral ascendancy over the victim." In this case, not long after the initial rape, appellant threatened "AAA" that he would kill her and her mother if ever she would tell anyone

about what happened. At that time, "AAA" was only 11 years old and was living under the same roof with the latter whom she treated as a father. Obviously, the threat "AAA" received from appellant, coupled with his moral ascendancy, is enough to cow and intimidate "AAA." Being young and inexperienced, it instilled tremendous fear in her mind. In *People v. Domingo,* we ruled that the effect of fear and intimidation instilled in the victim's mind cannot be measured against any given hard-and-fast rule such that it is viewed in the context of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter. In any event, "the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge."

3. **ID.; ID.; ID.; FAILURE TO SHOUT OR OFFER TENUOUS RESISTANCE DOES NOT MAKE VOLUNTARY THE VICTIM'S SUBMISSION TO THE CRIMINAL ACTS OF THE ACCUSED.—** "Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused." Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. Although an older person may have shouted for help under similar circumstances, a young victim such as "AAA" is easily overcome by fear and may not be able to cry for help. Also, the fact that "AAA" resumed her normal life after the commission of the alleged rapes cannot be taken against her. We have consistently ruled that "no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them."

4. **ID.; ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.—** As has been repeatedly ruled, rape can be committed even when the rapist and the victim are not alone. "[L]ust is no respecter of time and place." "[R]ape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep."

5. ID.; ID.; ID.; DENIAL COULD NOT PREVAIL OVER THE VICTIM'S DIRECT, POSITIVE AND CATEGORICAL ASSERTION.— "AAA" having positively identified the assailant to be the appellant and no other, the latter's proffered defense of denial must fail. "Denial could not prevail over the victim's direct, positive and categorical assertion."

6. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; ALIBI, UNCORROBORATED AND UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, IS SELF-SERVING AND DESERVES NO WEIGHT IN LAW; CASE AT BAR.— As to his alibi, appellant failed to substantiate the same with clear and convincing evidence. The plane tickets he submitted in evidence to show that he was in other places during the incidents are irrelevant. As correctly observed by the RTC, the tickets were all issued in 1994 while the incidents subject of the Informations charging appellant with rape transpired from 1996 to 1999. Thus, appellant's alibi being uncorroborated and unsubstantiated by clear and convincing evidence, is self-serving and deserves no weight in law.

7. CRIMINAL LAW; REVISED PENAL CODE; RAPE, QUALIFIED BY MINORITY AND RELATIONSHIP; TO JUSTIFY THE IMPOSITION OF DEATH PENALTY, THE QUALIFYING CIRCUMSTANCES MUST BE PROPERLY ALLEGED IN THE INFORMATION AND DULY PROVED DURING TRIAL; NOT ESTABLISHED IN CASE AT BAR.— Under Article 266-B of the Revised Penal Code (RPC), rape is qualified and the penalty of death is imposed when the victim is below 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. To justify the imposition of the death penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the Information and duly proved during the trial. Needless to say, these two circumstances must concur. x x x While the prosecution was able to sufficiently prove "AAA's" minority through the latter's testimony during the trial and by the presentation of her Certificate of Live Birth showing that she was born on September 15, 1985, it however, failed to prove the fact of relationship between her and the appellant (stepfather-

stepdaughter). x x x The allegation that "AAA" is the stepdaughter of appellant requires competent proof and should not be easily accepted as factually true. The bare testimony of appellant that he was married to "BBB" ("AAA's" mother) is not enough. Neither does "AAA's" reference to appellant as her stepfather during her testimony would suffice. As ruled in *People v. Agustin*, "the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship." In this case, save for the testimony of appellant that he was married to "BBB," the record is bereft of any evidence to show that appellant and "BBB" were indeed legally married.

8. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.— The elements of Acts of Lasciviousness under Article 336 are: 1. That the offender commits any acts of lasciviousness or lewdness; 2. That it is done under any of the following circumstances: a) By using force or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; or c) When the offended party is under 12 years of age; and 3. That the offended party is another person of either sex.

9. ID.; REPUBLIC ACT (R.A.) NO. 7610; SEXUAL ABUSE; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of sexual abuse under Section 5, Article III of RA 7610, to wit: 1. The accused commits the act of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years of age. Lascivious conduct is defined under Section 2(H) of the Implementing Rules and Regulations of RA 7610 as "a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intention to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, among others." In this case, it is undisputed that appellant committed lascivious conduct when he smelled "AAA's" genital area and inserted his finger inside her vagina to gratify or arouse his sexual desire. At the time this happened on May 8, 1993, "AAA" was barely eight years old as established through her birth certificate. Without a doubt, all the afore-stated elements are obtaining in this case. We thus likewise sustain the finding that appellant is guilty of Acts of Lasciviousness as defined and penalized

under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

For review is the July 30, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03163 affirming the Judgment[2] of the Regional Trial Court (RTC), Branch 94, Quezon City, finding accused-appellant Guillermo Lomaque (appellant) guilty of seven counts of Rape by Sexual Intercourse, one count of Rape by Sexual Assault, and one count of Acts of Lasciviousness.

Factual Antecedents

Appellant was charged under separate Informations for 13 counts of Rape by Sexual Intercourse allegedly committed against his stepdaughter "AAA"[3] on June 5, 1999 (Criminal Case No.

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[1] CA *rollo*, pp. 129-147; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jose L. Sabio, Jr. and Ricardo R. Rosario.

[2] Records, pp. 314-332; penned by Presiding Judge Romeo F. Zamora.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538-539.

Q-00-96389), February 11, 1999 (Criminal Case No. Q-00-96390), second week of January 1999 (Criminal Case No. Q-00-96391), last week of December 1998 (Criminal Case No. Q-00-96392), November 2, 1998 (Criminal Case No. Q-00-96393), October 24, 1998 (Criminal Case No. Q-00-96394), September 13, 1998 (Criminal Case No. Q-00-96395), April 27, 1998 (Criminal Case No. Q-00-96396), April 17, 1998 (Criminal Case No. Q-00-96397), January 2, 1998 (Criminal Case No. Q-00-96398), September 20, 1996 (Criminal Case No. Q-00-96399), March 17, 1999 (Criminal Case No. Q-00-96400), and September 16, 1996 (Criminal Case No. Q-00-96401).[4] Except as to the aforementioned dates of occurrence and the age of "AAA" at the time of the commission of the crimes, the accusatory portions in the Informations are similarly worded as the Information in Criminal Case No. Q-00-96389 which reads:

> The undersigned, upon prior sworn complaint of "AAA" accuses GUILLERMO LOMAQUE of the crime of RAPE (Paragraph 1 of Article 266-A of the Revised Penal Code as amended by RA 8353 in relation to Section 5 of RA 7610) committed as follows:
>
> That on or about the 5th day of June 1999 in Quezon City, Philippines, the above-named accused with force and intimidation did then and there willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one "AAA" his own stepdaughter a minor 14 years of age by then and there removing her shorts and inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent.
>
> CONTRARY TO LAW.[5]

In addition, appellant was also charged with Acts of Lasciviousness in relation to Section 5 of Republic Act (RA) No. 7610,[6] as amended, in Criminal Case No. Q-00-96402, the accusatory portion of which reads:

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[4] Records, pp. 2-100.

[5] *Id.* at 2.

[6] Known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

The undersigned, upon prior sworn complaint of "AAA" accuses GUILLERMO LOMAQUE of the crime of ACTS OF LASCIVIOUSNESS IN RELATION TO SECTION 5 of R.A. 7610, committed as follows:

That on or about the 8th da[y] of May 1993 in Quezon City, Philippines, the above-named accused with force and intimidation did then and there willfully, unlawfully and feloniously commit acts of lewdness upon the person of one "AAA" his own stepdaughter a minor 8 years of age by then and there caress[ing] her breast, and her vagina, smell[ing] her private parts and insert[ing] his finger inside her vagina, which are acts prejudicial to the child's psychological and emotional development, debase, demean and degrade the intrinsic worth and dignity of said "AAA" as a human being.

CONTRARY TO LAW.[7]

At arraignment, appellant entered a plea of not guilty to all the Informations. Soon the cases were set for Pre-Trial where only the minority of "AAA" was stipulated upon. Accordingly, the joint trial on the merits ensued.

Version of the Prosecution

The CA summarized the evidence for the prosecution based on the Decision of the RTC and the records of the case as follows:

AAA was born on September 15, 1985 to BBB by her first husband. She was about eight (8) years old at the time Lomaque started abusing/molesting her.

The first act of molestation happened on May 8, 1993 when Lomaque asked AAA to remove his growing mustache and take out white hair from his head. Lomaque, while lying on AAA's lap, started to smell and sniff her private parts, and thereafter inserted his finger inside her vagina.

At that time, she did not understand what Lomaque did to her. But to avert any further incident, she decided to sleep more often in the house of her aunt DDD. When her mother, BBB, inquired why she often slept in her Aunt's house, AAA told her mother that accused-appellant touched her private parts. BBB confronted Lomaque and

[7] Records, p. 107.

they quarreled. For a while, Lomaque stopped molesting her so AAA returned to their house to sleep there again. In the evening of September 16, 1996, while almost everybody was asleep, AAA was awakened by Lomaque who embraced her and slowly removed her shorts, and immediately inserted his penis into her vagina. She was then only [11] years old.

On September 20, 1996, when everybody in the room was already asleep, Lomaque again embraced AAA, slowly removed her shorts, and against her will, inserted his penis into AAA's vagina while her back was against him.

On January 2, 1998, when BBB was in the hospital, Lomaque again sexually abused AAA, this time removing all the clothes of AAA, and thereafter inserting his penis into her vagina. AAA could not shout as Lomaque, with a gun, threatened to kill her and her mother if she reported the incident.

Again, on April 17, 1998, while everyone was watching the television, Lomaque positioned himself at the back of AAA, and pinned AAA's thigh with his own legs. Lomaque slowly removed AAA's shorts and inserted his penis into her vagina. AAA could not do anything as she recalled Lomaque's threat to kill her and her mother if she reported the matter to BBB.

On April 27, 1998, while they were watching TV in their house, Lomaque touched and held AAA's vagina. Again, she could not do anything as she was scared.

In the evening of September 13, 1998, accused-appellant again sexually abused AAA, while everyone was asleep. He laid beside AAA, embraced her, lowered her shorts, and then inserted his penis into her vagina.

Another incident happened on October 24, 1998. This time, while AAA was embracing her mother BBB apologizing for something she did earlier, Lomaque positioned himself at the back of AAA, and initially held BBB's breasts, he then lowered his hand towards AAA's waist, and slowly removed AAA's shorts. Lomaque then inserted his penis into AAA's vagina.

During the last week of December 1998, Lomaque, while clad only with towel, summoned AAA to go upstairs. He asked AAA to hold his penis, had it inserted into AAA's mouth, and also rubbed his penis against her lips.

On February 11, 1999, while AAA was about to sleep, Lomaque went on top of her, and inserted his penis into her vagina while kissing her.

AAA's harrowing experience with Lomaque continued and she eventually became pregnant. It was during the last week of November 1999, when Lomaque asked BBB to bring AAA to the doctor for medical check-up, that BBB discovered that AAA was pregnant.

BBB inquired who the father was and AAA told her that it was Lomaque, a matter which Lomaque admitted. However, when BBB became hysterical, Lomaque retracted and concocted a story that somebody else caused the pregnancy of AAA.

After giving birth, AAA returned to their house. There she saw Lomaque kissing her younger sister, CCC. Afraid that CCC might suffer the same fate she had, she decided to file a complaint against Lomaque with the help of Bantay-Bata 163.

On June 19, 2000, AAA with her aunt DDD went to Bantay-Bata 163 to seek assistance. There, AAA disclosed to social worker Liwayway Ilao, what Lomaque did to her. Ilao conducted further interview and counseling on AAA and her sister CCC; submitted AAA for medico-legal examination; and assisted AAA in filing a complaint before the Women and Children Concern Office at Camp Crame, among others.

Dr. Jaime Rodrigo Leal ("Dr. Leal"), the medico-legal officer who conducted the physical examination on AAA, testified that AAA had an attenuated hymen and deep healed lacerations, indicating chronic penetration. While the same was consistent with vaginal delivery, Dr. Leal however explained that his findings validate the fact that AAA was indeed sexually abused several times, and that she gave birth on April 1, 2000.[8]

Version of the Defense

Appellant denied his complicity in the crimes charged by alleging alibi. His testimony was synthesized by the CA in this wise:

Lomaque testified that he started to live with BBB in 1993, bringing with him his own set of children by his first marriage.

He denied that he sexually abused AAA, claiming that he could not have committed the crimes charged because as a bio-medical

[8] CA *rollo*, pp. 132-136.

technician, he was deployed all over the country to repair hospital equipment. He offered several plane tickets in support of this allegation. These place (sic) tickets were dated: June 2, 1992; February 21, 1994; March 5, 1994; August 14, 1994; August 25, 1994; November 9, 1994; November 27 (year illegible); and January 7, 1997. He likewise testified that his parents-in-law and sister-in-law were living with them.[9]

Ruling of the Regional Trial Court

After trial, the RTC found "AAA" to be a credible witness and rejected the defense of denial and alibi proffered by the appellant. Consequently, it rendered a Decision[10] dated October 23, 2007 which declared appellant guilty of seven counts of rape by sexual intercourse (Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-00-96401), one count of rape by sexual assault (Criminal Case No. Q-00-96392) and one count of Acts of Lasciviousness (Criminal Case No. Q-00-96402). Accordingly, the RTC sentenced appellant to imprisonment and ordered him to pay damages, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Guillermo Lomaque:

1) In Crim. Case No. Q-00-96389, **NOT GUILTY** on ground of reasonable doubt with costs *de-oficio*.

2) In Crim. Case No. Q-00-96390, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party "AAA" the sum of ₱75,000; moral damages in the sum of ₱50,000 and to pay the costs.

3) In Crim. Case No. Q-00-96391, **NOT GUILTY** of the crime of Rape on ground of reasonable doubt.

4) In Crim. Case No. Q-00-96392, **GUILTY** beyond reasonable doubt and sentences accused with the indeterminate penalty

[9] *Id.* at 136.

[10] Records, pp. 314-332.

ranging from FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* in its medium period as minimum to TEN (10) YEARS of *prision mayor* in its medium period as maximum.

5) In Crim. Case No. Q-00-96393, **NOT GUILTY** on ground of reasonable doubt with costs *de-oficio*.

6) In Crim. Case No. Q-00-96394, **GUILTY** beyond reasonable doubt and sentences accused to suffer the penalty of *Reclusion Perpetua;* to indemnify the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000 and to pay the costs.

7) In Crim. Case No. Q-00-96395, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

8) In Crim. Case No. Q-00-96396, **NOT GUILTY** on ground of reasonable doubt with costs *de-oficio*.

9) In Crim. Case No. Q-00-96397, **GUILTY** beyond reasonable doubt and hereby sentences him to suffer the penalty of *Reclusion Perpetua;* to indemnity the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

10) In Crim. Case No. Q-00-96398, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua;* to indemnify the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

11) In Crim. Case No. Q-00-96399, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua;* to indemnity the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

12) In Crim. Case No. Q-00-96400, **NOT GUILTY** on ground of reasonable doubt with costs *de-oficio*.

13) In Crim. Case No. Q-00-96401, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua;* to indemnity the offended party ("AAA") the sum of ₱75,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

14) In Crim. Case No. Q-00-[96402], **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 of Republic Act No. 7610 and hereby sentences him to suffer the indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* in its medium period as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS and ONE (1) DAY of *Reclusion Temporal* in its medium period as maximum; to indemnify the offended party ("AAA") the sum of ₱50,000; to pay moral damages in the sum of ₱50,000; and to pay the costs.

To credit the accused the full period of his detention in accordance with law.

SO ORDERED.[11]

Appellant thus assailed his conviction before the CA.

Ruling of the Court of Appeals

In his Brief,[12] appellant faulted the trial court in giving full weight and credence to "AAA's" testimony and in finding him guilty beyond reasonable doubt of the crimes charged. The Office of the Solicitor General (OSG), for the plaintiff-appellee People of the Philippines, on the other hand prayed for the affirmance of the assailed Judgment contending that "AAA's" testimony is clear, candid and straightforward. It contended that appellant's culpability was established beyond reasonable doubt.

The CA, however, was not impressed with the arguments of the appellant, and hence rendered the questioned Decision[13] dated July 30, 2009 affirming the Decision of the RTC.

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[11] *Id.* at 330-332.

[12] CA *rollo*, pp. 48-62.

[13] *Id.* at 129-147.

Still not satisfied, appellant is now before us insisting on his innocence.

In the Resolution[14] dated February 8, 2010, we required the parties to file their respective supplemental briefs if they so desire.[15] Appellant manifested that he was no longer filing a supplemental brief and was instead adopting the Appellant's Brief filed before the CA.[16] The OSG took the same recourse by praying that its Appellee's Brief be considered as its supplemental brief.[17] Thus, the case was deemed submitted for decision on the basis of the parties' respective briefs filed with the CA.

Issue

Simply stated, the principal issue for resolution is whether the prosecution has proven beyond reasonable doubt the guilt of appellant for the crimes of rape and acts of lasciviousness. Basically, appellant assails the credibility of "AAA." Thus, the resolution of the issue rests upon the credibility of the testimony of the offended party.

Our Ruling

We affirm.

The RTC and the CA's finding of appellant's guilt must be sustained.

It is now too well-settled to require extensive documentation that where the issue is the extent of credence to be properly given to the declaration made by witnesses, the findings of the trial court are accorded great weight and respect. Such findings can only be discarded or disturbed when it appears in the records that the trial court overlooked, ignored or disregarded some facts or circumstances of weight or significance which if

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

[15] *Id.* at 36.

[16] *Id.* at 42-44.

[17] *Id.* at 48.

considered would have altered the result.[18] Here, we find no plausible ground to disturb the findings of the trial court, as sustained by the CA, respecting the credibility of "AAA." Her testimony indeed bears the earmarks of truth and sincerity which contains details only a real victim could remember and reveal. "AAA" was really positive and firm in pointing an accusing finger on appellant as the very person who sexually assaulted her on different dates.

In his attempt to discredit "AAA," appellant contends that "AAA's" silence and failure to divulge her alleged horrifying ordeal to immediate relatives despite the claim that it happened for several times run counter to the natural reaction of an outraged maiden despoiled of her honor.

We are not persuaded. "AAA's" momentary inaction will neither diminish nor affect her credibility. "The filing of complaints of rape months, even years, after their commission may or may not dent the credibility of witness and of testimony, depending on the circumstances attendant thereto."[19] "It does not diminish the complainant's credibility or undermine the charges of rape when the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercises moral ascendancy over the victim."[20] In this case, not long after the initial rape, appellant threatened "AAA" that he would kill her and her mother if ever she would tell anyone about what happened. At that time, "AAA" was only 11 years old and was living under the same roof with the latter whom she treated as a father. Obviously, the threat "AAA" received from appellant, coupled with his moral ascendancy, is enough to cow and intimidate "AAA." Being young and inexperienced, it instilled tremendous fear in her mind. In *People v. Domingo*,[21]

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[18] *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 735-736.

[19] *People v. Ricamora*, 539 Phil. 565, 579 (2006).

[20] *People v. Degala*, 411 Phil. 650, 663 (2001).

[21] G.R. No. 177136, June 30, 2008, 556 SCRA 788, 801-802.

we ruled that the effect of fear and intimidation instilled in the victim's mind cannot be measured against any given hard-and-fast rule such that it is viewed in the context of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter. In any event, "the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge."[22]

Neither the failure of "AAA" to struggle nor at least offer resistance during the rape incidents would tarnish her credibility. "Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused."[23] Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. Although an older person may have shouted for help under similar circumstances, a young victim such as "AAA" is easily overcome by fear and may not be able to cry for help.

Also, the fact that "AAA" resumed her normal life after the commission of the alleged rapes cannot be taken against her. We have consistently ruled that "no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them."[24]

Moreover, appellant contends that it challenges human credulity that he was able to sexually abuse "AAA" despite the many people around them. Such contention deserves scant consideration. This is not the first time that our attention was

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[22] *People v. Tejero*, G.R. No. 187744, June 20, 2012, 674 SCRA 244, 256.

[23] *People v. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341, 351-352.

[24] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 637.

called upon to rule on this matter. As has been repeatedly ruled, rape can be committed even when the rapist and the victim are not alone. "[L]ust is no respecter of time and place."[25] "[R]ape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep."[26]

"AAA" having positively identified the assailant to be the appellant and no other, the latter's proffered defense of denial must fail. "Denial could not prevail over the victim's direct, positive and categorical assertion."[27] As to his alibi, appellant failed to substantiate the same with clear and convincing evidence. The plane tickets he submitted in evidence to show that he was in other places during the incidents are irrelevant. As correctly observed by the RTC, the tickets were all issued in 1994 while the incidents subject of the Informations charging appellant with rape transpired from 1996 to 1999. Thus, appellant's alibi being uncorroborated and unsubstantiated by clear and convincing evidence, is self-serving and deserves no weight in law.

In fine, "AAA's" woeful tale of her harrowing experience in the hands of the appellant is impressively clear, definite and convincing. Her detailed narration of the incidents, given in a spontaneous and frank manner and without any fanfare, were beyond cavil well-founded. We therefore sustain the RTC's and the CA's findings of appellant's guilt.

However, the rapes committed in Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-00-96401 are simple and

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[25] *People v. Montesa,* G.R. No. 181899, November 27, 2008, 572 SCRA 317, 337.

[26] *People v. Mariano,* G.R. No. 168693, June 19, 2009, 590 SCRA 74, 89-90.

[27] *People v. Espina,* G.R. No. 183564, June 29, 2011, 653 SCRA 36, 39.

not qualified since the relationship between appellant and the victim was not proven.

The guilt of appellant having been established and following the settled rule that in a criminal case an appeal throws the whole case open for review,[28] we will now determine the sufficiency of evidence respecting the presence of the qualifying circumstances of minority and relationship. This is considering that it was under this context that the CA based its affirmance of appellant's guilt for qualified rape as shown by its declaration that the proper imposable penalty for the seven counts of rape at that time is death.[29]

Under Article 266-B of the Revised Penal Code (RPC), rape is qualified and the penalty of death is imposed when the victim is below 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. To justify the imposition of the death penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the Information and duly proved during the trial. Needless to say, these two circumstances must concur.

Based on our meticulous review, we find that the courts below erred in finding appellant guilty of rape in its qualified form. Indeed, the subject Informations clearly aver the special qualifying circumstances of minority of "AAA" and her filiation (stepdaughter) to the appellant. While the prosecution was able to sufficiently prove "AAA's" minority through the latter's testimony during the trial and by the presentation of her Certificate of Live Birth[30] showing that she was born on September 15, 1985, it however, failed to prove the fact of relationship between

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[28] *People v. Tambis*, G.R. No. 175589, July 28, 2008, 560 SCRA 343, 348.

[29] CA *rollo*, p. 146.

[30] Exhibit "E", records, p. 128.

her and the appellant (stepfather-stepdaughter). Notably, said alleged relationship was not even made the subject of stipulation of facts during the pre-trial.[31] As held in *People v. Hermocilla*,[32] "[a] stepdaughter is a daughter of one's spouse by previous marriage, while a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken is the offspring." The allegation that "AAA" is the stepdaughter of appellant requires competent proof and should not be easily accepted as factually true. The bare testimony of appellant that he was married to "BBB" ("AAA's" mother) is not enough. Neither does "AAA's" reference to appellant as her stepfather during her testimony would suffice. As ruled in *People v. Agustin*,[33] "the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship." In this case, save for the testimony of appellant that he was married to "BBB," the record is bereft of any evidence to show that appellant and "BBB" were indeed legally married. The prosecution could have presented the marriage contract, the best evidence to prove the fact of marriage but it did not. As aptly observed in *People v. Abello*:[34]

> This modifying circumstance, however, was not duly proven in the present case due to the prosecution's failure to present the marriage contract between Abello and AAA's mother. If the fact of marriage came out in the evidence at all, it was *via* an admission by Abello of his marriage to AAA's mother. This admission, however, is inconclusive evidence to prove the marriage to AAA's mother, as the marriage contract still remains the best evidence to prove the fact of marriage. This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty and hence must be proven by competent evidence.

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[31] See Pre-Trial Order dated March 6, 2001, *id.* at 143.

[32] G.R. No. 175830, July 10, 2007, 527 SCRA 296, 304.

[33] G.R. No. 175325, February 27, 2008, 547 SCRA 136, 146, citing *People v. Balbarona*, G.R. No. 146854, April 28, 2004, 428 SCRA 127, 145.

[34] G.R. No. 151952, March 25, 2009, 582 SCRA 378, 398-399.

Following *Abello*, "AAA" cannot be considered as appellant's stepdaughter and conversely, appellant as "AAA's" stepfather. Appellant, therefore, should only be convicted of simple rape in Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-00-96401 where the proper penalty for the same under Article 266-B[35] of the RPC is *reclusion perpetua*. Incidentally, the penalty of *reclusion perpetua* is the same penalty which would have been imposable even if he were guilty of qualified rape pursuant to RA 9346.[36]

There is variance in the mode of the commission of the crime of rape in Criminal Case No. Q-00-96392 as alleged in the Information and as proven during trial. Nevertheless, appellant's conviction for rape by sexual assault stands.

However, in Criminal Case No. Q-00-96392, we observe that the courts below overlooked a glaring variance between what was alleged in the Information and what was proven during trial respecting the mode of committing the offense. While the Information in this case clearly states that the crime was committed by appellant's insertion of his penis inside "AAA's" vagina, the latter solemnly testified on the witness stand that appellant merely put his penis in her mouth.[37] Nevertheless, appellant failed to register any objection that the Information alleged a different mode of the commission of the crime of rape. As ruled in *People v. Abello*[38] and *People v. Corpuz*,[39] a variance in the mode of commission

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

[36] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[37] TSN, November 26, 2001, pp. 9-10.

[38] *Supra* note 34 at 393.

[39] 517 Phil. 622, 639 (2006).

of the offense is binding upon the accused if he fails to object to evidence showing that the crime was committed in a different manner than what was alleged. Thus, appellant's conviction for rape by sexual assault must be sustained, the variance notwithstanding.

Appellant's conviction for Acts of Lasciviousness is likewise sustained.

In Criminal Case No. Q-00-96402, appellant was charged with having inserted his finger inside "AAA's" vagina under Article 336 (Acts of Lasciviousness) of the RPC in relation to Section 5(b), Article III of RA 7610. The elements of Acts of Lasciviousness under Article 336 are:

1. That the offender commits any acts of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:

a) By using force or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious; or

c) When the offended party is under 12 years of age; and

3. That the offended party is another person of either sex.

To obtain conviction for the same, the prosecution is also bound to establish the elements of sexual abuse under Section 5, Article III of RA 7610, to wit:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.

Lascivious conduct is defined under Section 2(H) of the Implementing Rules and Regulations of RA 7610 as "a crime committed through the intentional touching, either directly or

through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intention to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, among others."[40] In this case, it is undisputed that appellant committed lascivious conduct when he smelled "AAA's" genital area and inserted his finger inside her vagina to gratify or arouse his sexual desire. At the time this happened on May 8, 1993, "AAA" was barely eight years old as established through her birth certificate. Without a doubt, all the afore-stated elements are obtaining in this case. We thus likewise sustain the finding that appellant is guilty of Acts of Lasciviousness as defined and penalized under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610.

The Penalty and Proper Indemnity

Having declared appellant guilty of simple rape only in Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-000-96401, the appropriate penalty is *reclusion perpetua* under Article 266-B of the RPC. We, therefore, sustain the penalty of *reclusion perpetua* imposed on the appellant not by reason of RA 9346 but because that is the penalty provided for by the law for simple rape.

With regard to civil indemnity, we uphold the award of the same in line with prevailing jurisprudence that "civil indemnification is mandatory upon the finding of rape."[41] However, since the proper imposable penalty for simple rape is *reclusion perpetua*, the amount of civil indemnity awarded to the private complainant should correspondingly be reduced from ₱75,000.00 to ₱50,000.00 for each count, in line with current jurisprudence.

In like manner, case law requires automatic award of moral damages to a rape victim without need of proof because from the nature of the crime, it can be assumed that she has suffered moral injuries entitling her to such award. Thus, we find the

[40] *People v. Abello, supra* note 34 at 394.

[41] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 621.

award of moral damages by the CA in the amount of ₱50,000.00 for each count of rape proper. In addition, exemplary damages in the amount of ₱30,000.00 should be awarded in view of the proven circumstance of minority.

In Criminal Case No. Q-00-96392, rape by sexual assault in Article 266-A(2) of the RPC is punishable under Article 266-B by *prision mayor*, the duration of which is from six (6) years and one (1) day to twelve (12) years. The latter article also provides that if the rape is committed with any of the 10 aggravating/qualifying circumstances therein enumerated, the penalty shall be *reclusion temporal* which has a range of twelve (12) years and one (1) day to twenty (20) years.

As ruled by the Court in previous cases, the 10 attendant circumstances partake the nature of special qualifying circumstances. Under the first circumstance,[42] the minority of the victim and the relationship of the offender to the victim must both be alleged in the Information and duly proved clearly and indubitably as the crime itself. They must be lumped together and their concurrence constitutes only one special qualifying circumstance. However, in this particular case, while the special qualifying circumstance of minority was alleged and proved, the circumstance of relationship of "AAA" was not clearly established. Accordingly, appellant should be meted the penalty of *prision mayor*. Nonetheless, in *People v. Bayya*,[43] *People v. Esperanza*,[44] *People v. Hermocilla*,[45] and the recent case of *People v. Soria*,[46] the Court held that when one of the qualifying

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[42] Art. 266-B. x x x

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.

x x x x x x x x x

[43] 384 Phil. 519, 528 (2000).

[44] 453 Phil. 54, 77 (2003).

[45] 554 Phil. 189, 197 (2007).

[46] G.R. No. 179031, November 14, 2012, 658 SCRA 483, 507.

circumstances of relationship and minority is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. Conformably with such ruling, "AAA's" minority may be appreciated as an aggravating circumstance. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be within the full range of the penalty that is one degree lower than *prision mayor,* that is *prision correccional,* the range of which shall be from six (6) months and one (1) day to six (6) years. The maximum of the indeterminate penalty however shall be within the maximum period of *prision mayor* in view of the proven aggravating circumstance of minority. Thus, an indeterminate penalty of six (6) years of *prision correccional,* as minimum, to twelve (12) years of *prision mayor,* as maximum, is imposed upon appellant.

"AAA" is likewise entitled to ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages for rape through sexual assault. Exemplary damages in the amount of ₱30,000.00 is also awarded pursuant to prevailing jurisprudence.

In Criminal Case No. Q-00-96402, appellant is found guilty of Acts of Lasciviousness in relation to Section 5(b), Article III of RA 7610. The imposable penalty is *reclusion temporal* in its medium period since the victim was under 12 years of age at the time the crime was committed. Since the minority of the victim is considered an aggravating circumstance,[47] the penalty shall be applied in its maximum period that ranges from sixteen (16) years, five (5) months and ten (10) days to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *reclusion temporal* in its minimum period with a range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, the proper indeterminate penalty is fourteen (14) years, eight (8) months of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. "AAA' is entitled to ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages.

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[47] *Id*.

WHEREFORE, premises considered, the July 30, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03163 is **AFFIRMED with the following MODIFICATIONS**:

1. In Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-00-96401, appellant is hereby found **GUILTY** beyond reasonable doubt of the crime of Simple Rape under Article 266-A of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion perpetua* and **ORDERED** to pay "AAA" the reduced amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and an additional amount of ₱30,000.00 as exemplary damages for each count.

2. In Criminal Case No. Q-00-96392, appellant is found **GUILTY** of Rape by Sexual Assault under Article 266-A(2) and is hereby sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum. He is likewise **ORDERED** to pay "AAA" the amount of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages.

3. In Criminal Case No. Q-00-96402, appellant is found **GUILTY** of Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 and is meted to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is **ORDERED** to pay "AAA" the amounts of ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages.

SO ORDERED.

Brion[*] *(Acting Chairperson), Abad,*[**] *Perez,* and *Leonen,*[***] *JJ.,* concur.

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[*] Per Special Order No. 1460 dated May 29, 2013.

[**] Per Raffle dated April 10, 2013.

[***] Per Special Order No. 1461 dated May 29, 2013.

FIRST DIVISION

[G.R. No. 189836. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO BUSTAMANTE *y* ALIGANGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; IN A PROSECUTION FOR RAPE, THE ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM.— It is settled in jurisprudence 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. Jurisprudence is likewise instructive that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. In the case at bar, both the trial court and the Court of Appeals found AAA to be a credible witness and her testimony worthy of full faith and credit. After a careful review of the records of this case, we find no reason to deviate from the findings of the lower courts.

2. ID.; ID.; ID.; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Since the incident at issue happened prior to the enactment of Republic Act No. 8353, the trial court correctly applied Article 335 of the Revised Penal Code x x x according to the aforementioned provision, the elements of rape are (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force and intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age. x x x The element of carnal knowledge is present in the [victim's] narration. Furthermore, despite the absence of any evident force and intimidation, the same is still appreciated in the case at bar because it is doctrinally settled that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation since, in rape committed by a close kin, such as the victim's

father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.

3. ID.; ID.; ID.; DENIAL AS A DEFENSE; DENIAL CANNOT PREVAIL OVER POSITIVE, CANDID AND CATEGORICAL TESTIMONY OF THE COMPLAINANT; CASE AT BAR.— [I]t is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law because denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence. Likewise, the testimonies of the witnesses presented by appellant failed to buttress his defense of denial as they merely related to tangential matters which do not seriously affect the issue of AAA's credibility. With regard to the allegation that the accusation of rape was motivated by ill will and revenge, this Court is not surprised at this rather common excuse being raised by offenders in rape cases. We have consistently held that such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial. Jurisprudence tells us that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

4. ID.; ID.; ID.; QUALIFIED BY MINORITY AND RELATIONSHIP; IMPOSABLE PENALTY.— Under the old rape law which is applicable in this case, the death penalty shall be imposed if the crime of rape is committed under certain enumerated circumstances which would designate the crime as qualified rape. One such particular circumstance is when the victim is under eighteen (18) years of age and 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. The minority of the victim and her relationship to the accused were duly proven by her birth certificate. However, due to the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the trial court correctly imposed upon appellant the penalty of *reclusion perpetua*. In

view of the foregoing, we therefore affirm the conviction of appellant for qualified rape for which he is to suffer the penalty of *reclusion perpetua* without eligibility for parole in consonance with Article 335 of the Revised Penal Code and Republic Act No. 9346.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For our review is this appeal from the Decision[1] dated July 31, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03102, entitled *People of the Philippines v. Romeo Bustamante y Aliganga*, which affirmed the Judgment[2] dated November 28, 2007 of the Regional Trial Court (RTC) of Tuguegarao City, Branch 3 in Criminal Case No. 7406. The trial court found appellant Romeo Bustamante *y* Aliganga guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, considering that the offense was committed before the effectivity on October 22, 1997 of Republic Act No. 8353 (the Anti-Rape Law of 1997) that reclassified and defined rape as a crime against persons under Articles 266-A to 266-D of the same Code.

The pertinent portion of the Information[3] charging appellant with the crime of rape reads:

That on or about February 17, 1997, and sometime prior thereto, in the Municipality of Alcala, Province of Cagayan, and within the

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Portia Aliño-Hormachuelos and Arcangelita R. Lontok, concurring.

[2] CA *rollo*, pp. 59-67.

[3] Records, p. 10.

jurisdiction of this Honorable Court, the said accused Romeo Bustamante *y* Aliganga, father of the complainant, [AAA],[4] with lewd design and by means of threat and intimidation did then and there wilfully, unlawfully and feloniously have sexual intercourse with his own daughter, the herein offended party, [AAA] for several times, starting from the time that the offended party was only eleven (11) years of age, against her will.

Upon arraignment, appellant pleaded not guilty to the charge against him.[5]

During pre-trial, appellant made an admission with regard to the identity of the victim in this case.[6] Trial on the merits thereafter commenced.

The facts of this case, as summed by the trial court and adopted by the Court of Appeals, are as follows:

[AAA] testified that she lived with his father, the [appellant] in this case, mother and younger siblings, 3 brothers and a sister, in x x x, Alcala, Cagayan. At about lunch time or thereafter on February 17, 1997, she was alone in the second floor in their house when the [appellant] arrived. Her younger brother Jayjun was playing outside while her mother went to clean their ginger garden. The [appellant] laid her down on the floor and removed her shorts and panty. He then removed his pants, went on top of her and inserted his penis into her vagina. [Appellant] removed his penis after he ejaculated and told her not to report what had happened. [Appellant] forced her and she was not able to resist because she was still young during that time. She reported the incident to her mother and the police.

On re-direct examination, [AAA] testified that she filed the case against the [appellant] so that the latter would no longer box and

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[4] The Court withholds the real name of the victims-survivors and uses fictitious initials instead to represent them. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (See *People v. Cabalquinto*, 533 Phil. 703 [2006].)

[5] Records, p. 59.

[6] *Id.* at 72-74.

maltreat her and because he raped her. On re-cross, it was revealed that [appellant] was neither armed during the incident nor covered her mouth when he laid her down. She did not shout because she was afraid. [Appellant] threatened her before he raped her.

xxx xxx xxx

[Appellant] testified that in the early morning on February 7, 1997, he went to Tuguegarao with his daughter, [AAA]. He went to Mrs. Lolit Casauay, his employer, and Sgt. Poli to tell them his problem regarding [AAA] and her cousin having sex. Sgt. Poli advised [appellant] to go to Alcala Police to have his problem entered in the blotter and to go back to him after. They stayed in Tuguegarao the whole day and went back to x x x, Alcala, Cagayan about 7:00 o'clock in the evening. When they were approaching their house, Purita Torrado called for [AAA] and told [appellant] that he was a traitor. Purita Torrado and brothers, Rogelio and Amador Torrado, then entered his house, mauled him and tied his hands. Thereafter, policemen arrived and brought him to the Municipal Hall of Alcala, Cagayan without informing him why. His daughter [AAA] charged him of the heinous crime of rape because his wife and brothers-in-law harbored ill feelings against him, blaming him to have spread the rumor that Rogelio Torrado was the father of the child of his own sister Purita Torrado. Before February 17, 1997, his daughter [AAA] admitted to him that she had sexual relations with her cousin Randy Torrado for which reason he went to Tuguegarao to help [AAA] file a complaint against said Randy Torrado. It was after they came from Tuguegarao that his daughter [AAA] charged him with rape.

On cross-examination, [appellant] testified that he did not report any barangay official that Randy Torrado sexually molested his daughter x x x , but went to a person Ernie Fiesta who was not a barangay official. He admittedly told his problem to Sgt. Poli who asked [AAA] questions but the same was not entered in the blotter of the Cagayan Police Provincial Office.

On re-direct, [appellant] further testified that it was his daughter [AAA] who told him that Randy Torrado molested her so he brought her to Tuguegarao the following day, February 17, 1997. He was not able to enter it in the blotter of Alcala police as directed by Sgt. Poli because when they arrived in Maraburab, Alcala from Tuguegarao, his brothers-in-law mauled him. He did not file any charges against his brothers-in-law.

Police Inspector Carlos T. Poli testified as follows: He was then the Assistant Chief Investigator at the Cagayan Police Provincial Headquarters on February 17, 1997. [Appellant], with his daughter [AAA] went to him. [Appellant] told him that his daughter was molested by a nephew of his wife but he could not recall the name. He advised [appellant] to have the incident reported to, and entered in the blotter of, the Alcala Police Station where the incident took place and to return for investigation. He talked to [AAA] who admitted that there was truth to the report that she was molested and that there was a second occasion. He did not enter the report in the blotter because they did not have a blotter so he advised [appellant] to have the case entered in the blotter of Alcala Police. The report was not recorded because [appellant] only sought his advice and that he would first talk to his wife as the suspect was her relative. Admittedly, he invited the wife of [appellant] to his office upon the request of her in-laws who pitied and considered the [appellant] as their son. He asked the wife if she could help but the latter could not do it because her brother and sister were interested to pursue the case.

The last witness for the defense was Lolita Casauay who testified, thus: she knew [appellant] who was the mechanic of her brother. On February 13, 1997, he met the [appellant] who asked her advice regarding his daughter who was sexually molested. She told the [appellant] to go to the police to enter the incident in the blotter. The [appellant] went to Sgt. Poli for this purpose. On February 17, 1997, the [appellant] and [AAA] went to her house in Caggay, Tuguegarao. [AAA] voluntarily related to her that she was molested by her cousin Randy Torrado. In March 1997, she learned of the charge of rape against the [appellant]. When she saw the [appellant] in jail, she went to Maraburab, Alcala, Cagayan, and called for the wife and daughter of the [appellant]. She asked the wife why the [appellant] was incarcerated and the former felt guilty of what happened to the latter.[7]

At the conclusion of trial, the trial court convicted appellant of the crime of rape. The dispositive portion of the assailed November 28, 2007 Judgment of the trial court reads as follows:

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[7] *Rollo*, pp. 4-6.

WHEREFORE, the Court finds that the evidence on record has fully established with moral certainty the guilt of the accused beyond reasonable doubt of the felony of RAPE, defined and penalized under the provisions of Article 335, of the Revised Penal Code, as amended, and hereby sentences him:

1.) To suffer imprisonment of *reclusion perpetua*;

2.) To indemnify the private complainant [AAA] in the amount of :

a. ₱75,000.00 by way of civil indemnity;

b. ₱50,000.00 as moral damages; and,

c. ₱30,000.00 as exemplary damages.

3.) To pay the costs.[8]

Appellant elevated his case to the Court of Appeals in the hope of having a reversal of judgment; however, his appeal was denied in the assailed Decision dated July 31, 2009, the dispositive portion of which states:

WHEREFORE, premises considered, instant appeal is **DENIED**. Accordingly, the assailed Judgment, *supra*, of the court *a quo* is hereby **AFFIRMED in toto**.[9]

Hence, the appellant brought the present appeal before this Court wherein he merely adopted the Appellant's Brief he submitted to the Court of Appeals in lieu of submitting a Supplemental Brief as permitted by this Court. Appellant assigned two errors for our consideration, to wit:

I

THE COURT *A QUO* ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE

[8] CA *rollo*, pp. 66-67.

[9] *Rollo*, p. 13.

PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

In his appeal, appellant maintains that the accusation against him is baseless and untrue. He claims that, as evidenced by the victim's own testimony, AAA filed a false complaint of rape against him mainly due to her ill feelings towards him brought about by his purported repeated physical maltreatment of the victim.

The appeal is without merit.

It appears that the crux of appellant's appeal centers on the credibility of AAA's testimony. Accordingly, appellant implores this Court to review the same and render a judgment reversing his conviction for the crime of rape.

It is settled in jurisprudence 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.[11] Jurisprudence is likewise instructive that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[12]

In the case at bar, both the trial court and the Court of Appeals found AAA to be a credible witness and her testimony worthy of full faith and credit. After a careful review of the records of this case, we find no reason to deviate from the findings of the lower courts.

Since the incident at issue happened prior to the enactment of Republic Act No. 8353, the trial court correctly applied Article 335 of the Revised Penal Code which provides:

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

[11] *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 251.

[12] *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 618-619.

Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

Therefore, according to the aforementioned provision, the elements of rape are (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force and intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

We agree with the appellate court that the following portion of AAA's testimony indicated the presence of the foregoing elements of the crime of rape in this case, to wit:

[PROS. SAGUCIO]

Q At about lunch time or thereafter on February 17, 1997, do you remember where were you?
A I was in our house, sir.

Q Where in particular in your house because according to you as your house has a second floor?
A At the second floor, sir.

Q At that time and day, do you have any companions in your house?
A None, sir.

Q When you were alone in your house that time and day, do you recall if any member of your family arrived?
A Yes sir, there was.

Q Who arrived?
A My father, sir.

Q Now, if your father who arrived on that time and day, can you recognize him?
A Yes, sir.

Q Will you please go down from the witness stand and point to him?
A That one sir. [The witness is pointing to a person inside the courtroom who wears T-shirt and a coldoroy pants who gave his name as Romeo Bustamante when asked by the Court.]

Q When the accused arrived, where did he proceed?
A He went upstairs, sir.

Q That means that upstairs that you were?
A Yes, sir.

Q When the accused went upstairs where you were, what happened, if any?
A He laid me down, sir.

Q When the accused laid you down in a bed or to the floor?
A On the floor, sir.

Q In the upper part of your house on the second floor, are there rooms there?
A None, sir.

Q Aside from you and your father in that precise time that he laid you down to the floor, were there other persons inside the house?
A None sir, we were only two.

Q When the accused laid you down to the floor, what did he do next, if any?
A He removed my short and my panty, sir.

Q At the time that the accused removed your short and panty, were you still in that lying position?
A Yes, sir.

xxx xxx xxx

Q After the accused removed your short and your panty, what did he do next if any?
A He removed also his pants, sir.

Q And after the accused removed his pants, what did he do next, if any?
A He went on top of me, sir.

Q After he went on top of you, what happened next, if any?
A He inserted his penis into my vagina, sir.

Q How long did the penis of the accused stayed inside your vagina?
A When he ejaculates that's the time he removed his penis, sir.

Q Did you not resist?
A He forced me so I was not able to resist, sir.

Q Why were you not able to resist, can you explain?
A Because he was strong and I was still young during that time, sir.

Q You said after the accused ejaculated he removed his penis, what did he do next?
A He told me not to report what had happened to me, sir.[13]

Clearly, the element of carnal knowledge is present in the foregoing narration. Furthermore, despite the absence of any evident force and intimidation, the same is still appreciated in the case at bar because it is doctrinally settled that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation since, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.[14]

In his defense, appellant interposes denial while also ascribing ill motive on the part of the victim, his own biological daughter, for

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[13] TSN, January 11, 2001, pp. 3-7.

[14] *People v. Viojela, supra* note 11 at 256.

accusing him of rape. However, it is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law because denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.[15] Likewise, the testimonies of the witnesses presented by appellant failed to buttress his defense of denial as they merely related to tangential matters which do not seriously affect the issue of AAA's credibility.

With regard to the allegation that the accusation of rape was motivated by ill will and revenge, this Court is not surprised at this rather common excuse being raised by offenders in rape cases. We have consistently held that such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.[16] Jurisprudence tells us that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.[17]

Under the old rape law which is applicable in this case, the death penalty shall be imposed if the crime of rape is committed under certain enumerated circumstances which would designate the crime as qualified rape. One such particular circumstance is when the victim is under eighteen (18) years of age and 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. The minority of the victim and her relationship to the accused were duly proven by her birth certificate. However, due to the effectivity of Republic Act No. 9346, otherwise

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[15] *People v. Mangune*, G.R. No. 186463, November 14, 2012, 685 SCRA 578, 590.

[16] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 479-480.

[17] *People v. Ending*, G.R. No. 183827, November 12, 2012, 685 SCRA 180, 189.

known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the trial court correctly imposed upon appellant the penalty of *reclusion perpetua*.

In view of the foregoing, we therefore affirm the conviction of appellant for qualified rape for which he is to suffer the penalty of *reclusion perpetua* without eligibility for parole in consonance with Article 335 of the Revised Penal Code and Republic Act No. 9346. The award of civil indemnity and exemplary damages is likewise upheld. However, in line with jurisprudence, the award of moral damages is increased from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00).[18]

WHEREFORE, premises considered, the Decision dated July 31, 2009 of the Court of Appeals in CA-G.R. CR.-HC No. 03102 convicting appellant Romeo A. Bustamante for qualified rape for which he is to suffer the penalty of *reclusion perpertua* without eligibility for parole is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The moral damages to be paid by appellant Romeo A. Bustamante is increased from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00); and

(2) Appellant Romeo A. Bustamante is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

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[18] *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 246.

SECOND DIVISION

[G.R. No. 190818. June 5, 2013]

METRO MANILA SHOPPING MECCA CORP., SHOEMART, INC., SM PRIME HOLDINGS, INC., STAR APPLIANCES CENTER, SUPER VALUE, INC., ACE HARDWARE PHILIPPINES, INC., HEALTH AND BEAUTY, INC., JOLLIMART PHILS. CORP., and SURPLUS MARKETING CORPORATION, *petitioners, vs.* **MS. LIBERTY M. TOLEDO, in her official capacity as the City Treasurer of Manila, and THE CITY OF MANILA,** *respondents.*

SYLLABUS

1. TAXATION; REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA); THE REGLEMENTARY PERIOD FOR FILING THE PETITION FOR REVIEW MAY BE EXTENDED; SUSTAINED.— Although the [Revised Rules of the CTA (RRCTA,] does not explicitly sanction extensions to file a petition for review with the CTA, Section 1, Rule 7 thereof reads that in the absence of any express provision in the RRCTA, Rules 42, 43, 44 and 46 of the Rules of Court may be applied in a suppletory manner. In particular, Section 9 of Republic Act No. 9282 makes reference to the procedure under Rule 42 of the Rules of Court. In this light, Section 1 of Rule 42 states that the period for filing a petition for review may be extended upon motion of the concerned party. Thus, in *City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, the Court held that the original period for filing the petition for review may be extended for a period of fifteen (15) days, which for the most compelling reasons, may be extended for another period not exceeding fifteen (15) days. In other words, the reglementary period provided under Section 3, Rule 8 of the RRCTA is extendible and as such, CTA Division's grant of respondents' motion for extension falls squarely within the law.

2. ID.; ID.; FORMAL DEFECTS MAY BE RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE; APPLICATION IN CASE AT BAR.— Neither did respondents' failure to comply

with Section 4, Rule 5 and Section 2, Rule 6 of the RRCTA militate against giving due course to their Petition for Review. Respondents' submission of only one copy of the said petition and their failure to attach therewith a certified true copy of the RTC's decision constitute mere formal defects which may be relaxed in the interest of substantial justice. It is well-settled that dismissal of appeals based purely on technical grounds is frowned upon as every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. In this regard, the CTA Division did not overstep its boundaries when it admitted respondents' Petition for Review despite the aforementioned defects "in the broader interest of justice."

3. ID.; LOCAL GOVERNMENT CODE (LGC); REFUND OR CREDIT OF LOCAL TAXES; PROCEDURAL REQUIREMENTS; NOT SATISFIED IN CASE AT BAR.— A perusal of **Section 196 of the LGC** reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: ***first***, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and ***second***, the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit. Records disclose that while the case or proceeding for refund was filed by petitioners within two (2) years from the time of payment, they, however, failed to prove that they have filed a written claim for refund with the local treasurer considering that such fact – although subject of their Request for Admission which respondents did not reply to – had already been controverted by the latter in their Motion to Dismiss and Answer. x x x Based on the foregoing, once a party serves a request for admission regarding the truth of any material and relevant matter of fact, the party to whom such request is served is given a period of fifteen (15) days within which to file a sworn statement answering the same. Should the latter fail to file and serve such answer, each of the matters of which admission is requested shall be deemed admitted. **The exception to this rule is when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading**. x x x Records show that petitioners filed their Request for Admission with the RTC and also served the

same on respondents, requesting that the fact that they filed a written claim for refund with the City Treasurer of Manila be admitted. Respondents, however, did not – and in fact, need not – reply to the same considering that **they have already stated in their Motion to Dismiss and Answer that petitioners failed to file any written claim for tax refund or credit**. In this regard, respondents are ***not*** deemed to have admitted the truth and veracity of petitioners' requested fact. Indeed, it is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority. Consequently, as petitioners have failed to prove that they have complied with the procedural requisites stated under Section 196 of the LGC, their claim for local tax refund/ credit must be denied.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioners.
Office of the City Legal Officer (Manila) for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the September 8, 2009 Decision[2] and January 4, 2010 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. No. 480 which affirmed the October 31, 2008 Decision[4] of

[1] *Rollo*, pp. 13-110.

[2] *Id.* at 113-134. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Erlinda P. Uy, and Olga Palanca-Enriquez, concurring.

[3] *Id.* at 137-143.

[4] *Id.* at 214-230. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring.

the CTA Second Division (CTA Division), denying petitioners Metro Manila Shopping Mecca Corp., Shoemart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Super Value, Inc., Ace Hardware Philippines, Inc., Health and Beauty, Inc., Jollimart Phils. Corp., and Surplus Marketing Corporation's claim for refund of local business taxes.

The Facts

Sometime in October 2001, respondent Liberty M. Toledo, as Treasurer of respondent City of Manila (City), assessed petitioners for their fourth quarter local business taxes pursuant to Section 21 of City Ordinance No. 7794, as amended by City Ordinance Nos. 7807, 7988, and 8011, otherwise known as the "Revenue Code of the City of Manila" (Manila Revenue Code).[5] Consequently, on October 20, 2001, petitioners paid the total assessed amount of ₱5,104,281.26 under protest.[6]

In a letter[7] dated October 19, 2001, petitioners informed the Office of the City Treasurer of Manila of the nature of the foregoing payment, assailing as well the unconstitutionality of Section 21 of the Manila Revenue Code. Petitioners' protest was however denied[8] on October 25, 2001.

On October 20, 2003, petitioners filed a case with the Regional Trial Court of Manila (RTC) against respondents, reiterating their claim that Section 21 of the Manila Revenue Code is null and void. Accordingly, they sought the refund of the amount of local business taxes they previously paid to the City, plus interest. On November 14, 2003, petitioners filed an Amended Complaint which in essence, reprised their previous claims.[9]

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[5] *Id.* at 114-115.

[6] *Id.* at 115.

[7] *Id.* at 224-225.

[8] *Id.* at 225-226.

[9] *Id.* at 115.

For their part, respondents filed a Motion to Dismiss[10] dated November 6, 2003 (Motion to Dismiss). In an Order[11] dated December 10, 2003, the RTC did not address the arguments raised in the aforesaid Motion to Dismiss but merely admitted petitioners' amended complaint. Consequently, respondents filed their Answer[12] on December 16, 2003 (Answer). Notably, in their Motion to Dismiss and Answer, respondents averred that petitioners failed to file any written claim for tax refund or credit with the Office of the City Treasurer of Manila.[13]

On July 8, 2004, petitioners sent respondents a Request for Admissions & Interrogatories[14] dated July 7, 2004 (Request for Admission), which *inter alia* requested the admission of the fact that the former filed a written protest with the latter. Respondents did not respond to the said Request for Admission.

During pre-trial, the parties stipulated on the following issues: (1) whether petitioners were invalidly assessed local business taxes due to the unconstitutionality of Section 21 of the Manila Revenue Code; and (2) whether petitioners are entitled to a tax refund/credit in the amount of ₱5,104,281.26.

The Ruling of the RTC

In its Decision[15] dated December 7, 2006, the RTC held that respondents' assessment of local business tax under Section 21 of the Manila Revenue Code is null and void thereby, warranting the issuance of a tax refund, or tax credit in the alternative, in the amount of ₱5,104,281.26 in favor of petitioners.[16]

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[10] Records, Vol. 1, pp. 186-195.

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

[12] *Id.* at 234-243.

[13] *Id.* at 189, 238.

[14] *Rollo*, pp. 152-158.

[15] *Id.* at 144-149. Penned by Presiding Judge Augusto T. Gutierrez.

[16] *Id.* at 149.

In arriving at the same, it noted the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila* (*Coca-Cola Bottlers*)[17] where the Court declared the nullity of City Ordinance Nos. 7988 and 8011. Incidentally, these are the amendatory ordinances which made petitioners liable for local business taxes under the present Manila Revenue Code. Thus, the RTC opined that pursuant to the pronouncement in *Coca-Cola Bottlers*, it had no alternative but to declare the assessments made in the present case null and void as well.[18]

Respondents filed a Motion for Reconsideration[19] dated January 16, 2007 which the RTC, however, denied in its Order[20] dated April 17, 2007. Respondents received a copy of the said order on April 27, 2007. Thereafter, they filed two (2) Motions for Extension to File Petition for Review with the CTA, effectively requesting for a period of thirty (30) days from May 27, 2007, or until June 26, 2007, to file their petition for review.[21]

On June 26, 2007, respondents filed their Petition for Review[22] dated June 22, 2007 via registered mail. On June 28, 2007, respondents likewise filed a Manifestation[23] dated June 27, 2007 via personal filing, alleging that they have previously filed their Petition for Review via registered mail on June 26, 2007 and that they are attaching another copy of the same in the Manifestation. In its Resolution dated July 6, 2007, the CTA Division granted respondents' Motions for Extension, noted their Manifestation, and admitted their Petition for Review.[24]

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[17] 526 Phil. 249, 260-261 (2006).

[18] *Rollo*, p. 149.

[19] *Id.* at 159-165.

[20] *Id.* at 150-151.

[21] *Id.* at 117.

[22] *Id.* at 171-189.

[23] *Id.* at 190-192.

[24] *Id.* at 117.

The Ruling of the CTA Division

In its Decision dated October 31, 2008, the CTA Division reversed and set aside the RTC's ruling and in effect, denied petitioners' request for tax refund/credit.[25]

It held that petitioners failed to contest the denial of their protest before a court of competent jurisdiction within the period provided for under Section 195[26] of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC), and thus, the assessment became conclusive and unappealable. In this regard, petitioners could no longer contest the validity of such assessment when they filed their Complaint and Amended Complaint on October 20, 2003 and November 14, 2003, respectively.[27]

It likewise ruled that petitioners failed to comply with Section 196[28] of the LGC, considering that their letter dated October 19, 2001 to respondents was a mere protest letter and as such, could not be treated as a written claim for refund.[29]

On November 19, 2008, petitioners moved for reconsideration, averring that respondents failed to file their Petition for Review

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[25] *Id.* at 229.

[26] Section 195 of the LGC provides:

SEC. 195. *Protest of Assessment*. – x x x The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[27] *Rollo*, p. 226.

[28] Section 196 of the LGC provides:

SEC. 196. *Claim for Refund of Tax Credit*. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[29] *Rollo*, pp. 227-228.

within the reglementary period thus, making the RTC decision already final and executory. On March 16, 2009, the CTA Division issued a Resolution[30] denying petitioners' motion. Aggrieved, petitioners elevated the matter to the CTA *En Banc*.

The Ruling of the CTA *En Banc*

In its Decision dated September 8, 2009, the CTA *En Banc* upheld the CTA Division's ruling and found that: (1) respondents were able to file their Petition for Review within the reglementary period; (2) the assessment of local business taxes against petitioners had become conclusive and unappealable; and (3) petitioners' claim for refund should be denied for their failure to comply with the requisites provided for by law.[31]

On October 1, 2009, petitioners moved for reconsideration but the CTA *En Banc* denied the same in its Resolution[32] dated January 4, 2010.

Hence, this petition.

The Issues Before the Court

The following issues have been raised for the Court's resolution: (1) whether the CTA Division correctly gave due course to respondents' Petition for Review; and (2) whether petitioners are entitled to a tax refund/credit.

The Court's Ruling

The petition is bereft of merit.

A. Respondents' Petition for Review with the CTA Division

Petitioners argue that the CTA Division erred in extending the reglementary period within which respondents may file their

[30] *Id.* at 232-238.

[31] *Id.* at 122-134.

[32] *Id.* at 137-143.

Petition for Review, considering that Section 3, Rule 8[33] of the Revised Rules of the CTA (RRCTA) is silent on such matter. Further, even if it is assumed that an extension is allowed, the CTA Division should not have entertained respondents' Petition for Review for their failure to comply with the filing requisites set forth in Section 4, Rule 5[34] and Section 2, Rule 6[35] of the RRCTA.

Petitioners' arguments fail to persuade.

Although the RRCTA does not explicitly sanction extensions to file a petition for review with the CTA, Section 1, Rule 7[36] thereof reads that in the absence of any express provision in the RRCTA, Rules 42, 43, 44 and 46 of the Rules of Court may be applied in a suppletory manner. In particular, Section 9[37] of Republic

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[33] Section 3, Rule 8 of the RRCTA provides:

SEC. 3. *Who may appeal; period to file petition*. – (a) A party adversely affected by a decision, ruling or the inaction of x x x a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling x x x.

[34] Section 4, Rule 5 of the RRCTA provides:

SEC. 4. *Number of copies*. – The parties shall file eleven signed copies of every paper for cases before the Court *en banc* and six signed copies for cases before a Division of the Court in addition to the signed original copy, except as otherwise directed by the Court. x x x.

[35] Section 2, Rule 6 of the RRCTA provides:

SEC. 2. *Petition for review; contents*. – x x x A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.

[36] Section 1, Rule 7 of the RRCTA provides:

SEC. 1. Applicability of the Rules of the Court of Appeals, exception. – The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

[37] Section 9 of Republic Act No. 9282 provides:

SEC. 9. Sec. 11 of [Republic Act No. 1125] is hereby amended to read as follows:

Act No. 9282 makes reference to the procedure under Rule 42 of the Rules of Court. In this light, Section 1 of Rule 42[38] states that the period for filing a petition for review may be extended upon motion of the concerned party. Thus, in *City of Manila v. Coca-Cola Bottlers Philippines, Inc.*,[39] the Court held that the original period for filing the petition for review may be extended for a period of fifteen (15) days, which for the most compelling reasons, may be extended for another period not exceeding fifteen (15) days.[40] In other words, the reglementary period provided under Section 3, Rule 8 of the RRCTA is extendible and as such, CTA Division's grant of respondents' motion for extension falls squarely within the law.

Neither did respondents' failure to comply with Section 4, Rule 5 and Section 2, Rule 6 of the RRCTA militate against giving due course to their Petition for Review. Respondents' submission of only one copy of the said petition and their failure to attach therewith a certified true copy of the RTC's decision constitute mere formal defects which may be relaxed in the interest of substantial justice. It is well-settled that dismissal of

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SEC. 11. *Who may Appeal; Mode of Appeal; Effect of Appeal*. – Any party adversely affected by a decision, ruling or inaction of the x x x Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided x x x.

[38] Section 1, Rule 42 of the Rules of Court provides:

SEC. 1. *How appeal taken; time for filing.* – x x x 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.

[39] G.R. No. 181845, August 4, 2009, 595 SCRA 299.

[40] *Id.* at 315.

appeals based purely on technical grounds is frowned upon as every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities.[41] In this regard, the CTA Division did not overstep its boundaries when it admitted respondents' Petition for Review despite the aforementioned defects "in the broader interest of justice."

Having resolved the foregoing procedural matter, the Court proceeds to the main issue in this case.

B. Petitioners' claim for tax refund/credit

A perusal of **Section 196**[42] **of the LGC** reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: ***first***, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and ***second***, the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Records disclose that while the case or proceeding for refund was filed by petitioners within two (2) years from the time of payment,[43] they, however, failed to prove that they have filed a written claim for refund with the local treasurer considering that such fact – although subject of their Request for Admission which

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[41] See *Go v. Chaves*, G.R. No. 182341, April 23, 2010, 619 SCRA 333, 345; citing *Aguam v. CA*, 388 Phil. 587, 594 (2000).

[42] Section 196 of the LGC provides:

SEC. 196. *Claim for Refund of Tax Credit*. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[43] Petitioners paid the local business taxes to the City on October 20, 2001 and thereafter, filed their judicial claim for refund on October 20, 2003.

respondents did not reply to – had already been controverted by the latter in their Motion to Dismiss and Answer.

To elucidate, the scope of a request for admission filed pursuant to Rule 26 of the Rules of Court and a party's failure to comply with the same are respectively detailed in Sections 1 and 2 thereof, to wit:

SEC. 1. *Request for admission*. – At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or **of the truth of any material and relevant matter of fact set forth in the request.** Copies of the documents shall be delivered with the request unless copies have already been furnished.

SEC. 2. *Implied admission.* – **Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.**

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (Emphasis and underscoring supplied)

Based on the foregoing, once a party serves a request for admission regarding the truth of any material and relevant matter of fact, the party to whom such request is served is given a period of fifteen (15) days within which to file a sworn statement answering the same. Should the latter fail to file and serve such answer, each of the matters of which admission is requested shall be deemed admitted.[44]

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[44] See *Marcelo v. Sandiganbayan*, G.R. No. 156605, August 28, 2007, 531 SCRA 385, 399; *Manzano v. Despabiladeras*, G.R. No. 148786, December 16, 2004, 447 SCRA 123, 134; *Motor Service Co., Inc. v. Yellow Taxicab Co., Inc.*, 96 Phil. 688, 691-692 (1955).

The exception to this rule is when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading. Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn, the requesting party cannot reasonably expect a response to the request and thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26.[45] The rationale behind this exception had been discussed in the case of *CIR v. Manila Mining Corporation*,[46] citing *Concrete Aggregates Corporation v. CA*,[47] where the Court held as follows:

As *Concrete Aggregates Corporation v. Court of Appeals* holds, **admissions by an adverse party as a mode of discovery contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in a pleading, and does not refer to a mere reiteration of what has already been alleged in the pleadings; otherwise, it constitutes an utter redundancy and will be a useless, pointless process which petitioner should not be subjected to.**

Petitioner controverted in its Answers the matters set forth in respondent's Petitions for Review before the CTA – **the requests for admission being mere reproductions of the matters already stated in the petitions. Thus, petitioner should not be required to make a second denial of those matters it already denied in its Answers**. (Emphasis and underscoring supplied; citations omitted)

Likewise, in the case of *Limos v. Odones*,[48] the Court explained:

A request for admission is **not intended to merely reproduce or reiterate the allegations of the requesting party's pleading** but should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense.

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[45] *Limos v. Odones*, G.R. No. 186979, August 11, 2010, 628 SCRA 288, 298.

[46] G.R. No. 153204, August 31, 2005, 468 SCRA 571, 595.

[47] 334 Phil. 77 (1997).

[48] *Limos v. Odones*, *supra* note 45, at 298.

Unless it serves that purpose, it is pointless, useless and a mere redundancy. (Emphasis and underscoring supplied)

Records show that petitioners filed their Request for Admission with the RTC and also served the same on respondents, requesting that the fact that they filed a written claim for refund with the City Treasurer of Manila be admitted.[49] Respondents, however, did not – and in fact, need not – reply to the same considering that **they have already stated in their Motion to Dismiss and Answer that petitioners failed to file any written claim for tax refund or credit**.[50] In this regard, respondents are ***not*** deemed to have admitted the truth and veracity of petitioners' requested fact.

Indeed, it is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority.[51] Consequently, as petitioners have failed to prove that they have complied with the procedural requisites stated under Section 196 of the LGC, their claim for local tax refund/credit must be denied.

WHEREFORE, the petition is **DENIED**. The September 8, 2009 Decision and January 4, 2010 Resolution of the Court of Tax Appeals *En Banc* in CTA E.B. No. 480 are hereby **AFFIRMED**.

SO ORDERED.

Brion[*] *(Acting Chairperson), del Castillo, Perez,* and *Leonen,*[**] *JJ.,* concur.

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[49] Paragraphs 13 to 14, petitioners' Request for Admissions & Interrogatories dated July 7, 2004; *rollo,* pp. 152-158.

[50] Records, Vol.1, pp. 189 and 238.

[51] See *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011, 641 SCRA 70, 86; *CIR v. Manila Mining Corporation*, *supra* note 44, at 596.

[*] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

FIRST DIVISION

[G.R. No. 190957. June 5, 2013]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, *petitioner, vs.* **APAC MARKETING CORPORATION, represented by CESAR M. ONG, JR.,** *respondent.*

SYLLABUS

CIVIL LAW; DAMAGES; ATTORNEY'S FEES; DUE TO THE SPECIAL NATURE OF THE AWARD OF ATTORNEY'S FEES, A RIGID STANDARD IS IMPOSED ON THE COURTS BEFORE THESE FEES COULD BE GRANTED; SUSTAINED.— Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the parties may stipulate the recovery of attorney's fees. In the absence on such stipulation, this article restrictively enumerates the instances when these fees may be recovered, x x x In *ABS-CBN Broadcasting Corp. v. CA,* this Court had the occasion to expound on the policy behind the grant of attorney's fees as actual or compensatory damages: x x x In *Benedicto v. Villaflores,* we explained the reason behind the need for the courts to arrive upon an actual finding to serve as basis for a grant of attorney's fees, considering the dual concept of these fees as ordinary and extraordinary: x x x We can glean from the above ruling that attorney's fees are not awarded as a matter of course every time a party wins. We do not put a premium on the right to litigate. On occasions that those fees are awarded, the basis for the grant must be clearly expressed in the decision of the court. x x x We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely

state the amount of the grant in the dispositive portion of their decisions. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel and *Glenna Jean R. Ogan & Henry B. Salazar* for petitioner.
Law Firm of Espinas & Associates for respondent.

D E C I S I O N

SERENO, *C.J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules on Civil Procedures, the primordial issue to be resolved is whether the Court of Appeals (CA)[1] correctly affirmed the court *a quo*[2] in holding petitioner liable to respondent for attorney's fees.

The Antecedent Facts

Considering that there are no factual issues involved, as the Court of Appeals (CA) adopted the findings of fact of the Regional Trial Court (RTC) of Quezon City, Branch 96, we hereby adopt the CA's findings, as follows:

The present case involves a simple purchase transaction between defendant-appellant Philippine National Construction Corporation

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[1] CA (Special Fourth Division) Decision dated 09 July 2009 penned by Associate Justice Fernanda Lampas Peralta and concurred in by then former CA (now Supreme Court) Associate Justice Martin S. Villarama, Jr. and Associate Justice Andres B. Reyes, Jr.

[2] The present Petition had its origins in the Regional Trial Court (RTC) of Quezon City, Branch 96, in Civil Case No. Q-99-38492, with APAC Marketing Corporation (herein respondent) as the plaintiff and Philippine National Construction Corporation (PNCC), Rogelio Espiritu and Rolando Macasaet, as respondents. PNCC is the petitioner in this case.

(PNCC), represented by defendants-appellants Rogelio Espiritu and Rolando Macasaet, and plaintiff-appellee APAC, represented by Cesar M. Ong, Jr., involving crushed basalt rock delivered by plaintiff-appellee to defendant-appellant PNCC.

On August 17, 1999, plaintiff-appellee filed with the trial court a complaint against defendants-appellees for collection of sum of money with damages, alleging that (i) in March 1998, defendants-appellants engaged the services of plaintiff-appellee by buying aggregates materials from plaintiff-appellee, for which the latter had delivered and supplied good quality crushed basalt rock; (ii) the parties had initially agreed on the terms of payment, whereby defendants-appellants would issue the check corresponding to the value of the materials to be delivered, or "Check Before Delivery," but prior to the implementation of the said payment agreement, defendants-appellants requested from plaintiff-appellee a 30-day term from the delivery date within which to pay, which plaintiff-appellee accepted; and (iii) after making deliveries pursuant to the purchase orders and despite demands by plaintiff-appellee, defendants-appellants failed and refused to pay and settle their overdue accounts. The complaint prayed for payment of the amount of ₱782,296.80 "plus legal interest at the rate of not less than 6% monthly, to start in April, 1999 until the full obligation is completely settled and paid," among others.

On November 16, 1999, defendants-appellants filed a motion to dismiss, alleging that the complaint was premature considering that defendant-appellant PNCC had been faithfully paying its obligations to plaintiff-appellee, as can be seen from the substantial reduction of its overdue account as of August 1999.

In an Order dated January 17, 2000, the trial court denied the motion to dismiss. Thus, defendants-appellants filed their answer, alleging that the obligation of defendant-appellant PNCC was only with respect to the balance of the principal obligation that had not been fully paid which, based on the latest liquidation report, amounted to only ₱474,095.92.

After the submission of the respective pre-trial briefs of the parties, trial was held. However, only plaintiff-appellee presented its evidence. For their repeated failure to attend the hearings, defendants-appellants were deemed to have waived the presentation of their evidence.

On July 10, 2006, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering defendants jointly and solidarily to pay:

1. ₱782,296.80 as actual damages;

2. ₱50,000.00 as attorney's fees, plus ₱3,000.00 per court appearance;

3. Cost of suit.

SO ORDERED.

Defendants-appellants filed a motion for reconsideration, alleging that during the pendency of the case, the principal obligation was fully paid and hence, the award by the trial court of actual damages in the amount of ₱782,269.80 was without factual and legal bases.

In an Order dated October 6, 2006, the trial court considered defendants-appellants' claim of full payment of the principal obligation, but still it ordered them to pay legal interest of twelve per cent (12%) per annum. Thus:

"WHEREFORE, the decision dated July 10, 2006 is hereby modified, by ordering defendants jointly and solidarily to pay plaintiff as follows, to wit:

1. ₱220,234.083

2. ₱50,000.00 as attorney's fees, plus ₱3,000.00 per court appearance;

3. Cost of Suit.

SO ORDERED."

Defendants-appellants filed the present appeal which is premised on the following assignment of errors:

I. THE REGIONAL TRIAL COURT GRAVELY ERRED IN AWARDING INTEREST AT THE RATE OF 12% PER ANNUM AMOUNTING TO ₱220,234.083 AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFF-APPELLEE.

II. THE REGIONAL TRIAL COURT GRAVELY ERRED IN HOLDING DEFENDANTS ROGELIO ESPIRITU AND ROLANDO MACASAET JOINTLY AND SOLIDARILY LIABLE WITH DEFENDANT PNCC.

THE RULING OF THE COURT OF APPEALS

On 9 July 2009, the Special Fourth Division of the CA promulgated a Decision[3] in CA-G.R. CV No. 88827, affirming with modification the assailed Decision of the court *a quo*. The dispositive portion of the CA Decision reads as follows:

> WHEREFORE, the appealed Order dated October 6, 2006 is affirmed, subject to the modification that defendant-appellant PNCC is ordered to pay legal interest at six per cent (6%) per annum on the principal obligation, computed from January 8, 1999 until its full payment in January 2001. Defendants-appellants Rogelio Espiritu and Rolando Macasaet are absolved from liability. The Order dated October 6, 2006 is affirmed in all other respects.

On 29 July 2009, herein petitioner filed a Motion for Reconsideration, which raised the lone issue of the propriety of the award of attorney's fees in favor of respondent.[4] It should be noted that in said motion, petitioner fully agreed with the CA Decision imposing 6% legal interest per annum on the principal obligation and absolving Rogelio Espiritu and Rolando Macasaet from any liability as members of the board of directors of PNCC.[5] Thus, the main focus of the Motion for Reconsideration was on the CA's affirmation of the court *a quo*'s Decision awarding attorney's fees in favor of respondent. However, the appellate court's Former Special Fourth Division denied petitioner's Motion for Reconsideration in a Resolution dated 18 January 2010.[6]

THE SOLE ISSUE

Aggrieved, petitioner now assails before us the 9 July 2009 Decision of the CA by raising the sole issue of whether the CA gravely erred in awarding attorney's fees to respondent.

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[3] *Supra* note 2.

[4] *Rollo*, p. 70.

[5] *Id*.

[6] *Id*. at 81. Resolution dated 18 January 2010 of the CA's Former Special Fourth Division, penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Andres B. Reyes, Jr. and Mario L. Guarina, III.

THE COURT'S RULING

The Petition is impressed with merit.

Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the parties may stipulate the recovery of attorney's fees. In the absence on such stipulation, this article restrictively enumerates the instances when these fees may be recovered, to wit:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

In *ABS-CBN Broadcasting Corp. v. CA*,[7] this Court had the occasion to expound on the policy behind the grant of attorney's fees as actual or compensatory damages:

> (T)he law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.
>
> The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

In *Benedicto v. Villaflores*,[8] we explained the reason behind the need for the courts to arrive upon an actual finding to serve as basis for a grant of attorney's fees, considering the dual concept of these fees as ordinary and extraordinary:

> It is settled that the award of attorney's fees is the exception rather than the general rule; counsel'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. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that

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[7] 361 Phil. 499 (1999).

[8] G.R. No. 185020, 06 October 2010, 632 SCRA 446.

would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.

We can glean from the above ruling that attorney's fees are not awarded as a matter of course every time a party wins. We do not put a premium on the right to litigate. On occasions that those fees are awarded, the basis for the grant must be clearly expressed in the decision of the court.

Petitioner contends that the RTC's Decision has no finding that would fall under any of the exceptions enumerated in Article 2208 of the new Civil Code. Further, it alleges that the court *a quo* has not given any factual, legal, or equitable justification for applying paragraph 11 of Article 2208 as basis the latter's exercise of discretion in holding petitioner liable for attorney's fees.[9] We agree with petitioner on these points.

We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof.[10] Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in the dispositive portion of their decisions.[11] It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award.[12]

We have perused the assailed CA's Decision, but cannot find any factual, legal, or equitable justification for the award of attorney's fees in favor of respondent. The appellate court simply quoted the

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[9] *Rollo*, p. 19.

[10] *Delos Santos v. Papa*, G.R. No. 154427, 08 May 2009, 587 SCRA 385.

[11] *Philippine National Bank v. Court of Appeals*, 443 Phil.351(2003) citing *Pimentel v. Court of Appeals*, 366 Phil. 494 (1999).

[12] *Espino v. Spouses Bulut*, G.R. No. 183811, 30 May 2011, 649 SCRA 453.

portion of the RTC Decision that granted the award as basis for the affirmation thereof. There was no elaboration on the basis. There is therefore an absence of an independent CA finding of the factual circumstances and legal or equitable basis to justify the grant of attorney's fees. The CA merely adopted the RTC's rational for the award, which in this case we find to be sorely inadequate.

The RTC found as follows:

> x x x since it is clear that plaintiff was compelled to hire the services of a counsel, to litigate and to protect his interest by reason of an unjustified act of the other party, plaintiff is entitled to recover attorney's fees in the amount of ₱50,000.00 which it paid as acceptance fee and ₱3,000.00 as appearance fee.[13]

The only discernible reason proffered by the trial court in granting the award was that respondent, as complainant in the civil case, was forced to litigate to protect the latter's interest. Thus, we find that there is an obvious lack of a compelling legal reason to consider the present case as one that falls within the exception provided under Article 2208 of the Civil Code. Absent such finding, we hold that the award of attorney's fees by the court *a quo*, as sustained by the appellate court, was improper and must be deleted.

WHEREFORE, the foregoing Petition is **GRANTED**. The assailed Decision dated 9 July 2009 of the Court of Appeals in CA-G.R. CV No. 88827 is **MODIFIED,** in that the award of attorney's fees in the amount of ₱50,000 as acceptance fee and ₱3,000 as appearance fee, in favor of respondent APAC Marketing Incorporated, is hereby **DELETED**.

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro, Bersamin, Velasco, Jr.,[*] and *Reyes, JJ.,* concur.

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[13] *Rollo,* p. 19.

[*] Designated additional member per raffle dated 22 March 2010 in lieu of Associate Justice Martin S. Villarama.

SECOND DIVISION

[G.R. No. 191730. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MYLENE TORRES *y* CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURTS ARE ACCORDED RESPECT; RATIONALE.— [I]t is a fundamental principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. This is so because the trial court is in a unique position to observe the witnesses' demeanor on the witness stand. The above rule finds an even more stringent application where said findings are sustained by the Court of Appeals, like in the case under consideration.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); ILLEGAL SALE OF DANGEROUS OR PROHIBITED DRUGS; ELEMENTS.— In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs, like *shabu*, under Section 5, Article II of Republic Act No. 9165, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED.— Equally important in every prosecution for illegal sale of dangerous or prohibited drugs is the presentation in evidence of the seized drug as the *corpus delicti*. The identity of the prohibited drug must be proved with moral certainty. It must also be established

with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of Republic Act No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized. x x x The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.

4. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY IS ESTABLISHED THOUGH THERE MAY BE DEVIATIONS FROM THE REQUIRED PROCEDURE, WHAT IS ESSENTIAL IS THE PRESERVATION OF INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS; APPLICATION IN CASE AT BAR.— The chain of custody is, however, not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. The Implementing Rules and Regulations of Republic Act No. 9165 on the handling and disposition of seized dangerous drugs states: x x x Clearly, **what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused**." In the present case, as contrary to the claim of appellant, the totality of the evidence presented by the prosecution leads to an unbroken chain of custody of the confiscated item from appellant. Though there were deviations from the required procedure, *i.e.*, making physical inventory and taking photograph of the seized item, still, the integrity and the evidentiary value of the dangerous drug seized from appellant were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished.

5. ID.; ID.; ID.; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS; PRESENT IN CASE AT BAR.— It is also worth stressing that appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 only on appeal. Failure to raise this issue during trial is fatal to the case of appellant, as this Court had succinctly explained in *People v. Sta. Maria*: x x x Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal. x x x For the defense of denial to prosper, appellant must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner, which she failed to do. Furthermore, appellant failed to show any motive on the part of the buy-bust team to implicate her in a crime she claimed she did not commit. This Court has repeatedly held that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers. In this case there was none.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] dated 11 February 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03454,

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Josefina Guevara-Salonga and Stephen C. Cruz, concurring. *Rollo*, pp. 2-20.

affirming *in toto* the Decision[2] dated 17 August 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Criminal Case No. 15342-D, finding herein appellant Mylene Torres *y* Cruz guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5,[3] Article II of Republic Act No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, thereby, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine of ₱1,000,000.00.

In an Information[4] dated 19 January 2007, appellant Mylene Torres *y* Cruz was charged with violation of Section 5, Article II of Republic Act No. 9165, docketed as Criminal Case No. 15342-D, the accusatory portion of which reads:

> On or about [17 January 2007], in Pasig City and within the jurisdiction of this Honorable Court, [herein appellant], did then and there willfully, unlawfully and feloniously **sell, deliver and give away** to PO1 Jayson Rivera, a police poseur[-]buyer, **one (1) heat-sealed transparent plastic bag containing 0.04 gram of white crystalline substance**, which was **found positive to the test for methylamphetamine hydrochloride**, a dangerous drug, in violation of the said law.[5] (Emphasis supplied).

On arraignment, appellant, with the assistance of counsel *de oficio*, pleaded NOT GUILTY[6] to the crime charged.

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[2] Penned by Judge Abraham B. Borreta. CA *rollo*, pp. 13-18.

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

[4] CA *rollo*, pp. 9-10.

[5] *Id.* at 9.

[6] As evidenced by the Certificate of Arraignment and RTC Order both dated 14 February 2007. Records, pp. 18 and 20.

At the pre-trial conference, the parties stipulated on the following: (1) the existence and due execution of the Request for Laboratory Examination[7] and the Forensic Chemist Report[8] with the qualification made by the defense that the *shabu* alleged to be the subject thereof was not taken from appellant, and if ever it was taken from her, the same was illegally obtained; (2) the existence and due execution of the Joint Affidavit of Arrest;[9] and (3) the specimen described in the Request for Laboratory Examination was the same specimen submitted to the crime laboratory for examination, which yielded positive result for *methylamphetamine hydrochloride*, but without admitting that the forensic chemist had knowledge as to its origin or that it came from appellant.[10]

There being no other facts proposed for further stipulation between the parties, the pre-trial conference was terminated and trial on the merits thereafter ensued.

The prosecution presented as witnesses Police Inspector 1 Jayson Rivera (PO1 Rivera) and PO1 Jeffrey Male (PO1 Male), who were the designated *poseur*-buyer and immediate back-up officer, respectively, in the buy-bust operation conducted against appellant. Both are members of the Philippine National Police (PNP) assigned at the Eastern Police District, District Anti-Illegal Drugs Special Operation Task Force (DAIDSOTF), Pasig City.

The evidence for the prosecution reveals the following facts:

While on duty at DAIDSOTF on 17 January 2007, PO1 Rivera received information from an unidentified caller that a certain Mylene, who turned out later to be the appellant, was engaged in the sale of dangerous drugs in Pinagbuhatan, Pasig City. On the basis thereof, the police conducted surveillance and casing operation with a positive result. Thereafter, a team was formed to conduct a buy-bust operation, which was composed of PO1 Rivera (*poseur*-buyer), PO1 Male (immediate back-up officer),

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[7] Exhibit "A". *Id.* at 36.

[8] Exhibit "B". *Id.* at 37.

[9] Exhibit "C". *Id.* at 38-39.

[10] Per RTC Order dated 21 March 2007. *Id.* at 26-27.

a certain Senior Police Officer 1 Bautista, PO2 Floriano Resco, PO2 Michael Familara, Police Senior Inspector Glade Esguerra (PS/Insp. Esguerra - team leader) and the confidential informant. The buy-bust money of two 100-peso bills[11] was given to PO1 Rivera. A Pre-Operation Report/Coordination Sheet[12] was also prepared and sent to the Philippine Drug Enforcement Agency (PDEA) for compliance with the required coordination.[13]

At around 3:00 p.m., the team proceeded to the target area, *i.e.*, appellant's house in Baltazar St., Pinagbuhatan, Pasig City, on board two tricycles and two motorcycles. On arrival, they parked their vehicles five meters away from appellant's house. Then, PO1 Rivera and the confidential informant went ahead to appellant's house while the rest of the buy-bust team strategically positioned themselves nearby. Upon reaching appellant's house, the confidential informant immediately identified appellant. Right away, PO1 Rivera, together with the confidential informant, approached appellant saying: "*Iiskor ako panggamit*" to which the latter replied: "*Oo pards meron ako*."[14] PO1 Rivera then gave to appellant the ₱200.00 buy-bust money and the latter, in turn, handed to the former the one heat-sealed transparent plastic sachet containing white crystalline substance. Thereupon, PO1 Rivera scratched his head, which was the agreed pre-arranged signal that the sale was consummated, grabbed appellant, introduced himself to her as a police officer and apprised her of her violation. At this juncture, PO1 Male, who was just seven to eight meters away from the target area and witnessed the sale, rushed to the scene and assisted PO1 Rivera in arresting appellant.[15] PO1 Male

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[11] Exhibit "F" (100-peso bill with Serial No. GZ833513) and Exhibit "F-1" (100-peso bill with Serial No. SN147653). *Id.* at 41.

[12] Exhibit "D". *Id.* at 40.

[13] Testimony of PO1 Rivera, TSN, 25 April 2007, pp. 2-6; Testimony of PO1 Male, TSN, 13 June 2007, p. 3.

[14] *Id.* at 6-7; *Id.* at 3-4.

[15] Appellant's arrest was also evidenced by the Joint Affidavit of Arrest executed by PO1 Rivera and PO1 Male (Exhibit "C"), as well as by the Arrest and Booking Report. Records, pp. 38-39.

then recovered from appellant the buy-bust money. PO1 Rivera, on the other hand, remained in possession of the one heat-sealed transparent plastic sachet containing white crystalline substance subject of the sale. PO1 Rivera and PO1 Male, together with the rest of the buy-bust team, subsequently brought appellant and the confiscated item to their office where appellant was further investigated.[16]

At their office, PO1 Rivera placed a scotch tape and put his initials "JLR" on the one heat-sealed transparent plastic sachet subject of the sale and turned it over to the investigator.[17] A Request for Laboratory Examination of the said specimen was prepared. The request and the specimen were brought to the crime laboratory for examination.[18] Police Senior Inspector Isidro L. Carino (PS/Insp. Carino), Forensic Chemical Officer of the PNP Crime Laboratory, Eastern Police District Crime Laboratory Office, examined the specimen. It tested positive for *methylamphetamine hydrochloride* or *shabu*.[19]

For its part, the defense presented appellant and Flordeliza De Vera (Flordeliza), daughter of appellant's live-in partner, whose testimonies consisted of bare denials. Their version of what transpired on 17 January 2007 is as follows:

Between 2:00 p.m. to 3:00 p.m. of 17 January 2007, appellant was sleeping at the second floor of her house located in Baltazar St., Pinagbuhatan, Pasig City. At around 3:00 p.m., appellant was suddenly awakened by a commotion coming from the stairs. Upon checking, appellant saw armed police officers inside her house. The police simply ignored her and, instead, began to search the place. Though nothing was found in appellant's possession, the police officers still frisked her and invited her to the police station. Upon reaching the police station, appellant was incarcerated. When

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[16] Testimony of PO1 Rivera, TSN, 25 April 2007, pp. 7-9; Testimony of PO1 Male, TSN, 13 June 2007, pp. 4-5.

[17] *Id.* at 9-10; *Id.* at 6.

[18] *Id.*; *Id.* at 6 and 16.

[19] Per Physical Sciences Report No. D-63-07E (Exhibit "B"). *Id.* at 37.

asked for the reason why so, the police officers, in turn, asked appellant for the whereabouts of a certain Allan, who is known for selling *shabu*. Appellant denied that she knew such person. She was then brought to the crime laboratory and subjected to a drug test. The result was not made known to her.[20]

Appellant's narration was corroborated by Flordeliza on all material points. She testified that at around 3:00 p.m. of 17 January 2007, she was at the ground floor of their house (in the yard) washing clothes. Appellant was sleeping on the second floor of their house, together with her one-year old daughter. While doing the laundry, five police officers (four male and one female) suddenly barged inside their house, went upstairs and searched the place. Afterward, the police officers brought appellant with them. Flordeliza was similarly invited by the police officers to go with them but appellant told the police about her one-year old daughter. The police officers brought with them only the appellant. Flordeliza affirmed that when the police officers went to their house and took appellant, they were looking for a certain Allan.[21]

Giving credence to the testimonies of the prosecution witnesses as having established with competent and convincing evidence all the elements of the crime charged, the trial court rendered a judgment of conviction against appellant in its Decision dated 17 August 2007, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding the [herein appellant] **MYLENE TORRES *y* Cruz GUILTY** beyond reasonable doubt of the offense charged in the Information and she is sentenced to suffer **LIFE IMPRISONMENT**. She is also ordered to pay a fine of **ONE MILLION PESOS[**.][22] (Emphasis supplied).

On appeal,[23] appellant submitted the following assigned errors:

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[20] Testimony of Appellant, TSN, 1 August 2007, pp. 3-8.

[21] Testimony of Flordeliza De Vera, *id.* at 11-13.

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

[23] Per Notice of Appeal dated 24 August 2007. *Id.* at 25.

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [HEREIN APPELLANT] DESPITE THE FAILURE TO COMPLY WITH SECTION 21 OF REPUBLIC ACT NO. 9165.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[24]

In a Decision dated 11 February 2010, the Court of Appeals affirmed *in toto* the Decision of the trial court. It held that all the elements of the crime charged, *i.e.*, illegal sale of drugs, have been proven and established beyond reasonable doubt by the prosecution. The same was coupled with the presentation in court of *corpus delicti* as evidence. It also found the prosecution witnesses' testimonies sufficient to establish the various links in the chain of custody of the seized prohibited drug. This, despite the police officers' failure to take photographs and to inventory the drug seized from appellant, the prosecution was able to preserve the integrity and evidentiary value of the illegal drug. The police officers were found not to have any motive other than their duty to enforce the law.

Appellant is now before this Court contending that the police officers did not comply with the mandatory procedure for handling dangerous drugs set forth in Section 21 of Republic Act No. 9165, particularly the physical inventory and the taking of photograph of the seized item; and that the prosecution failed to prove beyond reasonable doubt that the one-heat sealed transparent plastic sachet containing white crystalline substance that was admitted in evidence during trial was the same item seized from her during the buy-bust operation. Such gap in the chain of custody of the seized item created reasonable doubt on appellant's culpability, thus, merits her acquittal from the crime charged.

[24] *Rollo*, p. 8.

Appellant's contentions fail to persuade.

To begin with, it is a fundamental principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings.[25] This is so because the trial court is in a unique position to observe the witnesses' demeanor on the witness stand.[26] The above rule finds an even more stringent application where said findings are sustained by the Court of Appeals,[27] like in the case under consideration.

In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs, like *shabu*, under Section 5, Article II of Republic Act No. 9165, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor.[28] Briefly, the delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[29]

In this case, the prosecution successfully established all the above-mentioned elements beyond moral certainty. Prosecution witnesses PO1 Rivera and PO1 Male amply proved that a buy-

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[25] *People v. Santos*, G.R. No. 176735, 26 June 2008, 555 SCRA 578, 592.

[26] *People v. Ariola*, 418 Phil. 808, 816 (2001).

[27] *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

[28] *People v. Bara*, G.R. No. 184808, 14 November 2011, 660 SCRA 38, 43; *People v. Gaspar*, *id.*; *People v. Cruz*, G.R. No. 187047, 15 June 2011, 652 SCRA 286, 298; *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463; *People v. Santos*, *supra* note 25 at 592-593.

[29] *People v. Bara*, *id.*; *People v. Cruz*, *id.*

bust operation actually took place. On the occasion thereof, appellant was caught red-handed delivering one-heat sealed transparent plastic sachet containing white crystalline substance to PO1 Rivera, the *poseur*-buyer, in exchange for ₱200.00. Being the *poseur-buyer*, PO1 Rivera unwaveringly and positively identified appellant in open court to be the same person who sold to him the aforesaid one-heat sealed transparent plastic sachet containing white crystalline substance for a consideration of ₱200.00.[30] The white crystalline substance contained in the one-heat sealed transparent plastic sachet handed by appellant to PO1 Rivera was examined and later on confirmed to be *methylamphetamine hydrochloride* or *shabu* per Physical Sciences Report No. D-63-07E dated 17 January 2007 issued by PS/Insp. Carino, Forensic Chemical Officer of the PNP Crime Laboratory, Eastern Police District Crime Laboratory Office. Upon presentation thereof in open court, PO1 Rivera duly identified it to be the same object sold to him by appellant.[31]

Undoubtedly, the prosecution established beyond reasonable doubt appellant's guilt for the offense of sale of *shabu* in violation of Section 5, Article II of Republic Act No. 9165.

Equally important in every prosecution for illegal sale of dangerous or prohibited drugs is the presentation in evidence of the seized drug as the *corpus delicti*. The identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit.[32] In this regard, paragraph 1, Section 21, Article II of Republic Act No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized,[33] to wit:

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[30] Testimony of PO1 Rivera, TSN, 25 April 2007, p. 8.

[31] *Id.* at 10.

[32] *People v. Cortez*, G.R. No. 183819, 23 July 2009, 593 SCRA 743, 762.

[33] *People v. Martinez*, G.R. No. 191366, 13 December 2010, 637 SCRA 791, 812.

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

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

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.[34]

The chain of custody is, however, not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. The Implementing Rules and Regulations[35] of Republic Act No.

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[34] *People v. Cortez, supra* note 32 at 762.

[35] 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:

9165 on the handling and disposition of seized dangerous drugs states:[36]

x x x ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Italics, emphasis and underscoring supplied).

Clearly, **what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused**."[37]

In the present case, as contrary to the claim of appellant, the totality of the evidence presented by the prosecution leads to an unbroken chain of custody of the confiscated item from appellant. Though there were deviations from the required procedure, *i.e.*, making physical inventory and taking photograph of the seized item, still, the integrity and the evidentiary value of the dangerous drug seized from appellant were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished.[38]

Notably, after the sale was consummated, that is, when appellant received the buy-bust money from PO1 Rivera and

(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 seized.

[36] *People v. Cortez*, *supra* note 32 at 763.

[37] *Id.* at 764.

[38] *People v. Bara*, *supra* note 28 at 45.

handed to the latter the one-heat sealed transparent plastic sachet containing white crystalline substance, the seized item remained in possession of PO1 Rivera until he and the rest of the buy-bust team, together with the appellant, returned to their office. On arrival thereat, PO1 Rivera placed a scotch tape and put his initials on the one-heat sealed transparent plastic sachet containing white crystalline substance before turning it over to the investigator. Thereafter, a Request for Laboratory Examination of the one-heat sealed transparent plastic sachet containing white crystalline substance was prepared by the team leader of the buy-bust team, *i.e.*, PS/Insp. Esguerra. Such request, together with the one-heat sealed transparent plastic sachet containing white crystalline substance, was brought to the crime laboratory for qualitative analysis. PS/Insp. Carino, PNP Forensic Chemical Officer, received and examined the same, which yielded positive for *methylamphetamine hydrochloride* or "*shabu*." Moreover, the one-heat sealed transparent plastic sachet containing white crystalline substance, which was found positive for *shabu*, was positively identified by PO1 Rivera in court to be the same item he confiscated from appellant.

As held in *People v. Bara*[39] citing *People v. Campomanes*:[40]

> Although Section 21(1) of [Republic Act] No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

We note that nowhere in the prosecution evidence does it show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation in the case at bar from complying with Section 21 of Republic Act No. 9165, particularly the making of

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[39] *Supra* note 28 at 46.

[40] G.R. No. 187741, 9 August 2010, 627 SCRA 494, 506-507.

the inventory and the photographing of the drugs and drug paraphernalia confiscated and/or seized. However, such omission shall not render accused-appellant's arrest illegal or the items seized/confiscated from him as inadmissible in evidence. In *People v. Naelga* [G.R. No. 171018, 11 September 2009, 599 SCRA 477], We have explained that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.

It must be stressed that said "justifiable ground" will remain unknown in the light of the apparent failure of the accused-appellant to challenge the custody and safekeeping or the issue of disposition and preservation of the subject drugs and drug paraphernalia before the RTC. x x x.

It is also worth stressing that appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 only on appeal. Failure to raise this issue during trial is fatal to the case of appellant, as this Court had succinctly explained in *People v. Sta. Maria*:[41]

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[42]

As a final note, appellant's bare denial cannot prevail over the positive identification by PO1 Rivera that she is the same

[41] 545 Phil. 520 (2007) cited in *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250, 274 and *People v. Desuyo*, G.R. No. 186466, 26 July 2010, 625 SCRA 590, 609.

[42] *People v. Sta. Maria, id.* at 534.

person who sold the *shabu* to him. For the defense of denial to prosper, appellant must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner, which she failed to do. Furthermore, appellant failed to show any motive on the part of the buy-bust team to implicate her in a crime she claimed she did not commit. This Court has repeatedly held that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers.[43] In this case there was none.

Under the law, the offense of illegal sale of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00), regardless of the quantity and purity of the substance.[44] Reviewing the penalties imposed by the trial court, which was affirmed by the Court of Appeal, this Court finds them to be in order.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03454 dated 11 February 2010 is hereby **AFFIRMED**. No Costs.

SO ORDERED.

Brion[*] *(Acting Chairperson), del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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

[44] *People v. Desuyo*, *supra* note 41 at 609.

[*] Per Special Order No. 1460 dated 29 May 2013.

[**] Per Special Order No. 1461 dated 29 May 2013.

FIRST DIVISION

[G.R. No. 192239. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO PAMINTUAN *y* SAHAGUN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The crime of rape is defined under Article 266-A of the Revised Penal Code, x x x Article 266-A(1)(d) provides the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve years of age or is demented. The element of carnal knowledge was established by the testimony of AAA. Her identification of accused-appellant as the perpetrator of the sexual attack was positive, consistent and steadfast; her narration of the incident, detailed and straightforward. When she was recounting her ordeal before the trial court, she was overcome with emotion and shed tears on more than one occasion. She did not waver in her stance even as she underwent cross-examination by the counsel for the defense. These factors impress upon us that AAA's claim against accused-appellant was not at all fabricated. Jurisprudence teaches that testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.

2. **ID.; ID.; ID.; CARNAL KNOWLEDGE, EXPLAINED; PRESENT IN CASE AT BAR.—** The Court has often held that "full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary, to conclude that carnal knowledge took place; the *mere touching* of the external genitalia by a penis that is capable of consummating the sexual act is sufficient to constitute carnal knowledge." x x x In this case, AAA was carefully questioned by the respective counsels

for the prosecution and the defense and the trial court judge herself. AAA consistently incriminated accused-appellant as the person who sexually abused her by inserting his penis into her vagina, although a full penetration was not accomplished. To our mind, AAA's testimony clearly proved the element of carnal knowledge.

3. ID.; ID.; ID.; DENIAL AS A DEFENSE; DENIAL CANNOT OVERCOME THE POSITIVE DECLARATION BY THE VICTIM OF THE IDENTITY AND INVOLVEMENT OF THE ACCUSED IN THE CRIMES ATTRIBUTED TO HIM; CASE AT BAR.— Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him." The Court also finds unconvincing the reason ascribed by accused-appellant on the part of AAA to accuse him of rape, *i.e.*, that AAA and her siblings disapproved of him as their mother's common-law husband. We find this argument flimsy and totally bereft of any corroboration. We already ruled that "[m]otives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused."

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

The Court decides the appeal filed by accused-appellant Ricardo Pamintuan *y* Sahagun from the Decision[1] dated

[1] *Rollo*, pp. 4-21; penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr., concurring.

November 24, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03449.

On September 6, 2004, accused-appellant was charged before the Regional Trial Court (RTC) of Manila with the crime of rape under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353. The accusatory portion of the Information stated:

> That sometime in September 2003, in the XXX, Philippines, the accused, did then and there wilfully, unlawfully, feloniously and knowingly commit abusive acts and [lascivious] conduct upon the person of AAA,[2] a minor, 11 years old, by then and there dragging her inside the room, kissing her on the lips and breast, undressing her and inserting his penis in her vagina and succeeded in having carnal knowledge of her against her will and consent thereby gravely endangering her survival, normal development and growth.[3]

Accused-appellant pleaded not guilty to the charge.[4] During the trial of the case, the prosecution put forward the following witnesses: (1) AAA, the victim; (2) Maria Cristina E. Viray, the Bantay Bata 163 social worker; (3) Police Officer (PO)1 Aireen Talattad;[5] and (4) Dr. Merle Tan.

AAA testified that accused-appellant was her uncle since the latter was the cousin of her father, BBB. He was also the common-law husband of her mother, CCC, as her parents had

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[2] The real name of the victim and those of her immediate family or household members are withheld to protect the victim's 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).

Thus, the minor victim in this case shall be referred to as AAA. The designation BBB shall refer to her father, while CCC shall refer to her mother. DDD and EEE shall indicate the names of her elder sister and aunt, respectively. XXX shall denote the place where the crime of rape was allegedly committed.

[3] Records, p. 2.

[4] *Id.* at 17.

[5] Also referred to as PO1 Aileen Taladtad in other parts of the records.

already separated. She could not recall when accused-appellant and CCC started to live together. He would stay in AAA's house in XXX then he would return to his house in Bulacan. AAA related that in September 2003, accused-appellant started to sexually abuse her inside their house. He pulled her to her mother's room when nobody else was around. He touched her breasts and her vagina. Afterwards, accused-appellant was able to insert his penis into her organ. He was only able to insert his penis halfway but the same hurt AAA. She cried and fought back by boxing him but he continued to assault her. He also kissed her lips and licked her vagina. She said that she did not bleed after she was raped.[6] Accused-appellant succeeded in abusing her seven times.[7]

AAA said that she revealed the incident to her sister, DDD, who informed their aunt, EEE, who was the sister of their father. AAA was then vacationing at EEE's house when the latter learned about the incident. EEE forbade AAA from going back home in XXX. She did not tell CCC about her ordeal because she was afraid of accused-appellant. According to AAA, her cousin told her that whenever the accused gets drunk, he would pour gasoline in their house and threaten to burn it.[8] AAA presented in court her birth certificate, which showed that she was born on November 6, 1992.[9]

On cross-examination, AAA stated that she filed the case against accused-appellant because he did rape her. Prior to that, she recalled an incident when he was even caring towards her. Back then, she was not yet angry with him.[10]

Maria Cristina E. Viray testified that AAA and EEE went to the Bantay Bata 163 office on May 28, 2005. They asked for assistance regarding the rape case filed against accused-

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[6] TSN, June 1, 2005, pp. 2-15.

[7] *Id.* at 9; TSN, January 9, 2006, p. 6.

[8] *Id.* at 12-19.

[9] Records, p. 93.

[10] TSN, January 9, 2006, pp. 3-4.

appellant. She made them fill up a form to provide an account of the incident. In her account, AAA narrated that at around September to October 2003, accused-appellant dragged her into a room, pulled up her clothing, and kissed her breasts. AAA boxed accused-appellant in the chest. He then took off AAA's shorts and panty and undressed himself. Afterwards, there was a penetration of AAA's vagina.[11] Viray stated that she did not conduct a detailed interview of AAA anymore so as not to further traumatize her. She asked AAA if she was willing to go forward with the case and the latter answered in the affirmative. Viray added that she was convinced that AAA was indeed raped by the accused-appellant.[12]

The testimony of PO1 Aireen Talattad was dispensed with after the parties stipulated that she was the investigator on the case, that she caused the preparation of the *Sinumpaang Salaysay* of AAA, and that she could identify AAA and accused-appellant.[13]

Dr. Merle Tan testified that she was a consultant at the Child Protection Unit of the University of the Philippines-Philippine General Hospital (UP-PGH) in Manila.[14] She presented in court a medical certificate dated December 29, 2003 issued by the PGH, which was the Final Medico Legal Report Number 2003-12-0061.[15] As AAA was already interviewed by the police, she only asked additional clarifying questions. She inquired from AAA if the latter already had a boyfriend or if there were other perpetrators of the sexual assault. AAA answered both questions in the negative. As to the medico-legal report, the impression that Dr. Tan noted down was that there was "[n]o evident injury at the time of examination but medical evaluation

[11] TSN, April 3, 2006, pp. 3-6.

[12] *Id.* at 10.

[13] Records, p. 68.

[14] TSN, December 7, 2006, p. 2.

[15] *Id.* at 5; records, p. 72.

cannot exclude sexual abuse. Further investigation, such as witnessed account or careful questioning of the child is required."[16]

On cross-examination, Dr. Tan stated that when she examined AAA in December 2003, she did not see any injury at all, not even healing injuries. According to her, however, the same may be explained by the rate with which an injured hymen can heal. Dr. Tan further informed the trial court that in rape cases, different injuries could be inflicted upon the victim, depending on a number of factors. Said factors include the degree of force used in inflicting the injury, the size of the blunt object, and the method with which the injury was caused. Dr. Tan also stated that some studies in the United States suggest that if the perpetrator of the rape is not a stranger to the child victim, the injuries inflicted on the latter are a little bit less serious. If there was an insertion in the vagina of a minor child, the resultant injury, if any, would depend on how the insertion was done. Moreover, an insertion would not necessarily lead to a laceration in the hymen in view of the changes occurring in the body of a female child. As the estrogen production in the child's body increases, the hymen becomes more stretchable and elastic. Thus, even with seven insertions, the presence of a laceration would depend on how the insertion was done and the length of the healing time, if there were injuries inflicted.[17]

For his defense, accused-appellant testified that AAA was his niece as he was the cousin of AAA's father. He was also the common-law husband of AAA's mother, CCC. Accused-appellant denied AAA's accusation of rape against him. He stated that CCC's children had a grudge against him, as they did not want him to live with their mother. He also said that a cousin of his, named Marie, likewise held a grudge against him and CCC.[18]

The Ruling of the RTC

On June 17, 2008, the RTC of Manila, Branch 38, adjudged[19] accused-appellant guilty of statutory rape and sentenced him thus:

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[16] *Id.* at 6-8.

[17] *Id.* at 9-11.

[18] TSN, January 25, 2008, pp. 3-7.

[19] CA *rollo*, pp. 19-26; penned by Judge Ma. Celestina C. Mangrobang.

WHEREFORE, in the light of the foregoing premises, this Court finds that the prosecution was able to prove the guilt of the accused beyond reasonable doubt in committing the crime of Rape under Article [266-A], par. 1 [of] the Revised Penal Code in relation to Republic Act 8353, and hereby sentences Ricardo Pamintuan *Y* Sahagun to suffer the penalty of *reclusion perpetua*; further, to indemnify [AAA], the amount of Fifty Thousand (Php50,000.00) Pesos, as civil indemnity; the amount of Fifty Thousand (Php50,000.00) as moral damages, and to pay the costs.[20]

The RTC found that AAA was only about 11 years old when she was raped by accused-appellant. The trial court gave more weight to her testimony, which was found to be categorical, straightforward, spontaneous and delivered in a frank manner. The trial court also downplayed the absence of injuries on the part of AAA as a result of the sexual abuse, citing rulings of the Court that such may be attributed to numerous factors and that the hymen of the victim need not be penetrated or ruptured for rape to be consummated. On the other hand, accused-appellant's unsubstantiated defense of denial was disregarded by the trial court. Accused-appellant was only convicted of statutory rape punishable by *reclusion perpetua* as the qualifying circumstance of relationship, *i.e.*, that he was the common-law husband of AAA's mother, was not alleged in the information.

Accused-appellant appealed his conviction to the Court of Appeals.[21]

The Decision of the Court of Appeals

On November 24, 2009, the appellate court affirmed the judgment of the RTC in this wise:

WHEREFORE, for lack of merit, the instant appeal is **DISMISSED**. The June 17, 2008 Decision of the Regional Trial Court of Manila, Branch 38 is **AFFIRMED** *in toto*.[22]

The Court of Appeals was convinced that the elements of the crime of rape had been proven in this case. The appellate

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[20] *Id.* at 26.

[21] Records, p. 117.

[22] *Rollo*, p. 21.

court gave more weight to AAA's testimony as compared to the bare denial of accused-appellant. The Court of Appeals also rejected the argument of accused-appellant that the absence of external signs, indicating that AAA was sexually abused, negated her claim of rape. The appellate court ruled that carnal knowledge, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. As the relationship of AAA to accused-appellant was not specifically alleged in the information, the Court of Appeals held that no qualifying circumstance was attendant in the case.

The Ruling of the Court

On appeal[23] before this Court, accused-appellant again pleads for his acquittal, arguing that "the trial court gravely erred in rendering a verdict of conviction despite the fact that [his] guilt was not proven beyond reasonable doubt."[24] Accused-appellant insists that the medical findings and the testimony of Dr. Merle Tan belied AAA's claim that she was raped seven times. Accused-appellant points out that if he indeed sexually assaulted AAA seven times, she must have sustained genital injuries or trauma. However, none was found by Dr. Tan. As the gravamen of the offense of rape is sexual intercourse with a woman without her consent, accused-appellant posits that the absence of gynecological injuries negated AAA's accusation of rape.

The Court sustains the conviction of accused-appellant.

The crime of rape is defined under Article 266-A of the Revised Penal Code, to wit:

ART. 266-A. *Rape, When and How Committed*. — Rape is committed —

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[23] CA *rollo*, pp. 122-124.

[24] *Id.* at 45. Accused-appellant and plaintiff-appellee opted not to file any supplemental brief. (*Rollo*, pp. 35-38 and 40-43). They instead adopted their respective briefs filed before the Court of Appeals. (CA *rollo*, pp. 43-54 and 79-90).

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

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Article 266-A(1)(d) provides the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve years of age or is demented.

The element of carnal knowledge was established by the testimony of AAA. Her identification of accused-appellant as the perpetrator of the sexual attack was positive, consistent and steadfast; her narration of the incident, detailed and straightforward. When she was recounting her ordeal before the trial court, she was overcome with emotion and shed tears on more than one occasion. She did not waver in her stance even as she underwent cross-examination by the counsel for the defense. These factors impress upon us that AAA's claim against accused-appellant was not at all fabricated.

Jurisprudence teaches that testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[25] Moreover, we held in *People v. Oden*[26] that "the spontaneity with which the victim has detailed the incidents of rape, the tears she ha[d] shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony."

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[25] *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[26] 471 Phil. 638, 667 (2004).

Contrary to accused-appellant's protestations, the testimony of AAA that she was raped seven times was not actually contradicted by the medical findings of Dr. Tan. This much is distinctly clear from the conclusion reached by Dr. Tan in the medico-legal report, which we quote:

IMPRESSIONS

No evident injury at the time of examination but medical evaluation cannot exclude sexual abuse. Further investigation, such as witnessed account or careful questioning of the child[,] is required.[27] (Emphasis ours.)

Nowhere in the medico-legal report was there a definitive statement from Dr. Tan that AAA could not have been subjected to sexual abuse. If the above quoted statement was not clear enough, Dr. Tan took the time to explain her findings in her testimony before the trial court. In essence, Dr. Tan explained that in rape cases, an insertion in the vagina of a minor child victim would not necessarily result in an injury, such as a laceration of the hymen. The presence or absence of injuries would depend on different factors, such as the forcefulness of the insertion, the size of the object inserted, the method by which the injury was caused, the changes occurring in a female child's body, and the length of healing time, if indeed injuries were caused. Thus, the fact that AAA did not sustain any injury in her sex organ does not *ipso facto* mean that she was not raped.

The Court has often held that "full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary, to conclude that carnal knowledge took place; the *mere touching* of the external genitalia by a penis that is capable of consummating the sexual act is sufficient to constitute carnal knowledge."[28] We also said in *People v. Opong*[29] that:

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[27] Records, p. 72.

[28] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233, 249-250.

[29] G.R. No. 177822, June 17, 2008, 554 SCRA 706, 726.

In *People v. Capt. Llanto*, citing *People v. Aguinaldo*, we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

xxx xxx xxx

It also bears stressing that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature. The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime. (Citations omitted.)

In this case, AAA was carefully questioned by the respective counsels for the prosecution and the defense and the trial court judge herself. AAA consistently incriminated accused-appellant as the person who sexually abused her by inserting his penis into her vagina, although a full penetration was not accomplished. To our mind, AAA's testimony clearly proved the element of carnal knowledge.

The accused-appellant's bare denial of the crime charged is insufficient to exculpate him. Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him."[30] The Court also finds unconvincing the reason ascribed by accused-appellant on the part of AAA to accuse him of rape, *i.e.*, that AAA and her siblings disapproved of him as their mother's common-law husband. We find this argument flimsy and totally bereft of any corroboration. We already ruled that "[m]otives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Further, ill motives become inconsequential if the

[30] *People v. Nieto*, 571 Phil. 220, 236 (2008).

rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused."[31]

As regards the age of AAA, the prosecution presented her certificate of birth to prove that she was born on November 6, 1992. Thus, at the time of the commission of the crime in September 2003, AAA was only a few months shy of being 11 years old.

With respect to the imposable penalty in this case, the Court affirms the judgment of the RTC that accused can only be convicted of statutory rape punishable by *reclusion perpetua*. Article 266-B of the Revised Penal Code, as amended by Republic Act No. 9346,[32] provides:

> Art. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> xxx xxx xxx
>
> 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The age of AAA was duly alleged and proven in this case. However, AAA's relationship with accused-appellant, *i.e.*, that accused-appellant was the common-law spouse of her mother, was not specifically alleged in the information. Although this circumstance was proven during trial, the same cannot qualify the crime committed. We held in *People v. Ramos*[33] that "[a]s a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt."

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[31] *People v. Opong*, *supra* note 29 at 723.

[32] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[33] *People v. Ramos*, 442 Phil. 710, 732 (2002).

We also affirm the trial court's award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. However, the award of exemplary damages is in order. The Court had occasion to rule in *People v. Arcillas*[34] that:

> According to the *Civil Code*, exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The law permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Accordingly, the [Court of Appeals] and the RTC should have recognized the entitlement of AAA to exemplary damages on account of the attendance of her minority and the common-law relationship between him and her mother. It did not matter that such qualifying circumstances were not taken into consideration in fixing his criminal liability, because the term *aggravating circumstances* as basis for awarding exemplary damages under the *Civil Code* was understood in its generic sense. x x x. (Citations omitted.)

We also stated in *People v. Nebria*[35] that the award of exemplary damages in rape cases is proper in order to protect the young from sexual exploitation and abuse. Thus, we further award ₱30,000.00 as exemplary damages in light of current jurisprudence.[36]

WHEREFORE, the appeal is **DENIED**. The Decision dated November 24, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03449 is **AFFIRMED WITH MODIFICATION** that exemplary damages in the amount of ₱30,000.00 is awarded. Accused-appellant is likewise ordered to pay legal interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision. No costs.

SO ORDERED.

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

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[34] G.R. No. 181491, July 30, 2012, 677 SCRA 624, 637-638.

[35] 440 Phil. 572, 588 (2002).

[36] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 590.

THIRD DIVISION

[G.R. No. 192893. June 5, 2013]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **HEIRS OF SPOUSES DIONISIO DELOY and PRAXEDES MARTONITO, represented by POLICARPIO DELOY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ELUCIDATED.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved. An ejectment case, based on the allegation of possession by tolerance, falls under the category of unlawful detainer. Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he/she will vacate on demand, failing which, an action for unlawful detainer will lie.

2. ID.; METROPOLITAN TRIAL COURTS; JURISDICTION; EJECTMENT CASE; ON ISSUE OF OWNERSHIP; WILL BE RESOLVED IF NECESSARY BUT ONLY TO DETERMINE THE ISSUE OF POSSESSION.— When the issue of ownership is raised in an ejectment case, the first level courts are not *ipso facto* divested of its jurisdiction. Section 33 (2) of Batas Pambansa *(B.P.)* Blg. 129, as amended by Republic Act *(R.A.)* No. 7691, provides: Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in Civil Cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise: x x x x (2) Exclusive original jurisdiction over cases of forcible

entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. In this regard, Section 16, Rule 70 of the Rules of Court allows the first level courts, in ejectment cases, to provisionally determine the issue of ownership for the sole purpose of resolving the issue of physical possession. Sec. 16. *Resolving defense of ownership*.–When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. Accordingly, it is unquestionably clear that the first level courts are clothed with the power to preliminarily resolve questions on the ownership of real property, if necessary, to arrive at the proper and complete determination of the question on physical possession or possession *de facto*.

3. ID.; EVIDENCE; RULES OF ADMISSIBILITY; ADMISSIONS OF A PARTY; CASE AT BAR.— [In] two documents, MERALCO acknowledged that the owners of the subject land were the Deloys. MERALCO never disputed the declarations contained in these letters which were even marked as its own exhibits. Pursuant to Section 26, Rule 130 of the Rules of Evidence, these admissions and/or declarations are admissible against MERALCO. SEC. 26. *Admissions of a party* – The act, declaration, or omission of a party as to a relevant fact may be given in evidence against him. In *Heirs of Bernardo Ulep v. Ducat*, it was written, thus: x x x Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. Guided by the foregoing rules and jurisprudence, the Court holds that the letter and the internal memorandum presented, offered and properly admitted as part of the evidence on record by MERALCO itself, constitute an admission against its own interest. Hence, MERALCO should appropriately be bound by the contents of the documents.

4. CIVIL LAW; LAND TITLES; OWNER OF THE PROPERTY HAS THE RIGHT OF POSSESSION.— [I]t 1s fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It bears to emphasize that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession. In *Pascual v. Coronel,* the Court reiterated the rule that a certificate of title has a superior probative value as against that of an unregistered deed of sale in ejectment cases.

APPEARANCES OF COUNSEL

Lynette Deloria-Manarang and *Maria Zarah R. Villanueva-Castro* for petitioner.

Molina Molina & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the November 9, 2009 Decision[1] and the July 5, 2010 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 96998. The challenged decision set aside the May 4, 2006 Resolution[3] and the September 27, 2006 Order[4] of the Regional Trial Court, Trece Martires City, Branch 23 *(RTC)*, which affirmed the dismissal of an unlawful detainer case by the Municipal Trial Court in Cities of Trece Martires City *(MTCC)*.

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[1] *Rollo*, pp. 39-47. Penned by Associate Justice Noel G. Tijam with Associate Justice Ramon M. Bato, Jr. and Associate Justice Sixto C. Marellla, concurring.

[2] *Id.* at 49-50.

[3] *Id.* at 192-193. Penned by Executive Judge Aurelio G. Icasiano, Jr.

[4] *Id.* at 194.

The Facts

On July 8, 2003, Domingo Deloy, Maria Deloy-Masicap, Zosimo Deloy, Mario Deloy, Silveria Deloy-Mabiling, Norma Deloy, Milagros Panganiban, Lino Deloy, Cornelio Deloy, Maricel Deloy, Adelina Banta, Rogelio Deloy, Evelyn Deloy, Edgardo Deloy, Cynthia Deloy, Donnabel Deloy, Glenda Deloy, Arnel Deloy, Ronnio Deloy, Isagani L. Reyes, and Policarpio Deloy *(respondents)*, all heirs of Spouses Dionisio Deloy *(Dionisio)* and Praxedes Martonito-Deloy, represented by Policarpio Deloy, instituted the Complaint for Unlawful Detainer[5] against Manila Electric Company *(MERALCO)* before the MTCC.

Respondents are the owners, by way of succession, of a parcel of land consisting of 8,550 square meters located in Trece Martires City *(Trece Martires property)*. On November 12, 1965, Dionisio, respondents' predecessor-in-interest, donated a 680-square meter portion *(subject land)* of the 8,550 square meter property to the Communications and Electricity Development Authority *(CEDA)* for the latter to provide cheap and affordable electric supply to the province of Cavite. A deed of donation[6] was executed to reflect and formalize the transfer.

Sometime in 1985, CEDA offered for sale to MERALCO, its electric distribution system, consisting of transformers and accessories, poles and hardware, wires, service drops, and customer meters and all rights and privileges necessary for providing electrical service in Cavite. This was embodied in a memorandum of agreement *(MOA)*,[7] dated June 28, 1985, signed by the parties.

On the same date, June 28, 1985, after the approval of the MOA, CEDA and MERALCO executed the Deed of Absolute Sale. Thereafter, MERALCO occupied the subject land.

On October 11, 1985, MERALCO, through its Assistant Vice President and Head of the Legal Department, Atty. L.D. Torres

[5] *Id.* at 62-66.

[6] *Id.* at 70-71.

[7] *Id.* at 51-55.

(Atty. Torres), wrote a letter[8] to Dionisio requesting the latter's permission for the continued use of the subject land as a substation site.

The parties were not able to reach any agreement. In an internal memorandum,[9] dated December 16, 1985, from L.G. De La Paz of the Trece Martires Substation of MERALCO to Atty. G.R. Gonzales and Atty. Torres of the Realty Division of MERALCO, it was stated that the death of Dionisio, the lack of agreement yet among the heirs, and a request that a member of the Deloy family be employed by MERALCO were some of the reasons.

Meanwhile, respondents claimed that they had no immediate use for the subject land and that they were preoccupied with the judicial proceedings to rectify errors involving the reconstituted title of the Trece Martires property, which included the subject land. On November 22, 2001, the proceedings were terminated and the decision became final.[10] Not long after, respondents offered to sell the subject land to MERALCO, but their offer was rejected.

For said reason, in their letter,[11] dated May 19, 2003, respondents demanded that MERALCO vacate the subject land on or before June 15, 2003. Despite the written demand, MERALCO did not move out of the subject land. Thus, on July 8, 2003, respondents were constrained to file the complaint for unlawful detainer.

Traversing respondents' complaint, MERALCO countered that CEDA, as the owner of the subject land by virtue of the deed of donation executed by Dionisio, lawfully sold to it all rights necessary for the operation of the electric service in Cavite by way of a deed of sale on June 28, 1985. MERALCO

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[8] *Id.* at 180.

[9] *Id.* at 181.

[10] *Id.* at 149-163.

[11] *Id.* at 264.

stressed that the condition of providing affordable electricity to the people of Cavite,[12] imposed in the deed of donation between Dionisio and CEDA, was still being observed and complied with. Thus, MERALCO claimed that, being CEDA's successor-in-interest, it had legal justification to occupy the subject land.

On September 15, 2005, the MTCC rendered the decision[13] dismissing respondents' complaint for unlawful detainer against MERALCO.

The MTCC ruled that it had no jurisdiction over the case because it would require an interpretation of the deed of donation making it one not capable of pecuniary estimation. Nevertheless, it opined that MERALCO was entitled to the possession of the subject land. It was of the view that it would only be when the deed of donation would be revoked or the deed of sale nullified that MERALCO's possession of the subject land would become unlawful.

Aggrieved, respondents appealed the MTCC ruling to the RTC. In its May 4, 2006 Resolution, the RTC sustained the MTCC decision.

The RTC pointed out that the only issue in an unlawful detainer case was possession. It affirmed the MTCC ruling that the latter had no jurisdiction to interpret contracts involving the sale of the subject land to MERALCO, after the latter raised the issue of ownership of the subject land. According to the RTC, the interpretation of the deed of sale and the deed of donation was the main, not merely incidental, issue.

Respondents moved for reconsideration but their motion was denied by the RTC in its September 27, 2006 Order.

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[12] *Id.* at 70.

"*Na dahil at alang-alang sa kapuri-puring layunin ng TUMATANGGAP (Donee) na mapalaganap ang murang kuryente sa buong lalawigan na siyang susi ng kaunlaran ng Kabite at dahil sa aking hangaring makatulong sa pagsasakatuparan ng palatuntunang pangkabuyan ng CEDA at iba pang mahalagang dahilan, x x x.*"

[13] *Rollo*, pp. 184-191. Penned by Judge Gonzalo O. Mapili, Jr.

Not satisfied with the adverse ruling, respondents elevated the case before the CA *via* a petition for review under Rule 42 of the Rules of Court.

In its November 9, 2001 Decision, the CA *set aside* the RTC ruling. The *fallo* of the decision reads:

> **WHEREFORE**, the instant Petition is ***GRANTED***. The assailed Resolution, dated May 4, 2006, and Order, dated September 27, 2006, both of the Regional Trial Court of Trece Martires City, Branch 23, in Civil Case No. TMCV-0055005, are hereby ***SET ASIDE*** and a new one rendered ***partially granting*** Petitioners' Complaint for Unlawful Detainer against Respondent. Accordingly, Respondent is ordered to vacate the subject property and to pay Petitioners the amount of ₱50,000.00 monthly rental counting from June 16, 2003, up to the time Respondent shall have fully vacated the subject property, and ₱25,000.00 as attorney's fees. Costs against Respondent.
>
> **SO ORDERED.**[14]

In partially granting the appeal, the CA explained that an ejectment case, based on the allegation of possession by tolerance, would fall under the category of unlawful detainer. Unlawful detainer involved the person's withholding from another of the possession of real property to which the latter was entitled, after the expiration or termination of the former's right to hold possession under a contract, either express or implied. Where the plaintiff allowed the defendant to use his/her property by tolerance without any contract, the defendant was necessarily bound by an implied promise that he/she would vacate on demand, failing which, an action for unlawful detainer would lie.

As to the issue of possession, the CA stated that by seeking Dionisio's permission to continuously occupy the subject land, MERALCO expressly acknowledged his paramount right of possession. MERALCO, thru its representative, Atty. Torres, would not have asked permission from Dionisio if it had an unconditional or superior right to possess the subject land. The CA considered

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[14] *Id.* at 46.

the fact that this recognition of Dionisio's right over the subject land was amplified by another letter, dated December 16, 1985,[15] by one L.G. De la Paz to Atty. Torres, expressly declaring Dionisio as the owner of the subject land. MERALCO never disputed the declarations contained in these letters. Neither did it claim that the same was made through palpable mistake. Indeed, Meralco even marked these letters as documentary exhibits. Pursuant to Section 26, Rule 130 of the Rules of Evidence, these admissions and/or declarations may be admitted against Meralco.

MERALCO moved for reconsideration but its motion was denied by the CA in its July 5, 2010 Resolution.

Hence, this petition for review.

ISSUES

I

WHETHER OR NOT THE COMPLAINT STATES A CAUSE OF ACTION FOR UNLAWFUL DETAINER.

II

WHETHER OR NOT EVIDENCE *ALIUNDE*, SUCH AS THE LETTERS DATED 11 OCTOBER 1985 OF PETITIONER'S ASSISTANT VICE PRESIDENT AND HEAD OF LEGAL DEPARTMENT, L.D. TORRES AND INTERNAL MEMORANDUM DATED 6 DECEMBER 1985 OF PETITIONER'S L.G. DELA PAZ WHICH PURPORTEDLY RECOGNIZED RESPONDENTS' OWNERSHIP OF THE PROPERTY CAN PREVAIL OVER THE DEED OF ABSOLUTE SALE.

III

WHETHER OR NOT TITLE TO THE PROPERTY DONATED TO CEDA WAS VALIDLY TRANSFERRED TO THE PETITIONER.

IV

WHETHER OR NOT THE SALE OF THE PROPERTY TO THE PETITIONER VIOLATED OR REVOKED THE DONATION TO CEDA.

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[15] *Id.* at 181.

V

WHETHER OR NOT THE COMPLAINT WAS BARRED BY PRESCRIPTION AND *LACHES*.[16]

Simply put, the vital issues for the Court's consideration are: (1) whether an action for unlawful detainer is the proper remedy in this case; and (2) if it is, who has a better right of physical possession of the disputed property.

In presenting its case before the Court, MERALCO argues that respondents' complaint before the MTCC failed to state a cause of action for unlawful detainer, but for one incapable of pecuniary estimation, because the issue of physical possession is inextricably linked with the proper interpretation of the deed of donation executed between Dionisio and CEDA. Thus, the MTCC was without jurisdiction to hear and decide the case. Further, MERALCO avers that it validly acquired title to the subject land by virtue of the deed of sale executed by CEDA in its favor on June 28, 1985. As a consequence, MERALCO contends that extrinsic or extraneous evidence, such as the letters, dated October 11, 1985 and December 6, 1985, cannot contradict the terms of the deed of sale between CEDA and MERALCO pursuant to Section 9, Rule 130[17] of the Rules of Court.

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[16] *Id.* at 341-342.

[17] Section 9. Evidence of written agreements. — When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" shall include wills.

The Court's Ruling

The petition lacks merit.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[18] The only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved.[19]

An ejectment case, based on the allegation of possession by tolerance, falls under the category of unlawful detainer. Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he/she will vacate on demand, failing which, an action for unlawful detainer will lie.[20]

Jurisdiction of the MTCC

MERALCO contends that respondents' complaint failed to make out a case for unlawful detainer but, rather, one incapable of pecuniary estimation, properly cognizable by the RTC and not the MTCC. It stresses the allegations in the complaint involve a prior determination on the issue of ownership before the issue of possession can be validly resolved.

This contention fails to persuade.

When the issue of ownership is raised in an ejectment case, the first level courts are not *ipso facto* divested of its jurisdiction.

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[18] *Canlas v. Tubil,* G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156-157.

[19] *Samelo v. Manotok Services, Inc.*, G.R. No. 170509, June 27, 2012, 675 SCRA 132, 138-139.

[20] *Republic v. Luriz,* 542 Phil. 137, 149 (2007).

Section 33 (2) of Batas Pambansa *(B.P.)* Blg. 129, as amended by Republic Act *(R.A.)* No. 7691,[21] provides:

> Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in Civil Cases*. – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
>
> x x x x x x x x x
>
> (2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. [Underscoring supplied.]
>
> x x x x x x x x x

In this regard, Section 16, Rule 70 of the Rules of Court allows the first level courts, in ejectment cases, to provisionally determine the issue of ownership for the sole purpose of resolving the issue of physical possession.

> Sec. 16. *Resolving defense of ownership*.–When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

Accordingly, it is unquestionably clear that the first level courts are clothed with the power to preliminarily resolve questions on the ownership of real property, if necessary, to arrive at the proper and complete determination of the question on physical possession or possession *de facto*. Thus, as correctly ruled by the CA, the MTCC should have taken cognizance of the complaint as it was well within its jurisdiction to do so. Moreover, considering that B.P. Blg. 129, as amended, has

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[21] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, amending for the purpose Batas Pambansa, Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980." which took effect on April 15, 1994.

distinctly defined and granted the MTCC with jurisdiction, it is the trial court's duty and obligation to exercise the same when properly invoked.

Right of Possession

As earlier stated, on the issue of possession, the CA opined that by seeking Dionisio's permission to occupy the subject land, MERALCO expressly acknowledged his paramount right of possession.

MERALCO posits that extrinsic evidence, such as the letter request, dated October 11, 1985, and the Internal Memorandum, dated December 6, 1985, cannot contradict the terms of the deed of sale between CEDA and MERALCO pursuant to Section 9, Rule 130[22] of the Rules of Court.

The Court has combed the records and is not convinced.

It is undisputed that on October 11, 1985 or four (4) months after the approval of the MOA and the corresponding Deed of Absolute Sale, MERALCO, through its Assistant Vice President and Head of the Legal Department, Atty. Torres, sent a letter to Dionisio seeking his permission for the continued use of the subject land. The letter reads:

Mr. Dionisio D(e)loy
Trece Martires City 2724
Province of Cavite

Dear Mr. D(e)loy:

This has reference to the Deed of Donation (Inter-vivos) executed on November 12, 1965 between Communications and Electricity Development Authority (CEDA) and Dionisio D(e)loy for a 680-square meter of land used as a substation site adjacent to A.B. Memorial Hospital x x x.

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[22] Section 9. Evidence of written agreements. — When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement.

In compliance with the franchise Nationalization program of the National Government, we wish to inform you that Meralco had taken over the electric operations in the province of Cavite being served by CEDA.

In view of this recent development, may we respectfully request you to please allow Manila Electric Company (Meralco) to continue the use of the above-mentioned portion of land as a substation site, subject to the terms and conditions which we may mutually agree upon.

In the interest of public service, we shall highly appreciate your kind cooperation on this matter and awaiting your reply.

Very truly yours,

[Signed]
L. D. TORRES
Assistant Vice-President
& Head, Legal Department[23]
[Underscoring supplied]

Relative thereto, L.G. De La Paz of the Trece Martires Substation of MERALCO sent the December 16, 1985 Internal Memorandum, addressed to Atty. G.R. Gonzales and Atty. Torres, informing them of some obstacles in reaching a lease agreement with the Deloys. The Internal Memorandum reads:

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" shall include wills.

[23] *Rollo*, p. 180.

ATTY. G.R. GONZALES
ATTY. L.D. TORRES TRECE MARTIRES SUBSTATION

REALTY SERVICES

DECEMBER 16, 1985

This refers to the proposed contract of lease with Mr. Dionisio D[e]loy, co-owner of the lot wherein the Trece Martires Substation is located.

Mr. D[e]loy had donated the use of 680-sq. m. portion of his co-owned land for CEDA's substation in Trece Martires in 1966. Copy of the Donation is enclosed. On October 11, 1985, the company informed him through its letter of its intention of continuing with the use of the property as a result of its acquisition of CEDA's franchise. He agreed to the request and proposed rental would be free provided one of his sons/grandsons would be employed by Meralco. Governor Remulla had favorably recommended Lino D(e)loy, one of his grandsons, for a position in the company. A son, Mr. Policarpio D(e)loy, former CEDA employee, had passed Meralco's entrance examination. According to PAD, his application papers were being processed by the Branch Services Department.

It was unfortunate that when we went to see him on December 6, 1985, to finalize the Contract of Lease, the man was already dead. His body laid at state in his residence. He died on December 5, 1985. As it was not proper to discuss things with the family, we asked the wife when the family would be available. She suggested that we should come back on December 21, 1985. On that day, all the members of the family would be free to confer with us.

There are some problems that may come up with the death of Mr. D(e)loy. These are:

1. the settlement of his estate among his heirs
2. the desire to have more members of the family to be employed in Meralco
3. the rent free use of the substation may not push through
4. the proper signatories in the contract of lease to be drawn

We do hope whatever the problem may be, we will be able to work it out.

For your information.

[Signed]
L.G. DE LA PAZ

xxx xxx xxx.

Evidently, by these two documents, MERALCO acknowledged that the owners of the subject land were the Deloys. It is clear as daylight. The first letter was written barely four (4) months *after* the deed of sale was accomplished. As observed by the CA, MERALCO never disputed the declarations contained in these letters which were even marked as its own exhibits. Pursuant to Section 26, Rule 130 of the Rules of Evidence, these admissions and/or declarations are admissible against MERALCO.

SEC. 26. *Admissions of a party* – The act, declaration, or omission of a party as to a relevant fact may be given in evidence against him.

In *Heirs of Bernardo Ulep v. Ducat*,[24] it was written, thus:

x x x Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.

Guided by the foregoing rules and jurisprudence, the Court holds that the letter and the internal memorandum presented, offered and properly admitted as part of the evidence on record by MERALCO itself, constitute an admission against its own interest. Hence, MERALCO should appropriately be bound by the contents of the documents.

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[24] G.R. No. 159284, January 27, 2009, 577 SCRA 6, 18, citing *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

Nevertheless, in this petition, MERALCO insists that extrinsic evidence, such as the two documents, even if these were their own, cannot contradict the terms of the deed of sale between CEDA and MERALCO pursuant to Section 9, Rule 130[25] of the Rules of Court.

The Court has read the MOA and the Deed of Absolute Sale but found nothing that clearly stated that the subject land was included therein. What were sold, transferred and conveyed were "its electric distribution facilities, service drops, and customers' electric meters except those owned by the VENDOR'S customers, x x x, and all the rights and privileges necessary for the operation of the electric service x x x."[26] No mention was made of any land. Rights and privileges could only refer to franchises, permits and authorizations necessary for the operation of the electric service. The land on which the substation was erected was not included, otherwise, it would have been so stated in the two documents. Otherwise, also, MERALCO would not have written Dionisio to ask permission for the continued use of the subject land.

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[25] Section 9. Evidence of written agreements. – When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" shall include wills.

[26] *Rollo*, p. 57.

At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It bears to emphasize that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession.[27] In *Pascual v. Coronel*,[28] the Court reiterated the rule that a certificate of title has a superior probative value as against that of an unregistered deed of sale in ejectment cases.

On a final note, the Court must stress that the ruling in this case is limited only to the determination as to who between the parties has a better right to possession. This adjudication is not a final determination on the issue of ownership and, thus, will not bar any party from filing an action raising the matter of ownership.

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

SO ORDERED.

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

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[27] *Tolentino v. Laurel*, G.R. No. 181368, February 22, 2012, 666 SCRA 561, 574.

[28] 554 Phil. 351, 361 (2007).

THIRD DIVISION

[G.R. No. 193453. June 5, 2013]

SPOUSES RUBIN and PORTIA HOJAS, *petitioners, vs.* **PHILIPPINE AMANAH BANK and RAMON KUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ESTOPPEL; A REPRESENTATION IS CONCLUSIVE UPON THE PERSON WHO MADE IT AND CANNOT BE DENIED AGAINST THE PERSON WHO RELIED ON IT.— Through *estoppel*, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it. This doctrine is based on the grounds of public policy, fair dealing, good faith, and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied on it. Thus, in order for this doctrine to operate, a representation must have been made to the detriment of another who relied on it. In other words, *estoppels* would not lie against one who, in the first place, did not make any representation.

2. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; RIGHT OF REDEMPTION; PAYMENT OF REDEMPTION PRICE IS IMPERATIVE AS MERE SIGNIFIED INTENTION TO REDEEM IS INSUFFICIENT.— Petitioners' allegation that they had signified their intention to avail of the incentive scheme (*which they have equated to their intention to redeem the property*), did not amount to an exercise of redemption precluding the bank from making the public sale. In the case of *China Banking Corporation v. Martir*, this Court expounded on what constitutes a proper exercise of the right of redemption, to wit: The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase. x x x [W]hether or not respondents were diligent in asserting their willingness to pay is irrelevant.

> Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of the full redemption price within said period. Even the complaint instituted by respondents cannot aid their plight because the institution of an action to annul a foreclosure sale does not suspend the running of the redemption period.

APPEARANCES OF COUNSEL

Henry Ll. Yusingco, Jr. for petitioners.
Mary Jane E. Misoles-Matobato for Allied Banking Corp.
Office of the Government Corporate Counsel for Philippine Amanah Bank.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the July 28, 2010 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 55722, which affirmed the May 27, 1996 Decision of the Regional Trial Court, Branch 13, Zamboanga City *(RTC)*, dismissing Civil Case No. 1028 (3952), an action for "Determination of True Balance of Mortgage, Debt, Annulment/ Setting Aside of Extrajudicial Foreclosure of Mortgage and Damages, with Prayer for Preliminary Injunction."

The petitioners, Spouses Rubin and Portia Hojas *(petitioners)*, alleged that on April 11, 1980, they secured a loan from respondent Philippine Amanah Bank *(PAB)* in the amount of ₱450,000.00; that this loan was secured by a mortgage, covering both personal and real properties; that from May 14, 1981 to June 27, 1986, they made various payments amounting to ₱486,162.13; that PAB, however, did not properly credit their payments; that based on the summary of payments furnished

[1] *Rollo*, pp. 19-33. Penned by Associate Justice Romulo V. Borja with Associate Justice Edgardo T. Lloren and Associate Justice Paul L. Hernando, concurring.

by PAB to them on February 24, 1989, only 13 payments were credited, erroneously amounting to ₱317,048.83; that PAB did not credit the payment they made totaling ₱165,623.24; and that, in the statement of their account as of October 17, 1984, PAB listed their total payment as ₱412,211.54 on the principal, and ₱138,472.09 as 30% interest, all amounting to ₱550,683.63, despite the fact that at that time, petitioners had already paid the total sum of ₱486,162.13.[2]

Petitioners further averred that for failure to pay the loan, PAB applied for the extrajudicial foreclosure of the mortgaged real properties of petitioners with the *Ex-Officio* Sheriff; that consequently, a Notice of Extrajudicial Foreclosure was issued on January 12, 1987 setting the foreclosure sale on April 21, 1987 and, stating therein the mortgage debt in the sum of ₱450,000.00; and that, in the public auction conducted, PAB acquired said real property.[3]

It was further alleged that on March 9, 1988, through the intervention of then Senator Aquilino Pimentel, Farouk A. Carpizo *(Carpizo)*, the OIC-President of PAB, wrote Roberto Hojas *(Roberto)*, petitioners' son, informing him that although the one-year redemption period would expire on April 21, 1988, by virtue of the bank's incentive scheme, the redemption period was extended until December 31, 1988; that despite said letter from the OIC-President, the OIC of the Project Development Department of PAB wrote Rubin Hojas that the real properties acquired by PAB would be sold in a public bidding before the end of August, 1988; that on November 4, 1988, a public bidding was conducted; that in the said bidding, the mortgaged properties were awarded to respondent Ramon Kue *(Kue)*; that subsequently, they received a letter from the OIC of the Project Development Department, dated January 3, 1989, informing them that they had fifteen (15) days from receipt within which to vacate the premises; that Kue then sent another letter, dated January 31, 1989, informing

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[2] *Id.* at 20.

[3] *Id*.

them that he had already acquired the said property and that they were requested to vacate the premises within fifteen (15) days from receipt thereof;[4] and that because of this development, on May 7, 1991, petitioners filed an action for "Determination of True Balance of Mortgage Debt, Annulment/Setting Aside of Extrajudicial Foreclosure of Mortgage and Damages, with Prayer for Preliminary Injunction" against PAB.[5]

On May 27, 1996, the RTC dismissed petitioners' complaint. It ruled, among others, that: 1) PAB was not guilty of bad faith in conducting the extrajudicial foreclosure as it, at one time, even suspended the conduct of the foreclosure upon the request of petitioners, who, nevertheless, failed to exert effort to settle their accounts; 2) because petitioners failed to redeem their properties within the period allowed, PAB became its absolute owner and, as such, it had the right to sell the same to Kue, who acquired the property for value and in good faith; and 3) the subsequent foreclosure and auction sale having been conducted above board and in accordance with the requisite legal procedure, collusion [between PAB and Kue] was certainly alien to the issue.[6]

Aggrieved, petitioners filed an appeal assailing the May 27, 1996 RTC Decision. They asserted that the March 9, 1988 Letter of Carpizo to Roberto Hojas extended the redemption period from April 21 to December 31, 1988. Considering that they had relied on Carpizo's representation, PAB violated the principle of *estoppel* when it conducted the public sale on November 4, 1988.[7] Their basis was the portion of said letter which stated:

x x x x x x x x x

As the Bank has adopted an incentive scheme whereby payments are liberalized to give chances to former owners to repossess their

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[4] *Id.* at 21.

[5] *Id.* at 22.

[6] *Id.* at 25.

[7] *Id.* at 30-31.

properties, we suggest that you advise your parents to drop by at our Zamboanga Office so they can avail of this rare privilege which shall be good only up to December 31, 1988. (Emphasis supplied)[8]

The CA was not sympathetic with petitioners' position. It held that the period of redemption was never extended. The date "December 31, 1988" was not an extension of the redemption period. It was merely the last day for the availment of the liberalized payment for the repossession of foreclosed assets under PAB's incentive scheme. PAB, through said letter, did not make an unqualified representation to petitioners that it had extended the redemption period. As such, PAB could not be said to have violated the principle of *estoppel* when it conducted a public sale on November 4, 1988.[9] Thus, the dispositive portion of the CA decision reads:

ACCORDINGLY, the instant appeal is **DENIED**. The Decision dated May 27, 1996, of the Regional Trial Court, 9th Judicial Region, Branch No. 13 of Zamboanga City, in Civil Case No. 1028 (3952), is **AFFIRMED.**

SO ORDERED.[10]

Undaunted, petitioners filed the present petition for review. It postulated the sole issue:

WHETHER OR NOT THE CA ERRED IN NOT HOLDING PAB TO HAVE VIOLATED THE PRINCIPLE OF *ESTOPPEL* WHEN THE LATTER CONDUCTED THE NOVEMBER 4, 1988 PUBLIC SALE.

Petitioners reiterated their argument that the November 4, 1988 public sale by PAB was violative of the principle of *estoppel* because said bank made it appear that the one-year redemption period was extended. As such, when PAB sold the property before said date, they suffered damages and were greatly prejudiced.[11]

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[8] *Id.* at 31.

[9] *Id.* at 32.

[10] *Id*.

[11] *Id.* at 14.

They also argued that since they manifested their interest in availing of the said "incentive scheme," PAB should have, at the very least, waited until December 31, 1988, before it sold the subject foreclosed property in a public auction.[12]

On the other hand, PAB explains that the purpose of the "incentive scheme" was to give previous owners the chance to redeem their properties on easy payment term basis, through condonation of some charges and penalties and allowing payment by installment based on their proposals which may be acceptable to PAB. Therefore, the March 9, 1988 Letter of Carpizo was an invitation for petitioners to submit a proposal to PAB.[13] It was not meant to extend the one-year redemption period.

As early as August 11, 1988, PAB wrote petitioners informing them of the scheduled public bidding. After receipt of the letter, petitioners went to PAB to signify their willingness to avail of the said incentive scheme. They, however, failed to submit a proposal. In fact, PAB did not hear from petitioners again. As such, the respondent sold the subject property in a public sale on November 4, 1988[14] PAB cited the RTC's finding that although the petitioners manifested their intention to avail of the incentive scheme desire alone was not sufficient. Redemption is not a matter of intent but involved making the proper payment or tender of the price of the land within the specified period.[15]

The petition is bereft of merit.

Through *estoppel*, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it.[16] This doctrine is based on the grounds of public policy, fair dealing, good faith, and

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

[13] *Id.* at 72.

[14] *Id*.

[15] *Dela Merced v. De Guzman*, 243 Phil. 251, 256 (1988).

[16] CIVIL CODE, Article 1431.

justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied on it.[17] Thus, in order for this doctrine to operate, a representation must have been made to the detriment of another who relied on it. In other words, *estoppel* would not lie against one who, in the first place, did not make any representation.

In this case, a perusal of the letter, on which petitioners based their position that the redemption period had been extended, shows otherwise. Pertinent portions of the said letter read:

xxx xxx xxx

Our records show that the above account has already been foreclosed by the bank. However, the **borrowers concerned can still exercise the one (1) year right of redemption over the foreclosed properties until April 21, 1988.**

As the Bank has adopted an incentive scheme whereby payments are liberalized to give chances to former owners to repossess their properties, we suggest that you advise your parents to drop by at our Zamboanga Office so they can avail of this rare privilege which shall be good only up to December 31, 1988. [Emphases and Underscoring Supplied][18]

As correctly held by the RTC and upheld by the CA, the date "December 31, 1988" refers to the last day when owners of foreclosed properties, like petitioners, could submit their payment proposals to the bank. The letter was very clear. It was about the availment of the liberalized payment scheme of the bank. On the last day for redemption, the letter was also clear. It was April 21, 1988. It was never extended.

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[17] *Rockland Construction Company v. Mid-Pasig Land Development Corporation*, G.R. No. 164587, February 04, 2008, 543 SCRA 596, 603, citing *Philippine National Bank v. Court of Appeals*, Nos. L-30831 & L-31176, November 21, 1979, 94 SCRA 357, 368.

[18] *Rollo*, p. 31.

The opportunity given to the petitioners was to avail of the liberalized payment scheme which program would expire on December 31, 1988. As explained by Abraham Iribani *(Iribani)*, the OIC of the Project Development Department of PAB, it was to give a chance to previous owners to repossess their properties on easy term basis, possibly by condonation of charges and penalties and payment on instalment. The letter of Carpizo was an invitation to the petitioners to come to the bank with their proposal. It appears that the petitioners could not come up with a proposal acceptable to the bank.

For said reason, the mortgaged property was included in the list of mortgaged properties that would be sold through a scheduled public bidding. Thus, on August 11, 1988, Iribani wrote the petitioners about the scheduled bidding. In response, the petitioners told Iribani that they would go Manila to explain their case. They did not, however, return even after the public bidding. In this regard, the CA was correct when it wrote:

> Here, there is no estoppel to speak of. The letter does not show that the Bank had unqualifiedly represented to the Hojases that it had extended the redemption period to December 31, 1988. Thus, the Hojases have no basis in positing that the public sale conducted on November 4, 1988 was null and void for having been prematurely conducted.[19]

Moreover, petitioners' allegation that they had signified their intention to avail of the incentive scheme (*which they have equated to their intention to redeem the property*), did not amount to an exercise of redemption precluding the bank from making the public sale.[20] In the case of *China Banking Corporation v. Martir*,[21] this Court expounded on what constitutes a proper exercise of the right of redemption, to wit:

> The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention

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[19] *Id.* at 32.

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

[21] G.R. No. 184252, September 11, 2009, 599 SCRA 672.

must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

In several cases decided by the Court where the right to repurchase was held to have been properly exercised, there was an unequivocal tender of payment for the full amount of the repurchase price. Otherwise, the offer to redeem is ineffectual. *Bona fide* redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented.

Moreover, jurisprudence also characterizes a valid tender of payment as one where the full redemption price is tendered. Consequently, in this case, the offer by respondents on July 24, 1986 to redeem the foreclosed properties for ₱1,872,935 and the subsequent consignation in court of ₱1,500,000 on August 27, 1986, while made within the period of redemption, was ineffective since the amount offered and actually consigned not only did not include the interest but was in fact also way below the ₱2,782,554.66 paid by the highest bidder/purchaser of the properties during the auction sale.

In *Bodiongan vs. Court of Appeals*, we held:

> In order to effect a redemption, the judgment debtor must pay the purchaser the redemption price composed of the following: (1) the price which the purchaser paid for the property; (2) interest of 1% per month on the purchase price; (3) the amount of any assessments or taxes which the purchaser may have paid on the property after the purchase; and (4) interest of 1% per month on such assessments and taxes x x x.

Furthermore, Article 1616 of the Civil Code of the Philippines provides:

> The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale x x x.

It is not difficult to understand why the redemption price should either be fully offered in legal tender or else validly consigned in court. Only by such means can the auction winner be assured that the offer to redeem is being made in good faith.

Respondents' repeated requests for information as regards the amount of loan availed from the credit line and the amount of redemption, and petitioner's failure to accede to said requests do not invalidate the foreclosure. Respondents can find other ways to

know the redemption price. For one, they can examine the Certificate of Sale registered with the Register of Deeds to verify the purchase price, or upon the filing of their complaint, they could have moved for a computation of the redemption price and consigned the same to the court. At any rate, whether or not respondents were diligent in asserting their willingness to pay is irrelevant. Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of the full redemption price within said period.

Even the complaint instituted by respondents cannot aid their plight because the institution of an action to annul a foreclosure sale does not suspend the running of the redemption period. (Underscoring supplied)[22]

In the case at bench, the record is bereft of concrete evidence that would show that, aside from the fact that petitioners manifested their intention to avail of the scheme, they were also ready to pay the redemption price. Hence, as they failed to exercise their right of redemption and failed to take advantage of the liberalized incentive scheme, PAB was well within its right to sell its property in a public sale.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[22] *Id.* at 685-686, citing *BPI Family Savings Bank v. Spouses Veloso,* 479 Phil. 627,632 (2004).

SECOND DIVISION

[G.R. No. 193747. June 5, 2013]

JOSELITO C. BORROMEO, *petitioner, vs.* **JUAN T. MINA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PARTY WHO ADOPTS A CERTAIN THEORY UPON WHICH THE CASE IS TRIED AND DECIDED BY THE LOWER COURTS WILL NOT BE ALLOWED TO CHANGE HIS THEORY ON APPEAL.—** Settled is the rule that a party who adopts a certain theory upon which the case is tried and decided by the lower courts or tribunals will not be permitted to change his theory on appeal, not because of the strict application of procedural rules, but as a matter of fairness. Basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court would not ordinarily be considered by a reviewing court, *except* when their factual bases would not require presentation of any further evidence by the adverse party in order to enable him to properly meet the issue raised, such as when the factual bases of such novel theory, issue or argument (*a*) is subject of judicial notice; or (*b*) had already been judicially admitted, which do not obtain in this case.

2. **LABOR AND SOCIAL LEGISLATION; PD 27; TRANSFER OF OWNERSHIP OVER TENANTED RICE AND/CORN LANDS AFTER OCTOBER 21, 1972 MUST ONLY BE IN FAVOR OF ACTUAL TENANT-TILLERS THEREON.—** PD 27 prohibits the transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 ***except only in favor of the actual tenant-tillers thereon***. x x x [Here] records reveal that the subject landholding fell under the coverage of PD 27 on October 21, 1972 and as such, could have been subsequently sold only to the tenant thereof, *i.e.*, the respondent. Notably, the status of respondent as tenant is now beyond dispute considering petitioner's admission of such fact. Likewise, as earlier discussed, petitioner is tied down to his initial theory that his claim of ownership over the subject property was based on the 1982

> deed of sale. Therefore, as Garcia sold the property in 1982 to the petitioner who is evidently not the tenant-beneficiary of the same, the said transaction is null and void for being contrary to law. In consequence, petitioner cannot assert any right over the subject landholding, such as his present claim for landholding exemption, because his title springs from a null and void source. A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation. x x x [T]he Court sees no reason to delve on the issue regarding the cancellation of respondent's emancipation patent, without prejudice to petitioner's right to raise his other claims and objections thereto through the appropriate action filed before the proper forum.

APPEARANCES OF COUNSEL

Maria Lilia Gemmilyn M. Borromeo for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the April 30, 2010 Decision[2] and September 13, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101185, dismissing petitioner Joselito C. Borromeo's petitions which identically prayed for the exemption of his landholding from the coverage of the government's Operation Land Transfer (OLT) program as well as the cancellation of respondent Juan T. Mina's title over the property subject of the said landholding.

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[1] *Rollo*, pp. 4-20.

[2] *Id.* at 69-82. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Romeo F. Barza and Amy C. Lazaro-Javier, concurring.

[3] *Id.* at 28-30.

The Facts

Subject of this case is a 1.1057 hectare parcel of agricultural land, situated in Barangay Magsaysay, Naguilian, Isabela, denominated as Lot No. 5378 and covered by Transfer Certificate of Title (TCT) No. EP-43526,[4] registered in the name of respondent (subject property). It appears from the foregoing TCT that respondent's title over the said property is based on Emancipation Patent No. 393178 issued by the Department of Agrarian Reform (DAR) on May 2, 1990.[5]

Petitioner filed a Petition dated June 9, 2003[6] before the Provincial Agrarian Reform Office (PARO) of Isabela, seeking that: (*a*) his landholding over the subject property (subject landholding) be exempted from the coverage of the government's OLT program under Presidential Decree No. 27 dated October 21, 1972[7] (PD 27); and (*b*) respondent's emancipation patent over the subject property be consequently revoked and cancelled.[8] To this end, petitioner alleged that he purchased the aforesaid property from its previous owner, one Serafin M. Garcia (Garcia), as evidenced by a deed of sale notarized on February 19, 1982 (1982 deed of sale). For various reasons, however, he was not able to effect the transfer of title in his name. Subsequently, to his surprise, he learned that an emancipation patent was issued in respondent's favor without any notice to him. He equally maintained that his total agricultural landholdings was only 3.3635 hectares and thus, within the landowner's retention limits under both PD 27 and Republic Act No. 6647, otherwise known as the "Comprehensive Agrarian

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[4] CA *rollo*, pp. 45-46.

[5] *Rollo*, p. 70.

[6] CA *rollo*, p. 42.

[7] "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."

[8] Docketed as Adm. Case No. A-0204-0113-03.

Reform Law of 1988." In this regard, he claimed that the subject landholding should have been excluded from the coverage of the government's OLT program.[9]

Petitioner filed a subsequent Petition dated September 1, 2003[10] also with the PARO which contained identical allegations as those stated in his June 9, 2003 Petition (PARO petitions) and similarly prayed for the cancellation of respondent's emancipation patent.

After due investigation, the Municipal Agrarian Reform Officer (MARO) Joey Rolando M. Unblas issued a Report dated September 29, 2003,[11] finding that the subject property was erroneously identified by the same office as the property of petitioner's father, the late Cipriano Borromeo. In all actuality, however, the subject property was never owned by Cipriano Borromeo as its true owner was Garcia – notably, a perennial PD 27 landowner[12] – who later sold the same to petitioner.

Based on these findings, the MARO recommended that: (*a*) the subject landholding be exempted from the coverage of the OLT; and (*b*) petitioner be allowed to withdraw any amortizations deposited by respondent with the Land Bank of the Philippines (LBP) to serve as rental payments for the latter's use of the subject property.[13]

The Ruling of the PARO

In an undated Resolution, the PARO adopted the recommendation of the MARO and accordingly (*a*) cancelled respondent's emancipation patent; (*b*) directed petitioner to allow respondent to continue in the peaceful possession and cultivation of the subject property and to execute a leasehold

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[9] *Supra* note 6.

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

[11] *Rollo*, pp. 31-32.

[12] *Id.* at 31.

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

contract over the same pursuant to the provisions of Republic Act No. 3844 (RA 3844), otherwise known as the "Agricultural Land Reform Code"; and (*c*) authorized petitioner to withdraw from the LBP all amortizations deposited by respondent as rental payments for the latter's use of the said property.[14]

Aggrieved, respondent filed an administrative appeal to the DAR Regional Director.

The Ruling of the DAR Regional Director

On November 30, 2004, DAR Regional Director Renato R. Navata issued an Order,[15] finding that petitioner, being the true owner of the subject property, had the right to impugn its coverage from the government's OLT program. Further, considering that the subject property was erroneously identified as owned by Cipriano Borromeo, coupled with the fact that petitioner's total agricultural landholdings was way below the retention limits prescribed under existing agrarian laws, he declared the subject landholding to be exempt from OLT coverage.

While affirming the PARO's Decision, the DAR Regional Director did not, however, order the cancellation of respondent's emancipation patent. He merely directed petitioner to institute the proper proceedings for such purpose before the DAR Adjudication Board.

Consequently, respondent moved for reconsideration,[16] challenging petitioner's ownership of the subject property for lack of sufficient basis to show that his averred predecessor-in-interest, Garcia, was its actual owner. In addition, respondent pointed out that petitioner never filed a protest against the issuance of an emancipation patent in his favor. Hence, petitioner should be deemed to have slept on his rights on account of his inaction for 21 years.

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[14] See Order dated November 30, 2004. CA *rollo*, pp. 48-49.

[15] *Id.* at 47-51.

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

The aforesaid motion was, however, denied in the Resolution dated February 10, 2006,[17] prompting respondent to elevate the matter to the DAR Secretary.

The Ruling of the DAR Secretary

On September 12, 2007, then DAR Secretary Nasser C. Pagandaman issued DARCO Order No. EXC-0709-333, series of 2007,[18] affirming *in toto* the DAR Regional Director's ruling. It upheld the latter's findings that the subject landholding was improperly placed under the coverage of the government's OLT program on account of the erroneous identification of the landowner,[19] considering as well the fact that petitioner's total agricultural landholdings, *i.e.*, 3.3635 hectares, was way below the retention limits under existing agrarian laws.[20]

Undaunted, respondent filed a petition for review with the CA.

The Ruling of the CA

In a Decision dated April 30, 2010,[21] the CA reversed and set aside the DAR Secretary's ruling. It doubted petitioner's claim of ownership based on the 1982 deed of sale due to the inconsistent allegations regarding the dates of its notarization divergently stated in the two (2) PARO Petitions, this alongside the fact that a copy of the same was not even attached to the records of the case for its examination. In any case, the CA found the said sale to be null and void for being a prohibited transaction under PD 27 which forbids the transfers or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiaries thereof, of which petitioner was not.[22] It also held[23] that petitioner cannot

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[17] *Id.* at 67-69. Penned by DAR OIC-Regional Director Araceli A. Follante, CESO IV.

[18] *Id.* at 77-80.

[19] *Id.* at 78.

[20] *Id.* at 79.

[21] *Rollo*, pp. 69-82.

[22] *Id.* at 78-80.

[23] *Rollo*, p. 80.

mount any collateral attack against respondent's title to the subject property as the same is prohibited under Section 48 of the Presidential Decree No. 1529 (PD 1529), otherwise known as the "Property Registration Decree."

Petitioner moved for reconsideration which was, however, denied in a Resolution dated September 13, 2010.[24]

Hence, this petition.

The Petition

Petitioner contends that the CA erred in declaring the sale between him and Garcia as null and void. In this connection, he avers that there was actually an oral sale entered into by him and Garcia (through his son Lorenzo Garcia) in 1976. The said oral sale was consummated on the same year as petitioner had already occupied and tilled the subject property and started paying real estate taxes thereon. He further alleges that he allowed respondent to cultivate and possess the subject property in 1976 only out of mercy and compassion since the latter begged him for work. The existing sale agreement had been merely formalized by virtue of the 1982 deed of sale which in fact, expressly provided that the subject property was not tenanted and that the provisions of law on pre-emption had been complied with.[25] In this regard, petitioner claims that respondent cannot be considered as a tenant and as such, the issuance of an emancipation patent in his favor was erroneous. Likewise, petitioner claims that his right to due process was violated by the issuance of the aforesaid emancipation patent without any notice on his part.

In his Comment,[26] respondent counters that petitioner cannot change his theory regarding the date of sale between him and Garcia nor even raise the same factual issue on appeal before the Court.[27] Moreover, he asserts that the 1982 deed of sale

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[24] *Supra* note 3.

[25] *Rollo*, pp. 9-10.

[26] *Id.* at 97-117.

[27] *Id.* at 100-103.

was not registered and therefore, does not bind him. In any event, he posits that the sale between petitioner and Garcia was null and void.[28] Finally, he argues that petitioner's PARO petitions constitute collateral attacks to his title to the subject property which are disallowed under PD 1529.[29]

The Court's Ruling

The petition lacks merit.

A. Petitioner's change of theory on appeal

The Court first resolves the procedural matter.

Settled is the rule that a party who adopts a certain theory upon which the case is tried and decided by the lower courts or tribunals will not be permitted to change his theory on appeal,[30] not because of the strict application of procedural rules, but as a matter of fairness.[31] Basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court would not ordinarily be considered by a reviewing court,[32] *except* when their factual bases would not require presentation of any further evidence by the adverse party in order to enable him to properly meet the issue raised,[33] such as when the factual bases of such novel theory, issue or

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[28] *Id.* at 106-109.

[29] *Id.* at 113-115.

[30] *Kings Properties Corporation v. Galido*, G.R. No. 170023, November 27, 2009, 606 SCRA 137, 154, citing *Philippine Ports Authority v. City of Iloilo,* 453 Phil. 927, 934 (2003).

[31] *Duty Free Philippines Services, Inc. v. Tria*, G.R. No. 174809, June 27, 2012, 675 SCRA 222, 231.

[32] *Jarcia, Jr. v. People*, G.R. No. 187926, February 15, 2012, 666 SCRA 336, 359.

[33] *Bote v. Veloso*, G.R. No. 194270, December 3, 2012, 686 SCRA 686 SCRA 758, 768.

argument is (*a*) subject of judicial notice; or (*b*) had already been judicially admitted,[34] which do not obtain in this case.

Records show that petitioner changed his theory on appeal with respect to two (2) matters:

First, the actual basis of his ownership rights over the subject property, wherein he now claims that his ownership was actually based on a certain oral sale in 1976 which was merely formalized by the 1982 deed of sale;[35] and

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[34] Rule 129 of the Rules of Court enumerates what matters need not be proved, to wit:

RULE 129

What Need Not Be Proved

SECTION 1 . *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SEC. 2 . *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

SEC. 3 . *Judicial notice, when hearing necessary*. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

SEC. 4 . *Judicial admissions*. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[35] *Rollo*, pp. 9, 122-123.

Second, the status of respondent as tenant of the subject property, which he never questioned during the earlier stages of the proceedings before the DAR but presently disputes before the Court.

Clearly, the factual bases of the foregoing theories require the presentation of proof as neither of them had been judicially admitted by respondent nor subject of judicial notice. Therefore, the Court cannot entertain petitioner's novel arguments raised in the instant petition. Accordingly, he must rely on his previous positions that (*a*) **his basis of ownership over the subject property rests on the 1982 deed of sale**; and (*b*) **that respondent's status as the tenant of the subject property remains undisputed**.

Having settled the foregoing procedural issue, the Court now proceeds to resolve the substantive issue in this case.

B. Validity of the sale of the subject property to petitioner

PD 27 prohibits the transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 ***except only in favor of the actual tenant-tillers thereon***. As held in the case of *Sta. Monica Industrial and Development Corporation v. DAR Regional Director for Region III*,[36] citing *Heirs of Batongbacal v. CA*:[37]

> x x x **P.D. No. 27, as amended, forbids the transfer or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiary**. x x x.
>
> In *Heirs of Batongbacal v. Court of Appeals*, involving the similar issue of sale of a covered agricultural land under P.D. No. 27, this Court held:
>
> > Clearly, therefore, Philbanking committed breach of obligation as an agricultural lessor. As the records show, private respondent was not informed about the sale between Philbanking and petitioner, and neither was he privy to the transfer of ownership from Juana Luciano to Philbanking. As an agricultural lessee, the law gives him the right to be informed about matters affecting the land he tills, without need for him to inquire about it.

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[36] G.R. No. 164846, June 18, 2008, 555 SCRA 97, 105.

[37] 438 Phil. 283, 295 (2002).

x x x x

> In other words, **transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 is allowed only in favor of the actual tenant-tillers thereon**. Hence, the sale executed by Philbanking on January 11, 1985 in favor of petitioner was in violation of the aforequoted provision of P.D. 27 and its implementing guidelines, and must thus be declared null and void. (Emphasis and underscoring supplied)

Records reveal that the subject landholding fell under the coverage of PD 27 on October 21, 1972[38] and as such, could have been subsequently sold only to the tenant thereof, *i.e.*, the respondent. Notably, the status of respondent as tenant is now beyond dispute considering petitioner's admission of such fact.[39] Likewise, as earlier discussed, petitioner is tied down to his initial theory that his claim of ownership over the subject property was based on the 1982 deed of sale. Therefore, as Garcia sold the property in 1982 to the petitioner who is evidently not the tenant-beneficiary of the same, the said transaction is null and void for being contrary to law.[40]

In consequence, petitioner cannot assert any right over the subject landholding, such as his present claim for landholding exemption, because his title springs from a null and void source. A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation.[41] Hence, notwithstanding the erroneous identification of the subject landholding

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[38] To note, based on the MARO's findings, Garcia is a "perennial P.D. No. 27 landowner." See *rollo*, p. 31.

[39] *Id.* at 78.

[40] Article 1409 of the Civil Code provides as follows:

> Art. 1409. The following contracts are inexistent and void from the beginning:
>
> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
>
> x x x x
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[41] *Menchavez v. Teves, Jr.*, 490 Phil. 268, 280 (2005).

by the MARO as owned by Cipriano Borromeo, the fact remains that petitioner had no right to file a petition for landholding exemption since the sale of the said property to him by Garcia in 1982 is null and void. Proceeding from this, the finding that petitioner's total agricultural landholdings is way below the retention limits set forth by law thus, becomes irrelevant to his claim for landholding exemption precisely because he has no right over the aforementioned landholding.

In view of the foregoing disquisition, the Court sees no reason to delve on the issue regarding the cancellation of respondent's emancipation patent, without prejudice to petitioner's right to raise his other claims and objections thereto through the appropriate action filed before the proper forum.[42]

WHEREFORE, the petition is **DENIED**. The assailed April 30, 2010 Decision and September 13, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 101185 are hereby **AFFIRMED.**

SO ORDERED.

Brion[*] *(Acting Chairperson), del Castillo, Perez,* and *Leonen,*[**] *JJ.,* concur.

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[42] To note, Section 9 of Republic Act No. 9700 (which took effect in 2009), amending Section 24 of Republic Act No. 6657, partly reads as follows:

Section 9**.** Section 24 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 24. *Award to Beneficiaries*. - The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land".

x x x x

"All cases involving the **cancellation of registered emancipation patents**, certificates of land ownership award, and other titles issued under any agrarian reform program are **within the exclusive and original jurisdiction of the Secretary of the DAR**."(Emphasis supplied)

[*] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

THIRD DIVISION

[G.R. No. 195523. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO GANI *y* TUPAS,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF YOUNG RAPE VICTIM, UPHELD.—** The Court finds no cogent reason to disturb the RTC's factual findings, as affirmed by the CA. It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. More importantly, this Court's assessment of the records of the case indicates no reversible error committed by the lower courts. AAA's testimony that she was raped by her uncle on February 21, 1997, around 1o'clock in the afternoon is worthy of belief as it was clear, consistent and spontaneously given. There is no compelling reason to disbelieve AAA's declaration given that she was only five (5) years old when she was ravished and eight (8) years old when she testified in court. It has long been established that the testimony of a rape victim, especially a child of tender years, is given full weight and credit.

2. **ID.; ID.; ALIBI; ACCUSED FAILED TO SUFFICIENTLY ESTABLISH THAT HE WAS IN A PLACE OTHER THAN THE *SITUS CRIMINIS* AT THE TIME WHEN THE CRIME WAS COMMITTED.—** The Court also upholds the rulings of the RTC and the CA that appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. In this case, appellant failed to prove that it was physically impossible for him to be at the crime scene on February 21, 1997. His token defense, during his direct examination, that he was in Quezon City when the victim was raped is hardly credible because he

failed to prove the physical impossibility of his presence at the scene of the crime when it was committed. On the contrary, he admitted, when he was cross-examined, that he was, in fact, in the same locality (Sitio Bayogbayog, Barangay Bulata) when AAA was raped.

3. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY AND IDENTIFICATION OF ACCUSED MADE BY CREDIBLE WITNESS WHO HAS NO ILL MOTIVE.— [S]ettled is the rule that alibi and denial cannot prevail over the positive and categorical testimony and identification of an accused by the complainant. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

4. ID.; ID.; FRAME-UP; WEAK DEFENSE THAT REQUIRES CLEAR AND CONVINCING EVIDENCE.— It is settled that the defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove. In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.

5. CRIMINAL LAW; QUALIFIED RAPE; MINORITY OF THE VICTIM AND HER RELATIONSHIP WITH ACCUSED SUFFICIENTLY ALLEGED AND ESTABLISHED; PENALTY APPLYING RA 9346 IS *RECLUSION PERPETUA*, NOT ELIGIBLE FOR PAROLE; CIVIL PENALTIES.— [T]he CA correctly affirmed appellant's conviction for qualified rape. Both the minority of the victim and her relationship to appellant were sufficiently alleged in the Information and proved by the prosecution. Such offense was punishable by death under Article 266-B of the Revised Penal Code and the trial court correctly imposed such penalty. However, in view of the enactment of Republic Act No. 9346 (RA 9346), which became effective on June 30, 2006 after the promulgation of the RTC Decision and which prohibits the imposition of death penalty, the CA correctly modified the judgment of the RTC by imposing the penalty of *reclusion perpetua.* The CA, nonetheless, should have indicated that appellant is not eligible for parole, in accordance with the provisions of Section 3 of RA 9346. As to appellant's

civil liability, the CA correctly ordered appellant's payment to AAA of the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. However, to conform to prevailing jurisprudence, the award of ₱25,000.00, as exemplary damages, is increased to ₱30,000.00 due to the attendance of the qualifying circumstances of minority of AAA and the relationship between her and appellant. In addition, appellant is liable to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this Decision.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

On appeal before the Court is the Decision[1] of the Court of Appeals (CA), dated January 26, 2010, in CA-G.R. CEB-CR-HC No. 00423, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Kabankalan City, Negros Occidental, Branch 61, dated January 11, 2005 in Criminal Case No. 97-1917, finding herein appellant Ernesto Gani *y* Tupas guilty beyond reasonable doubt of the crime of qualified rape and sentencing him to suffer the penalty of death.

In an Information dated May 5, 1997, appellant was indicted before the RTC of Negros Occidental, Kabankalan City for the crime of rape, to wit:

The undersigned 1st Assistant Provincial Prosecutor, Officer-in-Charge, on the basis of a criminal complaint signed by LETICIA G. ALINGASA, for and in behalf of AAA, her niece, a minor, 5 years old, accuses ERNESTO GANI *alias* "Botyok" of the crime of Rape, committed as follows:

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[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Agnes Reyes Carpio and Socorro B. Inting; concurring; *rollo*, pp. 2-10.

[2] Penned by Judge Henry D. Arles; CA *rollo*, pp. 23-31.

> That on or about the 21st day of February 1997, in the Municipality of Cauayan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being her uncle, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of AAA against her will.
>
> CONTRARY TO LAW.[3]

On August 25, 1998, appellant, duly assisted by his counsel, entered a plea of "not guilty" to the offense charged.[4]

After pre-trial,[5] trial on the merits ensued.

The facts, as established by the prosecution, are as follows:

In the afternoon of February 21, 1997, the victim, AAA, who was then only five (5) years old, was harvesting vegetables with her elder brother at Sitio Bayogbayog, Barangay Bulata, Cauayan, Negros Occidental.[6] The siblings were practically left as orphans, because their father was then in prison, and eventually died there, and their mother was living with another man.[7] While they were busy with their work, appellant, who is their uncle, arrived carrying a knife.[8] Appellant is the younger brother of their father.[9] Subsequently, he instructed AAA's brother to go home ahead.[10] After the latter left, appellant approached AAA and, right then and there, removed her underwear, placed himself on top of her and inserted his penis into her vagina.[11] After

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[3] Records, p. 1.

[4] See RTC Order, *id.* at 45.

[5] See PreTrial Order, *id.* at 67-69.

[6] TSN, May 29, 2000, p. 4.

[7] TSN, September 12, 2001, pp. 12-13; TSN, May 25, 2004, pp. 10-11.

[8] TSN, May 25, 2004, pp. 5, 8-9.

[9] TSN, September 12, 2001, p. 9; TSN, May 25, 2004, pp. 9-10.

[10] TSN, May 29, 2000, p. 5.

[11] *Id.* at 6-7.

having sexual intercourse with AAA, appellant drew out his knife and slashed her vagina causing her serious injury.[12] Thereafter, appellant left.[13] AAA then went home and recounted her ordeal to her grandmother.[14] AAA was then brought to the health center for first aid treatment and later to Bacolod City for further medical care.[15] Subsequently, AAA's aunt, Leticia Alingasa filed, in her behalf, a Criminal Complaint[16] against appellant.

Appellant interposed the defense of alibi claiming that he was in Quezon City at the time that AAA was raped.[17] He pointed to his brother-in-law, Ermelo Alingasa, as the one who committed the rape.[18]

In its Decision dated January 11, 2005, the RTC found the version of the prosecution credible and, accordingly, rendered judgment as follows:

> WHEREFORE, the Court finds accused Ernesto Gani *y* Tupas *alias* "Botyok," GUILTY beyond reasonable doubt of the crime of rape committed against his niece [AAA], five years of age and being the uncle of said victim, a relationship within the third civil degree of consanguinity hereby sentences him to suffer the supreme penalty of DEATH. He is also ordered to pay the victim the sum of ₱75,000.00 by way of civil indemnity, ₱50,000.00 by way of moral damages and ₱25,000.00 as exemplary damages and the costs.
>
> It is ordered that accused be immediately remitted to the National Penitentiary.
>
> SO ORDERED.[19]

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[12] *Id.* at 7 and 9.

[13] *Id.* at 7.

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

[15] *Id.* at 8.

[16] Records, p. 5.

[17] TSN, May 25, 2004, pp. 4-5.

[18] *Id.* at 8.

[19] Records, pp. 248-249.

The RTC held that the victim's categorical, spontaneous and candid narration of how the appellant raped her deserves full faith and credence; the victim's testimony was corroborated by the findings of the medico-legal officer who examined and treated her; the defense failed to prove ill motive on the part of the victim and of appellant's sister, who stood as prosecution witness, when they testified against him; appellant's act of fleeing to Guimaras Island after the crime was reported to the authorities is an indication of guilt; and, appellant's defense of denial and alibi could not overcome the evidence of the prosecution which established his guilt beyond reasonable doubt.

Aggrieved by the trial court's decision, appellant appealed his conviction to the CA.[20]

Appellant filed his Brief,[21] while appellee did not.

On January 26, 2010, the CA promulgated its Decision affirming the findings of the RTC, but modified the penalty imposed and the amount of moral damages awarded. The dispositive portion of the CA Decision reads, thus:

> WHEREFORE, premises considered, the Decision dated January 11, 2005 of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental, in Criminal Case No. 97-1917 is hereby **AFFIRMED** with **MODIFICATION**.
>
> As modified, accused-appellant is found guilty beyond reasonable doubt of the crime of qualified rape as defined and penalized in Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, and is hereby sentenced to suffer the penalty of ***reclusion perpetua*** pursuant to Republic Act No. 9346. Accused-appellant is ordered to pay the private complainant the amount of **₱75,000.00** as civil indemnity, **₱75,000.00** as moral damages, and **₱25,000.00** as exemplary damages.
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> **SO ORDERED**.[22]

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[20] See Notice of Appeal, CA *rollo*, p. 32.

[21] CA *rollo*, pp. 43-50.

[22] *Id.* at 70. (Emphasis in the original.)

On February 10, 2010, appellant filed his Notice of Appeal[23] of the CA Decision.

On March 14, 2011, this Court required the parties to file their respective supplemental briefs if they so desired.[24]

Appellee filed its own Manifestation and Motion in Lieu of Supplemental Brief contending that the prosecution was able to establish the presence of all the elements of the crime charged and that the issue raised by appellant in his brief was already passed upon by the CA in its assailed Decision.

Appellant, on the other hand, through counsel, filed a Manifestation in Lieu of Supplemental Brief stating that he is re-pleading and adopting all the arguments raised in the Appellant's Brief filed with the CA, since they squarely and sufficiently refute all the arguments raised by appellee in their own brief.

Thus, the lone assignment of error in appellant's brief, dated March 21, 2007, is now deemed adopted in this present appeal:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES (sic) CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[25]

In his Brief, appellant basically questions the credibility of the private complainant. He contends that the latter failed to amply explain why she previously accused another person as the culprit and who was even detained by reason of such accusation; and, that if appellant was the actual perpetrator of the crime, why was he not immediately taken into custody and indicted.

The appeal lacks merit.

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[23] *Id.* at 72.

[24] *Rollo*, p. 14.

[25] CA *rollo*, p. 48.

The Court finds no cogent reason to disturb the RTC's factual findings, as affirmed by the CA. It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[26] More importantly, this Court's assessment of the records of the case indicates no reversible error committed by the lower courts. AAA's testimony that she was raped by her uncle on February 21, 1997, around 1 o'clock in the afternoon is worthy of belief as it was clear, consistent and spontaneously given. There is no compelling reason to disbelieve AAA's declaration given that she was only five (5) years old when she was ravished and eight (8) years old when she testified in court. It has long been established that the testimony of a rape victim, especially a child of tender years, is given full weight and credit.[27]

The Court also upholds the rulings of the RTC and the CA that appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.[28] To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[29] In this case, appellant failed to prove that it was physically impossible for him to be at the crime scene on February 21, 1997. His token defense, during his direct examination, that he was in Quezon City when the victim was raped is hardly credible because he failed to prove the physical impossibility of his

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[26] *Mike Alvin Pielago y Ros v. People*, G.R. No. 202020, March 13, 2013; *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 386-387.

[27] *People v. Ortega*, G.R. No. 186235, January 25, 2012, 664 SCRA 273, 285, citing *People v. Velasco*, 405 Phil. 588 (2001).

[28] *People v. Jonathan "Uto" Veloso y Rama*, G.R. No. 188849, February 13, 2013.

[29] *Id*.

presence at the scene of the crime when it was committed. On the contrary, he admitted, when he was cross-examined, that he was, in fact, in the same locality (Sitio Bayogbayog, Barangay Bulata) when AAA was raped.[30]

At any rate, settled is the rule that alibi and denial cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.[31] Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[32] They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[33]

As to appellant's defense of frame-up, this Court quotes with approval the disquisition of the CA on the matter, to wit:

> BBB, private complainant's elder sister testified on direct examination that it was their grandmother, mother of accused-appellant, who reported the incident to the police authorities. The grandmother pointed to one Ermelo Alingasa as the person responsible for the crime so that her son, herein accused, could evade the crime of rape. Witness, BBB, was not able to confront her grandmother regarding the incident because the latter ran away and went to Guimaras as did the accused-appellant.
>
> When BBB was presented on the witness stand, accused-appellant neither challenged the truthfulness of the foregoing testimony nor did he question her credibility.
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> x x x x
>
> Verily, WE find appellant's argument that he was being framed presumably due to a family conflict as a flimsy excuse. It is highly

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[30] TSN, May 25, 2004, p. 11.

[31] *People v. Anastacio Amistoso y Broca*, G.R. 201447, January 9, 2013.

[32] *People v. Ortega, supra* note 27, at 288-289.

[33] *People v. Victor Lansangan*, G.R. No. 201587, November 14, 2012.

improbable that AAA would accuse appellant, her own [uncle] at that, of so serious a crime as rape, if it were not the truth. In any case, revenge or feud has never swayed this Court from giving full credence to the testimony of a complainant for rape, especially a minor, who remained steadfast in her testimony that she was raped.

x x x x.[34]

It is settled that the defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove.[35] In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.[36]

In the case under consideration, appellant failed to present any clear and convincing proof that AAA was moved by hatred or revenge, or that she was influenced by her aunt to implicate appellant. Thus, appellant's bare allegation of frame-up must fail.

Given the foregoing, the CA correctly affirmed appellant's conviction for qualified rape. Both the minority of the victim and her relationship to appellant were sufficiently alleged in the Information and proved by the prosecution. Such offense was punishable by death under Article 266-B of the Revised Penal Code and the trial court correctly imposed such penalty. However, in view of the enactment of Republic Act No. 9346 (RA 9346), which became effective on June 30, 2006 after the promulgation of the RTC Decision and which prohibits the imposition of death penalty, the CA correctly modified the judgment of the RTC by imposing the penalty of *reclusion perpetua.* The CA, nonetheless, should have indicated that appellant is not eligible for parole, in accordance with the provisions of Section 3[37] of RA 9346.

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[34] CA *rollo*, pp. 66-67.

[35] *People v. Montesa*, G.R. No. 181899, November 27, 2008, 572 SCRA 317, 341.

[36] *Id*.

[37] Section 3. Person[s] convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

As to appellant's civil liability, the CA correctly ordered appellant's payment to AAA of the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. However, to conform to prevailing jurisprudence, the award of ₱25,000.00, as exemplary damages, is increased to ₱30,000.00 due to the attendance of the qualifying circumstances of minority of AAA and the relationship between her and appellant.[38]

In addition, appellant is liable to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this Decision.[39]

WHEREFORE, in view of the foregoing, the instant appeal of Ernesto Gani *y* Tupas is **DISMISSED**. The Decision dated January 26, 2010 of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00423 is **AFFIRMED** with the following **MODIFICATIONS**: (1) that appellant is not eligible for parole; (2) that the award of exemplary damages is **INCREASED** to ₱30,000.00; and (3) that appellant is further **ORDERED** to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this Decision.

SO ORDERED.

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

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[38] *People v. Noel T. Laurino*, G.R. No. 199264, October 24, 2012; *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 539.

[39] *People v. Anastacio Amistoso y Broca*, *supra* note 31; *People v. Arpon*, *supra* note 38, at 540.

SECOND DIVISION

[G.R. No. 197039. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL CALARA *y* ABALOS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT EXPECTED TO REMEMBER EVERY DETAIL OF THE CRIME; WHAT IS VITAL IS THAT THEY SAW ACCUSED STAB THE VICTIM.—** The failure of the witnesses to remember the weapon used in the crime, as well as the apparel worn by the assailant is insignificant. Witnesses are not expected to remember every single detail of an incident with perfect or total recall. What is vital in their testimonies is not their knowledge of the weapon used, but that they saw appellant stab the victim. As a matter of fact, the presentation of the murder weapon is not even indispensable to the prosecution of an accused. The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant.

2. **ID.; ID.; ID.; DENIAL; FAILS IN THE PRESENCE OF POSITIVE IDENTIFICATON OF ACCUSED.—** The prosecution witnesses' positive identification prevails over the mere denial of appellant. Denial is an intrinsically weak defense. When unsubstantiated by clear and convincing evidence, it is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.

3. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED AS VICTIM SUSTAINED FATAL WOUND ON HIS BACK.—** The courts below correctly appreciated the circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the

aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim. The *post-mortem* findings indicate that Francisco sustained a fatal wound on his back chest. The position of the fatal wound is more than clear indication that the victim was stabbed from behind leaving him in a defenseless state.

4. ID.; ID.; PENALTY AND DAMAGES.— As the crime of murder has been proven beyond reasonable doubt, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* under Article 248 of the Revised Penal Code, as amended. Other than exemplary damages, the award of other damages is in order. In conformity with the prevailing jurisprudence, the amount of exemplary damages is increased to ₱30,000.00. In addition, an interest of 6% is imposed on the damages awarded in this case as a natural and probable consequence of the acts of the accused complained of.

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.*:

Before us on appeal is the Decision[1] of the Court of Appeals affirming the judgment[2] of the Regional Trial Court, Second Judicial Region, Branch 35, Santiago City, Province of Isabela, in Criminal Case No. 35-4781 finding Ariel Calara *y* Abalos (appellant) guilty of the crime of murder.

Appellant was charged with murder under the following Information:

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring. *Rollo,* pp. 2-18.

[2] Penned by Judge Efren M. Cacatian. Records, pp. 206-212.

That on [or] about March 6, 2004 at Santiago City Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, with malice aforethought and with deliberate intent to take the life of SGT FRANCISCO DULAY, willfully, unlawfully and feloniously suddenly unexpectedly, and treacherously attack the latter with a bladed weapon (colonial knife) and as a result thereof, suffered Irreversible hypovolemic shock due to an Intratoracic hemorrhage/bleeding, secondary to stabbing which caused the immediate death of said Sgt. FRANCISCO DULAY.[3]

The facts, as narrated by prosecution witnesses, follow.

On 6 March 2004 at around 1:00 a.m, the victim, Francisco Dulay (Francisco), was fatally stabbed at a *lugawan* along Maharlika Highway in Santiago City, Isabela, while he was about to board a tricycle.[4] This stabbing incident was witnessed by the victim's brother, Dante Dulay (Dante) and cousin Fernando Porquillano (Fernando), who were both with him at that time. Dante narrated that he saw appellant stab Francisco at the back shoulder.[5] Dante identified appellant as the perpetrator through the latter's distinguishing tattoo mark on his right arm. Dante also heard someone say the name "Aying" which later was identified to be appellant's nickname.[6] During the cross-examination, Dante revealed that as Francisco was stabbed, he was simultaneously hit on the nape with a stone. He however could not identify the person who hit him, except that appellant had two (2) companions at that time. Dante felt dizzy afterwards and upon regaining his stance, he saw Francisco lying on the street. Appellant, together with his two (2) companions, immediately fled the scene.[7] Dante denied that they had a drinking spree prior to the incident.[8]

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[3] *Id.* at 1.

[4] TSN, 28 March 2006, pp. 4-5.

[5] TSN, 1 March 2005, p. 6.

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

[7] TSN, 31 May 2005, pp. 3-9.

[8] *Id.* at 21.

Fernando recounted that he was seated on the tricycle after eating at a *lugawan* when he was suddenly boxed by an assailant.[9] Fernando could not identify his assailant because the latter ran away with the person who hit Dante on the nape.[10] Thereafter, he saw appellant stab Francisco.[11]

Francisco was immediately brought to the hospital where he expired.

The death certificate shows that he died from irreversible *hypovolemic* shock due to an *intratoracic hemorrhage* or bleeding second degree to stabbing.[12]

Dr. Romanchito Bayang conducted an autopsy on Francisco's body. In his Post-Mortem Report, he discovered two (2) stab wounds–first, on the victim's head, which appears to be superficial;[13] and second, at the back of the chest of the victim, which was six inches deep and fatal.[14]

Francisco's wife, Delia Dulay, testified on the expenses and damages incurred as a result of the death of her husband.

Appellant, on the other hand, denied killing Francisco and presented a different version of the incident. Appellant claimed that on 6 March 2004, he was accompanied by his friends, Albert Cauian, *alias* "Dugong" and Guiller Salvador, to the *lugawan* to court a girl. When they got to the *lugawan*, appellant saw Francisco giving him a dirty look. He left the *lugawan* but abruptly returned to buy cigarettes. He even went up to Francisco to ask for a light before he boxed the latter. A commotion ensued and appellant had a fistfight with Dante.[15] Appellant saw Francisco attempt to stab him but Dugong intercepted the attack and stabbed Francisco

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[9] TSN, 15 November 2006, pp. 7-13.

[10] TSN, 21 February 2007, p. 14.

[11] *Id.* at 24.

[12] Records, p. 9.

[13] TSN, 5 June 2007, p. 9.

[14] *Id.* at 13-15.

[15] TSN, 27 February 2008, pp. 9-12.

first.[16] Appellant insisted that it was Dugong who killed Francisco. Appellant went home after the incident. He initially denied being in the *lugawan* when asked by his mother, but he later on admitted his presence when pressed by his uncle, who actually saw him in the *lugawan*.[17]

On 12 March 2009, the trial court rendered judgment finding appellant guilty of murder. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, this Court finds accused Ariel Calara *y* Abalos GUILTY beyond reasonable doubt of the offense of murder and hereby sentenced to suffer the penalty of imprisonment for a period of TWENTY (20) years and ONE (1) day to FORTY (40) years. The accused is likewise adjudged civilly liable and ordered to pay the heirs of the victim Sgt. Francisco Dulay the following damages:
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> 1) Death indemnity Php. 50,000.00;
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> 2) Actual damages Php. 109,300.00;
>
> 3) Moral damages Php. 100,000.00;
>
> 4) Exemplary damages Php. 100,000.00; and
>
> 5) Loss of earning capacity Php. 3,227,360.00.[18]

Appellant filed an appeal before the Court of Appeals assigning in his Brief the following errors allegedly committed by the trial court:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

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[16] TSN, 25 June 2008, p. 3.

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

[18] Records, p. 212.

III.

THE COURT *A QUO* GRAVELY ERRED IN AWARDING ₱109,300.00 ACTUAL DAMAGES, [₱]100,000.00 MORAL DAMAGES, ₱100,000.00 EXEMPLARY DAMAGES, AND [₱]3,227,360.00 LOSS OF EARNING CAPACITY.[19]

The Office of the Solicitor General (OSG) filed its Brief and refuted the allegations of appellant. The OSG dismissed the alleged inconsistencies as minor details which should not affect the integrity of the eyewitnesses' testimonies. The OSG defended the presence of treachery by the mere fact that Francisco was stabbed from behind. And finally, the OSG supported the award of damages, which amounts are duly supported by law and evidence.

In a Decision dated 26 November 2010, the Court of Appeals affirmed with modification the decision of the trial court. The dispositive portion reads:

WHEREFORE, premises considered, the assailed decision dated March 12, 2009 of the RTC, Branch 35, Santiago City in Criminal Case No. 35-4781 is hereby AFFIRMED with MODIFICATION in that the award of moral damages is reduced from ₱100,000.00 to ₱50,000.00 while exemplary damages is likewise reduced from ₱100,000.00 to ₱25,000.00. The loss of earning capacity is reduced to ₱3,220,355.00. The rest of the decision stand[s].[20]

On 15 December 2010, appellant filed a notice of appeal. In a Resolution dated 5 September 2011, the Court directed the parties to file supplemental briefs, if they so desire. Both parties manifested that they were no longer filing their supplemental briefs.[21]

Appellant is appealing for the reversal of his conviction. He denies stabbing Francisco and instead points to a certain Dugong as the perpetrator, but in the same breadth, he harps on the absence of treachery to qualify the crime to murder.

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

[20] *Rollo*, p. 17.

[21] *Id.* at 25-31.

Appellant points out several inconsistencies and incredulities in the testimonies of Dante and Fernando. Appellant notes that Dante and Fernando contradicted themselves when they initially testified that Francisco was paying the bill at the *lugawan* when he was stabbed, but later stated that Francisco was about to board the tricycle when stabbed. Appellant finds it impossible for Dante not to see the actual weapon when he testified that he saw appellant approach and stab the victim. Appellant doubts if Dante and Fernando were able to witness the whole incident when the former admitted to have been knocked out after he was hit in the nape with a stone, and the latter was only less than two (2) meters away from the location of Francisco. Appellant submits that Dante did not witness the actual stabbing because the latter could not even identify what the appellant was wearing at the time of the incident, contrary to his later testimony that he was able to take a good look at appellant before the stabbing incident.

The supposed inconsistency on what the victim was precisely doing when he was stabbed is inconsequential as it relates to a minor and peripheral detail. The paying of the bill preceded the boarding of the tricycle and that explains why Dante mentioned it in his direct testimony. As a matter of fact, Dante corrected himself when confronted with this matter and maintained that Francisco was stabbed when he was about to board the tricycle. This statement was corroborated by Fernando when he himself recounted that the victim was stabbed when he was about to ride the tricycle.

The failure of the witnesses to remember the weapon used in the crime, as well as the apparel worn by the assailant is insignificant. Witnesses are not expected to remember every single detail of an incident with perfect or total recall. What is vital in their testimonies is not their knowledge of the weapon used, but that they saw appellant stab the victim. As a matter of fact, the presentation of the murder weapon is not even indispensable to the prosecution of an accused.[22]

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[22] *People v. Fernandez,* 434 Phil. 224, 231-232 (2002).

The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant.[23]

The purported inconsistencies aside, Dante and Fernando were steadfast in pointing to appellant as the person who stabbed Francisco. Dante was able to identify appellant by his tattoo mark and upon hearing someone call out his name at the time of the stabbing, thus:

Q. Do you know the cause of death of your brother?
A. He was stabbed to death, sir.

Q. Do you know where he was stabbed?
A. At the highway, sir, near the Market, at the *Lugawan*.

Q. Were you present when he was stabbed?
A. Yes, sir.

COURT:

Q. You were present and you saw him stabbed?
A. Yes, Your Honor.

Q. Who stabbed him?
A. Ariel, Your Honor.

Fiscal De Los Santos:

Q. Is this Ariel inside the Courtroom?
A. Yes, sir.

Q. Could you pinpoint to him?

Witness: A. Witness point to a person, sitted (*sic*) on the last bench, and when asked, he identified himself as Ariel Calara.

x x x x

[23] *People v. Delos Reyes,* G.R. No. 177357, 17 October 2012, 684 SCRA 260, 276; *People v. Mamaruncas,* G.R. No. 179497, 25 January 2012, 664 SCRA 182, 194-195.

Q. Now, when these 3 came in suddenly, what did you do?
A. Ariel stabbed my brother, sir.

Q. Was your brother hit when he was stabbed?
A. Yes, sir.

Q. What part of his body was hit?
A. Here, sir. Witness pointing to his back shoulder.

Q. Now, immediately before Ariel Calara stabbed your brother, what is the relative position of your brother to the accused against Calara?

Witness: A. At the back, sir.

x x x x

Q. Did you see Ariel Calara approached (*sic*) your brother before he was stabbed?
A. Yes, Your Honor.

COURT: Continue Fiscal.

Fiscal De Los Santos:

Q. Now, since this incident occurred at night, then, how could you be able to recognize Ariel Calara who stabbed your brother?
A. Before my brother was stabbed, they talked to the vendors.

Q. Is there any distinguishing mark that you recognized from the person of Ariel Calara?

Witness: A. There is, sir.

Fiscal De Los Santos:

Q. And what is that mark?
A. Here, sir, there is a mark.

Interpreter: Witness pointing to his left arm and said he cannot describe.

Fiscal De Los Santos:

Q. Could you explain to us what is this mark? Is it mole or whatever?
A. A name, sir.

Q. Could you approach the accused and point to us his distinguishing mark that you are telling us?
A. Witness approached the accused and pointed to the mark on the right arm named OMMY and TATTOO like a web.

Atty. Manuel: May we spread on the records, Your Honor, that when the witness testified, he tap his left hand and when he approached the accused, Your Honor, what he identified is the right hand of the accused.

COURT:

Q. Aside from the Tattoo that you recognized, what else did you recognize about the accused?
A. I heard his named (*sic*) AYING.

Q. Did you see his face when he stabbed your brother?
A. Yes, Your Honor.

Fiscal De Los Santos:

Q. You mentioned that you heard his name. Could you tell us specifically when did you hear his name?
A. When my brother was already stabbed and they ran away. Somebody said that it was AYING.[24]

Fernando also witnessed how Francisco was stabbed to death, thus:

Q. What were you doing if any at the time that you were boxed by this person whom you mentioned earlier?
A. I was then seated on my tricycle, Ma'am.

Q. How far were you from Francisco Dulay at that time?
A. More than one (1) meter away, Ma'am.

[24] TSN, 1 March 2005, pp. 4-9.

Q. And where was Francisco Dulay at that time, on your right side or on your left side?

Atty. Manuel: Can we make reference of time, Your Honor.

Fiscal Madrid:

Q. At the time that he was seated on his motorcycle?
A. On my left side, Ma'am.

Q. Now, what happened next, Mr. Witness, after somebody boxed you, if any?
A. There was a commotion, Ma'am.

Q. And what was this commotion about, Mr. Witness, if you know?
A. They surprised us, Ma'am.

Q. What happened to Francisco Dulay at that time, Mr. Witness, if you know?
A. He fell down to the ground, Ma'am.

Q. Now you mentioned that Francisco Dulay was st[a]bbed, when was he st[a]bbed, Mr. Witness, during this time?
A. At that night, Ma'am.

Q. And who st[a]bbed him, if you know?
A. A person named *alias* Aying, Ma'am.

Q. Were you able to see the face of this person, Mr. Witness?
A. Yes, Ma'am.

Q. So, if given a chance to see the face of this person again, will you be able to identify him?
A. Yes, Ma'am.

Q. Did you come to know, Mr. Witness, of the real name of this person whom you referred to as Aying?
A. Yes, Ma'am.

Q. And what was his real name that you came to know, Mr. Witness?
A. Ariel Calara, Ma'am.

Q. Do you know, Mr. Witness, if this Ariel Calara *alias* Aying is in Court now?
A. Yes, Ma'am.

Fiscal Madrid cont.

Q. Can you please look around and point to this person Ariel Calara *alias* Aying?

Court Interpreter:

Witness pointed to a person seated on the second bench when asked he identified himself as Ariel Calara.

Court. Will you stand up, you are asked.

Fiscal Madrid. May we just want to spread on the record, Your Honor, that the person pointed to and identified by the witness is the same accused in this case.[25]

The prosecution witnesses' positive identification prevails over the mere denial of appellant. Denial is an intrinsically weak defense. When unsubstantiated by clear and convincing evidence, it is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[26]

The courts below correctly appreciated the circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[27] The *post-mortem* findings indicate that Francisco sustained a

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[25] TSN, 15 November 2006, pp. 8-11.

[26] *People v. Laurino*, G.R. No. 199264, 24 October 2012, 684 SCRA 612, 620-621; *People v. Teñoso*, G.R. No. 188975, 5 July 2010, 623 SCRA 614, 621; *Domingo v. People*, G.R. No. 186101, 12 October 2009, 603 SCRA 488, 507-508.

[27] *People v. Sally*, G.R. No. 191254, 13 October 2010, 633 SCRA 293, 305; *People v. Vallespin*, 439 Phil. 816, 824 (2002).

fatal wound on his back chest. The position of the fatal wound is more than clear indication that the victim was stabbed from behind leaving him in a defenseless state.

As the crime of murder has been proven beyond reasonable doubt, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* under Article 248 of the Revised Penal Code, as amended.

Other than exemplary damages, the award of other damages is in order. In conformity with the prevailing jurisprudence,[28] the amount of exemplary damages is increased to ₱30,000.00. In addition, an interest of 6% is imposed on the damages awarded in this case as a natural and probable consequence of the acts of the accused complained of.[29]

WHEREFORE, the appealed judgment is hereby **AFFIRMED with MODIFICATIONS.** Appellant Ariel Calara *y* Abalos is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of Francisco Dulay the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Brion[*] *(Chairperson), del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[28] *People v. Pondivida*, G.R. No. 188969, 27 February 2013; *People v. Peteluna*, G.R. No. 187048, 23 January 2013.

[29] *People v. Zapuiz,* G.R. No. 199713, 20 February 2013.

[*] Per Special Order No. 1460 dated 29 May 2013.

[**] Per Special Order No. 1461 dated 29 May 2013.

THIRD DIVISION

[G.R. No. 197861. June 5, 2013]

SPOUSES FLORENTINO T. MALLARI and AUREA V. MALLARI, *petitioners, vs.* **PRUDENTIAL BANK (now BANK OF THE PHILIPPINE ISLANDS),** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LOAN; INTEREST OF 23% *PER ANNUM* (P.A.) IS NOT UNCONSCIONABLE.— The issue for resolution is whether the 23% p.a. interest rate and the 12% p.a. penalty charge on petitioners' ₱1,700,000.00 loan to which they agreed upon is excessive or unconscionable under the circumstances. x x x We do not consider the interest rate of 23% p.a. (or less than 2% per month) agreed upon by petitioners and respondent bank to be unconscionable. In *Villanueva v. Court of Appeals*, where the issue raised was whether the 24% p.a. stipulated interest rate is unreasonable under the circumstances, we answered in the negative and held: x x x the Court finds that the 24% *per annum* interest rate, provided for in the subject mortgage contracts for a loan of ₱225,000.00, may not be considered unconscionable. [C]onsidering that the mortgage agreement was freely entered into by both parties, the same is the law between them and they are bound to comply with the provisions contained therein. Clearly, jurisprudence establish that the 24% p.a. stipulated interest rate was not considered unconscionable, thus, the 23% p.a. interest rate imposed on petitioners' loan in this case can by no means be considered excessive or unconscionable.

2. ID.; ID.; ID.; 12% P.A. PENALTY CHARGE FOR DEFAULT IN THE PAYMENT OF LOAN OBLIGATION IS VALID.— We also do not find the stipulated 12% p.a. penalty charge excessive or unconscionable. In *Ruiz v. CA*, we held: The 1% surcharge on the principal loan for every month of default is valid. This surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Art. 2227 of the New Civil Code, and is separate and distinct from

interest payment. Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. The obligor would then be bound to pay the stipulated amount of indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. x x x And in *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.,* we held that: x x x The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse - the failure of the performance was due to either *force majeure* or the acts of the creditor himself. Here, petitioners defaulted in the payment of their loan obligation with respondent bank and their contract provided for the payment of 12% p.a. penalty charge, and since there was no showing that petitioners' failure to perform their obligation was due to *force majeure* or to respondent bank's acts, petitioners cannot now back out on their obligation to pay the penalty charge. A contract is the law between the parties and they are bound by the stipulations therein.

APPEARANCES OF COUNSEL

Ricardo C. Atienza for petitioners.
Guia Lambino Tantuan Tamayo & Bragado for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45, assailing the Decision[1] dated June 17, 2010 and the

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 30-37.

Resolution[2] dated July 20, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 65993.

The antecedent facts are as follows:

On December 11, 1984, petitioner Florentino T. Mallari (Florentino) obtained from respondent Prudential Bank-Tarlac Branch (respondent bank), a loan in the amount of ₱300,000.00 as evidenced by Promissory Note (PN) No. BD 84-055.[3] Under the promissory note, the loan was subject to an interest rate of 21% per annum (p.a.), attorney's fees equivalent to 15% of the total amount due but not less than ₱200.00 and, in case of default, a penalty and collection charges of 12% p.a. of the total amount due. The loan had a maturity date of January 10, 1985, but was renewed up to February 17, 1985. Petitioner Florentino executed a Deed of Assignment[4] wherein he authorized the respondent bank to pay his loan with his time deposit with the latter in the amount of ₱300,000.00.

On December 22, 1989, petitioners spouses Florentino and Aurea Mallari (petitioners) obtained again from respondent bank another loan of ₱1.7 million as evidenced by PN No. BDS 606-89[5] with a maturity date of March 22, 1990. They stipulated that the loan will bear 23% interest p.a., attorney's fees equivalent to 15% p.a. of the total amount due, but not less than ₱200.00, and penalty and collection charges of 12% p.a. Petitioners executed a Deed of Real Estate Mortgage[6] in favor of respondent bank covering petitioners' property under Transfer Certificate of Title (TCT) No. T-215175 of the Register of Deeds of Tarlac to answer for the said loan.

Petitioners failed to settle their loan obligations with respondent bank, thus, the latter, through its lawyer, sent a demand letter

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

[3] *Id.* at 43.

[4] *Id.* at 47.

[5] *Id* at 44.

[6] *Id.* at 45-46.

to the former for them to pay their obligations, which when computed up to January 31, 1992, amounted to ₱571,218.54 for PN No. BD 84-055 and ₱2,991,294.82 for PN No. BDS 606-89.

On February 25, 1992, respondent bank filed with the Regional Trial Court (RTC) of Tarlac, a petition for the extrajudicial foreclosure of petitioners' mortgaged property for the satisfaction of the latter's obligation of ₱1,700,000.00 secured by such mortgage, thus, the auction sale was set by the Provincial Sheriff on April 23, 1992.[7]

On April 10, 1992, respondent bank's Assistant Manager sent petitioners two (2) separate Statements of Account as of April 23, 1992, *i.e.*, the loan of ₱300,000.00 was increased to ₱594,043.54, while the ₱1,700,000.00 loan was already ₱3,171,836.18.

On April 20, 1992, petitioners filed a complaint for annulment of mortgage, deeds, injunction, preliminary injunction, temporary restraining order and damages claiming, among others, that: (1) the ₱300,000.00 loan obligation should have been considered paid, because the time deposit with the same amount under Certificate of Time Deposit No. 284051 had already been assigned to respondent bank; (2) respondent bank still added the ₱300,000.00 loan to the ₱1.7 million loan obligation for purposes of applying the proceeds of the auction sale; and (3) they realized that there were onerous terms and conditions imposed by respondent bank when it tried to unilaterally increase the charges and interest over and above those stipulated. Petitioners asked the court to restrain respondent bank from proceeding with the scheduled foreclosure sale.

Respondent bank filed its Answer with counterclaim arguing that: (1) the interest rates were clearly provided in the promissory notes, which were used in computing for interest charges; (2) as early as January 1986, petitioners' time deposit was made to apply for the payment of interest of their ₱300,000.00 loan; and (3) the statement of account as of April 10, 1992 provided for a computation of interest and penalty charges only from May 26, 1989, since the proceeds of petitioners' time deposit was applied to the payment of interest and penalty charges for the preceding period. Respondent

[7] *Id.* at 48.

bank also claimed that petitioners were fully apprised of the bank's terms and conditions; and that the extrajudicial foreclosure was sought for the satisfaction of the second loan in the amount of ₱1.7 million covered by PN No. BDS 606-89 and the real estate mortgage, and not the ₱300,000.00 loan covered by another PN No. 84-055.

In an Order[8] dated November 10, 1992, the RTC denied the Application for a Writ of Preliminary Injunction. However, in petitioners' Supplemental Motion for Issuance of a Restraining Order and/or Preliminary Injunction to enjoin respondent bank and the Provincial Sheriff from effecting or conducting the auction sale, the RTC reversed itself and issued the restraining order in its Order[9] dated January 14, 1993.

Respondent bank filed its Motion to Lift Restraining Order, which the RTC granted in its Order[10] dated March 9, 1993. Respondent bank then proceeded with the extrajudicial foreclosure of the mortgaged property. On July 7, 1993, a Certificate of Sale was issued to respondent bank being the highest bidder in the amount of ₱3,500,000.00.

Subsequently, respondent bank filed a Motion to Dismiss Complaint[11] for failure to prosecute action for unreasonable length of time to which petitioners filed their Opposition.[12] On November 19, 1998, the RTC issued its Order[13] denying respondent bank's Motion to Dismiss Complaint.

Trial thereafter ensued. Petitioner Florentino was presented as the lone witness for the plaintiffs. Subsequently, respondent bank filed a Demurrer to Evidence.

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[8] Per Presiding Judge Edilberto Aquino; *id.* at 89-93.

[9] *Rollo,* pp. 94-96.

[10] Per Executive Judge Augusto N. Felix; *id.* at 116-117;

[11] *Rollo,* pp. 126-130.

[12] *Id.* at 132-133.

[13] Per Presiding Judge Edgardo F. Sundiam; *id*. at 134-135;

On November 15, 1999, the RTC issued its Order[14] granting respondent's demurrer to evidence, the dispositive portion of which reads:

> WHEREFORE, this case is hereby ordered DISMISSED. Considering there is no evidence of bad faith, the Court need not order the plaintiffs to pay damages under the general concept that there should be no premium on the right to litigate.
>
> NO COSTS.
>
> SO ORDERED.[15]

The RTC found that as to the ₱300,000.00 loan, petitioners had assigned petitioner Florentino's time deposit in the amount of ₱300,000.00 in favor of respondent bank, which maturity coincided with petitioners' loan maturity. Thus, if the loan was unpaid, which was later extended to February 17, 1985, respondent bank should had just applied the time deposit to the loan. However, respondent bank did not, and allowed the loan interest to accumulate reaching the amount of ₱594,043.54 as of April 10, 1992, hence, the amount of ₱292,600.00 as penalty charges was unjust and without basis.

As to the ₱1.7 million loan which petitioners obtained from respondent bank after the ₱300,000.00 loan, it had reached the amount of ₱3,171,836.18 per Statement of Account dated April 27, 1993, which was computed based on the 23% interest rate and 12% penalty charge agreed upon by the parties; and that contrary to petitioners' claim, respondent bank did not add the ₱300,000.00 loan to the ₱1.7 million loan obligation for purposes of applying the proceeds of the auction sale.

The RTC found no legal basis for petitioners' claim that since the total obligation was ₱1.7 million and respondent bank's bid price was ₱3.5 million, the latter should return to petitioners the difference of ₱1.8 million. It found that since petitioners' obligation had reached ₱2,991,294.82 as of January 31, 1992,

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[14] *Rollo,* pp. 199-204.

[15] *Id.* at 204.

but the certificate of sale was executed by the sheriff only on July 7, 1993, after the restraining order was lifted, the stipulated interest and penalty charges from January 31, 1992 to July 7, 1993 added to the loan already amounted to ₱3.5 million as of the auction sale.

The RTC found that the 23% interest rate p.a., which was then the prevailing loan rate of interest could not be considered unconscionable, since banks are not hospitable or equitable institutions but are entities formed primarily for profit. It also found that Article 1229 of the Civil Code invoked by petitioners for the reduction of the interest was not applicable, since petitioners had not paid any single centavo of the ₱1.7 million loan which showed they had not complied with any part of the obligation.

Petitioners appealed the RTC decision to the CA. A Comment was filed by respondent bank and petitioners filed their Reply thereto.

On June 17, 2010, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the instant appeal is hereby **DENIED**. The Order dated November 15, 1999 issued by the Regional Trial Court (RTC), Branch 64, Tarlac City, in Civil Case No. 7550 is hereby **AFFIRMED.**[16]

The CA found that the time deposit of ₱300,000.00 was equivalent only to the principal amount of the loan of ₱300,000.00 and would not be sufficient to cover the interest, penalty, collection charges and attorney's fees agreed upon, thus, in the Statement of Account dated April 10, 1992, the outstanding balance of petitioners' loan was ₱594,043.54. It also found not persuasive petitioners' claim that the ₱300,000.00 loan was added to the ₱1.7 million loan. The CA, likewise, found that the interest rates and penalty charges imposed were not unconscionable and adopted *in toto* the findings of the RTC on the matter.

Petitioners filed their Motion for Reconsideration, which the CA denied in a Resolution dated July 20, 2011.

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[16] *Id.* at 36. (Emphasis in the original.)

Hence, petitioners filed this petition for review arguing that:

THE HON. COURT OF APPEALS ERRED IN AFFIRMING THE ORDER OF THE RTC-BRANCH 64, TARLAC CITY, DATED NOVEMBER 15, 1999, DESPITE THE FACT THAT THE SAME IS CONTRARY TO SETTLED JURISPRUDENCE ON THE MATTER.[17]

The issue for resolution is whether the 23% p.a. interest rate and the 12% p.a. penalty charge on petitioners' ₱1,700,000.00 loan to which they agreed upon is excessive or unconscionable under the circumstances.

Parties are free to enter into agreements and stipulate as to the terms and conditions of their contract, but such freedom is not absolute. As Article 1306 of the Civil Code provides, "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Hence, if the stipulations in the contract are valid, the parties thereto are bound to comply with them, since such contract is the law between the parties. In this case, petitioners and respondent bank agreed upon on a 23% p.a. interest rate on the ₱1.7 million loan. However, petitioners now contend that the interest rate of 23% p.a. imposed by respondent bank is excessive or unconscionable, invoking our ruling in *Medel v. Court of Appeals*,[18] *Toring v. Spouses Ganzon-Olan*,[19] and *Chua v. Timan*.[20]

We are not persuaded.

In *Medel v. Court of Appeals*,[21] we found the stipulated interest rate of *66%* p.a. or a 5.5% per month on a ₱500,000.00 loan excessive, unconscionable and exorbitant, hence, contrary

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[17] *Id.* at 19.

[18] 359 Phil. 820 (1998).

[19] G.R. No. 168782, October 10, 2008, 568 SCRA 376.

[20] G.R. No. 170452, August 13, 2008, 562 SCRA 146.

[21] *Supra* note 18.

to morals if not against the law and declared such stipulation void. In *Toring v. Spouses Ganzon-Olan*,[22] the stipulated interest rates involved were 3% and 3.81% per month on a ₱10 million loan, which we find under the circumstances excessive and reduced the same to 1% per month. While in *Chua v. Timan*,[23] where the stipulated interest rates were 7% and 5% a month, which are equivalent to 84% and 60% p.a., respectively, we had reduced the same to 1% per month or 12% p.a. We said that we need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, unconscionable and exorbitant, hence, the stipulation was void for being contrary to morals.[24]

In this case, the interest rate agreed upon by the parties was only *23% p.a.*, or less than 2% per month, which are much lower than those interest rates agreed upon by the parties in the above-mentioned cases. Thus, there is no similarity of factual milieu for the application of those cases.

We do not consider the interest rate of 23% p.a. agreed upon by petitioners and respondent bank to be unconscionable.

In *Villanueva v. Court of Appeals*,[25] where the issue raised was whether the 24% p.a. stipulated interest rate is unreasonable under the circumstances, we answered in the negative and held:

> In *Spouses Zacarias Bacolor and Catherine Bacolor v. Banco Filipino Savings and Mortgage Bank, Dagupan City Branch*, this Court held that the interest rate of 24% *per annum* on a loan of ₱244,000.00, agreed upon by the parties, may not be considered as unconscionable and excessive. As such, the Court ruled that the borrowers cannot renege on their obligation to comply with what is incumbent upon them under the contract of loan as the said contract is the law between the parties and they are bound by its stipulations.

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[22] *Supra* note 19.

[23] *Supra* note 20.

[24] *Id.* at 149-150.

[25] G.R. No. 163433, August 22, 2011, 655 SCRA 707.

Also, in *Garcia v. Court of Appeals*, this Court sustained the agreement of the parties to a 24% *per annum* interest on an ₱8,649,250.00 loan finding the same to be reasonable and clearly evidenced by the amended credit line agreement entered into by the parties as well as two promissory notes executed by the borrower in favor of the lender.

Based on the above jurisprudence, the Court finds that the 24% *per annum* interest rate, provided for in the subject mortgage contracts for a loan of ₱225,000.00, may not be considered unconscionable. Moreover, considering that the mortgage agreement was freely entered into by both parties, the same is the law between them and they are bound to comply with the provisions contained therein.[26]

Clearly, jurisprudence establish that the 24% p.a. stipulated interest rate was not considered unconscionable, thus, the 23% p.a. interest rate imposed on petitioners' loan in this case can by no means be considered excessive or unconscionable.

We also do not find the stipulated 12% p.a. penalty charge excessive or unconscionable.

In *Ruiz v. CA*,[27] we held:

The 1% surcharge on the principal loan for every month of default is valid. This surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Art. 2227 of the New Civil Code, and is separate and distinct from interest payment. Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. The obligor would then be bound to pay the stipulated amount of indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. x x x[28]

And in *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.*,[29] we held that:

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[26] *Id.* at 716-717. (Italics in the original)

[27] 449 Phil. 419 (2003).

[28] *Id.* at 435.

[29] G.R. No. 180458, July 30, 2009, 594 SCRA 461.

x x x The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse – the failure of the performance was due to either *force majeure* or the acts of the creditor himself.[30]

Here, petitioners defaulted in the payment of their loan obligation with respondent bank and their contract provided for the payment of 12% p.a. penalty charge, and since there was no showing that petitioners' failure to perform their obligation was due to *force majeure* or to respondent bank's acts, petitioners cannot now back out on their obligation to pay the penalty charge. A contract is the law between the parties and they are bound by the stipulations therein.

WHEREFORE, the petition for review is **DENIED**. The Decision dated June 17, 2010 and the Resolution dated July 20, 2011 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

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[30] *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd., supra*, at 473, citing *Development Bank of the Philippines v. Go*, G.R. No. 168779, September 14, 2007, 533 SCRA 460, 470-471.

THIRD DIVISION

[G.R. No. 198755. June 5, 2013]

ALBERTO PAT-OG, SR., *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES AGAINST PUBLIC SCHOOL TEACHERS; WITHIN THE CONCURRENT JURISDICTION OF THE CSC, DEPED AND PRC; ELUCIDATED.— In *Puse v. Santos-Puse*, it was held that the CSC, the Department of Education (*DepEd*) and the Board of Professional Teachers-Professional Regulatory Commission (*PRC*) have concurrent jurisdiction over administrative cases against public school teachers. Under Article IX-B of the 1987 Constitution, the CSC is the body charged with the establishment and administration of a career civil service which embraces all branches and agencies of the government. Executive Order (*E.O.*) No. 292 (the Administrative Code of 1987) and Presidential Decree (*P.D.*) No. 807 (the Civil Service Decree of the Philippines) expressly provide that the CSC has the power to hear and decide administrative disciplinary cases instituted with it or brought to it on appeal. Thus, the CSC, as the central personnel agency of the government, has the inherent power to supervise and discipline all members of the civil service, including public school teachers. Indeed, under Section 9 of R.A. No. 4670, the jurisdiction over administrative cases of public school teachers is lodged with the investigating committee constituted therein. Also, under Section 23 of R.A. No. 7836 (the Philippine Teachers Professionalization Act of 1994), the Board of Professional Teachers is given the power, after due notice and hearing, to suspend or revoke the certificate of registration of a professional teacher for causes enumerated therein. Concurrent jurisdiction is that which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.

2. ID.; ID.; ID.; ID.; THE BODY THAT FIRST TAKES COGNIZANCE OF THE COMPLAINT SHALL EXERCISE JURISDICTION TO THE EXCLUSION OF THE OTHERS.— Where concurrent jurisdiction exists in several tribunals, the body that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others. In this case, it was CSC which first acquired jurisdiction over the case because the complaint was filed before it. Thus, it had the authority to proceed and decide the case to the exclusion of the DepEd and the Board of Professional Teachers. In *CSC v. Alfonso*, it was held that special laws, such as R.A. No. 4670, do not divest the CSC of its inherent power to supervise and discipline all members of the civil service, including public school teachers. Pat-og, as a public school teacher, is first and foremost, a civil servant accountable to the people and answerable to the CSC for complaints lodged against him as a public servant. To hold that R.A. No. 4670 divests the CSC of its power to discipline public school teachers would negate the very purpose for which the CSC was established and would impliedly amend the Constitution itself. To further drive home the point, it was ruled in *CSC v. Macud* that R.A. No. 4670, in imposing a separate set of procedural requirements in connection with administrative proceedings against public school teachers, should be construed to refer *only* to the specific procedure to be followed in administrative investigations *conducted by the DepEd*. By no means, then, did R.A. No. 4670 confer an exclusive disciplinary authority over public school teachers on the DepEd.

3. REMEDIAL LAW; ESTOPPEL; ON THE ISSUE OF JURISDICTION; MAY NO LONGER BE INVOKED AFTER ACTIVELY PARTICIPATING IN THE PROCEEDINGS AND SUBMITTING THE CASE FOR DECISION.— At any rate, granting that the CSC was without jurisdiction, the petitioner is indeed estopped from raising the issue. Although the rule states that a jurisdictional question may be raised at any time, such rule admits of the exception where, as in this case, estoppel has supervened. Here, instead of opposing the CSC's exercise of jurisdiction, the petitioner invoked the same by actively participating in the proceedings before the CSC-CAR and by even filing his appeal before the CSC itself; only raising the issue of jurisdiction later in his motion for reconsideration after the CSC denied his appeal. This Court has time and again frowned upon the undesirable practice of a party submitting his case for decision and then

accepting the judgment only if favorable, but attacking it for lack of jurisdiction when adverse.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; RIGHT OF CROSS-EXAMINE IS NOT AN INDISPENSABLE ASPECT THEREOF.— The essence of due process is simply to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied. Hence, the right to cross-examine is not an indispensable aspect of administrative due process. The petitioner cannot, therefore, argue that the affidavit of Bang-on and his witnesses are hearsay and insufficient to prove his guilt.

5. ID.; ID.; MISCONDUCT.— Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard f behaviour. 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. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest.

6. ID.; ID.; CODE OF ETHICS OF PROFESSIONAL TEACHERS; PROHIBITION AGAINST INFLICTING CORPORAL PUNISHMENT ON OFFENDING LEARNERS; VIOLATION THEREOF IS GRAVE MISCONDUCT.— Teachers are duly licensed professionals who must not only be competent in the practice of their noble profession, but must also possess dignity and a reputation with high moral values. They *must strictly adhere to,* observe, and practice the set of ethical and moral principles, standards, and values laid down in the Code of Ethics of Professional Teachers, which apply to all teachers in schools in the Philippines, whether public or private, as provided in the preamble of the said Code. Section 8 of Article VIII of the same Code expressly provides that "**a teacher shall not inflict corporal punishment on offending learners.**" Clearly then, petitioner cannot argue that in punching Bang-on, he was exercising his right as a teacher *in loco parentis* to discipline his student. It is beyond

cavil that the petitioner, as a public school teacher, deliberately violated his Code of Ethics. Such violation is a flagrant disregard for the established rule contained in the said Code tantamount to grave misconduct.

7. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE MISCONDUCT; PROPER PENALTY OF DISMISSAL TEMPERED WITH COMPASSION AND MITIGATING CIRCUMSTANCES.— Under Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the penalty for grave misconduct is dismissal .from the service, which carries with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service. This penalty must, however, be tempered with compassion as there was sufficient provocation on the part of Bang-on. Considering further the mitigating circumstances that the petitioner has been in the government service for 33 years, that this is his first offense and that he is at the cusp of retirement, the Court finds the penalty of suspension for six months as appropriate under the circumstances.

APPEARANCES OF COUNSEL

Palsiw & Associates Law Office for petitioner.
The Solicitor General for respondent

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to set aside the April 16, 2011 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 101700, affirming the April 11, 2007 Decision[2] of the Civil Service Commission *(CSC)*, which ordered the

[1] *Rollo*, pp. 35-47; Penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Japar B. Dimaampao and Associate Justice Ramon R. Garcia.

[2] *Id.* at 97-100.

dismissal of petitioner Alberto Pat-og, Sr. *(Pat-og)* from the service for grave misconduct.

The Facts

On September 13, 2003, Robert Bang-on (*Bang-on*), then a 14-year old second year high school student of the Antadao National High School in Sagada, Mountain Province, filed an affidavit-complaint against Pat-og, a third year high school teacher of the same school, before the Civil Service Commission-Cordillera Administrative Region *(CSC-CAR).*

Bang-on alleged that on the morning of August 26, 2003, he attended his class at the basketball court of the school, where Pat-og and his third year students were also holding a separate class; that he and some of his classmates joined Pat-og's third year students who were practicing basketball shots; that Pat-og later instructed them to form two lines; that thinking that three lines were to be formed, he stayed in between the two lines; that Pat-og then held his right arm and punched his stomach without warning for failing to follow instructions; and that as a result, he suffered stomach pain for several days and was confined in a hospital from September 10-12, 2003, as evidenced by a medico-legal certificate, which stated that he sustained a contusion hematoma in the hypogastric area.

Regarding the same incident, Bang-on filed a criminal case against Pat-og for the crime of Less Serious Physical Injury with the Regional Trial Court (*RTC*) of Bontoc, Mountain Province.

Taking cognizance of the administrative case, the CSC-CAR directed Pat-og to file his counter-affidavit. He denied the charges hurled against him and claimed that when he was conducting his Music, Arts, Physical Education and Health (*MAPEH*) class, composed of third year students, he instructed the girls to play volleyball and the boys to play basketball; that he later directed the boys to form two lines; that after the boys failed to follow his repeated instructions, he scolded them in a loud voice and wrested the ball from them; that while approaching them, he noticed that there were male students who were not members of his class who had joined the shooting practice; that one of those male

students was Bang-on, who was supposed to be having his own MAPEH class under another teacher; that he then glared at them, continued scolding them and dismissed the class for their failure to follow instructions; and that he offered the sworn statement of other students to prove that he did not box Bang-on.

On June 1, 2004, the CSC-CAR found the existence of a *prima facie* case for misconduct and formally charged Pat-og.

While the proceedings of the administrative case were ongoing, the RTC rendered its judgment in the criminal case and found Pat-og guilty of the offense of slight physical injury. He was meted the penalty of imprisonment from eleven (11) to twenty (20) days. Following his application for probation, the decision became final and executory and judgment was entered.

Meanwhile, in the administrative case, a pre-hearing conference was conducted after repeated postponement by Pat-og. With the approval of the CSC-CAR, the prosecution submitted its position paper in lieu of a formal presentation of evidence and formally offered its evidence, which included the decision in the criminal case. It offered the affidavits of Raymund Atuban, a classmate of Bang-on; and James Domanog, a third year high school student, who both witnessed Pat-og hit Bang-on in the stomach.

For his defense, Pat-og offered the testimonies of his witnesses - Emiliano Dontongan *(Dontongan)*, a teacher in another school, who alleged that he was a member of the Municipal Council for the Protection of Children, and that, in such capacity, he investigated the incident and came to the conclusion that it did not happen at all; and Ernest Kimmot, who testified that he was in the basketball court at the time but did not see such incident. Pat-og also presented the affidavits of thirteen other witnesses to prove that he did not punch Bang-on.

Ruling of the CSC-CAR

In its Decision,[3] dated September 19, 2006, the CSC-CAR found Pat-og guilty and disposed as follows:

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[3] *Id.* at 79-91.

WHEREFORE, all premises told, respondent Alberto Pat-og, Sr., Teacher Antadao National High School, is hereby found guilty of Simple Misconduct.

Under the Uniform Rules on Administrative Cases in the Civil Service, the imposable penalty on the first offense of Simple Misconduct is suspension of one (1) month and one (1) day to six (6) months.

Due to seriousness of the resulting injury to the fragile body of the minor victim, the CSC-CAR hereby imposed upon respondent the maximum penalty attached to the offense which is six months suspension without pay.

The CSC-CAR gave greater weight to the version posited by the prosecution, finding that a blow was indeed inflicted by Pat-og on Bang-on. It found that Pat-og had a motive for doing so - his students' failure to follow his repeated instructions which angered him. Nevertheless, the CSC-CAR ruled that a motive was not necessary to establish guilt if the perpetrator of the offense was positively identified. The positive identification of Pat-og was duly proven by the corroborative testimonies of the prosecution witnesses, who were found to be credible and disinterested. The testimony of defense witness, Dontongan, was not given credence considering that the students he interviewed for his investigation claimed that Pat-og was not even angry at the time of the incident, contrary to the latter's own admission.

The CSC-CAR held that the actions of Pat-og clearly transgressed the proper norms of conduct required of a public official, and the gravity of the offense was further magnified by the seriousness of the injury of Bang-on which required a healing period of more than ten (10) days. It pointed out that, being his teacher, Pat-og's substitute parental authority did not give him license to physically chastise a misbehaving student. The CSC-CAR added that the fact that Pat-og applied for probation in the criminal case, instead of filing an appeal, further convinced it of his guilt.

The CSC-CAR believed that the act committed by Pat-og was sufficient to find him guilty of Grave Misconduct. It, however,

found the corresponding penalty of dismissal from the service too harsh under the circumstances. Thus, it adjudged petitioner guilty of Simple Misconduct and imposed the maximum penalty of suspension for six (6) months.

On December 11, 2006, the motion for reconsideration filed by Pat-og was denied for lack of merit.[4]

The Ruling of the CSC

In its Resolution,[5] dated April 11, 2007, the CSC dismissed Pat-og's appeal and affirmed with modification the decision of the CSC-CAR as follows:

> WHEREFORE, foregoing premises considered, the instant appeal is hereby DISMISSED. The decision of the CSC-CAR is affirmed with the modification that Alberto Pat-og, Sr., is adjdged guilty of grave misconduct, for which he is meted out the penalty of dismissal from the service with all its accessory penalties of cancellation of eligibilities, perpetual disqualification from re-employment in the government service, and forfeiture of retirement benefits.[6]

After evaluating the records, the CSC sustained the CSC-CAR's conclusion that there existed substantial evidence to sustain the finding that Pat-og did punch Bang-on in the stomach. It gave greater weight to the positive statements of Bang-on and his witnesses over the bare denial of Pat-og. It also highlighted the fact that Pat-og failed to adduce evidence of any ill motive on the part of Bang-on in filing the administrative case against him. It likewise gave credence to the medico-legal certificate showing that Bang-on suffered a hematoma contusion in his hypogastric area.

The CSC ruled that the affidavits of Bang-on's witnesses were not bereft of evidentiary value even if Pat-og was not afforded a chance to cross-examine the witnesses of Bang-on. It is of no moment because the cross-examination of witnesses is not an indispensable requirement of administrative due process.

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[4] *Id.* at 97-100.

[5] *Id.* at 111-119.

[6] *Id.* at 119.

The CSC noted that Pat-og did not question but, instead, fully acquiesced in his conviction in the criminal case for slight physical injury, which was based on the same set of facts and circumstances, and involved the same parties and issues. It, thus, considered his prior criminal conviction as evidence against him in the administrative case.

Finding that his act of punching his student displayed a flagrant and wanton disregard of the dignity of a person, reminiscent of corporal punishment that had since been outlawed for being harsh, unjust, and cruel, the CSC upgraded Pat-og's offense from Simple Misconduct to Grave Misconduct and ordered his dismissal from the service.

Pat-og filed a motion for reconsideration, questioning for the first time the jurisdiction of CSC over the case. He contended that administrative charges against a public school teacher should have been initially heard by a committee to be constituted pursuant to the Magna Carta for Public School Teachers.

On November 5, 2007, the CSC denied his motion for reconsideration.[7] It ruled that Pat-og was estopped from challenging its jurisdiction considering that he actively participated in the administrative proceedings against him, raising the issue of jurisdiction only after his appeal was dismissed by the CSC.

Ruling of the Court of Appeals

In its assailed April 6, 2011 Decision,[8] the CA affirmed the resolutions of the CSC. It agreed that Pat-og was estopped from questioning the jurisdiction of the CSC as the records clearly showed that he actively participated in the proceedings. It was of the view that Pat-og was not denied due process when he failed to cross-examine Bang-on and his witnesses because he was given the opportunity to be heard and present his evidence before the CSC-CAR and the CSC.

The CA also held that the CSC committed no error in taking into account the conviction of Pat-og in the criminal case. It

[7] *Id.* at 123-129.

[8] *Id.* at 35-47.

stated that his conviction was not the sole basis of the CSC for his dismissal from the service because there was substantial evidence proving that Pat-og had indeed hit Bang-on.

In its assailed Resolution,[9] dated September 13, 2011, the CA denied the motion for reconsideration filed by Pat-og.

Hence, the present petition with the following

Assignment of Errors

WHETHER OR NOT RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE SUPREME PENALTY OF DISMISSAL FROM SERVICE WITH FORFEITURE OF RETIREMENT BENEFITS AGAINST THE PETITIONER WITHOUT CONSIDERING PETITIONER'S LONG YEARS OF GOVERNMENT SERVICE?

WHETHER OR NOT RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PETITIONER IS ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE CIVIL SERVICE COMMISSION TO HEAR AND DECIDE THE ADMINISTRATIVE CASE AGAINST HIM?

WHETHER OR NOT RESPONDENT COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE APPEAL DESPITE LACK OF SUBSTANTIAL EVIDENCE?

On Jurisdiction

Pat-og contends that Section 9 of Republic Act (*R.A.*) No. 4670, otherwise known as the Magna Carta for Public School Teachers, provides that administrative charges against a public school teacher shall be heard initially by a committee constituted under said section. As no committee was ever formed, the

[9] *Id.* at 49-50.

petitioner posits that he was denied due process and that the CSC did not have the jurisdiction to hear and decide his administrative case. He further argues that notwithstanding the fact that the issue of jurisdiction was raised for the first time on appeal, the rule remains that estoppel does not confer jurisdiction on a tribunal that has no jurisdiction over the cause of action or subject matter of the case.

The Court cannot sustain his position.

The petitioner's argument that the administrative case against him can only proceed under R.A. No. 4670 is misplaced.

In *Puse v. Santos-Puse*,[10] it was held that the CSC, the Department of Education (*DepEd*) and the Board of Professional Teachers-Professional Regulatory Commission (*PRC*) have concurrent jurisdiction over administrative cases against public school teachers.

Under Article IX-B of the 1987 Constitution, the CSC is the body charged with the establishment and administration of a career civil service which embraces all branches and agencies of the government.[11] Executive Order (*E.O.*) No. 292 (the Administrative Code of 1987)[12] and Presidential Decree (*P.D.*)

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[10] G.R. No. 183678, March 15, 2010, 615 SCRA 500, 513.

[11] Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

x x x x x x x x x

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

[12] Chapter 3, Title I(A), Book V:

Section 12. *Powers and Functions.* - The Commission shall have the following powers and functions: x x x

No. 807 (the Civil Service Decree of the Philippines)[13] expressly provide that the CSC has the power to hear and decide administrative disciplinary cases instituted with it or brought to it on appeal. Thus, the CSC, as the central personnel agency of the government, has the inherent power to supervise and discipline all members of the civil service, including public school teachers.

Indeed, under Section 9 of R.A. No. 4670, the jurisdiction over administrative cases of public school teachers is lodged with the investigating committee constituted therein.[14] Also,

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(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x

[13] Section 9. *Powers and Functions of the Commission.* The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x x x x x x

(j) Hear and decide administrative disciplinary cases instituted directly with it in accordance with Section 37 or brought to it on appeal;

x x x x x x x x x

Section 37. *Disciplinary Jurisdiction.*

(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken. x x x

[14] Section. 9. *Administrative Charges*. Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who should at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teacher's organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings and recommendations to the Director of Public Schools within thirty days from the termination of the hearings:

under Section 23 of R.A. No. 7836 (the Philippine Teachers Professionalization Act of 1994), the Board of Professional Teachers is given the power, after due notice and hearing, to suspend or revoke the certificate of registration of a professional teacher for causes enumerated therein.[15]

Concurrent jurisdiction is that which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. When the law bestows upon a government body the jurisdiction to hear and decide cases involving

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Provided, however, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education.

[15] Section. 23. *Revocation of the Certificate of Registration, Suspension from the Practice of the Teaching Profession, and Cancellation of Temporary or Special Permit*. — The Board shall have the power, after due notice and hearing, to suspend or revoke the certificate of registration of any registrant, to reprimand or to cancel the temporary/special permit of a holder thereof who is exempt from registration, for any of the following causes:

(a) Conviction for any criminal offense by a court of competent jurisdiction;

(b) Immoral, unprofessional or dishonorable conduct;

(c) Declaration by a court of competent jurisdiction for being mentally unsound or insane;

(d) Malpractice, gross incompetence, gross negligence or serious ignorance of the practice of the teaching profession;

(e) The use of or perpetration of any fraud or deceit in obtaining a certificate of registration, professional license or special/temporary permit;

(f) Chronic inebriety or habitual use of drugs;

(g) Violation of any of the provisions of this Act, the rules and regulations and other policies of the Board and the Commission, and the code of ethical and professional standards for professional teachers; and

(h) Unjustified or willful failure to attend seminars, workshops, conferences and the like or the continuing education program prescribed by the Board and the Commission.

The decision of the Board to revoke or suspend a certificate may be appealed to the regional trial court of the place where the Board holds office within fifteen (15) days from receipt of the said decision or of the denial of the motion for reconsideration filed in due time.

specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.[16]

Where concurrent jurisdiction exists in several tribunals, the body that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others. In this case, it was CSC which first acquired jurisdiction over the case because the complaint was filed before it. Thus, it had the authority to proceed and decide the case to the exclusion of the DepEd and the Board of Professional Teachers.[17]

In *CSC v. Alfonso*,[18] it was held that special laws, such as R.A. No. 4670, do not divest the CSC of its inherent power to supervise and discipline all members of the civil service, including public school teachers. Pat-og, as a public school teacher, is first and foremost, a civil servant accountable to the people and answerable to the CSC for complaints lodged against him as a public servant. To hold that R.A. No. 4670 divests the CSC of its power to discipline public school teachers would negate the very purpose for which the CSC was established and would impliedly amend the Constitution itself.

To further drive home the point, it was ruled in *CSC v. Macud*[19] that R.A. No. 4670, in imposing a separate set of procedural requirements in connection with administrative proceedings against public school teachers, should be construed to refer *only* to the specific procedure to be followed in administrative investigations *conducted by the DepEd*. By no means, then, did R.A. No. 4670 confer an exclusive disciplinary authority over public school teachers on the DepEd.

At any rate, granting that the CSC was without jurisdiction, the petitioner is indeed estopped from raising the issue. Although

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[16] *Puse v. Santos-Puse*, *supra* note 10, at 513.

[17] *Id.* at 516.

[18] G.R. No. 179452, June 11, 2009, 589 SCRA 88, 97.

[19] G.R. No. 177531, September 10, 2009, 599 SCRA 52,65; citing *Ombudsman v. Masing*, 566 Phil. 253, 274 (2008).

the rule states that a jurisdictional question may be raised at any time, such rule admits of the exception where, as in this case, estoppel has supervened.[20] Here, instead of opposing the CSC's exercise of jurisdiction, the petitioner invoked the same by actively participating in the proceedings before the CSC-CAR and by even filing his appeal before the CSC itself; only raising the issue of jurisdiction later in his motion for reconsideration after the CSC denied his appeal. This Court has time and again frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable, but attacking it for lack of jurisdiction when adverse.[21]

On Administrative Due Process

On due process, Pat-og asserts that the affidavits of the complainant and his witnesses are of questionable veracity having been subscribed in Bontoc, which is nearly 30 kilometers from the residences of the parties. Furthermore, he claimed that considering that the said affiants never testified, he was never afforded the opportunity to cross-examine them. Therefore, their affidavits were mere hearsay and insufficient to prove his guilt.

The petitioner does not persuade.

The essence of due process is simply to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[22] Administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings,

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[20] *CSC v. Macud*, G.R. No. 177531, September 10, 2009, 599 SCRA 52,66.

[21] *Rubio v. Munar*. 561 Phil. 1, 9 (2007).

[22] *Ombudsman v. Reyes*, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640; citing *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

a formal or trial-type hearing is not always necessary[23] and technical rules of procedure are not strictly applied. Hence, the right to cross-examine is not an indispensable aspect of administrative due process.[24] The petitioner cannot, therefore, argue that the affidavit of Bang-on and his witnesses are hearsay and insufficient to prove his guilt.

At any rate, having actively participated in the proceedings before the CSC-CAR, the CSC, and the CA, the petitioner was apparently afforded every opportunity to explain his side and seek reconsideration of the ruling against him.

As to the issue of the veracity of the affidavits, such is a question of fact which cannot now be raised before the Court under Rule 45 of the Rules of Court. The CSC-CAR, the CSC and the CA did not, therefore, err in giving credence to the affidavits of the complainants and his witnesses, and in consequently ruling that there was substantial evidence to support the finding of misconduct on the part of the petitioner.

On the Penalty

Assuming that he did box Bang-on, Pat-og argues that there is no substantial evidence to prove that he did so with a clear intent to violate the law or in flagrant disregard of the established rule, as required for a finding of grave misconduct. He insists that he was not motivated by bad faith or ill will because he acted in the belief that, as a teacher, he was exercising authority over Bang-on *in loco parentis*, and was, accordingly, within his rights to discipline his student. Citing his 33 years in the government service without any adverse record against him and the fact that he is at the edge of retirement, being already 62 years old, the petitioner prays that, in the name of substantial and compassionate justice, the CSC-CAR's finding of simple misconduct and the concomitant penalty of suspension should be upheld, instead of dismissal.

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[23] *Imperial v. GSIS*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505.

[24] *Velez v. De Vera*, 528 Phil. 763, 802 (2006).

The Court agrees in part.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behaviour. 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. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest.[25]

Teachers are duly licensed professionals who must not only be competent in the practice of their noble profession, but must also possess dignity and a reputation with high moral values. They *must strictly adhere to*, observe, and practice the set of ethical and moral principles, standards, and values laid down in the Code of Ethics of Professional Teachers, which apply to all teachers in schools in the Philippines, whether public or private, as provided in the preamble of the said Code.[26] Section 8 of Article VIII of the same Code expressly provides that "**a teacher shall not inflict corporal punishment on offending learners**."

Clearly then, petitioner cannot argue that in punching Bang-on, he was exercising his right as a teacher *in loco parentis* to discipline his student. It is beyond cavil that the petitioner, as a public school teacher, deliberately violated his Code of Ethics. Such violation is a flagrant disregard for the established rule contained in the said Code tantamount to grave misconduct.

Under Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the penalty for grave misconduct is dismissal from the service, which carries with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the

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[25] *Ombudsman v. Reyes*, G.R. No.170512, *supra* note 22, at 637; citing *Salazar v. Barriaga*, A.M. No. P-05-2016, 550 Phil. 44, 48-49 (2007).

[26] Preamble, Code of Ethics of Professional Teachers.

government service.[27] This penalty must, however, be tempered with compassion as there was sufficient provocation on the part of Bang-on. Considering further the mitigating circumstances that the petitioner has been in the government service for 33 years, that this is his first offense and that he is at the cusp of retirement, the Court finds the penalty of suspension for six months as appropriate under the circumstances.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition and **MODIFIES** the April 16, 2011 Decision of the Court of Appeals in CA-G.R. SP No. 101700. Accordingly, Alberto Pat-og, Sr. is found **GUILTY** of Grave Misconduct, but the penalty is reduced from dismissal from the service to **SUSPENSION** for **SIX MONTHS**.

SO ORDERED.

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

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[27] Section 58(a), Rule IV, Uniform Rules on Administrative Cases in the Civil Service.

FIRST DIVISION

[G.R. No. 200329. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO PIOSANG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— [F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. There is no cogent reason for us to depart from the general rule in this case.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE CHILD-VICTIMS, RESPECTED; MORE SO WHEN CORROBORATED BY AN EYEWITNESS AND THE MEDICO-LEGAL FINDINGS.— Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering her tender age, AAA could not have invented a horrible story. x x x And although AAA's testimony was already convincing proof, by itself, of accused-appellant's guilt, it was further corroborated by the testimony of CCC, who personally witnessed the rape, and by the medico-legal findings which reported healed

lacerations on AAA's genital area and AAA's non-virgin physical state.

3. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY.— [A]ccused-appellant averred that he was at home, letting his hair dry in the garage, at the time of AAA's rape. We have oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. Moreover, for the defense of alibi to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. In the case at bar, AAA was raped in the detached comfort room of accused-appellant's house on July 8, 1998, at which time, accused-appellant claimed that he was in the garage of the very same house. Obviously, accused-appellant was in the immediate vicinity of the *locus criminis* at the time of commission of the crime.

4. CRIMINAL LAW; STATUTORY RAPE; PROPER PENALTY AND CIVIL DAMAGES.— The crime of rape is now defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353, to wit: ART. 266-A. *Rape; When and How Committed*. – Rape is committed – 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: x x x x 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. ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. 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: x x x x 5) When the victim is a child below seven (7) years old. x x x AAA was born on July 21, 1994, as evidenced by the Certification from the Civil Registrar's Office, so she was almost four years of

age when the crime was committed. Resultantly, accused-appellant was charged and proven guilty of statutory rape. Following Republic Act No. 9346, the RTC, as affirmed by the Court of Appeals, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but we specify that it is without the eligibility of parole. The Court of Appeals also properly awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse. We additionally order the accused-appellant to pay interest of six percent (6%) per annum from the finality of this judgment until the amount of damages thus awarded is 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

LEONARDO-DE CASTRO, *J.*:

For Our resolution is the appeal of the Decision[1] dated April 28, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04303, which affirmed with modifications the Decision[2] dated November 26, 2009 of the Regional Trial Court (RTC) of Quezon City, Branch 94, in Criminal Case No. Q-99-82565, finding

[1] *Rollo*, pp. 2-7; penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Bienvenido L. Reyes (also a member of this Court) and Elihu A. Ybañez, concurring.

[2] CA *rollo*, pp. 12-19; penned by Presiding Judge Roslyn M. Rabara-Tria.

accused-appellant Ricardo Piosang, *alias* Ricric, guilty of raping AAA,[3] a minor.

Upon the sworn complaint of AAA's mother, the City Prosecutor of Quezon City filed with the RTC an Information dated January 8, 1999, charging accused-appellant with rape, committed as follows:

> That on or about the 8th day of July 1998 in Quezon City[,] Philippines, the above-named accused thru force and intimidation did then and there wilfully, unlawfully and feloniously commit acts of sexual abuse upon the person of one [AAA] a minor 4 years of age by then and there inserting his penis into the vagina of said complainant and thereafter had carnal knowledge of her.[4]

When arraigned on April 24, 2000, accused-appellant pleaded "not guilty."[5]

At the trial, the prosecution presented the testimonies of (1) AAA,[6] the victim; (2) BBB,[7] the mother of AAA; (3) CCC,[8] another minor who witnessed the rape; (4) DDD,[9] mother of CCC; and (5) Police Senior Inspector (P/Sr. Insp.) Mary Ann Gajardo (Gajardo),[10] Medico Legal Officer of the Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City, who appeared on behalf of Dr. Tomas Suguitan, the physician who conducted the physical examination of AAA.

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[3] 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).

[4] Records, p. 1.

[5] *Id.* at 25.

[6] TSN, January 16, 2001, March 19, 2001, and October 1, 2001.

[7] TSN, September 18, 2000, October 4, 2000, and October 24, 2000.

[8] TSN, August 8, 2000, August 21, 2000, and August 22, 2000. CCC died during the pendency of the case before the RTC.

[9] TSN, November 22, 2000.

[10] TSN, February 27, 2001. Dr. Suguitan was unable to personally testify because he was left comatose after a vehicular accident.

The defense, for its part, called to the witness stand accused-appellant[11] himself and his mother Remedios Piosang[12] (Remedios). The testimony of another defense witness, Lorna Montero, was stricken out from the record for her failure to appear for the continuation of her cross-examination despite notice.

The RTC rendered its Decision on November 26, 2009 finding accused-appellant guilty beyond reasonable doubt of raping AAA and imposing upon him the following penalties:

> WHEREFORE, finding accused RICARDO PIOSANG GUILTY beyond reasonable doubt of the crime of rape under Article 266-A par. 1, Revised Penal Code in relation to Section 5(b) Article III of R.A. 7610, he is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. He is further ordered to pay private complainant AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and the costs of suit.[13]

Accused-appellant appealed to the Court of Appeals.

The prosecution's version of events, as determined by the Court of Appeals, is as follows:

> On July 8, 1998, AAA was playing with some friends when then eleven-and-a-half-year-old CCC, her neighbor, called and asked her to play computer with him at the house of herein accused-appellant, RICARDO PIOSANG or "RICRIC" on instructions of the latter. At the invitation, AAA readily joined CCC, and together with accused-appellant proceeded to his house.
>
> On the way, however, AAA and CCC were suddenly pushed inside accused-appellant's comfort room, which was built separately from the house. Inside, accused-appellant whipped out a *"bente nueve"* or fan knife and pointed it to CCC, telling the two children to keep quiet, otherwise, he will kill them. After accused-appellant had barred the door shut, he instructed CCC to hold AAA from behind, which CCC obeyed by clutching AAA on her stomach. Accused-appellant

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[11] TSN, June 11, 2008.

[12] TSN, June 6, 2006, March 12, 2007, and June 27, 2007.

[13] CA *rollo*, pp. 18-19.

removed his short pants, then applied something reddish on his penis and, while AAA was standing atop the toilet bowl being held by CCC from the back, inserted the same into her vagina and made pumping motions while standing. The victim AAA could only cry.

After having satiated his carnal desires against AAA, accused-appellant once again pointed the knife at CCC and told him to likewise insert his penis into AAA's private part. CCC pretended to do what [he] was told, and while doing so, the latter masturbated and, when he ejaculated, wiped the semen on the helpless AAA's mouth. Thereafter, he reiterated his threats to kill them if they told anyone of what happened, and then let them go home. Before AAA went out of the comfort room, however, accused-appellant gave her a five-peso coin to buy candy, which she threw away.

AAA did not reveal what happened to her on that fateful day. Months later, however, or on September 23, 1998, while AAA and her mother, BBB, were playing, BBB told her daughter not to let anyone touch her private part. After being silent for a moment, AAA suddenly blurted out, "*Mama, bastos si Kuya Ric Ric and Kuya CCC,"* because, according to AAA, they inserted their penises into her vagina. At this revelation, BBB confronted CCC's mother, DDD, who made her son disclose what truly happened to AAA. CCC tearfully narrated what accused-appellant did on July 8, 1998 and that he threatened to kill both him and AAA if they reported the matter.

Upon medical examination, AAA was found to have "shallow healed lacerations at 3 and 8 o'clock positions" on her genital area, and that she was in non-virgin state physically.[14] (Citations deleted.)

The Court of Appeals likewise summarized the evidence for the defense:

In defense, accused-appellant completely denied the charges and claimed that he was at home on the day in question, letting his hair dry at the garage of their house, when a neighbor named MARIETTA told him that DDD, CCC's mother was looking for him. Accused-appellant then proceeded to DDD's house where he heard CCC crying and saying, "*that's enough, that's enough, I will not do it again.*" Accused-appellant then deemed it best not to continue on, so he went home. A few minutes later, DDD arrived and called on accused-

[14] *Rollo*, pp. 3-4.

appellant, to which the latter's mother replied that they will just follow ("*Susunod na lang kami*"). Accused-appellant and his mother went to the house of AAA and BBB, where CCC admitted having raped AAA, as a result of which, DDD hit him repeatedly. Accused-appellant even suggested bringing AAA to be examined by a doctor.[15] (Citations omitted.)

In its Decision dated April 28, 2011, the Court of Appeals affirmed with modifications the RTC judgment and decreed thus:

WHEREFORE, premises considered the appealed judgment of conviction is hereby **AFFIRMED** with **MODIFICATIONS**, ordering accused-appellant RICARDO PIOSANG to pay the victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00. The rest of the *Decision* stands.[16]

Hence, accused-appellant comes before us on appeal with the same lone assignment of error he raised before the Court of Appeals:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[17]

Accused-appellant denies raping AAA and points to CCC, instead, as the perpetrator. Accused-appellant calls attention to CCC's initial refusal to reveal the incident when confronted by the latter's mother, DDD. Remedios even testified seeing a furious DDD whipping CCC after CCC admitted to raping AAA. In addition, accused-appellant points out that he would not have suggested to AAA's parents that AAA be physically examined by a doctor if he was actually the one who raped AAA. Lastly, accused-appellant insists that an Atty. Labay of the Office of the Vice Mayor, Quezon City, contacted him by telephone offering to settle the case in exchange for money, thus, supporting accused-appellant's claims of innocence and of an attempt to cover-up CCC's guilt for the crime charged.

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[15] *Id.* at 5.

[16] *Id.* at 7.

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

Accused-appellant's appeal essentially challenges the findings of fact of the RTC, as affirmed by the Court of Appeals, giving more weight and credence to the evidence of the prosecution as compared to those of the defense.

Accused-appellant's appeal has no merit.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.[18] There is no cogent reason for us to depart from the general rule in this case.

AAA, who was six years old by the time she testified in court, had consistently, positively, and categorically identified accused-appellant as her abuser. Her testimony was direct, candid, and replete with details of the rape.

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.[19] Considering her tender age, AAA could not have invented a horrible story. As aptly found by the RTC and we quote:

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[18] *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.

[19] *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 307.

The offended party testified in a straightforward manner and positively identified the accused in open court as the very person who inserted his penis into her vagina. Her candid narration of the dastardly act done upon her by the accused has the earmark of truth and sincerity. Her testimony was taken on three (3) different dates but not once did she waiver in pointing to the accused as the person who inserted his penis into her vagina. She even clarified that CCC only pretended to put his penis into her vagina when he was ordered by the accused to do so. x x x.

The court finds no reason why private complainant would impute against accused so grave a charge if it were not true. The tender age of the offended party and her candidness in narrating her debasing experience are badges of truth and sincerity. For her to fabricate the facts of rape and to charge the accused falsely of a crime is certainly beyond her mental capacity. x x x.[20]

And although AAA's testimony was already convincing proof, by itself, of accused-appellant's guilt, it was further corroborated by the testimony of CCC, who personally witnessed the rape, and by the medico-legal findings which reported healed lacerations on AAA's genital area and AAA's non-virgin physical state.[21]

In contrast, accused-appellant averred that he was at home, letting his hair dry in the garage, at the time of AAA's rape. We have oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[22] Moreover, for the defense of alibi to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[23] In the case at bar, AAA was

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

[21] Records, p. 41.

[22] *People v. Narido*, 374 Phil. 489, 508 (1999).

[23] *People v. Delabajan and Lascano*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 866.

raped in the detached comfort room of accused-appellant's house on July 8, 1998, at which time, accused-appellant claimed that he was in the garage of the very same house. Obviously, accused-appellant was in the immediate vicinity of the *locus criminis* at the time of commission of the crime.

Accused-appellant's theory that he was falsely charged with rape because the actual rapist, CCC, was a minor and could not be held criminally liable, is baseless and illogical. We stress that AAA clearly testified that it was only accused-appellant who inserted his penis into AAA's vagina and that CCC merely pretended to have also done so. Accused-appellant failed to impute any ill motive on the part of AAA to single him out from all other neighbors and untruthfully charge him with the rape. As we held in *People v. Agcanas*:[24]

> Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

We likewise give scant consideration to accused-appellant's averments that he advised BBB to have AAA examined by a doctor to determine what really happened and that a certain Atty. Labay (presumably acting on behalf of BBB) offered to settle the case in exchange for money, since these were solely based on his testimony, thus, completely unsubstantiated and self-serving.

The crime of rape is now defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353,[25] to wit:

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[24] G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847, cited in *People v. Caisip*, 352 Phil. 1058, 1065 (1998).

[25] Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, took effect on October 22, 1997. AAA's rape was committed on July 8, 1998.

ART. 266-A. *Rape; When and How Committed.* – Rape is committed –

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

x x x x

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

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

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:

x x x x

5) When the victim is a child below seven (7) years old.

We elucidated in *People v. Dollano, Jr.*[26] that:

Rape under paragraph 3 of the above-mentioned article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below twelve years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. x x x. (Citations omitted.)

AAA was born on July 21, 1994, as evidenced by the Certification from the Civil Registrar's Office, so she was almost four years of age when the crime was committed.[27] Resultantly, accused-appellant was charged and proven guilty of statutory rape.

Following Republic Act No. 9346, the RTC, as affirmed by the Court of Appeals, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but we

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[26] G.R. No. 188851, October 19, 2011, 659 SCRA 740, 753.

[27] AAA was only thirteen days short of four years.

specify that it is without the eligibility of parole. The Court of Appeals also properly awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[28] Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.[29]

We additionally order the accused-appellant to pay interest of six percent (6%) per annum from the finality of this judgment until the amount of damages thus awarded is fully paid.[30]

WHEREFORE, the instant appeal is **DENIED** and the Decision dated April 28, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04303 is hereby **AFFIRMED with the following MODIFICATIONS**: (1) accused-appellant RICARDO PIOSANG is sentenced to suffer the penalty of *reclusion perpetua* without the eligibility of parole; and (2) that said accused-appellant is additionally ordered to pay the victim interest of six percent (6%) per annum from the finality of this judgment until the amount of damages thus awarded is fully paid.

SO ORDERED.

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

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[28] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 348.

[29] *People v. Garcia*, G.R. No. 177740, April 5, 2010, 617 SCRA 318, 335.

[30] *People v. Atadero, supra* note 28 at 349.

[*] Per Raffle dated May 8, 2013.

FIRST DIVISION

[G.R. No. 200837. June 5, 2013]

MAERSK FILIPINAS CREWING INC./MAERSK SERVICES LTD., and/or MR. JEROME DELOS ANGELES, *petitioners, vs.* **NELSON E. MESINA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS (POEA-SEC); ON RESOLVING DISPUTES ON DISABILITY BENEFITS; FUNDAMENTAL CONSIDERATION IS THE PROTECTION AND BENEFIT OF FILIPINO SEAMEN.— At the onset, it is well to note that in resolving disputes on disability benefits, the fundamental consideration has been that the POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, its provisions must be construed and applied fairly, reasonably and liberally in their favor because only then can its beneficent provisions be fully carried into effect.

2. ID.; ID.; ID.; PERMANENT DISABILITY; MUST BE SUBSTANTIALLY ESTABLISHED AS WORK-RELATED ILLNESS TO BE COMPENSABLE; DISCUSSED.— Under Section 20.1.4.1 of the parties' AMOSUP/IMEC-CBA for 2004, the respondent shall be entitled to compensation if he suffers permanent disability as a result of a work-related illness while serving on board. The provision further states that the determination of whether an illness is work-related shall be made in accordance with Philippine laws on employees' compensation. The 2000 POEA-SEC defines "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." In interpreting the said definition, the Court has held that for disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury

has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. The Court has likewise ruled that the list of illnesses/diseases in Section 32-A does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. This is in view of Section 20(B)(4) of the POEA-SEC which states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with such presumption is the burden placed upon the claimant to present substantial evidence that his working conditions caused or at least increased the risk of contracting the disease. Substantial evidence consists of such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. Only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of a non-occupational disease.

3. ID.; ID.; ID.; ID.; ID.; DIAGNOSIS OF COMPANY-DESIGNATED PHYSICIAN, NOT CONCLUSIVE.— In determining the work-causation of a seafarer's illness, the diagnosis of the company-designated physician bears vital significance. After all, it is before him that the seafarer must initially report to upon medical repatriation pursuant to above terms. Nevertheless, the company physician's assessment does not evince irrefutable and conclusive weight in assessing the compensability of an illness as the seafarer has the right to seek a second opinion from his preferred physician. x x x Hence, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him.

4. ID.; ID.; ID.; PERMANENT TOTAL DISABILITY; PRESENT IN CASE AT BAR AS RESPONDENT WAS UNABLE TO WORK FOR MORE THAN 120 DAYS AND CONSIDERING THE

NATURE OF THE DISEASE OF PSORIASIS.— [Respondent] is deemed to have suffered permanent total disability pursuant to the following guidelines in *Fil-Star Maritime Corporation v. Rosete*, thus: Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days. x x x. It is undisputed that from the time the respondent was medically repatriated on October 7, 2005 he was unable to work for more than 120 days. In fact, Dr. Alegre's certification was issued only after 259 days with the respondent needing further medical treatments thus rendering him unable to pursue his customary work. Despite the declaration in the medical reports that psoriasis is not contagious, no profit-minded employer will hire him considering the repulsive physical manifestation of the disease, it's chronic nature, lack of long-term cure and the vulnerability of the patient to cardiovascular diseases and some cancers. Its inevitable impact to the respondent's chances of being hired and capacity to continue working as a seaman cannot be ignored. His permanent disability thus effectively became total in nature entitling him to permanent total disability benefits as correctly awarded by the LA and the CA.

APPEARANCES OF COUNSEL

Carag Jamora Somera & Villareal Law Offices for petitioners.

Oliver C. Castro for respondent.

RESOLUTION

REYES, *J.*:

This Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, assails the Decision[2] dated October 27, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 113470 which reversed and set aside the Decision[3] dated July 23, 2009 of the National Labor Relations Commission (NLRC) and reinstated the Decision[4] dated April 14, 2008 of the Labor Arbiter (LA) awarding US$75,000.00 total disability benefits to Nelson Mesina (respondent) as well as attorney's fees.

Likewise assailed is the CA Resolution[5] dated February 29, 2012 which denied reconsideration.

Antecedent Facts

On March 29, 2005, the respondent was employed by Maersk Filipinas Crewing Inc., with Mr. Jerome delos Angeles as its Manager, for and in behalf of its principal, Maersk Services, Ltd., (petitioners) as a steward on board the vessel "Sealand Innovator" for a period of nine (9) months with a monthly basic salary of US$425.00.[6]

The respondent boarded the vessel on May 3, 2005 after having been declared 'fit for sea duties' in his Pre-Employment Medical Examination.[7]

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[1] *Rollo*, pp. 3-28.

[2] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guariña III and Apolonio D. Bruselas, Jr., concurring; *id.* at 30-37.

[3] *Id.* at 69-79.

[4] *Id.* at 127-137.

[5] *Id.* at 66-67.

[6] *Id.* at 80.

[7] *Id.* at 199.

As a steward, the respondent's functions involved kitchen-related services, cleaning accommodation spaces and performing laundry services, as may be required. Thus, while on board he cooked and served three meals everyday for sixty (60) persons. He also washed a cabin-load of dirty laundry all by himself using strong detergent and fabric conditioner. He was further ordered by the vessel's captain to wash-paint the decks from second to fourth deck using special soap and chemicals.

Sometime in June 2005, the respondent started to feel unusual itchiness all over his body followed by the appearance of small spots on his skin. He initially deferred seeking medical attention but when the itching became unbearable in October 2005, he requested for a thorough medical check-up.

He was subjected to medical check-up on board. After considering the extent of the rashes on his upper torso[8] and the fact that he is engaged in food preparation and service, he was medically repatriated on October 7, 2005.

Upon arrival in the Philippines, the respondent was referred to the petitioners' company-designated physician, Dr. Natalio Alegre II (Dr. Alegre),[9] before whom he reported for treatment twice a week for eight (8) months. The respondent also underwent phototherapy for not less than twenty (20) sessions. During all these times, the petitioners shouldered the medical expenses of the respondent and paid him sick wage benefits.

In a letter dated June 23, 2006 to the petitioners, Dr. Alegre declared the respondent to be afflicted with psoriasis, an auto-immune ailment that is not work-related, *viz*:

Mr. Nelson E. Mesina followed-up on 23 June 2006.

The complete hepatitis profile was normal. The SGPT and SGOT were elevated indicating liver inflammation.

Ultrasound of the liver showed severe fatty infiltration.

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[8] *Id.* at 82.

[9] *Id*.

Essentiale Forte three times daily is prescribed and follow-up is requested on 23 July 2006.

Psoriasis is an auto-immune ailment whereby the immune system misbehaves for no known reasons to attack a particular part of the body (in this case, the skin). It is not work[-]related and based on POEA contract, no disability could be assessed.[10]

Based on Dr. Alegre's finding that psoriasis is not work-related, the petitioners discontinued paying the respondent's benefits. Aggrieved, the respondent sought the assistance of his union, the Associated Maritime Officers' and Seamen's Union of the Philippines (AMOSUP), which submitted him for diagnosis to Dr. Glenda Anastacio-Fugoso (Dr. Fugoso), a dermatologist at the Seaman's Hospital.

In a handwritten certification dated February 13, 2007, Dr. Fugoso confirmed that the respondent is suffering from *Psoriasis Vulgaris*, a disease aggravated by work but is not contagious. In another handwritten certification dated February 20, 2007, Dr. Fugoso certified that:

Mr. Nelson E, Mesina is at present disabled. Diagnosed as Psoriasis Vulgaris (a recurring non-contagious papulosquamous disease aggravated by stress drug intake alcohol etc.). His skin condition has occupied 80% of his body which will need a longer time to control.[11]

In view of the conflicting findings of the two doctors on the causal connection between respondent's illness and work, the parties pursued grievance machinery under the Total Crew Cost-International Maritime Employers Committee-Collective Bargaining Agreement (TCC-IMEC CBA). Their conferences, however, yielded no settlement. This prompted the respondent to commence the herein complaint for the payment of full disability benefits, damages, and attorney's fees before the LA.

The respondent claimed that his illness is compensable because it manifested during his employment aboard the petitioners'

[10] *Id.* at 83.
[11] *Id.* at 241.

vessel. He further averred that it was triggered by his exposure to strong detergent soap and chemicals which he used in washing the dishes, laundry and ship decks. Upon the other hand, the petitioners denied liability on the basis of Dr. Alegre's declaration that it is not a work-related ailment and psoriasis is not an occupational disease under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Seafarers (POEA-SEC).

Ruling of the LA

In its Decision[12] dated April 14, 2008, LA Romelita N. Rioflorido adjudged the respondent's illness to be reasonably connected to his work and thus compensable. The LA explained, thus:

> Our own research confirms that [respondent's] illness can be reasonably related to his work as steward. Not every everyone [sic] who has the gene mutations gets psoriasis and there are several forms of psoriasis that people can develop. Certain environmental triggers play a role in causing psoriasis in people who have these gene mutations. Also, psychological stress has long been understood as a trigger for psoriasis flares, but scientists are still unclear about exactly how this occurs. Studies do show that not only can a sudden, stressful event trigger a rash to worsen[;] daily hassles of life can also trigger a flare. In addition, one study showed that people who are categorized as "huge worriers" were almost two times less likely to respond to treatment compared to "low worriers". (//dermatology.about.com/od/psoriasisbasics/a/psorcause.htm). Sometime[s] even mild injuries to the skin such as abrasions can trigger psoriasis flares. This is called koebner phenomenon. (www.psoriasiscafe.org/psoriasis-cause.htm).
>
> There is nothing in the record to show that [respondent's] illness was caused by genetic predisposition or drug reaction. Having ruled out these causes, what remains is the environmental factor such as [respondent's] constant exposure to strong laundry detergent powder and fabric conditioner, chemicals and the stress and strain which are present in his work.[13]

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[12] *Id.* at 127-137.

[13] *Id.* at 135.

The LA further reasoned that in disability compensation, it is not the injury which is compensated but rather the incapacity to work resulting in the impairment of one's earning capacity. Obviously, the respondent's continued employment is deleterious to his health because he will be exposed to factors that can increase the risk of the further recurrence or aggravation of his psoriasis. The fact that the petitioners no longer employed him is the most eloquent proof of his permanent disability.[14] Accordingly, the decretal portion of the LA decision read:

> WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] to pay the [respondent], jointly and severally, the amount of US$75,000.00 representing his total disability benefits, plus attorney's fees of US$7,500.00, in Philippine currency, at the rate of exchange prevailing at the time of actual payment. All other claims are dismissed.
>
> SO ORDERED.[15]

Ruling of the NLRC

The NLRC differed with the conclusions of the LA and held that there is actually no substantial evidence to prove that the nature of and the stress concomitant to the respondent's work aggravated his psoriasis. The NLRC observed that the only evidence substantiating the claim that the respondent's illness is work-related were his bare allegations and the two certifications of Dr. Fugoso who examined him only once. The NLRC noted that Dr. Fugoso even failed to make a clear finding that it was the stress specifically experienced by the respondent while aboard the vessel that aggravated his disease. The NLRC accorded more weight to the certification issued by Dr. Alegre, who was in a better position to assess the respondent after having examined and treated him twice a week for eight (8) months. Thus, the NLRC reversed the LA's ruling and disposed as follows in its Decision[16] dated July 23, 2009, *viz*:

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[14] *Id.* at 136-137.

[15] *Id.* at 137.

[16] *Id.* at 69-79.

WHEREFORE, premises considered, the appealed Decision is hereby **REVERSED** and **SET ASIDE,** and another one entered **DISMISSING** the instant complaint for lack of merit.

SO ORDERED.[17]

Ruling of the CA

The CA sustained the LA's judgment elaborating that inasmuch as the actual cause of psoriasis is unknown and given the probability that its onset was caused by factors found within the respondent's work environment, the doubt as to whether his illness is work-related should be resolved in his favor.

The CA further pointed out that despite the failure of the two doctors to declare the respondent to be fit to return to work, the abrasions on his skin remain repulsive despite treatment for eight (8) months, and the fact that there is no known cure for psoriasis reasonably establish that he can no longer work as seaman; hence, permanently and totally disabled for purposes of compensation under the law. The decretal portion of the CA Decision[18] dated October 27, 2011 thus read:

WHEREFORE, the foregoing considered, the assailed Decision dated 23 July 2009 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 07-000527-08 is **REVERSED** and **SET ASIDE,** and the Decision dated 14 April 2008 of the Labor Arbiter Romelita N. Rioflorido rendered in NLRC NCR CASE No. OFW-(M)-06-06586-07 is hereby **REINSTATED.**

SO ORDERED.[19]

The petitioners moved for reconsideration but their motion was denied in the CA Resolution[20] dated February 29, 2012.

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[17] *Id.* at 78.

[18] *Id.* at 30-37.

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

[20] *Id.* at 66-67.

Issues

The petitioners impute the following errors to the appellate court, *viz*:

I.

THE CONCLUSION OF THE [CA] WAS BASED ON INFERENCES THAT WERE MANIFESTLY MISTAKEN[;] ITS FINDINGS WERE CONTRARY TO THE PROVISIONS OF THE POEA STANDARD [EMPLOYMENT] CONTRACT AND THE CBA, [AND] THE AGREEMENTS BETWEEN THE PARTIES[;]

II.

THE HONORABLE [CA] BLATANTLY ERRED IN REVERSING THE DECISION OF THE NLRC EVEN IF RESPONDENT FAILED TO DEMONSTRATE THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN DECIDING TO REVERSE THE DECISION OF [LA] RIOFLORIDO.[21]

The primordial issue submitted for the Court's resolution is whether or not the respondent is entitled to permanent total disability benefits.

Ruling of the Court

At the onset, it is well to note that in resolving disputes on disability benefits, the fundamental consideration has been that the POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, its provisions must be construed and applied fairly, reasonably and liberally in their favor because only then can its beneficent provisions be fully carried into effect.[22]

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[21] *Id.* at 11.

[22] *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671-672 (2007).

Under Section 20.1.4.1[23] of the parties' AMOSUP/IMEC-CBA for 2004, the respondent shall be entitled to compensation if he suffers permanent disability as a result of a work-related illness while serving on board. The provision further states that the determination of whether an illness is work-related shall be made in accordance with Philippine laws on employees' compensation.[24]

The 2000 POEA-SEC[25] defines "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[26]

In interpreting the said definition, the Court has held that for disability to be compensable under Section 20(B) of the 2000 POEA-SEC,[27] it is not sufficient to establish that the seafarer's

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[23] A seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving on board, including accidents and work[-]related illness occurring whilst travelling to and from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work-related illness, reference shall be made to the Philippine Employees Compensation Law and/or Social Security Law. *Rollo*, p. 73.

[24] *Id*.

[25] Department Order No. 4, s. of 2000 is entitled Amended Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

[26] *Id.*, Definition of Terms, Item No. 12.

[27] SEC. 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[28]

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2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation, or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

[28] *Magsaysay Maritime Corporation v. NLRC*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 373-374.

The Court has likewise ruled that the list of illnesses/diseases in Section 32-A does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. [29] This is in view of Section 20(B)(4) of the POEA-SEC which states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."

Concomitant with such presumption is the burden placed upon the claimant to present substantial evidence that his working conditions caused or at least increased the risk of contracting the disease.[30] Substantial evidence consists of such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions.[31] Only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of a non-occupational disease.[32]

Equally relevant to the resolution of the present claim are the following provisions of the POEA-SEC, *viz*:

SECTION 20. COMPENSATION AND BENEFITS

(B) COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

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[29] *Supra* note 22.

[30] *Aya-ay v. Arpaphil Shipping Corp.*, 516 Phil. 628, 639-640 (2006).

[31] *Supra* note 28, at 376.

[32] *GSIS v. Besitan*, G.R. No. 178901, November 23, 2011, 661 SCRA 186, 194.

For this purpose, the seafarer shall submit himself to a post employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

In determining the work-causation of a seafarer's illness, the diagnosis of the company-designated physician bears vital significance. After all, it is before him that the seafarer must initially report to upon medical repatriation pursuant to above terms. Nevertheless, the company physician's assessment does not evince irrefutable and conclusive weight in assessing the compensability of an illness as the seafarer has the right to seek a second opinion from his preferred physician.[33]

The conflicting findings of the company's doctor and the seafarer's physician often stir suits for disability compensation. As an extrajudicial measure of settling their differences, the POEA-SEC gives the parties the option of agreeing jointly on a third

[33] See *Coastal Safeway Marine Services, Inc. v. Esguerra*, G.R. No. 185352, August 10, 2011, 655 SCRA 300, 307-308.

doctor whose assessment shall break the impasse and shall be the final and binding diagnosis.

While it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. This is because resort to a third doctor remains a mere directory not a mandatory provision as can be gleaned from the tenor of Section 20(B)(3), POEA-SEC itself. Further, the right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.[34]

Hence, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him.[35]

Psoriasis comes from the Greek word "*psora*" which means itch. It is a common disfiguring and stigmatising skin disease associated with profound impaired quality of life.[36] People with psoriasis typically have sharply demarcated erythematous plaques covered by silvery white scales, which most commonly appear on the elbows, knees, scalp, umbilicus, and lumbar area.[37] Chronic plaque psoriasis (*psoriasis vulgaris*) is the most common type of the disease which manifests thru plaques of varying degrees of scaling, thickening and inflammation in the skin. The plaques are typically oval-shaped, of variable size and clearly distinct from adjacent normal skin.[38]

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[34] *See HFS Philippines, Inc. v. Pilar*, G.R. No. 168716, April 16, 2009, 585 SCRA 315, 326.

[35] *Supra* note 22, at 670-671.

[36] Smith, Catherine H. and Barker, J N W N, "*Psoriasis and its management*," BRITISH MEDICAL JOURNAL 333 (2006), 380.

[37] Schon, Michael P. and Boehncke, W.-Henning, "*Psoriasis*," THE NEW ENGLAND JOURNAL OF MEDICINE 352 (2005), 1900.

[38] *Supra* note 36, at 381.

As a result of the chronic, incurable nature of psoriasis, associated morbidity is significant. Patients in primary care and hospital settings have similar reductions in quality of life specifically in the functional, psychological and social dimensions. Symptoms specifically related to the skin (*i.e.*, chronic itch, bleeding, scaling, nail involvement), problems related to treatments (mess, odor, inconvenience, time), arthritis, and the effect of living with a highly visible, disfiguring skin disease (difficulties with relationships, difficulties with securing employment, and poor self-esteem) all contribute to morbidity. About one in four patients experience major psychological distress, and the extent to which they feel socially stigmatised and excluded is significant.[39]

Current available treatments for the disease are reasonably effective as short-term therapy. Extended disease control is, however, difficult to achieve as the safety profile of most therapeutic agents limit their long-term use.[40]

Until now, the exact cause of psoriasis remains a mystery. But several family studies have provided compelling evidence of a genetic predisposition to psoriasis, although the inheritance pattern is still unclear.[41] Other environmental factors such as climate changes, physical trauma, infections of the upper respiratory tract,[42] drugs, and stress may also trigger its onset or development.[43]

After a circumspect evaluation of the conflicting medical certifications of Drs. Alegre and Fugoso, the Court finds that serious doubts pervade in the former. While both doctors gave a brief description of psoriasis, it was only Dr. Fugoso who categorically stated a factor that triggered the activity of the respondent's disease – stress, drug or alcohol intake, etc. Dr. Alegre immediately concluded that it is not work-related on the

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[39] *Id*.

[40] *Supra* note 37, at 1909.

[41] *Id.* at 1899.

[42] *Id.* at 1902.

[43] *Supra* note 36.

basis merely of the absence of psoriasis in the schedule of compensable diseases in Sections 32 and 32-A of the POEA-SEC. Dr. Alegre failed to consider the varied factors the respondent could have been exposed to while on board the vessel. At best, his certification was merely concerned with the examination of the respondent for purposes of diagnosis and treatment and not with the determination of his fitness to resume his work as a seafarer in stark contrast with the certification issued by Dr. Fugoso which categorically declared the respondent as "disabled." The certification of Dr. Alegre is, thus, inconclusive for purposes of determining the compensability of psoriasis under the POEA-SEC. Moreover, Dr. Alegre's specialization is General Surgery[44] while Dr. Fugoso is a dermatologist, or one with specialized knowledge and expertise in skin conditions and diseases like psoriasis. Based on these observations, it is the Court's considered view that Dr. Fugoso's certification deserves greater weight.

It remains undisputed that the respondent used strong detergent, fabric conditioner, special soap and chemicals in performing his duties as a steward. Stress and climate changes likewise permeate his working environment as with that of any other seafarer. These factors, taken together with Dr. Fugoso's certification, confirm the existence of a reasonable connection between the nature of respondent's work and the onset of his psoriasis.

At any rate, even in the absence of an official finding by the company-designated physician or the respondent's own physician, he is deemed to have suffered permanent total disability pursuant to the following guidelines in *Fil-Star Maritime Corporation v. Rosete*,[45] thus:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

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[44] http://alegremedicalclinic.net/about_us.html, last accessed on April 2, 2013, 11:22 a.m.

[45] G.R. No. 192686, November 23, 2011, 661 SCRA 247.

> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.
>
> A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days. x x x.[46] (Citations omitted)

It is undisputed that from the time the respondent was medically repatriated on October 7, 2005 he was unable to work for more than 120 days. In fact, Dr. Alegre's certification was issued only after 259 days with the respondent needing further medical treatments thus rendering him unable to pursue his customary work. Despite the declaration in the medical reports that psoriasis is not contagious, no profit-minded employer will hire him considering the repulsive physical manifestation of the disease, it's chronic nature, lack of long-term cure and the vulnerability of the patient to cardiovascular diseases and some cancers.[47] Its inevitable impact to the respondent's chances of being hired and capacity to continue working as a seaman cannot be ignored. His permanent disability thus effectively became total in nature entitling him to permanent total disability benefits as correctly awarded by the LA and the CA.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated October 27, 2011 and Resolution dated February 29, 2012 of the Court of Appeals in CA-G.R. SP No. 113470 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[46] *Id.* at 257-258.

[47] *Supra* note 36.

SECOND DIVISION

[G.R. No. 202690. June 5, 2013]

HENRY L. SY, *petitioner, vs.* **LOCAL GOVERNMENT OF QUEZON CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PERIOD FOR FILING; DELAY NOT EXCUSED BY MERE CLAIM OF EXCUSABLE NEGLIGENCE.— Sy's motion for reconsideration was filed out of time (a day late) and thus, was properly dismissed by the CA. x x x Sy's counsel claims that his secretary's inadvertent placing of the date January 27, 2012, instead of January 26, 2012, on the Notice of Decision constitutes excusable negligence which should therefore, justify a relaxation of the rules. The assertion is untenable. A claim of excusable negligence does not loosely warrant a relaxation of the rules. ***Verily, the party invoking such should be able to show that the procedural oversight or lapse is attended by a genuine miscalculation or unforeseen fortuitousness which ordinary prudence could not have guarded against so as to justify the relief sought***. The standard of care required is that which an ordinarily prudent man bestows upon his important business. In this accord, the duty rests on every counsel to see to adopt and strictly maintain a system that will efficiently take into account all court notices sent to him.

2. ID.; ID.; LIBERAL APPLICATION OF THE RULES MAY BE ALLOWED IN THE INTEREST OF JUSTICE.— [P]rocedural rules may be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.

3. ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; LEGAL INTEREST; CORRECT RATE IS 12% PER ANNUM RECKONED FROM THE TIME OF TAKING OF THE PROPERTY.— Based on a judicious review of the records and application of jurisprudential rulings, the Court holds that the correct rate of legal interest to be applied is twelve percent (12%) and not six percent (6%) per annum, owing to the nature of the City's obligation as an effective forbearance. In the case of *Republic v. CA*, the Court ruled that the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes an effective forbearance which therefore, warrants the application of the 12% legal interest rate, *viz*: x x x **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time**. x x x In similar regard, the Court, in *Land Bank of the Philippines v. Rivera*, pronounced that: In many cases decided by this Court, it has been repeated time and again that the **award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance**. x x x As to the reckoning point on which the legal interest should accrue, the same should be computed from the time of the taking of the subject property and not from the filing of the complaint for expropriation. x x x Case law dictates that there is "taking" when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof.

4. ID.; ID.; ID.; DAMAGES; EXEMPLARY DAMAGES AND ATTORNEY'S FEES PROPER FOR THE DELAY IN INITIATING EXPROPRIATION PROCEEDINGS.— As correctly observed by the CA, exemplary damages and attorney's fees should be awarded to the landowner if the government takes possession of the property for a prolonged period of time without properly initiating expropriation proceedings.

5. ID.; ID.; ID.; JUST COMPENSATION; AMOUNT TO BE ASCERTAINED AT THE TIME OF TAKING.— ***It is well-settled that the amount of just compensation is to be ascertained as***

of the time of the taking. Consequently, the case must be remanded to the RTC in order to properly determine the amount of just compensation during such time the subject property was actually taken.

APPEARANCES OF COUNSEL

Tranquilino F. Meris and *Law Firm of Dela Cruz Albano Gasis and Associates* for petitioner.

Office of the City Attorney (Quezon) for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the January 20, 2012 Decision[2] and July 16, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 91964 which affirmed with modification the August 22, 2008 Order[4] of the Regional Trial Court of Quezon City, Branch 80 (RTC) in Civil Case No. Q-96-29352, ordering respondent Local Government of Quezon City (the City) to pay petitioner Henry L. Sy (Sy) just compensation set at ₱5,500.00 per square meter (sq. m.), including ₱200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

The Facts

On November 7, 1996, the City, through then Mayor Ismael Mathay, Jr., filed a complaint for expropriation with the RTC in order to acquire a 1,000 sq. m. parcel of land, owned and

[1] *Rollo*, pp. 9-23.

[2] *Id.* at 24-44. Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam and Edwin D. Sorongon, concurring.

[3] *Id.* at 45-47.

[4] CA *rollo*, pp. 19-24. Penned by Presiding Judge Charito B. Gonzales.

registered under the name of Sy (subject property),[5] which was intended to be used as a site for a multi-purpose *barangay* hall, day-care center, playground and community activity center for the benefit of the residents of Barangay Balingasa, Balintawak, Quezon City.[6] The requisite ordinance to undertake the aforesaid expropriation namely, Ordinance No. Sp-181, s-94, was enacted on April 12, 1994.[7]

On March 18, 1997, pursuant to Section 19[8] of Republic Act No. 7160 (RA 7160), otherwise known as the "Local Government Code of 1991," the City deposited the amount of ₱241,090.00 with the Office of the Clerk of Court, representing 15% of the fair market value of the subject property based on its tax declaration.[9]

During the preliminary conference on November 8, 2006, Sy did not question the City's right to expropriate the subject

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[5] *Rollo*, p. 25. The subject property is covered by two (2) titles, namely, Transfer Certificate of Title (TCT) No. 113193, with an area of 649 sq. m., and TCT No. 113194, with an area of 905 sq. m. (See also CA *rollo*, p. 19).

[6] *Id*.

[7] *Id.* at 36.

[8] SEC. 19. *Eminent Domain*. - A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted**: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated**: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property. (Emphasis supplied)

[9] *Rollo*, pp. 25-26.

property. Thus, only the amount of just compensation remained at issue.[10]

On July 6, 2006, the RTC appointed Edgardo Ostaco (Commissioner Ostaco), Engr. Victor Salinas (Commissioner Salinas) and Atty. Carlo Alcantara (Commissioner Alcantara) as commissioners to determine the proper amount of just compensation to be paid by the City for the subject property. Subsequently, Commissioners Ostaco and Alcantara, in a Report dated February 11, 2008, recommended the payment of ₱5,500.00 per sq. m., to be computed from the date of the filing of the expropriation complaint, or on November 7, 1996. On the other hand, Commissioner Salinas filed a separate Report dated March 7, 2008, recommending the higher amount of ₱13,500.00 per sq. m. as just compensation.[11]

The RTC Ruling

In the Order dated August 22, 2008,[12] the RTC, citing the principle that just compensation must be fair not only to the owner but to the expropriator as well, adopted the findings of Commissioners Ostaco and Alcantara and thus, held that the just compensation for the subject property should be set at ₱5,500.00 per sq. m.[13] Further, it found no basis for the award of damages and back rentals in favor of Sy.[14] Finally, while legal interest was not claimed, for equity considerations, it awarded six percent (6%) legal interest, computed from November 7, 1996 until full payment of just compensation.[15]

Dissatisfied, Sy filed an appeal with the CA.[16]

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[10] *Id.* at 26.

[11] *Id.* at 26-27. See also CA *rollo,* pp. 20-21.

[12] CA *rollo,* pp. 19-24.

[13] *Id.* at 23.

[14] *Id*.

[15] *Id*.

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

The CA Ruling

In the Decision dated January 20, 2012,[17] the CA affirmed the RTC's ruling but modified the same, ordering the City to pay Sy the amount of ₱200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

It found the appraisal of Commissioners Ostaco and Alcantara for the subject property to be more believable than the ₱13,000.00 per sq. m. valuation made by independent appraisers Cuervo and Asian Appraisers in 1995 and 1996, respectively, considering that it was arrived at after taking into account: (*a*) the fair market value of the subject property in the amount of ₱4,000.00 per sq. m. based on the September 4, 1996 recommendation of the City Appraisal Committee;[18] (*b*) the market value of the subject lot in the amount of ₱2,000.00 per sq. m. based on several sworn statements made by Sy himself;[19] and (*c*) Sy's own tax declaration for 1996,[20] stating that the subject property has a total market value of ₱2,272,050.00. Accordingly, it held that the fair market value of ₱5,500.00 per sq. m., or ₱5,500,000.00 in total, for the 1,000 sq. m. subject property arrived at by Commissioners Ostaco and Alcantara was more than fair and reasonable.[21]

The CA also denied Sy's assertion that he should be entitled to damages on account of the purported shelving of his housing project, finding no sufficient evidence to support the same. Likewise, it observed that the expropriation would not leave the rest of Sy's properties useless as they would still be accessible

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[17] *Rollo*, pp. 24-44.

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

[19] *Id.* at 38.

[20] *Id.* Covered under Tax Declaration Nos. D-01200698 and D-01200214, with market values of ₱778,800.00 and ₱1,493,250.00, respectively, or ₱2,272,050.00 in total.

[21] *Id*.

through a certain Lot 8 based on the Property Identification Map.[22]

Nonetheless, citing the case of *Manila International Airport Authority v. Rodriguez* (*MIAA*),[23] it awarded exemplary damages in the amount of ₱200,000.00 and attorney's fees equivalent to one percent (1%) of the amount due because of the City's taking of the subject property without even initiating expropriation proceedings.[24] It, however, denied Sy's claim of back rentals considering that the RTC had already granted legal interest in his favor.[25]

Aggrieved, Sy moved for reconsideration which was denied in the Resolution dated July 16, 2012[26] for being filed out of time.[27] The City also filed a motion for reconsideration which was equally denied for lack of merit.[28]

Hence, this petition.

Issues Before The Court

The present controversy revolves around the issue of whether the CA correctly: (*a*) dismissed Sy's motion for reconsideration for being filed out of time; (*b*) upheld the amount of just compensation as determined by the RTC as well as its grant of six percent (6%) legal interest; and (*c*) awarded exemplary damages and attorney's fees.

The Court's Ruling

The petition is partly meritorious.

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[22] *Id.* at 38-40.

[23] G.R. No. 161836, February 28, 2006, 483 SCRA 619, 633.

[24] *Rollo*, pp. 42-43.

[25] *Id.* at 42.

[26] *Id.* at 45-47.

[27] *Id.* at 46.

[28] *Id.* at 47.

A. Failure to seasonably move for reconsideration; excusable negligence; relaxation of procedural rules

At the outset, the Court observes that Sy's motion for reconsideration was filed out of time and thus, was properly dismissed by the CA. Records show that, as per the Postmaster's Certification, the CA's January 20, 2012 Decision was received by Sy on January 26, 2012 and as such, any motion for reconsideration therefrom should have been filed not later than fifteen (15) days from receipt,[29] or on February 10, 2012.[30] However, Sy filed his motion for reconsideration (subject motion) **a day late**, or on February 13, 2012,[31] which thus, renders the CA decision final and executory.[32]

In this regard, it is apt to mention that Sy's counsel, Atty. Tranquilino F. Meris (Atty. Meris), claims that his secretary's inadvertent placing of the date January 27, 2012, instead of January 26, 2012, on the Notice of Decision[33] constitutes excusable negligence which should therefore, justify a relaxation of the rules.

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[29] See Section 1, Rule 37 of the Rules of Court.

[30] *Rollo*, p. 46.

[31] February 11 and 12, 2012 fall on a Saturday and Sunday, respectively.

[32] Section 2, Rule 36 of the Rules of Court partly provides:

> SEC. 2. *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, within a certificate that such judgment or final order has become final and executory. (2a, 10, R51)

[33] *Rollo*, p. 10.

The assertion is untenable.

A claim of excusable negligence does not loosely warrant a relaxation of the rules. ***Verily, the party invoking such should be able to show that the procedural oversight or lapse is attended by a genuine miscalculation or unforeseen fortuitousness which ordinary prudence could not have guarded against so as to justify the relief sought***.[34] The standard of care required is that which an ordinarily prudent man bestows upon his important business.[35] In this accord, the duty rests on every counsel to see to adopt and strictly maintain a system that will efficiently take into account all court notices sent to him.[36]

Applying these principles, the Court cannot excuse Atty. Meris' misstep based on his proffered reasons. Evidently, the erroneous stamping of the Notice of Decision could have been averted if only he had instituted a credible filing system in his office to account for oversights such as that committed by his secretary. Indeed, ordinary prudence could have prevented such mistake.

Be that as it may, procedural rules may, nonetheless, be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[37] Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.[38]

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[34] See *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779 (1961).

[35] *Id.*, citing *Gaylord v. Berry*, 169 N.C. 733, 86 S.E. 623.

[36] *Colcol v. Philippine Bank of Commerce*, 129 Phil. 117-119 (1967), citing *Mendoza v. Bulanadi*, 108 Phil. 11 (1967).

[37] *Lazaro v. CA*, 386 Phil. 412, 417 (2000). (Citations omitted)

[38] *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012, 687 SCRA 469, 476, citing *Villanueva v. People*, G.R. No. 188630, February 23, 2011, 644 SCRA 358, 368.

As applied in this case, the Court finds that the procedural consequence of the above-discussed one-day delay in the filing of the subject motion – which, as a matter of course, should render the CA's January 20, 2012 Decision already final and executory and hence, bar the instant petition – is incommensurate to the injustice which Sy may suffer. This is in line with the Court's observation that the amount of just compensation, the rate of legal interest, as well as the time of its accrual, were incorrectly adjudged by both the RTC and the CA, contrary to existing jurisprudence. In this respect, the Court deems it proper to relax the rules of procedure and thus, proceed to resolve these substantive issues.

B. Rate of legal interest and time of accrual

Based on a judicious review of the records and application of jurisprudential rulings, the Court holds that the correct rate of legal interest to be applied is twelve percent (12%) and not six percent (6%) per annum, owing to the nature of the City's obligation as an effective forbearance.

In the case of *Republic v. CA*,[39] the Court ruled that the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes an effective forbearance which therefore, warrants the application of the 12% legal interest rate, *viz*:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time

[39] 433 Phil. 107, 122-123 (2002). (Citations omitted)

when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

The Bulacan trial court, in its 1979 decision, was correct in imposing interests on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time**. x x x (Emphasis and underscoring supplied)

In similar regard, the Court, in *Land Bank of the Philippines v. Rivera*,[40] pronounced that:

In many cases decided by this Court,[41] it has been repeated time and again that the **award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance**. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades. (Emphasis and underscoring supplied)

As to the reckoning point on which the legal interest should accrue, the same should be computed from the time of the taking of the subject property in 1986 and not from the filing of the complaint for expropriation on November 7, 1996.

Records show that the City itself admitted in its Appellee's Brief filed before the CA that **as early as 1986**, "a burden was already imposed upon the owner of the [subject] property x x x, considering that the expropriated property was already being used

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[40] G.R. No. 182431, February 27, 2013.

[41] *Land Bank of the Philippines v. Celada,* 515 Phil. 467, 484 (2006) citing *Land Bank of the Philippines v. Wycoco,* G.R. No. 140160, 13 January 2004, 419 SCRA 67, 80 further citing *Reyes v. National Housing Authority,* G.R. No. 147511, 20 January 2003, 395 SCRA 494.

as *Barangay* day care and office."[42] Thus, the property was actually taken during that time and from thereon, legal interest should have already accrued. In this light, the Court has held that:[43]

> x x x [T]he final compensation **must include interests on its just value to be computed from the time the property is taken** to the time when compensation is actually paid or deposited with the court[.] x x x (Emphasis supplied)

This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking."[44]

Notably, the lack of proper authorization, *i.e.*, resolution to effect expropriation,[45] did not affect the character of the City's taking of the subject property in 1986 as the CA, in its January 20, 2012 Decision, suggests. Case law dictates that there is

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[42] CA *rollo*, p. 103

[43] *Republic v. CA*, *supra* note 39.

[44] *MIAA v. Rodriguez, supra* note 23, at 631, citing *Urtula v. Republic*, No. L-22061, 31 January 1968, 22 SCRA 477, 480.

[45] Batas Pambansa Bilang 337 was the law applicable at the time of the subject property's taking in 1986 as RA 7160 took effect only in January 1, 1992. Under Section 9, Book 1, Title 1, Chapter 2 of the former law, a resolution was the proper authorization to institute condemnation proceedings, thus:

> SEC. 9. *Eminent Domain*. – A local government unit may, through its head and acting pursuant to a **resolution** of its head and acting pursuant to a resolution of its sanggunian, exercise the right of eminent domain and institute condemnation proceedings for public use or purpose. (Emphasis supplied)

Meanwhile, under Section 19 of RA 7160, an ordinance is required:

> SEC. 19. *Eminent Domain*. - A local government unit may, through its chief executive and acting pursuant to an **ordinance**, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws.
>
> x x x x (Emphasis supplied)

"taking" when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof.[46] Therefore, notwithstanding the lack of proper authorization, the legal character of the City's action as one of "taking" did not change. In this relation, the CA noted that the City enacted Ordinance No. Sp-181, s-94, only on April 12, 1994 and filed its expropriation complaint on November 7, 1996. However, as it previously admitted, it already commenced with the taking of the subject property as early as 1986. Accordingly, interest must run from such time.

This irregularity does not, however, proceed without any consequence. As correctly observed by the CA, citing as basis the *MIAA* case, exemplary damages and attorney's fees should be awarded to the landowner if the government takes possession of the property for a prolonged period of time without properly initiating expropriation proceedings. The *MIAA* ruling was applied in the more recent case of *City of Iloilo v. Judge Lolita Contreras-Besana*,[47] wherein the Court said:

> We stress, however, that the City of Iloilo should be held liable for damages for taking private respondent's property without payment of just compensation. In ***Manila International Airport Authority v. Rodriguez***, the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages:
>
> > **Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA.** This is based on the principle that interest "runs

[46] *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, September 30, 1964, 12 SCRA 164, citing *U.S. v. Causby*, 382 U.S. 256.

[47] G.R. No. 168967, February 12, 2010, 612 SCRA 459, 470-471, citing *MIAA v. Rodriguez, supra* note 23, at 630-632.

> as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking x x x.
>
> x x x x
>
> For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, **these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order.** x x x. (Emphasis and underscoring supplied; citations omitted)

All told, the Court finds the grant of exemplary damages in the amount of ₱200,000.00 as well as attorney's fees equivalent to 1% of the total amount due amply justified, square as it is with existing jurisprudence.

C. Amount of just compensation

Finally, the Court cannot sustain the amount of ₱5,500.00/sq. m. as just compensation which was set by the RTC and upheld by the CA. The said valuation was actually arrived at after considering: (*a*) the September 4, 1996 recommendation of the City Appraisal Committee; (*b*) several sworn statements made by Sy himself; and (*c*) Sy's own tax declaration for 1996.[48] ***It is well-settled that the amount of just compensation is to be ascertained as of the time of the taking***.[49] However, the above-stated documents do not reflect the value of the subject property at the time of its taking in 1986 but rather, its valuation in 1996. Consequently, the case must be remanded to the RTC in order to properly determine the amount of just compensation during such time the subject property was actually taken.

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

[49] See *City of Iloilo v. Judge Lolita Contreras-Besana*, *supra* note 47, at 468-469, citing *B.H. Berkenkotter & Co. v. CA*, G.R. No. 89980, December 14, 1992, 216 SCRA 584, 587.

WHEREFORE, the petition is **PARTLY GRANTED**. The January 20, 2012 Decision and July 16, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 91964 are hereby **SET ASIDE**. Accordingly, the case is **REMANDED** to the trial court for the proper determination of the amount of just compensation in accordance with this Decision. To forestall any further delay in the resolution of this case, the trial court is hereby ordered to fix the just compensation for petitioner Henry L. Sy's property with dispatch and report to the Court its compliance. Finally, respondent Local Government of Quezon City is ordered to **PAY** exemplary damages in the amount of ₱200,000.00 and attorney's fees equivalent to one percent (1%) of the amount due, after final determination of the amount of just compensation.

SO ORDERED.

Brion (Acting Chairperson),[*] *del Castillo, Perez,* and *Leonen,*[**] *JJ.,* concur.

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[*] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

FIRST DIVISION

[G.R. No. 203041. June 5, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MOISES CAOILE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; ACCUSED CHARGED WITH RAPE OF A "DEMENTED" PERSON INSTEAD OF RAPE OF A PERSON "DEPRIVED OF REASON"; ERROR WILL NOT EXONERATE ACCUSED WHO DID NOT OBJECT TO THE CHARGE AND ALL THE ELEMENTS OF THE CRIME WERE STATED IN THE INFORMATION.— Article 266-A, paragraph 1 of the Revised Penal Code, as amended, provides for two circumstances when having carnal knowledge of a woman with a mental disability is considered rape: 1. Paragraph 1(b): when the offended party is **deprived of reason** x x x; and 2. Paragraph 1(d): when the offended party is x x x **demented**. Caoile was charged in the Amended Informations with rape of a demented person under paragraph 1(d). The term *demented* refers to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity. On the other hand, the phrase *deprived of reason* under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. Thus, AAA, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," and not one who is "demented." The mistake, however, will not exonerate Caoile. In the first place, he did not even raise this as an objection. More importantly, none of his rights, particularly that of to be informed of the nature and cause of the accusation against him, was violated. Although the Amended Informations stated that he was being charged with the crime of *rape of a demented person* under *paragraph 1(d)*, it also stated that his victim was "a person with a mental age of seven (7) years old." Elucidating on the foregoing, this Court, in *People v. Valdez*, held: x x x **Every element of the offense**

must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; COMPETENCE AND CREDIBILITY OF MENTALLY DEFICIENT RAPE VICTIMS, UPHELD; CASE AT BAR.—** Caoile's insistence, to escape liability, that AAA is not a mental retardate, cannot be accepted by this Court. The fact that AAA was able to answer in a straightforward manner during her testimony cannot be used against her. The capacity of a mental retardate to stand as a witness in court has already been settled by this Court. In *People v. Castillo*, we said: It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Moreover, it is settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused. More importantly, AAA's medical condition was verified not only by one expert, but three witnesses – a psychologist and two psychiatrists, one of whom was even chosen by the defense and testified for the defense. All three experts confirmed that AAA suffered from mental retardation. Caoile cannot, at this point, properly impeach his own witness without violating established rules of evidence.

3. **CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE OF A MENTAL RETARDATE INCAPABLE OF GIVING CONSENT TO A SEXUAL ACT IS RAPE UNDER ART. 266-A, PAR. 1(B) OF THE REVISED PENAL CODE; SWEETHEART DEFENSE, NOT APPRECIATED.—** Carnal knowledge of a woman who is a

mental retardate is rape under Article 266-A, paragraph 1(b) of the Revised Penal Code, as amended. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, what needs to be proven are the facts of sexual intercourse between the accused and the victim, and the victim's mental retardation. Verily, the prosecution was able to sufficiently establish that AAA is a mental retardate. Anent the fact of sexual congress, it is worthy to note that aside from the prosecution's own testimonial and documentary evidence, Caoile never denied being physically intimate with AAA. In fact, he has confirmed such fact, and even claimed that he and AAA often had sex, they being *sweethearts*. Unfortunately, such defense will not exculpate him from liability. Carnal knowledge of a female, even when done without force or intimidation, is rape nonetheless, if it was done without her consent.

4. ID.; ID.; ID.; LACK OF KNOWLEDGE THAT VICTIM IS A MENTAL RETARDATE MAKES ACCUSED GUILTY ONLY OF SIMPLE RAPE ; PENALTY.— Caoile's allegation that he did not know that AAA was mentally retarded will not suffice to overturn his conviction. The Revised Penal Code, as amended, punishes the rape of a mentally disabled person regardless of the perpetrator's awareness of his victim's mental condition. However, the perpetrator's knowledge of the victim's mental disability, at the time he committed the rape, qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10. x x x There is no sufficient evidence to establish the qualifying circumstance of knowledge by Caoile of AAA's mental disability. The trial court and the Court of Appeals which did not make any finding on the said qualifying circumstance correctly convicted said accused of simple rape only. ,x x x **WHEREFORE**, x x x [a]ccused-appellant is found **GUILTY** beyond reasonable doubt of the crime of simple rape x x x and is sentenced to *reclusion perpetua* for each count of rape. The award of civil indemnity and moral damages, both in the amount of Fifty Thousand Pesos (₱50,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00), all for each count of rape, are maintained, subject to interest at the rate of 6% *per annum* from the date of finality of this judgment. No costs.

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.*:

The accused-appellant challenges in this appeal the March 21, 2012 **Decision**[1] promulgated by the Court of Appeals in **CA-G.R. CR.-H.C. No. 03957**, which affirmed with modification the judgment[2] of conviction for two counts of Rape rendered against him by Branch 32 of the Agoo, La Union Regional Trial Court (RTC) in **Family Court Case Nos. A-496 and A-497**.

Accused-appellant Moises Caoile (Caoile), in two separate Amended Informations filed before the RTC on January 5, 2006, was charged with two separate counts of Rape of a Demented Person under Article 266-A, paragraph 1(d) of the Revised Penal Code, to wit:

FAMILY COURT CASE No. A-496

That on or about April 6, 2005, in the Municipality of Rosario, La Union, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, knowing the mental disability of the victim, did the[n] and there willfully, unlawfully and feloniously have sexual intercourse with one **[AAA]**,[3] a demented person with a mental age of seven (7) years old against her will and, to her damage and prejudice.[4]

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Socorro B. Inting with Associate Justices Fernanda Lampas Peralta and Mario V. Lopez, concurring.

[2] CA *rollo*, pp. 14-19; penned by Presiding Judge Jennifer A. Pilar.

[3] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[4] Records, FC Case No. A-496, p. 61.

FAMILY COURT CASE No. A-497

That on or about May 12, 2005, in the Municipality of Rosario, La Union, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, knowing the mental disability of the victim, did the[n] and there willfully, unlawfully and feloniously have sexual intercourse with one **[AAA]**, a demented person with a mental age of seven (7) years old against her will and, to her damage and prejudice.[5]

Caoile pleaded not guilty to both charges upon his arraignment[6] for both cases on March 1, 2006. After the completion of the pre-trial conference on March 8, 2006,[7] joint trial on the merits ensued.

The antecedents of this case, which were succinctly summarized by the RTC, are as follows:

Evidence for the Prosecution

[AAA], the herein victim, was left in the care of her grandmother and auntie in Alipang, Rosario, La Union when her mother left to work abroad when she was still young. One of their neighbors was the accused whose daughter, Marivic, was the playmate of [AAA].

One day, the accused invited [AAA] to go to the bamboo trees in their place. Upon reaching thereat, the accused directed [AAA] to lie down on the ground. [AAA] followed the instruction of the accused whom she called uncle Moises. Thereafter, the accused removed [AAA]'s short pant[s] and panty and inserted his penis into her vagina. [AAA] felt pain but she did not do anything. After two minutes or so, the accused removed his penis inside [AAA]'s vagina. [AAA] stood up and wore again her short pant[s] and panty. Before the accused allowed [AAA] to go home, the former gave the latter a medicine, which she described as a red capsule with white casing, with the instruction of taking the same immediately upon reaching home. As instructed by her uncle Moises, [AAA] took the medicine as soon as she got home.

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[5] Records, FC Case No. A-497, p. 54.

[6] Records, FC Case No. A-496, p. 63.

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

Four (4) days thereafter, and while [AAA] was at the pumping well near their house, the accused invited her to gather guavas at the mountain. [AAA] accepted her uncle Moises's invitation. At the mountain, the accused led [AAA] to lie down, and then he removed her short pant[s] and panty. Thereafter, the accused inserted his penis inside the vagina of [AAA]. After the sexual intercourse, the accused and [AAA] gathered guavas, and went home.

One day, while [AAA] was sleeping in their house, Marivic woke her up and invited her to play at their house. At the accused's house, and while [AAA] and Marivic were playing, the accused invited [AAA] to gather santol fruits. [AAA] went with the accused, and once again the accused had carnal knowledge [of] her.

Sometime in April 2005, [AAA] heard her friend, [BBB], complaining to Lucio Bafalar, a Barangay Tanod, that the accused mashed her breast. Upon hearing the story of [BBB], [AAA] blurted out that she, too, was abused by the accused.

[CCC], [AAA]'s aunt, immediately went home [to] Rosario when she learned that her niece was raped by the accused, and together with [AAA] and Barangay Captain Roming Bartolome they went to the Rosario Police Station to report the incident. After executing their respective affidavits, [AAA] was examined by [Dr.] Claire Maramat at San Fernando, La Union.

After examining [AAA] on June 21, 2005, Dr. Claire Maramat found out that [AAA]'s genitalia suffered a multiple hymenal laceration which, at the time of the examination, was already healed, thus, possibly, it was inflicted a week or months prior to the examination. According to Dr. Maramat, a multiple hymenal laceration may be caused by several factors, such as trauma to the perineal area or penetration of a penis.

Dr. Maramat also took seminal fluid from the vagina, the cervix and the cervical canal of [AAA], and forwarded the same to Dr. Brenda Rosuman, a pathologist at the Ilocos Training and Regional Medical Center (ITRMC), for examination.

Dr. Rosuman testified that after examining the seminal fluids taken from [AAA], she found the presence of spermatozoa, which means that [AAA] had sexual intercourse, and the predominance of coccobacilli, meaning that [AAA] could be suffering from infection

caused by hygiene or acquired through sexual intercourse. She further testified that, according to some books, spermatozoa can live in the vaginal tract within 17 days from sexual intercourse. She clarified, however, that in her medical experience, she rarely finds spermatozoa in a specimen beyond three (3) days.

Claire Baliaga, a psychologist of the Philippine Mental Health Association, Baguio-Benguet Chapter, testified that she conducted a psychological evaluation on [AAA] on August 10, 2007; that [AAA] obtained an overall score performance of 55, which is classified within the mental retardation range; and that [AAA] has the mental age of a seven-year, nine-month old child who is inadequate of sustaining mental processes and in solving novel problems employing adoptive strategies.

Dr. Roderico V. Ramos, a psychiatrist of the ITRMC, testified that he evaluated the mental condition of [AAA], that after psychiatric evaluation, [AAA] was given a diagnosis of moderate mental retardation; that a person who is mentally retardate do not function the way his age required him to be; that [AAA] was eighteen (18) years old at the time he examined her, but the mental functioning of her brain is around five (5) to six (6) years old; and that [AAA] can only do what a five or six-year old child could do.

Dr. Ramos further testified that generally a mentally retardate cannot finish primary education. He, however, explained that parents of mentally retardates begged the teachers to give passing marks to their sons/daughters, and out of pity, they would be able to finish primary education.[8]

Evidence for the Defense

Accused Moises Caoile knew [AAA] because they were neighbors. [AAA] was, in fact, a playmate of his children and a frequent visitor in their house. When accused and [AAA] became familiar with one another, the latter would go to the former's house even when the children were not there, and they would [talk] and [tease] each other.

In the year 2005, the wife of the accused worked at the town proper of Rosario, La Union. The wife would leave early in the morning, and returned home late at night. More often than not, the accused

[8] CA *rollo*, pp. 15-16.

was left alone in the house since all his children were attending school. It was during his so called alone moments that the accused courted [AAA]. He gave her money, chocolates or candies. Time came when [AAA] would stay at the accused'[s] house, from Monday to Sunday, with or without the children. Soon thereafter, accused and [AAA] found themselves falling in love with one other. As lovers, they had their intimate moments, and their first sexual intercourse happened on April 6, 2005 on the mountain. From then on, the accused and [AAA] repeatedly had sexual intercourse, and most of which were initiated by [AAA], especially their sexual intimacies in Agri Motel, Pangasinan.

During their relationship, [AAA] suggested that they [live] together as husband and wife. The accused refused because he cannot leave his family.

The accused did not know that [AAA] was a demented person since she acted like a normal individual. In fact, she went to a regular school and she finished her elementary education.

The accused did not force himself [on] [AAA]. [AAA] knew that he is a married man, but she, nonetheless, loved him without reservation.

The defense moved that it be allowed to have [AAA] be evaluated by a psychiatrist of its own choice. As prayed for the defense, [AAA] was evaluated by Dr. Lowell A. Rebucal of the Department of Psychiatry, Baguio General Hospital and Medical Center. In his Psychiatric Evaluation Report, Dr. Rebucal concluded that [AAA] is suffering from Mild Mental Retardation.[9]

Ruling of the RTC

On May 6, 2009, after weighing the respective evidence of the parties, the RTC rendered its Joint Decision finding Caoile guilty beyond reasonable doubt of two counts of rape:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In FC Case No. A-496, accused Moises Caoile is hereby found **guilty** beyond reasonable doubt of the crime of rape defined

[9] *Id.* at 17.

and penalized under Article 266-A, paragraph 1(d) and Article 266-B of Republic Act No. 8353, and is sentenced to suffer the penalty of ***reclusion perpetua*.**

2. In FC Case No. A-497, accused Moises Caoile is hereby found **guilty** beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A, paragraph 1(d) and Article 266-B of Republic Act No. 8353, and is sentenced to suffer the penalty of ***reclusion perpetua*.**

3. The accused is further ordered to indemnify the private complainant the amounts of ₱50,000.00 for each count of rape as compensatory damages and ₱50,000.00 for each count of rape as moral damages.[10]

Caoile elevated the RTC ruling to the Court of Appeals, claiming that his guilt was not proven beyond reasonable doubt by attacking the credibility of AAA and the methods used to determine her mental state.

Ruling of the Court of Appeals

In its **Decision** dated March 21, 2012, in CA-G.R. CR.-H.C. No. 03957, the Court of Appeals affirmed with modification the RTC decision. The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the *Joint Decision* dated May 6, 2009 of the Regional Trial Court ("RTC"), First Judicial Region, Branch 32, Agoo, La Union, in Family Court Case Nos. A-496 and A-497, entitled "People of the Philippines, Plaintiff, versus Moises Caoile, Accused," finding appellant Moises Caoile guilty beyond reasonable doubt of two (2) counts of rape is **AFFIRMED with modification** in that aside from civil indemnity and moral damages, appellant Moises Caoile is **ORDERED** to indemnify [AAA] exemplary damages amounting to ₱30,000.00 for each count of rape.[11] (Citation omitted.)

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

[11] *Rollo*, p. 19.

Issue

Caoile is now before this Court, on appeal,[12] with the same lone assignment of error he posited before the Court of Appeals,[13] to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE.[14]

In essence, Caoile is attacking the credibility of AAA, and claims that she might not be a mental retardate at all, having been able to give categorical and straightforward answers during her testimony. Moreover, Caoile avers that it has not been shown that AAA underwent the proper clinical, laboratory, and psychometric tests to arrive at the conclusion that she fell within the range of mental retardation. Caoile argues that while it is true that his denial and sweetheart defenses are generally deemed weak and unavailing, his conviction should nevertheless be founded on the strength of the prosecution's evidence and not on the flaws of his defenses.[15]

This Court's Ruling

Caoile was tried and convicted of rape under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph 1, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

Article 266-A. Rape; When and How Committed. — Rape is committed:

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

x x x x

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[12] *Id.* at 21-23.

[13] *Id.* at 39-42.

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

[15] *Id.* at 54-57.

b) When the offended party is deprived of reason or is otherwise unconscious;

x x x x

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.)

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

Validity of the Amended Informations

Taking a cue from the Court of Appeals, this Court would like, at the outset, to address the validity of the Amended Informations *vis-à-vis* the crime Caoile was actually convicted of.

Article 266-A, paragraph 1 of the Revised Penal Code, as amended, provides for two circumstances when having carnal knowledge of a woman with a mental disability is considered rape:

1. Paragraph 1(b): when the offended party is **deprived of reason** x x x; and
2. Paragraph 1(d): when the offended party is x x x **demented**.[16]

Caoile was charged in the Amended Informations with rape of a demented person under paragraph 1(d). The term *demented*[17] refers to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity.[18] On the other hand, the phrase *deprived of reason* under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation.[19]

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[16] *People v. Monticalvo*, G.R. No. 193507, January 30, 2013.

[17] *Webster's Third New International Dictionary* (1993).

[18] *People v. Burgos*, 201 Phil. 353, 360 (1982).

[19] *People v. Monticalvo, supra* note 16.

Thus, AAA, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," and not one who is "demented."

The mistake, however, will not exonerate Caoile. In the first place, he did not even raise this as an objection. More importantly, none of his rights, particularly that of to be informed of the nature and cause of the accusation against him,[20] was violated. Although the Amended Informations stated that he was being charged with the crime of *rape of a demented person* under *paragraph 1(d)*, it also stated that his victim was "a person with a mental age of seven (7) years old." Elucidating on the foregoing, this Court, in *People v. Valdez*,[21] held:

> For [a] complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare**

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[20] CONSTITUTION, Article III, Section 14(2).

[21] G.R. No. 175602, January 18, 2012, 663 SCRA 272, 287, citing *People v. Dimaano*, 506 Phil. 630, 649-650 (2005).

his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.

Thus, the erroneous reference to paragraph 1(d) in the Amended Informations, did not cause material and substantial harm to Caoile. Firstly, he simply ignored the error. Secondly, particular facts stated in the Amended Informations were averments sufficient to inform Caoile of the nature of the charges against him.

Mental Condition of AAA

Caoile's insistence, to escape liability, that AAA is not a mental retardate, cannot be accepted by this Court.

The fact that AAA was able to answer in a straightforward manner during her testimony cannot be used against her. The capacity of a mental retardate to stand as a witness in court has already been settled by this Court. In *People v. Castillo*,[22] we said:

> It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Moreover, it is settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused. (Citations omitted.)

More importantly, AAA's medical condition was verified not only by one expert, but three witnesses – a psychologist and two psychiatrists, one of whom was even chosen by the defense and testified for the defense. All three experts confirmed that AAA suffered from mental retardation. Caoile cannot, at this point,

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[22] G.R. No. 186533, August 9, 2010, 627 SCRA 452, 471.

properly impeach his own witness without violating established rules of evidence.

This Court further disagrees with Caoile's claim that the experts "merely impressed that they conducted a psychological evaluation on [AAA] in which she obtained a performance classified within the mental retardation range."[23] The experts' findings on AAA's mental condition were based on several tests and examinations, including the Stanford-Binet Test,[24] which Caoile, relying on this Court's ruling in *People v. Cartuano, Jr.*,[25] considered as one of the more reliable standardized tests.[26] Besides, this Court has already qualified the applicability of *Cartuano* in cases involving mentally deficient rape victims, to wit:

> *People v. Cartuano* applies only to cases where there is a dearth of medical records to sustain a finding of mental retardation. Indeed, the Court has clarified so in *People v. Delos Santos,* declaring that the records in *People v. Cartuano* were wanting in clinical, laboratory, and psychometric support to sustain a finding that the victim had been suffering from mental retardation. It is noted that in *People v. Delos Santos,* the Court upheld the finding that the victim had been mentally retarded by an examining psychiatrist who had been able to identify the tests administered to the victim and to sufficiently explain the results of the tests to the trial court.[27] (Citations omitted.)

Borrowing our words in *People v. Butiong*,[28] "[i]n direct contrast to *People v. Cartuano,* this case did not lack clinical findings on the mentality of the victim." Here, the psychiatric evaluation report of Caoile's own expert witness is the final nail on the coffin of Caoile's argument.

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[23] CA *rollo,* p. 57.

[24] Records, FC Case No. A-496, pp. 220, 225.

[25] 325 Phil. 718 (1996).

[26] CA *rollo,* p. 55.

[27] *People v. Butiong*, G.R. No. 168932, October 19, 2011, 659 SCRA 557, 575.

[28] *Id.*

In addition, this Court will not contradict the RTC's findings, which were affirmed by the Court of Appeals, absent any valid reason. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding upon this Court.[29] In *People v. Sapigao, Jr.*,[30] we explained in detail the rationale for this practice:

> It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

Carnal Knowledge of a Mental retardate amounts to Rape

Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A, paragraph 1(b) of the Revised Penal

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[29] *People v. Escultor*, 473 Phil. 717, 730 (2004).

[30] G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.

Code, as amended. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, what needs to be proven are the facts of sexual intercourse between the accused and the victim, and the victim's mental retardation.[31]

Verily, the prosecution was able to sufficiently establish that AAA is a mental retardate. Anent the fact of sexual congress, it is worthy to note that aside from the prosecution's own testimonial and documentary evidence, Caoile never denied being physically intimate with AAA. In fact, he has confirmed such fact, and even claimed that he and AAA often had sex, they being *sweethearts*.

Sweetheart Defense

Unfortunately, such defense will not exculpate him from liability. Carnal knowledge of a female, even when done without force or intimidation, is rape nonetheless, if it was done without her consent. To expound on such concept, this Court, in *People v. Butiong*,[32] said:

> In rape committed by means of duress, the victim's will is nullified or destroyed. Hence, the necessity of proving real and constant resistance on the part of the woman to establish that the act was committed against her will. On the other hand, in the rape of a woman deprived of reason or unconscious, the victim has no will. **The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance**

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[31] *People v. Magabo*, 402 Phil. 977, 983-984 (2001).

[32] *Supra* note 27 at 569; citing III Ramon Aquino, *The Revised Penal Code* (1997 Ed.), pp. 410-411.

to the act did not mean consent for she was incapable of giving any rational consent.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feebleminded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape. But a deafmute is not necessarily deprived of reason. This circumstances must be proven. Intercourse with a deafmute is not rape of a woman deprived of reason, in the absence of proof that she is an imbecile. Viada says that the rape under par. 2 may be committed when the offended woman is deprived of reason due to any cause such as when she is asleep, or due to lethargy produced by sickness or narcotics administered to her by the accused. x x x.

Consequently, the mere fact that Caoile had sexual intercourse with AAA, a mental retardate, makes him liable for rape under the Revised Penal Code, as amended.

Defense of Lack of knowledge of AAA's mental condition

Similarly, Caoile's allegation that he did not know that AAA was mentally retarded will not suffice to overturn his conviction.

The Revised Penal Code, as amended, punishes the rape of a mentally disabled person regardless of the perpetrator's awareness of his victim's mental condition. However, the perpetrator's knowledge of the victim's mental disability, at the time he committed the rape, qualifies the crime and makes it punishable by death[33] under Article 266-B, paragraph 10, to wit:

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

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[33] Although under Republic Act No. 7659 (The Death Penalty Law), the crime of qualified rape is punishable by death, Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines), which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed in lieu of the death penalty is *reclusion perpetua* (Section 2) without eligibility for parole (Section 3).

x x x x

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

There is no sufficient evidence to establish the qualifying circumstance of knowledge by Caoile of AAA's mental disability. The trial court and the Court of Appeals which did not make any finding on the said qualifying circumstance correctly convicted said accused of simple rape only.

This Court finds the award of damages as modified by the Court of Appeals in order. Pursuant to prevailing jurisprudence,[34] however, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.

WHEREFORE, premises considered, the decision of the Court of Appeals in **CA-G.R. CR.-H.C. No. 03957** is hereby **AFFIRMED with MODIFICATION**. Accused-appellant **MOISES CAOILE** is found **GUILTY** beyond reasonable doubt of the crime of simple rape in Family Court Case Nos. A-496 and A-497 under subparagraph (b) of Article 266-A of the Revised Penal Code, as amended, and is sentenced to *reclusion perpetua* for each count of rape. The award of civil indemnity and moral damages, both in the amount of Fifty Thousand Pesos (₱50,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00), all for each count of rape, are maintained, subject to interest at the rate of 6% *per annum* from the date of finality of this judgment. No costs.

SO ORDERED.

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

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[34] *Sison v. People*, G.R No. 187229, February 22, 2012, 666 SCRA 645, 667.

EN BANC

[A.C. No. 4191. June 10, 2013]

ANITA C. PEÑA, *complainant, vs.* **ATTY. CHRISTINA C. PATERNO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE CASE; CRIMINAL CASE THAT REQUIRES PROOF BEYOND REASONABLE DOUBT DIFFERENT FROM ADMINISTRATIVE CASE THAT REQUIRES ONLY SUBSTANTIAL EVIDENCE.— The criminal case of estafa from which respondent was acquitted, as her guilt was not proven beyond reasonable doubt, is different from this administrative case, and each must be disposed of according to the facts and the law applicable to each case. Section 5, in relation to Sections 1 and 2, Rule 133, Rules of Court states that in administrative cases, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. ***Freeman v. Reyes*** held that the dismissal of a criminal case does not preclude the continuance of a separate and independent action for administrative liability, as the weight of evidence necessary to establish the culpability is merely substantial evidence. An administrative case can proceed independently, even if there was a full-blown trial wherein, based on both prosecution and defense evidence, the trial court eventually rendered a judgment of acquittal, on the ground either that the prosecution failed to prove the respondent's guilt beyond reasonable doubt, or that no crime was committed.

2. LEGAL ETHICS; ATTORNEYS; DISBARMENT; PURPOSE.— The purpose of disbarment is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence. The burden of proof rests upon the complainant, and the Court will exercise its disciplinary power only if she

establishes her case by clear, convincing and satisfactory evidence.

3. ID.; NOTARY PUBLIC; DUTY TO KEEP A NOTARIAL REGISTER AND FORWARD THE SAME TO THE PROPER CLERK OF COURT.— The pertinent provisions of the applicable Notarial Law found in Chapter 12, Book V, Volume I of the Revised Administrative Code of 1917, as amended, states that every notary public shall keep a notarial register, and he shall enter in such register, in chronological order, the nature of each instrument executed, among others, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and he shall likewise enter in said records a brief description of the substance thereof. A ground for revocation of a notary public's commission is failure of the notary to send the copy of the entries to the proper clerk of the Court of First Instance (RTC) within the first ten days of the month next following or the failure of the notary to forward his notarial register, when filled, to the proper clerk of court. x x x Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.

4. ID.; ATTORNEYS; MAY BE REMOVED OR SUSPENDED FOR ANY DECEIT OR DISHONEST ACT; DECEITFUL CONDUCT OF RESPONDENT ATTORNEY IN CASE AT BAR MERITED DISBARMENT.— Pursuant to Section 27, Rule 138 of the Rules of Court, a lawyer may be removed or suspended for any deceit or dishonest act. x x x [Here,] respondent was in possession of complainant's copy of the certificate of title (TCT No. N-61244) to the property in Marikina, and it was respondent who admittedly prepared the Deed of Sale, which complainant denied having executed or signed, the important evidence of the alleged forgery of complainant's signature on the Deed of Sale and the validity of the sale is the Deed of Sale itself. However, a copy of the Deed of Sale could not be produced by the Register of Deeds of Marikina City. x x x Moreover, respondent did not submit to the Clerk of Court of the RTC of Manila her Notarial Report for the month of November 1986, including the said Deed of Sale, which was executed on November 11, 1986. Hence, Investigating Commissioner Sordan opined that it appears that efforts were exerted to get rid of the copies of the said Deed

of Sale to prevent complainant from getting hold of the document for the purpose of handwriting verification from an expert to prove that her alleged signature on the Deed of Sale was forged. x x x During her testimony, x x x respondent would neither directly confirm nor deny that she notarized the said Deed of Sale. For the aforementioned deceitful conduct, respondent is disbarred from the practice of law. As a member of the bar, respondent failed to live up to the standards embodied in the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

Liwag Escobar Amazona & Devera for complainant.

D E C I S I O N

PER CURIAM:

This is an administrative case filed against respondent Atty. Christina C. Paterno for acts violative of the Code of Professional Responsibility and the Notarial Law.

On February 14, 1994, complainant Anita C. Peña, former head of the Records Department of the Government Service Insurance System (GSIS), filed an Affidavit-Complaint[1] against respondent Atty. Christina C. Paterno. Complainant alleged that she was the owner of a parcel of land known as Lot 7-C, Psd-74200, located in Bayanbayanan, Parang, Marikina, Metro Manila, covered by Transfer Certificate of Title (TCT) No. N-61244,[2] Register of Deeds of Marikina, with an eight-door apartment constructed thereon. She personally knew respondent Atty. Christina C. Paterno, as respondent was her lawyer in a legal separation case, which she filed against her husband in 1974, and the aforementioned property was her share in their property settlement. Complainant stated that she also knew personally one Estrella D. Kraus, as she was respondent's trusted employee who did secretarial work

[1] *Rollo,* Vol. I, p. 1.

[2] *Rollo,* Vol. II, p. 42.

for respondent. Estrella Kraus was always there whenever she visited respondent in connection with her cases.

Moreover, complainant stated that, sometime in 1986, respondent suggested that she (complainant) apply for a loan from a bank to construct townhouses on her property for sale to interested buyers, and that her property be offered as collateral. Respondent assured complainant that she would work out the speedy processing and release of the loan. Complainant agreed, but since she had a balance on her loan with the GSIS, respondent lent her the sum of ₱27,000.00, without any interest, to pay the said loan. When her title was released by the GSIS, complainant entrusted it to respondent who would handle the preparation of documents for the loan and follow-up the same, and complainant gave respondent the authority for this purpose. From time to time, complainant inquired about the application for the loan, but respondent always assured her that she was still preparing the documents required by the bank. Because of her assurances, complainant did not bother to check on her property, relying on respondent's words that she would handle speedily the preparation of her application.

Further, complainant narrated that when she visited her property, she discovered that her apartment was already demolished, and in its place, four residential houses were constructed on her property, which she later learned was already owned by one Ernesto D. Lampa, who bought her property from Estrella D. Kraus. Complainant immediately confronted respondent about what she discovered, but respondent just brushed her aside and ignored her. After verification, complainant learned that her property was sold on November 11, 1986 to Krisbuilt Traders Company, Ltd., and respondent was the Notary Public before whom the sale was acknowledged.[3] Krisbuilt Traders Company, Ltd., through its Managing Partner, Estrella D. Kraus, sold the same to one Ernesto D. Lampa on April 13, 1989.[4]

Complainant stated in her Complaint that she did not sell her property to Krisbuilt Traders Company, Ltd., and that she neither

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[3] Exhibit "B-2-A", *id.* at 44.

[4] Exhibit "F", *id.* at 48.

signed any deed of sale in its favor nor appeared before respondent to acknowledge the sale. She alleged that respondent manipulated the sale of her property to Krisbuilt Traders Company, Ltd. using her trusted employee, Estrella D. Kraus, as the instrument in the sale, and that her signature was forged, as she did not sign any deed selling her property to anyone.

In her Answer,[5] respondent alleged that Estrella D. Kraus never worked in any capacity in her law office, and that Estrella and her husband, Karl Kraus (Spouses Kraus), were her clients. Respondent denied that she suggested that complainant should apply for a loan from a bank to construct townhouses. She said that it was the complainant, on the contrary, who requested her (respondent) to look for somebody who could help her raise the money she needed to complete the amortization of her property, which was mortgaged with the GSIS and was about to be foreclosed. Respondent stated that she was the one who introduced complainant to the Spouses Kraus when they were both in her office. In the course of their conversation, complainant offered the property, subject matter of this case, to the Spouses Kraus. The Spouses Kraus were interested, and got the telephone number of complainant. Thereafter, complainant told respondent that she accompanied the Spouses Kraus to the site of her property and the Office of the Register of Deeds. After about three weeks, the Spouses Kraus called up respondent to tell her that they had reached an agreement with complainant, and they requested respondent to prepare the deed of sale in favor of their company, Krisbuilt Traders Company, Ltd. Thereafter, complainant and the Spouses Kraus went to respondent's office where complainant signed the Deed of Sale after she received Sixty-Seven Thousand Pesos (₱67,000.00) from the Spouses Kraus. Respondent alleged that complainant took hold of the Deed of Sale, as the understanding was that the complainant would, in the meantime, work for the release of the mortgage, and, thereafter, she would deliver her certificate of title, together with the Deed of Sale, to the Spouses Kraus who would then pay complainant the balance of the agreed price. Complainant

[5] *Rollo,* Vol. I, p. 52.

allegedly told respondent that she would inform respondent when the transaction was completed so that the Deed of Sale could be recorded in the Notarial Book. Thereafter, respondent claimed that she had no knowledge of what transpired between complainant and the Spouses Kraus. Respondent stated that she was never entrusted with complainant's certificate of title to her property in Marikina (TCT No. N-61244). Moreover, it was only complainant who negotiated the sale of her property in favor of Krisbuilt Traders Company, Ltd. According to respondent, complainant's inaction for eight years to verify what happened to her property only meant that she had actually sold the same, and that she concocted her story when she saw the prospect of her property had she held on to it. Respondent prayed for the dismissal of the case.

On February 28, 1995, complainant filed a Reply,[6] belying respondent's allegations and affirming the veracity of her complaint.

On March 20, 1995, this case was referred to the Integrated Bar of the Philippines (IBP) for investigation and recommendation.[7] On April 18, 1996, complainant moved that hearings be scheduled by the Commission on Bar Discipline. On November 8, 1999, the case was set for its initial hearing, and hearings were conducted from March 21, 2000 to July 19, 2000.

On August 3, 2000, complainant filed her Formal Offer of Evidence. Thereafter, hearings for the reception of respondent's evidence were set, but supervening events caused their postponement.

On July 4, 2001, respondent filed a Demurrer to Evidence,[8] which was opposed by complainant. The Investigating Commissioner denied respondent's prayer for the outright dismissal of the complaint, and directed respondent to present her evidence on October 24, 2001.[9]

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[6] *Id.* at 65.

[7] *Id.* at 70.

[8] *Id.* at 87.

[9] Order dated October 4, 2001, *id.* at 112.

The Register of Deeds of Marikina City was subpoenaed to testify and bring the Deed of Absolute Sale dated November 11, 1986, which caused the cancellation of TCT No. 61244 in the name of complainant and the issuance of a new title to Krisbuilt Traders Company, Ltd. However, the Register of Deeds failed to appear on March 1, 2002. During the hearing held on July 29, 2003, respondent's counsel presented a certification[10] from Records Officer Ma. Corazon Gaspar of the Register of Deeds of Marikina City, which certification stated that a copy of the Deed of Sale executed by Anita C. Peña in favor of Krisbuilt Traders Company, Ltd., covering a parcel of land in Marikina, could not be located from the general file of the registry and that the same may be considered lost. Hearings continued until 2005. On February 17, 2005, respondent was directed by the Investigating Commissioner to formally offer her evidence and to submit her memorandum.

Before the resolution of the case by the IBP, respondent filed a Motion to Dismiss before the IBP on the ground that the criminal case of estafa filed against her before the RTC of Manila, Branch 36, which estafa case was anchored on the same facts as the administrative case, had been dismissed in a Decision[11] dated August 20, 2007 in Criminal Case No. 94-138567. The RTC held that the case for estafa could not prosper against the accused Atty. Christina C. Paterno, respondent herein, for insufficiency of evidence to secure conviction beyond reasonable doubt, considering the absence of the Deed of Sale and/or any competent proof that would show that Anita Peña's signature therein was forged and the transfer of the land was made through fraudulent documents.

The issue resolved by the Investigating Commissioner was whether or not there was clear and preponderant evidence showing that respondent violated the Canons of Professional Responsibility by (a) deceiving complainant Anita C. Peña; (b) conspiring with Estrella Kraus and Engr. Ernesto Lampa to enable the

[10] Exhibit "1", *id.* at 216.

[11] Annex "1", *id.* at 243.

latter to register the subject property in his name; and (c) knowingly notarizing a falsified contract of sale.

On January 6, 2009, Atty. Albert R. Sordan, the Investigating Commissioner of the IBP, submitted his Report and Recommendation finding that respondent betrayed the trust reposed upon her by complainant by executing a bogus deed of sale while she was entrusted with complainant's certificate of title, and that respondent also notarized the spurious deed of sale. Commissioner Sordan stated that there was no evidence showing that respondent actively conspired with any party or actively participated in the forgery of the signature of complainant. Nevertheless, Commissioner Sordan stated that complainant's evidence supports the conclusion that her signature on the said Deed of Sale dated November 11, 1986 was forged.

Although no copy of the said Deed of Sale could be produced notwithstanding diligent search in the National Archives and the Notarial Section of the Regional Trial Court (RTC) of Manila, Commissioner Sordan stated that the interlocking testimonies of the complainant and her witness, Maura Orosco, proved that the original copy of the owner's duplicate certificate of title was delivered to respondent.[12] Commissioner Sordan did not give credence to respondent's denial that complainant handed to her the owner's duplicate of TCT No. N-61244 in November 1986 at the GSIS, as Maura Orosco, respondent's former client who worked as Records Processor at the GSIS, testified that she saw complainant give the said title to respondent.

Commissioner Sordan gave credence to the testimony of complainant that she gave respondent her owner's duplicate copy of TCT No. 61244 to enable respondent to use the same as collateral in constructing a townhouse, and that the title was in the safekeeping of respondent for seven years.[13] Despite

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[12] TSN, May 6, 2003, p. 60; TSN, July 19, 2000 (Direct Examination of Maura Orosco), pp. 6, 9-14.

[13] TSN, March 21, 2000 (Direct Examination of Anita Peña), p. 24.

repeated demands by complainant, respondent refused to return it.[14] Yet, respondent assured complainant that she was still the owner.[15] Later, complainant discovered that a new building was erected on her property in January 1994, eight years after she gave the title to respondent. Respondent argued that it was unfathomable that after eight years, complainant never took any step to verify the status of her loan application nor visited her property, if it is untrue that she sold the said property. Complainant explained that respondent kept on assuring her that the bank required the submission of her title in order to process her loan application.[16]

Commissioner Sordan stated that respondent enabled Estrella B. Kraus to sell complainant's land to Krisbuilt Traders Company, Ltd.[17] This was evidenced by Entry No. 150322 in TCT No. 61244 with respect to the sale of the property described therein to Krisbuilt Traders Company, Ltd. for ₱200,000.00.[18] Respondent alleged that complainant signed the Deed of Sale in her presence inside her office.[19] However, respondent would neither directly confirm nor deny if, indeed, she notarized the instrument in her direct examination,[20] but on cross-examination, she stated that she was not denying that she was the one who notarized the Deed of Sale.[21] Estrella Kraus' affidavit[22] supported respondent's defense.

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[14] *Id.* at 25-27.

[15] *Id.* at 28.

[16] *Id.* at 28.

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

[18] *Id.* at 34-35; Exhibits "B-2", "B-2-A", *rollo*, vol. II, p. 44.

[19] TSN, April 19, 2002 (Direct Examination of Atty. Christina Paterno), pp. 20-22; TSN, August 16, 2002 (Cross-examination of Atty. Christina Paterno), pp. 8-10.

[20] TSN, April 19, 2002, pp. 24-27.

[21] TSN, May 6, 2003 (Cross-examination of Atty. Christina Paterno), pp. 19-20.

[22] Exhibit "2", *rollo*, vol. II, p. 204.

Respondent presented her former employee Basilio T. Depaudhon to prove the alleged signing by complainant of the purported Deed of Absolute Sale, and the notarization by respondent of the said Deed. However, Commissioner Sordan doubted the credibility of Depaudhon, as he affirmed that his participation in the alleged Deed of Absolute Sale was mere recording, but he later affirmed that he saw the parties sign the Deed of Absolute Sale.[23]

Commissioner Sordan stated that the unbroken chain of circumstances, like respondent's testimony that she saw complainant sign the Deed of Sale before her is proof of respondent's deception. Respondent's notarization of the disputed deed of sale showed her active role to perpetuate a fraud to prejudice a party. Commissioner Sordan declared that respondent failed to exercise the required diligence and fealty to her office by attesting that the alleged party, Anita Peña, appeared before her and signed the deed when in truth and in fact the said person did not participate in the execution thereof. Moreover, respondent should be faulted for having failed to make the necessary entries pertaining to the deed of sale in her notarial register.

According to Commissioner Sordan, these gross violations of the law made respondent liable for violation of her oath as a lawyer and constituted transgressions of Section 20 (a),[24] Rule 138 of the Rules of Court and Canon 1[25] and Rule 1.01 of the Code of Professional Responsibility.

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[23] TSN, October 28, 2003 (Cross-examination of Basilio T. Depaudhon), pp. 65-68.

[24] Sec. 20. *Duties of attorneys.* - It is the duty of an attorney:
(a) To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

[25] CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Commissioner Sordan recommended that respondent be disbarred from the practice of law and her name stricken-off the Roll of Attorneys, effective immediately, and recommended that the notarial commission of respondent, if still existing, be revoked, and that respondent be perpetually disqualified from reappointment as a notary public.

On August 28, 2010, the Board of Governors of the IBP passed Resolution No. XIX-20-464, adopting and approving the Report and Recommendation of the Investigating Commissioner, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding Respondent guilty of [her] oath as a lawyer, Section 20 (a), Rule 138 of the Rules of Court and Canon 1, Rule 1.01 of the Code of Professional Responsibility, Atty. Christina C. Paterno is hereby **DISBARRED** from the practice of law and her name stricken off from the Roll of Attorneys. Furthermore, respondent's notarial commission if still existing is Revoked with Perpetual Disqualification from reappointment as a Notary Public.

The Court adopts the findings of the Board of Governors of the IBP insofar as respondent has violated the Code of Professional Responsibility and the Notarial Law, and agrees with the sanction imposed.

The criminal case of estafa from which respondent was acquitted, as her guilt was not proven beyond reasonable doubt, is different from this administrative case, and each must be disposed of according to the facts and the law applicable to each case.[26] Section 5,[27] in relation to

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[26] *Freeman v. Reyes*, A.C. No. 6246 (Formerly CBD No. 00-730), November 15, 2011, 660 SCRA 48.

[27] Sec. 5 . *Substantial evidence***.** — In cases filed before **administrative** or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence

Sections 1[28] and 2,[29] Rule 133, Rules of Court states that in administrative cases, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[30]

Freeman v. Reyes[31] held that the dismissal of a criminal case does not preclude the continuance of a separate and independent action for administrative liability, as the weight of evidence necessary to establish the culpability is merely substantial evidence. An administrative case can proceed independently, even if there was a full-blown trial wherein, based on both prosecution and defense evidence, the trial court eventually rendered a judgment of acquittal, on the ground either that the prosecution failed to prove the respondent's guilt beyond reasonable doubt, or that no crime was committed.[32]

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which a reasonable mind might accept as adequate to justify a conclusion. (Emphasis supplied.)

[28] Sec. 1. *Preponderance of evidence, how determined.* — In **civil cases,** the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis supplied.)

[29] Sec. 2 . *Proof beyond reasonable doubt.* — In a **criminal case,** the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (Emphasis supplied.)

[30] *Freeman v. Reyes*, *supra* note 26.

[31] *Id*.

[32] *Id.* at 67.

The purpose of disbarment is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence.[33] The burden of proof rests upon the complainant, and the Court will exercise its disciplinary power only if she establishes her case by clear, convincing and satisfactory evidence.[34]

In this case, Investigating Commissioner Sordan gave credence to complainant's testimony that she gave respondent her owner's copy of the certificate of title to her property as respondent would apply for a bank loan in complainant's behalf, using the subject property as collateral. Complainant's testimony was corroborated by Maura Orosco, a former records processor in complainant's office at the GSIS and also a client of respondent, who stated that she saw complainant give her title to respondent.[35] Respondent admitted in her Answer[36] that she executed the Deed of Sale per the request of the Spouses Kraus. The said Deed of Sale was notarized by respondent as evidenced by Entry No. 150322[37] in complainant's title, TCT No. N-61244. As the Deed of Sale could not be presented in evidence, through no fault of the complainant, nonetheless, the consequence thereof is failure of complainant to prove her allegation that her signature therein was forged and that respondent defrauded complainant by facilitating the sale of the property to Krisbuilt Traders Company, Ltd. without complainant's approval. However, complainant proved that respondent did not submit to the Clerk of Court of the RTC of Manila, National Capital Region her

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[33] *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, 355.

[34] *Id*.

[35] TSN, May 6, 2003, p. 60; TSN, July 19, 2000, pp. 6, 9-15.

[36] *Rollo*, Vol. I, p. 53 (paragraph no. 9).

[37] Exhibit "B-2-A", *rollo*, Vol. II, p. 44.

Notarial Report for the month of November 1986, when the Deed of Sale was executed.

The pertinent provisions of the applicable Notarial Law found in Chapter 12, Book V, Volume I of the Revised Administrative Code of 1917, as amended, states that every notary public shall keep a notarial register,[38] and he shall enter in such register, in chronological order, the nature of each instrument executed, among others, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and he shall likewise enter in said records a brief description of the substance thereof.[39] A ground for revocation of a notary public's

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[38] Sec. 245. *Notarial register*. – Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; x x x

[39] Sec. 246. *Matters to be entered therein*. – The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as a notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

x x x x x x x x x

At the end of each week the notary shall certify in his register the number of instruments executed, sworn to, acknowledged, or protested before him; or if none such, the certificate shall show this fact.

A certified copy of each month's entries as described in this section and a certified copy of any instrument acknowledged before them shall within the first ten days of the month next following be forwarded by the notaries public to the clerk of the court of First Instance of the province and shall be filed under the responsibility of such officer; *Provided*, That if there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of the certified copies herein required.

commission is failure of the notary to send the copy of the entries to the proper clerk of the Court of First Instance (RTC) within the first ten days of the month next following or the failure of the notary to forward his notarial register, when filled, to the proper clerk of court.[40]

In this case, the Clerk of Court of the RTC of Manila issued a Certification,[41] dated February 22, 1994, stating that respondent

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Sec. 247. *Disposition of notarial register*.— Immediately upon his notarial register being filled, and also within fifteen days after the expiration of his commission, unless reappointed, the notary public shall forward his notarial register to the clerk of the Court of First Instance of the province or of the City of Manila, as the case may be, wherein he exercises his office, who shall examine the same and report thereon to the judge of the Court of First Instance. If the judge finds that no irregularity has been committed in the keeping of the register, he shall forward the same to the chief of the division of archives, patents, copyrights, and trade-marks. In case the judge finds that irregularities have been committed in the keeping of the register, he shall refer the matter to the fiscal of the province, and in the City of Manila, to the fiscal of the city for action, and the sending of the register to the chief of the division of archives, patents, copyrights, and trade-marks shall be deferred until the termination of the case against the notary public.

[40] Notarial Law, Section 249. *Grounds for revocation of commission.* – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

(a) The failure of the notary to keep a notarial register.

(b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

(c) The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten days of the month next following.

(d) The failure of the notary to affix to acknowledgments the date of expiration of his commission, as required by law.

(e) The failure of the notary to forward his notarial register, when filled, to the proper clerk of court.

x x x x

[41] Exhibit "E", *rollo*, vol. II, p. 47.

was duly appointed as a Notary Public for the City of Manila for the year 1986, and that respondent has not yet forwarded to the Clerk of Court's Office her Notarial Report for the month of November 1986, when the Deed of Sale was executed and notarized by her. Hence, a copy of the Notarial Report/Record and the said Deed of Sale could not also be found in the National Archives per the certification[42] of the Archives Division Chief Teresita R. Ignacio for Director Edgardo J. Celis. The failure of respondent to fulfill her duty as notary public to submit her notarial register for the month of November 1986 and a copy of the said Deed of Sale that was notarized by her on the same month is cause for revocation of her commission under Section 249 of the Notarial Law.[43] Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[44]

Pursuant to Section 27, Rule 138 of the Rules of Court, a lawyer may be removed or suspended for any deceit or dishonest act, thus:

> Sec. 27. *Attorneys removed or suspended by Supreme Court on what grounds.* – A member of the bar may be removed 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 wilfull disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

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[42] Exhibit "D", *id.* at 46.

[43] *Id*.

[44] *Lanuzo v. Bongon*, A.C. No. 6737, September 23, 2008, 566 SCRA 214, 217.

Given the facts of this case, wherein respondent was in possession of complainant's copy of the certificate of title (TCT No. N-61244) to the property in Marikina, and it was respondent who admittedly prepared the Deed of Sale, which complainant denied having executed or signed, the important evidence of the alleged forgery of complainant's signature on the Deed of Sale and the validity of the sale is the Deed of Sale itself. However, a copy of the Deed of Sale could not be produced by the Register of Deeds of Marikina City, as it could not be located in the general files of the registry, and a certification was issued stating that the Deed of Sale may be considered lost.[45] Moreover, respondent did not submit to the Clerk of Court of the RTC of Manila her Notarial Report for the month of November 1986,[46] including the said Deed of Sale, which was executed on November 11, 1986. Hence, Investigating Commissioner Sordan opined that it appears that efforts were exerted to get rid of the copies of the said Deed of Sale to prevent complainant from getting hold of the document for the purpose of handwriting verification from an expert to prove that her alleged signature on the Deed of Sale was forged. The failure of respondent to submit to the proper RTC Clerk of Court her Notarial Register/Report for the month of November 1986 and a copy of the Deed of Sale, which was notarized by her within that month, has far-reaching implications and grave consequences, as it in effect suppressed evidence on the veracity of the said Deed of Sale and showed the deceitful conduct of respondent to withhold the truth about its authenticity. During her testimony, it was observed by the Investigating Commissioner and reflected in the transcript of records that respondent would neither directly confirm nor deny that she notarized the said Deed of Sale.

For the aforementioned deceitful conduct, respondent is disbarred from the practice of law. As a member of the bar, respondent failed to live up to the standards embodied in the Code of Professional Responsibility, particularly the following Canons:

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[45] Exhibit "1", *rollo*, Vol. II, p. 216.

[46] Exhibit "E", *id.* at 47.

CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 7 - A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

WHEREFORE, respondent Atty. Christina C. Paterno is **DISBARRED** from the practice of law, pursuant to Section 27, Rule 138 of the Rules of Court, as well as for violation of the Code of Professional Responsibility; and the notarial commission of Atty. Christina C. Paterno, if still existing, is perpetually **REVOKED**.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

The Bar Confidant is hereby **DIRECTED** to strike out the name of Christina C. Paterno from the Roll of Attorneys.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, J., on official leave.

THIRD DIVISION

[A.C. No. 9537. June 10, 2013]
(Formerly CBD Case No. 09-2489)

DR. TERESITA LEE, *complainant, vs.* **ATTY. AMADOR L. SIMANDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; TESTS IN DETERMINING WHETHER A LAWYER IS GUILTY OF REPRESENTING CONFLICTING INTEREST.— Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interest: One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule. Another test of inconsistency of interests is **whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

2. ID.; ID.; PROHIBITION AGAINST REPRESENTING CONFLICTING INTERESTS.— [I]t is improper for respondent attorney to appear as counsel for one party (complainant as creditor) against the adverse party (Mejorado as debtor) who is also his client, since a lawyer is prohibited from representing conflicting interests. He may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflict with that of his present or former client. x x x It must be stressed that the proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance

of a function in a non-professional capacity. In the process of determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST USING INFORMATION ACQUIRED IN THE COURSE OF EMPLOYMENT; VIOLATED IN CASE AT BAR.— [W]e find respondent guilty of violating Rule 21.01 of the Code of Professional Responsibility. In his last-ditch effort to impeach the credibility of complainant, he divulged informations which he acquired in confidence during the existence of their lawyer-client relationship. We held in *Nombrado v. Hernandez* that the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason for the rule is that the client's confidence once reposed cannot be divested by the expiration of the professional employment. Consequently, a lawyer should not, even after the severance of the relation with his client, do anything which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation. Accordingly, we reiterate that lawyers are enjoined to look at any representation situation from "the point of view that there are possible conflicts," and further, "to think in terms of impaired loyalty" that is to evaluate if his representation in any way will impair loyalty to a client.

APPEARANCES OF COUNSEL

Vibar Llorin Duran & Associates for complainant.
Eusebio Jose F. Alvina for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Disbarment[1] dated July 21, 2009 filed by Dr. Teresita Lee (Dr. Lee) against respondent Atty.

[1] *Rollo*, pp. 1-13.

Amador L. Simando (Atty. Simando) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 09-2489, now A.C. No. 9537, for violation of the Code of Judicial Ethics of Lawyers.

The facts of the case, as culled from the records, are as follows:

Atty. Simando was the retained counsel of complainant Dr. Lee from November 2004 until January 8, 2008, with a monthly retainer fee of Three Thousand Pesos (Php3,000.00).[2]

Sometime during the above-mentioned period, Atty. Simando went to see Dr. Lee and asked if the latter could help a certain Felicito M. Mejorado (Mejorado) for his needed funds. He claimed that Mejorado was then awaiting the release of his claim for informer's reward from the Bureau of Customs. Because Dr. Lee did not know Mejorado personally and she claimed to be not in the business of lending money, the former initially refused to lend money. But Atty. Simando allegedly persisted and assured her that Mejorado will pay his obligation and will issue postdated checks and sign promissory notes. He allegedly even offered to be the co-maker of Mejorado and assured her that Mejorado's obligation will be paid when due. Atty. Simando was quoted saying: "*Ipapahamak ba kita, kliyente kita"; "Sigurado ito, kung gusto mo, gagarantiyahan ko pa ito, at pipirma din ako"; "Isang buwan lang, at hindi hihigit sa dalawang buwan ito, bayad ka na.*"[3]

Due to Atty. Simando's persistence, his daily calls and frequent visits to convince Dr. Lee, the latter gave in to her lawyer's demands, and finally agreed to give Mejorado sizeable amounts of money. Respondent acted as co-maker with Mejorado in various cash loans, to wit:[4]

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[2] *Id.* at 2.

[3] *Id.* at 2.

[4] *Id.* at 3.

Date:	Amount
November 11, 2006	Php 400,000.00
November 24, 2006	200,000.00
November 27, 2006	400,000.00
December 7, 2006	200,000.00
December 13, 2006	200,000.00
Total:	Php1,400,000.00

When the said obligation became due, despite Dr. Lee's repeated demands, Mejorado failed and refused to comply with his obligation. Since Atty. Simando was still her lawyer then, Dr. Lee instructed him to initiate legal action against Mejorado. Atty. Simando said he would get in touch with Mejorado and ask him to pay his obligation without having to resort to legal action. However, even after several months, Mejorado still failed to pay Dr. Lee, so she again asked Atty. Simando why no payment has been made yet. Dr. Lee then reminded Atty. Simando that he was supposed to be the co-maker of the obligation of Mejorado, to which he replied: "*Di kasuhan din ninyo ako!*"[5]

Despite complainant's repeated requests, respondent ignored her and failed to bring legal actions against Mejorado. Thus, in January 2008, complainant was forced to terminate her contract with Atty. Simando.

Subsequently, complainant's new lawyer, Atty. Gilbert Morandarte, sent a demand letter dated June 13, 2008 to Atty. Simando in his capacity as the co-maker of some of the loans of Mejorado.

In his Letter dated June 30, 2008, respondent denied his liability as a co-maker and claimed that novation had occurred because complainant had allegedly given additional loans to Mejorado without his knowledge.[6]

Dr. Lee then accused Atty. Simando of violating the trust and confidence which she gave upon him as her lawyer, and

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[5] *Id.*

[6] *Id.*

even took advantage of their professional relationship in order to get a loan for his client. Worse, when the said obligation became due, respondent was unwilling to help her to favor Mejorado. Thus, the instant petition for disbarment against Atty. Simando.

On August 12, 2009, the IBP-CBD ordered respondent to submit his Answer on the complaint against him.[7]

In his Answer[8] dated September 17, 2009, Atty. Simando claimed that complainant, who is engaged in lending money at a high interest rate, was the one who initiated the financial transaction between her and Mejorado. He narrated that complainant asked him if it is true that Mejorado is his client as she found out that Mejorado has a pending claim for informer's reward with the Bureau of Customs. When he affimed that Mejorado is his client, complainant signified that she is willing to give money for Mejorado's financial needs while awaiting for the release of the informer's reward. Eventually, parties agreed that Mejorado will pay double the amount and that payment shall be made upon receipt by Mejorado of the payment of his claim for informer's reward.[9]

Meanwhile, Atty. Simando stressed that Dr. Lee gave Mejorado a total of Php700,000.00 as an investment but he signed as co-maker in all the receipts showing double the amount or Php1,400,000.00.[10]

Respondent claimed that complainant is a money-lender exacting high interest rates from borrowers.[11] He narrated several instances and civil cases where complainant was engaged in money-lending where he divulged that even after defendants had already paid their loan, complainant still persists in collecting

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[7] *Id.* at 14.

[8] *Id.* at 26-40.

[9] *Id.* at 28.

[10] *Id.*

[11] *Id.* at 30.

from them.[12] Respondent asserted that he knew of these transactions, because he was among the four lawyers who handled complainant's case.[13]

Respondent averred that from the time that Mejorado and Dr. Lee had become close to each other, the latter had given Mejorado additional investments and one (1) Silverado Pick-up at the price of ₱500,000.00 and fifty (50) sacks of old clothings. He claimed that the additional investments made by Dr. Lee to Mejorado were given without his knowledge.

Atty. Simando further alleged that with Dr. Lee's investment of around ₱2 Million which included the Silverado Pick-up and the fifty (50) sacks of old clothings, the latter required Mejorado to issue five (5) checks with a total value of ₱7,033,500.00, an amount more than the actual value which Mejorado received.[14]

Atty. Simando added that while Dr. Lee and Mejorado agreed that the issued checks shall be presented to the bank only upon payment of his informer's reward, Dr. Lee presented the checks to the bank despite being aware that Mejorado's account had no funds for said checks. Atty. Simando further denied that he refused to take legal action against Mejorado. He claimed that complainant never instructed him to file legal action, since the latter knew that Mejorado is obligated to pay only upon receipt of his informer's reward.

Finally, Atty. Simando insisted that he did not violate their lawyer-client relationship, since Dr. Lee voluntarily made the financial investment with Mejorado and that he merely introduced complainant to Mejorado. He further claimed that there is no conflict of interest because he is Mejorado's lawyer relative to the latter's claim for informer's reward, and not Mejorado's lawyer against Dr. Lee. He reiterated that there is no conflicting interest as there was no case between Mejorado and Dr. Lee that he is handling for both of them.[15]

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[12] *Id.*

[13] *Id.*

[14] *Id.* at 29.

[15] *Id.* at 33.

In her Reply dated October 30, 2009, Dr. Lee denied that what she entered into was a mere investment. She insisted that she lent the money to Mejorado and respondent, in his capacity as co-maker and the transaction was actually a loan.[16] To prove her claim, Dr. Lee submitted the written loan agreements/receipts which categorically stated that the money received was a loan with due dates, signed by Mejorado and respondent as co-maker.[17] She further claimed that she did not know Mejorado and it was respondent who brought him to her and requested her to assist Mejorado by lending him money as, in fact, respondent even vouched for Mejorado and agreed to sign as co-maker.

Complainant further emphasized that what she was collecting is the payment only of the loan amounting to One Million Four Hundred Thousand Pesos (Php1,400,000.00) which respondent had signed as co-maker. Thus, respondent's claim that his obligation was already extinguished by novation holds no water, since what was being collected is merely his obligation pertaining to the loan amounting to Php1,400,000.00 only, and nothing more.

Finally, complainant lamented that respondent, in his comments, even divulged confidential informations he had acquired while he was still her lawyer and even used it against her in the present case, thus, committing another unethical conduct. She, therefore, maintained that respondent is guilty of violating the lawyer-client confidentiality rule.

Both parties failed to appear during the mandatory conference on January 15, 2010. Both parties requested for resetting of the mandatory conference, however, both failed to agree on a certain date. Hence, the IBP, so as not to delay the disposition of the complaint, terminated the mandatory conference and instead required the parties to submit their respective position papers.[18]

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[16] *Id.* at 123.

[17] *Id.* at 135-137.

[18] *Id.* at 184.

On March 18, 2010, the IBP-CBD found Atty. Simando guilty of violating the Code of Professional Responsibility. It recommended that respondent be suspended from the practice of law for six (6) months.

On December 29, 2010, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD to suspend Atty. Simando from the practice of law for a period of six (6) months.

Respondent moved for reconsideration.

On March 10, 2012, the IBP Board of Governors granted respondent's motion for reconsideration for lack of sufficient evidence to warrant the penalty of suspension. The Resolution dated December 29, 2010 was reversed and the case against respondent was dismissed.

RULING

We reverse the ruling of the IBP Board of Governors.

Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interest:

> One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.
>
> Another test of inconsistency of interests is **whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[19]

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[19] *Josefina M. Aninon v. Atty. Clemencio Sabitsana, Jr.*, A.C. No. 5098, April 11, 2012. (Emphasis supplied.)

In the instant case, we find substantial evidence to support respondent's violation of the above parameters, as established by the following circumstances on record:

First, it is undisputed that there was a lawyer-client relationship between complainant and Atty. Simando as evidenced by the retainer fees received by respondent and the latter's representation in certain legal matters pertaining to complainant's business;

Second, Atty. Simando admitted that Mejorado is another client of him *albeit* in a case claiming rewards against the Bureau of Customs;

Third, Atty. Simando admitted that he was the one who introduced complainant and Mejorado to each other for the purpose of entering into a financial transaction while having knowledge that complainant's interests could possibly run in conflict with Mejorado's interests which ironically such client's interests, he is duty-bound to protect;

Fourth, despite the knowledge of the conflicting interests between his two clients, respondent consented in the parties' agreement and even signed as co-maker to the loan agreement;

Fifth, respondent's knowledge of the conflicting interests between his two clients was demonstrated further by his own actions, when he:

(a) failed to act on Mejorado's failure to pay his obligation to complainant despite the latter's instruction to do so;

(b) denied liability despite signing as co-maker in the receipts/promissory notes arising from the loan agreement between his two clients;

(c) rebutted complainant's allegations against Mejorado and him, and even divulged informations he acquired while he was still complainant's lawyer.

Clearly, it is improper for respondent to appear as counsel for one party (complainant as creditor) against the adverse party (Mejorado as debtor) who is also his client, since a lawyer

is prohibited from representing conflicting interests. He may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflict with that of his present or former client.

Respondent's assertion that there is no conflict of interest because complainant and respondent are his clients in unrelated cases fails to convince. His representation of opposing clients in both cases, though unrelated, obviously constitutes conflict of interest or, at the least, invites suspicion of double-dealing.[20] Moreover, with the subject loan agreement entered into by the complainant and Mejorado, who are both his clients, readily shows an apparent conflict of interest, moreso when he signed as co-maker.

Likewise, respondent's argument that the money received was an investment and not a loan is difficult to accept, considering that he signed as co-maker. Respondent is a lawyer and it is objectionable that he would sign as co-maker if he knew all along that the intention of the parties was to engage in a mere investment. Also, as a lawyer, signing as a co-maker, it can be presupposed that he is aware of the nature of suretyship and the consequences of signing as co-maker. Therefore, he cannot escape liability without exposing himself from administrative liability, if not civil liability. Moreover, we noted that while complainant was able to show proof of receipts of various amounts of money loaned and received by Mejorado, and signed by the respondent as co-maker, the latter, however, other than his bare denials, failed to show proof that the money given was an investment and not a loan.

It must be stressed that the proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance of a function in a non-professional capacity. In the process of

[20] *Id.*

determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict.[21]

We likewise note that respondent offered several excuses in order to avoid payment of his liability. *First,* in his Answer to complainant's demand letter, he claimed there was novation which extinguished his liability; *Secondly*, he claimed that the amount received by Mejorado for which he signed as co-maker was merely an investment and not a loan. *Finally,* he alleged that it was agreed that the investment with profits will be paid only after Mejorado receives the payment for his claim for reward which complainant violated when she presented the checks for payment prematurely. These actuations of Atty. Simando do not speak well of his reputation as a lawyer.[22]

Finally, we likewise find respondent guilty of violating Rule 21.01 of the Code of Professional Responsibility.[23] In his last-ditch effort to impeach the credibility of complainant, he divulged informations[24] which he acquired in confidence during the existence of their lawyer-client relationship.

We held in *Nombrado v. Hernandez*[25] that the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason for the rule is that the client's confidence once reposed cannot be divested by the expiration of the professional employment. Consequently, a lawyer should not, even after the severance of the relation with his client, do anything

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[21] *Quiambao v. Atty. Bamba*, A.C. No. 6708, August 25, 2005, 465 SCRA 1, 13.

[22] *Rollo*, pp. 135-137.

[23] Rule 21.01.– A lawyer shall not, to the disadvantage of his client, use information acquired in the course of mployment, nor shall he use the same to his own advantge or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

[24] Respondent's Answer dated September 17, 2009, *rollo*, pp. 30-31.

[25] 135 Phil. 5, 9 (1968).

which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation.

Accordingly, we reiterate that lawyers are enjoined to look at any representation situation from "the point of view that there are possible conflicts," and further, "to think in terms of impaired loyalty" that is to evaluate if his representation in any way will impair loyalty to a client.[26]

WHEREFORE, premises considered, this Court resolves to **ADOPT** the findings and recommendation of the IBP in Resolution No. XIX-2010-733 suspending respondent Atty. Amador L. Simando for six (6) months from the practice of law, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to respondent's record as member of the Bar.

Atty. Simando is **DIRECTED** to inform the Court of the date of his receipt of this Decision so that we can determine the reckoning point when his suspension shall take effect.

This Decision shall be immediately executory.

SO ORDERED.

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

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[26] *Heirs of Falame v. Atty. Baguio,* A.C. No. 6876, March 7, 2008, 548 SCRA 1, 15.

EN BANC

[A.M. No. P-06-2223. June 10, 2013]
(Formerly A.M. No. 06-7-226-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LORENZA M. MARTINEZ, Clerk of Court, Municipal Trial Court, Candelaria, Quezon,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERKS OF COURT; DUTY TO PROMPTLY ISSUE OFFICIAL RECEIPTS FOR ALL THE MONEY RECEIVED AND TO DEPOSIT THE SAME WITHIN 24 HOURS FROM RECEIPT; VIOLATED IN CASE AT BAR; PENALTY.— [Clerk of Court] Martinez violated OCA Circular No. 26-97, which directs judges and clerks of court to strictly comply with the provisions of the Auditing and Accounting Manual, particularly Article VI, Sections 61 and 113 thereof, which require collecting officers to promptly issue official receipts for all money received by them. She likewise violated OCA Circular No. 50-95 which mandates all clerks of court to deposit, within 24 hours from receipt, all collections from bailbonds, rental deposits and other fiduciary collections. These directives are mandatory and designed to promote full accountability for government funds. Clerks of Court, as custodians of the court funds and revenues, are obliged to immediately deposit with the Land Bank of the Philippines *(LBP)* or with any authorized government depository, their collections on various funds because they are not authorized to keep funds in their custody. In this case, Martinez failed to present a satisfactory explanation regarding her cash shortages, her improper use of official receipts and the withdrawal of cash bonds. As Clerk of Court, she was the court's accountable officer. It was her duty to supervise and monitor her subordinate to ensure that the proper procedures were followed in the collection of the court's funds. Being the custodian of the court's funds, revenues, records, properties, and premises, she was liable for any loss, shortage, destruction

or impairment of such funds and property. x x x **WHEREFORE**, finding respondent **GUILTY** of Gross Neglect of Duty, Dishonesty, and Grave Misconduct, the Court hereby orders her **DISMISSAL** from the service, with forfeiture of all her benefits and perpetual disqualification from re-employment in the government service. [Respondent] is **ORDERED** to immediately **RESTITUTE** the shortages in the Judiciary Development Fund and in the Fiduciary Fund.

2. ID.; ID.; ID.; REQUIRED DECORUM; EMPHASIZED.— Time and again, the Court reminds that "those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. 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 would diminish, or even just tend to diminish, the faith of the people in the Judiciary."

APPEARANCES OF COUNSEL

D.L. Wagas Law Office for respondent.

D E C I S I O N

PER CURIAM:

This administrative case arose from the financial audit conducted by the Court Management Office *(CMO)*, Office of the Court Administrator *(OCA)*, in the Municipal Trial Court of Candelaria, Quezon *(MTC)*. The audit covered the accountabilities of Lorenza M. Martinez *(Martinez)*, Clerk of Court, from March 1985 to November 2005.

In September 2004, the salaries of Martinez were withheld. Beginning December 2005, she was excluded from the payroll

because of her failure to submit the monthly reports of collections and deposits as required by SC Circular No. 32-93.

The audit disclosed that Martinez incurred cash shortages in the Judicial Development Fund *(JDF)* in the amount of ₱12,273.33 and in the Fiduciary Fund *(FF)* in the amount of ₱882,250.00. The breakdown of Martinez' cash accountabilities were as follows:

Judiciary Development Fund	
Total Collections	₱ 917,847.69
Less: Total Remittances	905,574.36
Balance of Accountabilities	₱ 12,273.33
Fiduciary Fund	
Total Collections	₱ 4,288,212.50
Less: Total Withdrawals	3,020,712.50
Unwithdrawn Fiduciary Fund as of November 30, 2005	₱ 1,267,500.00
Less: Bank Balance per LBP SA No. 2611-0011-02 net of unwithdrawn Interest of ₱816.98, as of November 30, 2005	385,250.00
Balance of Accountabilities	₱ 882,250.00[1]

The audit team discovered that the shortages were due to the following manipulation of Martinez:

1. There were collections without the date of collection appearing on the face of either the duplicate or triplicate official receipt and were found undeposited, *viz*:

OR No.	Case No.	Amount
11445587	01-214	₱ 75,000.00
11445589	01-218	6,000.00
11445590	01-257	2,000.00

[1] *Rollo,* p. 10.

11445592	01-245	2,000.00
11445593	01-306	5,000.00
11445594	01-306	5,000.00
11445595	01-306	5,000.00
11445596	01-305	2,000.00
11445597	01-284	10,000.00
11445598	02-16	6,000.00
11445599	02-17	2,000.00
Total		₱ 120,000.00

There were also collections with different dates appearing on the face of the original and triplicate copies of OR[2] (Annexes 1.1 to 1.5), as follows:

OR No.	Date of Original OR	Date of Triplicate OR	Date of Deposit	Case No.	Amount
11445553	12-21-00	1-5-01	1-5-01	00-267	₱ 5,000.00
11445554	12-21-00	1-29-01	1-30-01	00-268	5,000.00
9972352	6-7-99	7-1-99	7-1-99	99-107	12,000.00
9972357	9-21-99	10-11-99	10-14-99	99-228	10,000.00
9972388	5-10-00	5-20-00	5-25-00	27420 & 27421	4,000.00
Total					**₱36,000.00**

In all cases, the duplicate and triplicate copies of OR will be carbon reproductions in all respects of whatever may have been written on the original. However, this was not observed by Ms. Martinez, instead she issued official receipts for collections received with the date of actual receipt posted on the original OR, while the duplicate and

[2] Official Receipts.

triplicate copies were left undated. She first used the money received as collections and when she regained it, the same was deposited, and that was the time when she posted a date on the duplicate and triplicate OR which is different from the date of the original OR. This was to cover her practice of delaying the remittance of collections. There were also times that the collections were not remitted at all, and the duplicate and triplicate ORs were remained undated up to date, as what had happened to the above undeposited collections of ₱120,000.00.

2. Ms. Martinez used a single OR for both JDF and FF collections, the original OR was used for FF and its corresponding duplicate and triplicate copies were used for JDF (Annexes 2.1 to 2.11), *viz*:

OR No.	JDF		FF		
	Date of Collection	Amount	Date of Collection	Case No.	Amount
9972099	12-10-98	₱ 10.00	6-6-95	4470	₱ 6,000.00
14392168	10-17-01	10.00	10-18-01	01-234	5,000.00
11445533	11-9-00	10.00	5-21-99	99-103 to 106	30,000.00
9972266	5-7-99	10.00	2-23-99	99-50	30,000.00
9972267	5-7-99	10.00	2-24-99	99-50	30,000.00
9972789	4-18-00	10.00	11-20-99	99-235	40,000.00
9972410	7-9-99	10.00	5-15-99	99-97	15,000.00
9972265	5-7-99	10.00	1-20-98	5561	10,000.00
9972838	5-24-00	10.00	11-12-96	5098	2,000.00
11445534	11-9-00	10.00	10-7-98	5619	10,000.00
14392156	10-12-01	10.00	6-27-01	01-128	10,000.00
15381554	7-10-02	10.00	6-7-02	02-135	12,000.00
15381257	2-4-02	10.00	2-1-02	01-28	30,000.00
Total		**130.00**			**₱230,000.00**

Verification revealed that the ₱130.00 collections for JDF were reported and deposited. On the other hand, the ₱230,000.00 collections for FF were unreported and undeposited. This practice was a clear violation of the following provisions of Circular No. 22-94 dated April 8, 1994:

x x x x

3. A total of ₱90,000.00 were accounted as bonds that were withdrawn twice. Details are as follows:

OR No.	Case No.	Date of 1st Withdrawal	Date of 2nd Withdrawal	Amount
4491458	4320	4-21-95	9-19-02	₱ 2,000.00
4491470	4290 & 4295	4-28-95	7-16-97	6,000.00
5129970	4557	8-10-00	12-15-00	3,000.00
6419483	5089	6-9-00	2-28-02	12,000.00
9972398	00-88	8-16-00	2-8-01	10,000.00
7557979	5090	8-10-00	9-26-02	12,000.00
7557997	99-97	7-9-99	12-7-99	15,000.00
9972356	99-227	5-25-00	3-14-01	10,000.00
9972357	99-228	5-25-00	3-14-01	10,000.00
Total				**₱ 90,000.00**

The above double withdrawals were made possible because only Ms. Martinez signed the withdrawal slips, in violation of Circular No. 50-95 dated October 11, 1995 which requires both the signatures of the Executive Judge/Presiding Judge and the Clerk of Court in making withdrawals of FF. Hon. Felix A. Caraos, Presiding Judge, when informed on this matter, immediately wrote a letter to the manager of LBP, Candelaria Branch (Annex 3), notifying the same that he will be jointly allowed to withdraw from the FF account of the court with Mr. Apolonio M. Sugay, designated Officer-in-Charge on December 6, 2005.

4. The bonds posted in Case Nos. 5528 and 5529 entitled *"PP. vs. Amelita Ramilo for Violation of BP 22"* amounting to ₱26,000.00

each were reported as withdrawn on November 1999. However, records revealed that there were no court orders that were issued to support the withdrawals. Therefore, the withdrawals made were unauthorized. The signatures of Ms. Ramilo on the herein attached acknowledgement receipt (Annex 4) were clearly forged as these were totally different to her signatures that were retrieved on the casefolders of the above cases (Annex 5.1 to 5.2).

5. The bond posted in Case No. 00-88 under OR No. 9972398 in the amount of ₱10,000.00 was withdrawn on August 16, 2000. However, through a fictitious court order (Annex 6), the same was again withdrawn on February 8, 2001. Said fictitious court order was accomplished by altering the Case No. from 5662 to 00-88. All the entries in the herein attached court order of Case No. 5662 (Annex 7) were the same with the entries in the fictitious court order except that of the case number. Also, the signature in the acknowledgment receipt of Ms. Lerma M. Mediavillo (Annex 8), the accused of Case No. 00-88 and not Ms. Nila Carreon as appearing in the fictitious court order, was forged because this was entirely unlike her signature that was retrieved on the casefolder of Case No. 00-88 (Annex 9).[3]

Acting on the report and recommendation[4] of the OCA, the Court, in its Resolution,[5] dated August 2, 2006, directed Martinez to (1) explain her failure 1.a] to collect fees accruing to the General Fund and Mediation Fund, 1.b] to present the JDF official receipts and monthly reports covering the period from March 1985 to December 1995, and 1.3] to deposit her collections on time; (2) explain the discrepancies of the entries in the original and triplicate copies of the official receipts of the FF collections; (3) explain why she used the original OR for the FF collection and its corresponding duplicate or triplicate copies for the JDF collections; (4) explain the double withdrawal of the bonds and their withdrawal without the necessary court orders; and (5) restitute her shortages. The Court also ordered her suspension pending resolution of the case and issued a hold departure order against her to prevent her from leaving the country.

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[3] *Id.* at 6-8.

[4] Memorandum dated June 30, 2006, *id*. at 1-3.

[5] *Id.* at 41-47.

In a letter,[6] dated September 4, 2006, Martinez averred that the shortage only amounted to ₱540,273.33 and denied responsibility for the shortage in the JDF as it was the court's Clerk II who did the transactions. Martinez asked for a reconsideration of her suspension citing her 28 years of service as basis and begged for the release of her withheld salary.

On August 22, 2006, the Bureau of Immigration issued an order directing the issuance of the hold departure order against Martinez.[7]

As of January 30, 2012, Martinez had failed to explain and restitute her shortages as required in the Court's August 2, 2006 Resolution.[8] Consequently, the Court issued a resolution[9] requiring her to show cause why she should not be disciplinarily dealt with or held in contempt for such failure.

In a letter,[10] dated May 8, 2012, Martinez explained that her failure to restitute the shortages was due to her lack of means to do so because she had been suspended from the service since August 2004. She manifested that if the Court would permit her to resign effective May 8, 2012, she would apply her benefits or separation pay to her shortages and would settle the remaining balance in staggered payments.

The said letter was referred to the OCA for evaluation, report and recommendation.

In a Memorandum,[11] the OCA recommended that:

1) Ms. Lorenza M. Martinez, Clerk of Court, MTC, Candelaria, Quezon, be DISMISSED from the service for gross dishonesty resulting in malversation of judiciary funds, with forfeiture

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[6] *Id.* at 55-56.

[7] *Id.* at 67.

[8] Certifications from the Fiscal Monitoring Division and OCA, *id.* at 78-79.

[9] *Id.* at 80.

[10] *Id.* at 82-83.

[11] *Id.* at 89-93.

of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government- owned and controlled corporations;

2) the Office of the Administrative Services (OAS), Office of the Court Administrator (OCA), be DIRECTED to COMPUTE the balance of earned leave credits of Ms. Lorenza M. Martinez, and forward the same, together with her Official Service of Records and Notice of Salary Adjustments (NOSA), to the Financial Management Office (FMO), OCA, for the processing of her terminal leave pay;

3) the Financial Management Office, OCA, upon receipt of the records and documents from the OAS, OCA, be DIRECTED to COMPUTE and APPLY the withheld salaries and the monetary value of the earned leave credits of Ms. Lorenza M. Martinez to the cash shortages incurred in the Fiduciary Fund;

4) Mr. Apolonio M. Sugay, Officer-in-charge, MTC, Candelaria, Quezon be DIRECTED to DEPOSIT the check representing the total amount of the withheld salaries and monetary value of the earned leave credits of Ms. Lorenza M. Martinez to the Fiduciary Fund account, as partial payment of the cash shortages incurred, within five (5) days from receipt of the check from the Checks Disbursement Division, FMO, OCA, and FURNISH immediately the Fiscal Monitoring Division, Court Management Office, OCA, with a machine validated copy of the deposit slip;

5) Hon. Judge Felix A. Caraos, MTC, Candelaria, Quezon, be DIRECTED to STRICTLY MONITOR Mr. Apolonio M. Sugay, Officer-in-Charge, MTC, Candelaria, Quezon, to ensure strict compliance with the circulars and issuances of the Court, particularly in the handling of judiciary funds, otherwise, he shall be held equally liable for the infractions committed by the employee/s under his command/supervision; and

6) the Legal Office, OCA, be DIRECTED to proceed with the filing of the appropriate criminal case against Ms. Lorenza M. Martinez.

The Court substantially agrees with the recommendation of the OCA.

Doubtless, Martinez violated OCA Circular No. 26-97, which directs judges and clerks of court to strictly comply with the provisions of the Auditing and Accounting Manual, particularly Article VI, Sections 61 and 113 thereof, which require collecting officers to promptly issue official receipts for all money received by them. She likewise violated OCA Circular No. 50-95 which mandates all clerks of court to deposit, within 24 hours from receipt, all collections from bailbonds, rental deposits and other fiduciary collections.

These directives are mandatory and designed to promote full accountability for government funds.[12] Clerks of Court, as custodians of the court funds and revenues, are obliged to immediately deposit with the Land Bank of the Philippines *(LBP)* or with any authorized government depository, their collections on various funds because they are not authorized to keep funds in their custody.[13]

In this case, Martinez failed to present a satisfactory explanation regarding her cash shortages, her improper use of official receipts and the withdrawal of cash bonds. Her contention that it was the cash clerk who was responsible for the JDF fund is untenable. As Clerk of Court, she was the court's accountable officer. It was not the cash clerk. It was her duty to supervise and monitor her subordinate to ensure that the proper procedures were followed in the collection of the court's funds. Being the custodian of the court's funds, revenues, records, properties, and premises, she was liable for any loss, shortage, destruction or impairment of such funds and property.[14]

Time and again, the Court reminds that "those charged with the dispensation of justice, from the justices and judges to the

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[12] *Office of the Court Administrator v. Fontanilla*, A.M. No. P-12-3086, September 18, 2012, 681 SCRA 17.

[13] *Office of the Court Administrator v. Cruz*, A.M. No.P-11-2988, December 12, 2011, 662 SCRA 8, 11.

[14] *Office of the Court Administrator v. Marasigan*, A.M. No. P-05-2082, November 29, 2011, 661 SCRA 464, 480.

lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. 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 would diminish, or even just tend to diminish, the faith of the people in the Judiciary."[15]

In one case, *Re: Financial Audit on the Books of Account of Ms. Laura D. Delantar, Clerk of Court, MTC, Leyte, Leyte*,[16] the Court dismissed the clerk of court for misappropriating the court's collection, for tampering the official receipts and cash book, and for failing to record and remit collections and to submit the necessary monthly reports.

Also, in the case of *Office of the Court Administrator v. Nacuray*,[17] the clerk of court falsified the official receipts and the monthly report of collections and withdrawals. The Court found her guilty of gross dishonesty and grave misconduct and imposed upon her the penalty of dismissal. In *OCA v. Santos*,[18] a clerk of court suffered a similar fate for the same reasons.

WHEREFORE, finding respondent Lorenza M. Martinez, Clerk of Court of the Municipal Trial Court of Candelaria, Quezon, **GUILTY** of Gross Neglect of Duty, Dishonesty, and Grave Misconduct, the Court hereby orders her **DISMISSAL** from the service, with forfeiture of all her benefits and perpetual disqualification from re-employment in the government service.

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[15] *Office of the Court Administrator v Recio*, A.M. No. P-04-1813, May 31, 2011, 649 SCRA 552, 572.

[16] 520 Phil. 434 (2006).

[17] 521 Phil. 32 (2006).

[18] A.M. No. P-06-2287 [Formerly A.M. No. 06-11391-MTC], October 12, 2010, 632 SCRA 678.

Martinez is **ORDERED** to immediately **RESTITUTE** the shortages in the Judiciary Development Fund in the total amount of ₱12,273.33 and in the Fiduciary Fund in the total amount of ₱882,250.00.

The Office of Administrative Services, Office of the Court Administrator, is **ORDERED** to compute the balance of the earned leave credits of Martinez and to forward it to the Finance Division, Financial Management Office, Office of the Court Administrator, including the certified true copies of her computerized service records and notices of salary adjustment.

The Financial Management Office, Office of the Court Administrator, is **DIRECTED** to compute and process the monetary value of leave credits and other benefits due to Martinez, including her withheld salaries and allowances, and apply the same to her accountabilities.

Lorenza M. Martinez is also **DIRECTED** to deposit, within a non-extendible period of one (1) month from receipt of notice, any remaining balance of the indicated shortages to the corresponding fund accounts, after the total money value of her leave credits and withheld salaries and allowances (net of deductions) have been applied to her accountabilities, and to furnish the Chief, FMD, CMO-OCA, copies of the corresponding machine-validated deposit slips.

The Legal Office, Office of the Court Administrator, is **DIRECTED** to immediately file appropriate criminal and civil proceedings against Martinez upon receipt of the Report from the FMD, CMO-OCA, that she failed to restitute the portion of their shortages not covered by the money value of their leave credits and the withheld salaries and allowances (net of deductions).

Mr. Apolonio M. Sugay, Officer-in-Charge, Municipal Trial Court, Candelaria, Quezon, is **DIRECTED** to deposit to the respective fund accounts (as instructed by the FMD, CMO-OCA), the checks to be sent to him by the FMO-OCA, to settle the accountabilities of Martinez and furnish the latter and the Chief, FMD, CMO-OCA, copies of the machine-validated deposit slips.

Judge Felix A. Caraos, Municipal Trial Court, Candelaria, Quezon, is **DIRECTED** to closely monitor the financial transactions of the court, otherwise, he shall be held equally liable for the infractions committed by the employees under his supervision, and to study and implement procedures that will strengthen the internal control over financial transactions.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, J., on leave.

Velasco, Jr. and *Perez, JJ.,* no part.

EN BANC

[A.M. No. P-11-2980. June 10, 2013]
(Formerly OCA I.P.I. No. 08-3016-P)

LETICIA A. ARIENDA, *complainant, vs.* **EVELYN A. MONILLA, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 4, LEGAZPI CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; COURT STENOGRAPHER HAS NO AUTHORITY TO PREPARE EXTRAJUDICIAL SETTLEMENT OF ESTATE AND RECEIVE MONEY THEREFOR.— [R]espondent [Court Stenographer] admitted in her comment that she prepared and finalized the extrajudicial settlement of the estate of complainant's deceased mother. The preparation of an extrajudicial settlement of estate constitutes practice of law. x x x Not being a lawyer, respondent had no authority to

prepare and finalize an extrajudicial settlement of estate. Worse, respondent also admitted receiving money from complainant for her services. Being a court employee, respondent ought to have known that it was improper for her to prepare and finalize the extrajudicial settlement of estate, a service only a lawyer is authorized to perform, and to receive money therefor. It is true that respondent prepared and finalized the extrajudicial settlement of estate pursuant to a private agreement between her and complainant. However, respondent is an employee of the court whose conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let her be free from any suspicion that may taint the judiciary. She is expected to exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people to preserve the court's good name and standing. Respondent's behavior and conduct, which led other people to believe that she had the authority and capability to prepare and finalize an extrajudicial settlement of estate even when she is not a lawyer, clearly fall short of the exacting standards of ethics and morality imposed upon court employees.

2. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; PROPER PENALTY IN CASE AT BAR.— Misconduct generally means wrongful, unlawful conduct, motivated by a premeditated, obstinate or intentional purpose. Thus, any transgression or deviation from the established norm, whether it be work-related or not, amounts to misconduct. In preparing and finalizing the extrajudicial settlement of estate and receiving compensation for the same even when she is not a lawyer, respondent is guilty of simple misconduct, punishable under Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one month and one day to six months. Considering that this is respondent's first offense and that she had served the judiciary for almost 16 years, a suspension of four months would have been proper. Since respondent had already retired, the Court instead imposes the penalty of a fine equivalent to her salary for four months, to be deducted from her retirement benefits.

APPEARANCES OF COUNSEL

Vicente G. Judar for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an administrative complaint for conduct unbecoming a court employee and abuse of authority filed by complainant Leticia A. Arienda against respondent Evelyn A. Monilla, Court Stenographer III of the Regional Trial Court (RTC), Branch 4 of Legazpi City.

In her letter-complaint[1] dated October 8, 2008, complainant alleged that respondent and Atty. Zaldy Monilla (Atty. Monilla), respondent's husband (together referred to as the spouses Monilla), went to complainant's house on January 13, 2002 and offered their services in settling the estate of complainant's deceased mother. According to the spouses Monilla, they would prepare an extrajudicial settlement for complainant and the latter's siblings, while respondent's brother, Engineer Matias A. Arquero (Engr. Arquero), would conduct the survey of the estate. Everytime the spouses Monilla went to complainant's house, they would ask for partial payment. Six Temporary Receipts show that complainant had paid the spouses Monilla a total of ₱49,800.00. Complainant repeatedly requested from the spouses Monilla the approved survey plan prepared by Engr. Arquero, but the spouses Monilla demanded that complainant first pay the ₱20,000.00 she still owed them before they give her the approved survey plan and extrajudicial settlement of estate. Complainant subsequently learned that the spouses Monilla had no authority to settle her deceased mother's estate as Atty. Monilla was currently employed at the Department of Agrarian Reform (DAR) and respondent was not even a lawyer but an ordinary court employee.

[1] *Rollo*, pp. 3-4.

In her comment[2] dated May 23, 2009, respondent denied that it was she and her husband who offered complainant their services in settling the estate of complainant's deceased mother. Respondent averred that it was complainant and her sister, Ester, who came to respondent's house sometime in December 2000 and requested respondent to convince her brother Engr. Arquero, a geodetic engineer, to partition the four lots left by complainant's parents situated in Bigaa, Legazpi City. Respondent was initially hesitant to accede to complainant's request because of complainant's reputation in their locality as a troublemaker. However, respondent's husband, upon learning that complainant was a relative, urged respondent to assist the complainant.

Respondent alleged that she was not privy to the agreement between Engr. Arquero and complainant. Complainant scheduled the survey of one of the lots, Lot No. 5489, on January 13, 2001. After Engr. Arquero conducted the survey, complainant was nowhere to be found and respondent had to shoulder the expenses for the same.

Respondent further narrated that without her knowledge, complainant and her siblings filed a case for partition of estate before the RTC, Branch 7 of Legazpi City, on May 24, 2001. When their case was dismissed by the RTC, complainant and her siblings argued at the Hall of Justice, thus, disrupting court proceedings. Knowing that respondent was a court employee, complainant approached and asked respondent to intervene. Respondent, during her lunch break, met with complainant and the latter's siblings at respondent's residence located near the Hall of Justice. Complainant and her siblings, already wishing to partition their deceased parents' estate out of court, pleaded that respondent prepare an extrajudicial settlement. Respondent declined to get involved at first because complainant and her siblings were represented by a lawyer in the partition case before the RTC, but complainant and her siblings said that they had no more money to pay for the continued services of their

[2] *Id.* at 22-27.

lawyer. Respondent understood the predicament of complainant and her siblings, so respondent agreed to help them. Respondent called her brother, Engr. Arquero, and requested him to bring the sketch plan of Lot No. 5489 he had previously prepared. In the presence of Engr. Arquero, complainant and her siblings chose their respective shares in the property. Respondent prepared and finalized the extrajudicial settlement and handed the said document to complainant and her siblings. After a year, complainant, her sister Ester, and a buyer of their shares in Lot No. 5489, Marlyn Dominguez (Dominguez), again approached respondent. Complainant asked that Engr. Arquero continue with the partition of Lot No. 5489 as Dominguez advanced the money to pay for the expenses, including the preparation of the lot plan. Engr. Arquero, despite his misgivings and persuaded by respondent, conducted the survey, but complainant did not show up and respondent had to shoulder the expenses once more.

Respondent went on to recount that on January 20, 2003, complainant, Ester, and a sales agent came to respondent's house, asking respondent to again convince her brother Engr. Arquero to re-survey Lot No. 5489 because the boundaries were no longer visible. According to complainant, the new buyer, Galahad O. Rubio (Rubio), wanted to see the exact location and the boundaries of the lot. Respondent refused and told complainant to directly negotiate with Engr. Arquero. When complainant and her companions returned in the afternoon, complainant tendered ₱9,000.00 to respondent's husband, Atty. Monilla, as partial payment for the latter's services. The following day, complainant and her companions came back and complainant handed over another ₱9,000.00 as partial payment for the services of respondent's brother, Engr. Arquero.

Respondent admitted receiving from complainant payments amounting to ₱49,800.00, all made at respondent's residence in Rawis, not at complainant's house in Bigaa. The ₱25,000.00 was for the preparation by Atty. Monilla of the following documents: (a) four deeds of sale to different buyers; (b) two copies of extrajudicial settlement; (c) two contracts to sell; (d)

two authorities to sell; and (e) one demand letter. The remaining ₱24,800.00 was for Engr. Arquero's services in subdividing Lot No. 5489 into 13 lots.

Respondent asserted that she had already turned over to complainant on March 30, 2003 the notarized extrajudicial settlement for Lot No. 5489, the blueprint of the subdivision plan for the said lot, and the deed of sale between complainant and Rubio. The subdivision plan was not approved by the Bureau of Lands because of complainant's failure to submit other requirements. Because of complainant's broken promises, respondent and her husband, Atty. Monilla, no longer prepared the other documents complainant was requesting for, and respondent's brother, Engr. Arquero, discontinued his services as a surveyor.

Lastly, respondent maintained that complainant knew that Atty. Monilla was a DAR employee. Complainant and her siblings had often consulted Atty. Monilla regarding the properties left by their parents, as well as their ongoing family feud. Complainant was likewise aware that respondent was not a lawyer and was a mere court stenographer since complainant and respondent are neighbors and they are related to one another. Respondent had already filed for early retirement effective April 23, 2007, and she claimed that her former co-employees at the RTC, Branch 4 of Legazpi City conspired and confederated with one another to induce complainant to file the instant complaint against her.

In a Resolution[3] dated June 23, 2010, the Court referred the instant administrative matter to Vice Executive Judge Pedro R. Soriao (Investigating Judge Soriao) of RTC, Branch 5 of Legazpi City, for investigation, report, and recommendation.

In his report[4] dated September 22, 2010, Investigating Judge Soriao made the following findings and recommendations:

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[3] *Id.* at 88-89.

[4] *Id.* at 91-94.

Substantial evidence appearing of record demonstrates that Evelyn A. Monilla committed a simple misconduct unbecoming of court personnel while she was a court stenographer. The imposition upon her of an administrative penalty of fine equivalent to two months of the salary that she was receiving when she resigned to be deducted from her retirement benefits is hereby recommended.

Finally, it is submitted that Evelyn A. Monilla's liability over the amount of ₱49,800 pesos that she received from Leticia Arienda is a legal matter that can be properly ventilated in a separate appropriate judicial proceeding.[5]

After evaluation of Investigating Judge Sariao's report, the Office of the Court Administrator (OCA) submitted to the Court its Memorandum[6] dated July 14, 2011, likewise recommending that respondent be found guilty of simple misconduct but that the amount of fine imposed against her be increased to four months salary, to be deducted from her retirement benefits.

In her Manifestation[7] dated May 2, 2012, respondent informed the Court that Dominguez filed a case against complainant for a sum of money and damages, docketed as Civil Case No. 5287, before the Municipal Trial Court in Cities (MTCC), Branch 2 of Legazpi City. Dominguez wanted to recover the partial payments she had made on Lot No. 5489, plus other damages, after complainant sold the very same property to someone else. In a Decision dated July 7, 2006, the MTCC ruled in Dominguez's favor. Respondent wanted this Court to note that neither complainant nor Dominguez mentioned in Civil Case No. 5287 the participation of respondent or her brother in the transaction involving Lot No. 5489.

It bears to note that respondent admitted in her comment that she prepared and finalized the extrajudicial settlement of the estate of complainant's deceased mother. The preparation

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[5] *Id.* at 94.

[6] *Id.* at 207-213.

[7] *Id.* at 217-218.

of an extrajudicial settlement of estate constitutes practice of law as defined in *Cayetano v. Monsod*,[8] to wit:

> Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill." x x x.

Not being a lawyer, respondent had no authority to prepare and finalize an extrajudicial settlement of estate. Worse, respondent also admitted receiving money from complainant for her services. Being a court employee, respondent ought to have known that it was improper for her to prepare and finalize the extrajudicial settlement of estate, a service only a lawyer is authorized to perform, and to receive money therefor.

It is true that respondent prepared and finalized the extrajudicial settlement of estate pursuant to a private agreement between her and complainant. However, respondent is an employee of the court whose conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let her be free from any suspicion that may taint the judiciary. She is expected to exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people to preserve the court's good name and standing.[9]

Respondent's behavior and conduct, which led other people to believe that she had the authority and capability to prepare and finalize an extrajudicial settlement of estate even when she is not a lawyer, clearly fall short of the exacting standards of ethics and morality imposed upon court employees.

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[8] 278 Phil. 235, 243 (1991).

[9] *Spouses Tiples, Jr. v. Montoyo*, 523 Phil. 404, 407 (2006).

Respondent's mention of Civil Case No. 5287 before the MTCC does not help her defense. That case is irrelevant herein for it is between complainant and Dominguez.

Misconduct generally means wrongful, unlawful conduct, motivated by a premeditated, obstinate or intentional purpose. Thus, any transgression or deviation from the established norm, whether it be work-related or not, amounts to misconduct.[10] In preparing and finalizing the extrajudicial settlement of estate and receiving compensation for the same even when she is not a lawyer, respondent is guilty of simple misconduct, punishable under Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one month and one day to six months. Considering that this is respondent's first offense and that she had served the judiciary for almost 16 years, a suspension of four months would have been proper. Since respondent had already retired, the Court instead imposes the penalty of a fine equivalent to her salary for four months, to be deducted from her retirement benefits.

WHEREFORE, in view of the foregoing, the Court finds respondent Evelyn Monilla, retired Stenographer III of RTC, Branch 4 of Legazpi City, **GUILTY** of simple misconduct and imposes upon said respondent a **FINE** equivalent to four months salary to be deducted from her retirement benefits.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

[10] *Hernando v. Bengson*, A.M. No. P-09-2686, March 10, 2010, 615 SCRA 7, 11.

THIRD DIVISION

[G.R. No. 173829. June 10, 2013]

VALBUECO, INC., *petitioner, vs.* **PROVINCE OF BATAAN, represented by its Provincial Governor ANTONIO ROMAN;**[1] **EMMANUEL M. AQUINO,**[2] **in his official capacity as Registrar of the Register of Deeds of Balanga, Bataan; and PASTOR P. VICHUACO,**[3] **in his official capacity as Provincial Treasurer of Balanga, Bataan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTION OF LAW IS ALLOWED.— While it has been ruled that the notices and publication, as well as the legal requirements for a tax delinquency sale under Presidential Decree No. 464 (otherwise known as the Real Property Tax Code), are mandatory and that failure to comply therewith can invalidate the sale in view of the requirements of due process, We have equally held that the claim of lack of notice is a factual question. In a petition for review, the Court can only pass upon questions of law; it is not a trier of facts and will not inquire into and review the evidence presented by the contending parties during the trial and relied upon by the lower courts to support their findings. The issues raised in this petition undeniably involve only questions of fact. On this ground alone, it should be dismissed outright.

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[1] In the Entry of Appearance with Manifestation and Motion for Extension of Time to File Comment filed before this Court on November 21, 2006, counsel for respondents stated that the incumbent Governor of the Province of Bataan is Enrique T. Garcia, Jr. and the present Provincial Treasurer is Emerlinda S. Talento (*Rollo*, pp. 299-303).

[2] In his Motion filed on October 17, 1996, Emmanuel M. Aquino manifested that he was already assigned as Registrar of the Register of Deeds of Olongapo City effective April 1, 1993. (Records, pp. 43-44)

[3] *Supra* note 1.

2. ID.; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY RULE; COURT CANNOT RELY ON A REPRESENTATION MADE ALLEGEDLY IN A "CONVERSATION."— The Court cannot simply rely on the representation of Juan and Atty. Lalaquit that there was no notice of assessment and/or demand for payment of tax delinquency made by respondents because it was what Mr. Bueno told them so in a "conversation." Conformably with the hearsay rule, the trial court correctly allowed the questions propounded by petitioner's counsel to Juan and Atty. Lalaquit but only insofar as they testify that a "conversation" took place and not necessarily admitting as true the alleged utterance of Mr. Bueno.

3. TAXATION; TAX SALE; NO PRESUMPTION OF REGULARITY OF ANY ADMINISTRATIVE ACTION THAT DEPRIVES A TAXPAYER OF HIS PROPERTY THROUGH A TAX SALE; NOT APPLICABLE IN THE ABSENCE OF PROOF OF IRREGULARITY.— [P]etitioner utterly failed to present preponderant evidence to support its allegations that the auction sale of the subject properties due to tax delinquency was attended by irregularities. The two witnesses it presented are neither competent nor convincing to attest with reasonable certainty that respondents failed to observe the procedural requirements of PD 464. x x x [Thus,] the principle We enunciated in *Valencia v. Jimenez, Camo v. Riosa Boyco,* and *Requiron v. Sinaban* that there can be no presumption of regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale does not apply in the case at bar. x x x The Court, therefore, affirms the RTC's opinion that petitioner was not able to establish its cause of action for its failure to submit convincing evidence to establish a case and the CA's position that it must rely on the strength of its evidence and not on the weakness of respondents' claim.

4. REMEDIAL LAW; EVIDENCE; EQUIPONDERANCE OF EVIDENCE RULE; APPLIED IN CASE AT BAR.— What petitioner has accomplished is only to cast doubts by capitalizing on the absence of documentary evidence on the part of respondents. While such approach would succeed if carried out by the accused in criminal cases, plaintiffs in civil cases need to do much more to overturn findings of fact and credibility by the trial court, especially when the same had been

affirmed by the CA. It must be stressed that overturning judgments in civil cases should be based on preponderance of evidence, and with the further qualification that, when the scales shall stand upon an equipoise, the court should find for the defendant. The "equiponderance of evidence" rule states that when the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant. Under this principle, the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim; even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.

APPEARANCES OF COUNSEL

Jaso Dorillo and Associates for petitioner.
Provincial Legal Office (Bataan) for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the October 24, 2005 Decision[4] and July 18, 2006 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 81191 affirming the August 19, 2003 Decision[6] of the Regional Trial Court (RTC), Branch 1, Balanga City, Bataan, which dismissed the civil complaint filed by petitioner.

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[4] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Portia Aliño-Hormachuelos and Mariano C. Del Castillo (now Supreme Court Associate Justice) concurring; *rollo*, pp. 45-57.

[5] *Id.* at 60-61.

[6] *Id.* at 170-180.

Petitioner Valbueco, Inc. was the registered owner of eight (8) parcels of land situated at Saysain, Bagac, Bataan, described in and covered by Transfer Certificates of Title (TCT) Nos. 47377, 47378, 47379, 47380, 47381, 47382, 47385 and 47386 of the Register of Deeds for the Province of Bataan, with a total land area of 1,862,123 sq. m., and an assessed value of ₱1,364,330.00 as of 1994.

Due to petitioner's unpaid real property taxes, the above-mentioned properties were sold at public auction sometime in 1987 or 1988[7] whereby respondent Province of Bataan (Province) emerged as the winning bidder in the amount of Seventy Thousand Seven Hundred Sixty-Two Pesos and 90/100 (₱70,762.90).

Years later, on March 29, 1995, petitioner filed a complaint to nullify the tax sale and the consolidation of title and ownership in favor of respondent Province, and to reconvey the possession, title and ownership of the subject properties, alleging as follows:

x x x x

6. To effect collection of taxes on [petitioner's] real property x x x in the total amount of SEVENTY THOUSAND SEVEN HUNDRED SIXTY-TWO PESOS AND NINETY CENTAVOS (₱70,762.90), defendant provincial TREASURER proceeded to effect collection of taxes without first making a distraint on the personality *(sic)* of [petitioner] which is worth more than its alleged total tax liability, instead, distrained the real properties stated in the immediately preceeding *(sic)* paragraph;

7. In making and effecting the distraint, [respondent] TREASURER failed and omitted to have the distraint annotated;

8. Having made the annotated levy on distraint, [respondent] TREASURER caused the sale of the real properties at the auction sans the necessary publication and/or notice in at least three (3) public and conspicuous places;

9. Likewise, no notice of the sale has been served upon the [petitioner];

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[7] TSN, October 25, 2002, pp. 6-7.

10. To make matters worse, [respondents] caused the unlawful consolidation of title and ownership to the above-mentioned real properties in the name of the [respondent] PROVINCE x x x;

11. It was only sometime in the first quarter of 1992, while [petitioner] was in the process of negotiating with the representatives of the Department of Agrarian Reform for the possibility of exemption of its landholdings at Bagac, Bataan, did it learn that the aforesaid parcels of land were included in the auction sale conducted by [respondent] TREASURER pursuant to the provisions of Presidential Decree No. 464;

12. On several occasions [petitioner] requested and demanded the reconveyance of the above-mentioned properties from the [respondents] but to no avail;

13. As a consequence of the anomalous and irregular distraint, levy, auction sale and consolidation of title and ownership of the above-mentioned real properties in the name of the [respondent] PROVINCE, [petitioner] suffered actual damages in an amount to be proved at the trial of this case; x x x[8]

In their Answer with Counterclaim, respondents denied petitioner's allegations and, by way of special and affirmative defenses, averred:

x x x x

8. That granting hypothetically that there was no distraint of personal property first of the [petitioner] before proceeding with the distraint of real properties, Presidential Decree No. 464, the law then prevailing[,] provides under Section 67, thus:

> "SEC. 67. – Remedies, cumulative, simultaneous and unconditional. – Collection of real property tax may be enforced through any or all of the remedies provided under this Code, and the use or non-use of one remedy shall not be a bar against the institution of the others. Formal demand for the payment of the delinquent taxes and penalties due need not be made before any of such remedies may be resorted to; notice of

[8] Records, pp.2-3.

delinquency as required in Section sixty-five hereof shall be sufficient for the purpose." (underlining supplied)

In fact, in the succeeding section, it is so provided that "payment may be enforced by distraining the personal property x x x" (underscoring supplied) which only means that distraint of personal property is not a condition sine qua non before real property could be distraint;

9. That all legal requirements under Presidential Decree No. 464 had been properly complied with in the public auction sale of the delinquent properties;

10. That despite repeated demands, no attempt has been made by the [petitioner] to pay the tax delinquency, much less, redeem the property from the [respondent] provincial government; x x x[9]

It appearing that the subject lots were placed under the coverage of the Comprehensive Agrarian Reform Program (CARP) and distributed to qualified beneficiaries under Republic Act (R.A.) No. 6657, petitioner later on filed an Amended Complaint[10] dated September 10, 1998 impleading the Secretary of the Department of Agrarian Reform (DAR) and eighty-five (85) individual beneficiaries as additional defendants. Petitioner further alleged that: on December 2, 1994, it wrote a letter to the DAR Secretary through the OIC Regional Director of Region 3, San Fernando, Pampanga, objecting to the operation of the CARP for the reason that the subject properties are pasture lands; that instead of answering said letter, the DAR Secretary unlawfully and unscrupulously awarded the subject properties through the issuance of Certificates of Land Ownership Award (CLOA) No. 00146060, 00146062, 00146065, and 00146071 in favor of the defendant beneficiaries; and that pursuant to the decision of the Court in *Luz Farms v. Secretary of the Department of Agrarian Reform*,[11] TCT No. CLOA-4464,

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[9] *Id.* at 35. (Underscoring in the original.)

[10] *Id.* at 135-154.

[11] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

CLOA-4465, CLOA-4466, CLOA-4467, and CLOA-4468 issued to the beneficiaries should be cancelled for being null and void.

Meantime, on November 16, 1998, petitioner manifested that it deposited before the clerk of court the amount of ₱70,762.90 and ₱62,271.00, which respectively represent the price the subject properties were sold at public auction and the two percent (2%) interest per month reckoned from the date of the sale until the filing of the complaint.[12]

In their Answer with Compulsory Counterclaim,[13] the CARP beneficiaries moved to dismiss the Amended Complaint. They asserted that petitioner's claim does not state a cause of action for failure to exhaust administrative remedies prior to filing of the case; that the consolidation of title and transfer of ownership in favor of respondent Province are in accordance with the law; that TCT Nos. CLOA-4464, CLOA-4465, CLOA-4466, CLOA-4467, and CLOA-4468 are legal, valid and binding conformably with RA 6657 and related laws; that petitioner is guilty of estoppel and is barred by laches; and that they are the qualified and legal beneficiaries of the subject properties, which are agricultural in nature, hence, within the CARP coverage.

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[12] Records, pp. 201-202.

Notably, Section 83 of Presidential Decree No. 464 provide:

Sec. 83. *Suits assailing validity of tax sale.* – No court shall entertain any suit assailing the validity of a tax sale of real estate under this Chapter until the taxpayer shall have paid into court the amount for which the real property was sold, together with interests of twenty per centum per annum upon that sum from the date of sale to the time of instituting suit. The money so paid into court shall belong to the purchaser at the tax sale if the deed is declared invalid, but shall be returned to the depositor if the action fails.

Neither shall any court declare a sale invalid by reason of irregularities or informalities in the proceedings committed by the officer charged with the duty of making sale, or by reason of failure by him to perform his duties within the time herein specified for their performance, unless it shall have been proven that such irregularities, informalities or failure have impaired the substantial rights of the taxpayer.

[13] *Id.* at 283-286.

Likewise, the DAR Secretary sought the dismissal of the Amended Complaint. Invoking Section 1[14] (f) and (g), Rule II of the Department of Agrarian Reform Adjudication Board (DARAB) New Rules of Procedure dated May 30, 1994, Sections 50 and 57[15] of RA 6657, Section 34[16] of Executive Order No. 129-A dated July 26, 1987, and Supreme Court Administrative Circular No. 3-92, it was argued that the RTC has

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[14] SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

x x x x

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of Presidential Decree No. 946, except sub-paragraph (q) thereof and Presidential Decree No. 815.

x x x x

[15] Section 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). x x x

Section 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. x x x

[16] Section 34. *Implementing Authority of the Secretary*. The Secretary shall issue orders, rules and regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

no jurisdiction over DAR because the ultimate relief prayed for by petitioner is the cancellation of the CLOAs issued to the qualified beneficiaries of the CARP under RA 6657, the determination of which is exclusively lodged before the DARAB.

On September 29, 1999, the trial court dismissed the Amended Complaint.[17] Subsequently, however, it reconsidered the resolution on February 8, 2000. The court ruled that, even if it lacks jurisdiction over the DAR Secretary and the CARP beneficiaries, it still has jurisdiction to decide on the validity or legality of the auction sale and the consolidation of ownership and/or transfer of title of the subject properties in favor of respondent Province.[18]

After trial on the merits, petitioner's complaint was nonetheless dismissed. The dispositive portion of the August 19, 2003 Decision reads:

> **WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing its complaint for lack of merit and ordering the [petitioner] to pay the Province of Bataan the sum of ₱50,000.00 as attorney's fees.**
>
> The clerk of court of the Regional Trial Court of Bataan is hereby ordered to refund the sum of ₱133,033.90 which [petitioner] deposited on November 13, 1998 as its cash deposit under O.R. 1604701.
>
> SO ORDERED.[19]

Petitioner elevated the case to the CA, but its appeal was dismissed on October 24, 2005. The RTC Decision was affirmed except for the award of attorney's fees, which was deleted for lack of basis. On July 18, 2006, petitioner's motion for reconsideration was also denied; hence, this petition.

The petition lacks merit.

While it has been ruled that the notices and publication, as well as the legal requirements for a tax delinquency sale under Presidential

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[17] Records, p. 313.

[18] *Id.* at 325.

[19] *Id.* at 676. (Emphasis in the original.)

Decree No. 464 (otherwise known as the Real Property Tax Code),[20] are mandatory and that failure to comply therewith can invalidate the sale in view of the requirements of due process, We have equally held that the claim of lack of notice is a factual question.[21] In a petition for review, the Court can only pass upon questions of law; it is not a trier of facts and will not inquire into and review the evidence presented by the contending parties during the trial and relied upon by the lower courts to support their findings.[22] The issues raised in this petition undeniably involve only questions of fact. On this ground alone, it should be dismissed outright.

Even if We dig deeper and scrutinize the entire case records, the same conclusion would be arrived at. Indeed, petitioner utterly failed to present preponderant evidence to support its allegations that the auction sale of the subject properties due to tax delinquency was attended by irregularities. The two witnesses it presented are neither competent nor convincing to attest with reasonable certainty that respondents failed to observe the procedural requirements of PD 464.[23] The Court is, thus,

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[20] Took effect on June 1, 1974 (See *Meralco Securities Industrial Corporation v. Central Board of Assessment Appeals, et al.*, 199 Phil. 453, 458 [1982] and *De Asis v. Intermediate Appellate Court*, 251 Phil. 294, 305 [1989]) but was later on superseded by R.A. No. 7160 or the Local Government Code of 1991, which took effect on January 1, 1992 (See *Cagayan Electric Power and Light Co., Inc. v. City of Cagayan De Oro*, G.R. No. 191761, November 14, 2012 and *Moday v. CA*, 335 Phil. 1057, 1063 [1997]).

[21] *De Knecht v. CA*, 352 Phil. 833, 847 (1998). See also *Aquino v. Quezon City*, 529 Phil. 486, 500 (2006); *Talusan v. Tayag*, 408 Phil. 373, 387 (2001); and *Pecson v. Court of Appeals*, G.R. No. 105360, May 25, 1993, 222 SCRA 580, 583.

[22] *Id*.

[23] In particular, Sections 65 and 73 of PD 464 mandate:

Sec. 65. *Notice of delinquency in the payment of the real property tax.* – Upon the real property tax or any installment thereof becoming delinquent, the provincial or city treasurer shall immediately cause notice of the fact to be posted at the main entrance of the provincial building and

satisfied with the factual findings of the trial court, as affirmed by the CA, and sees no reason to disturb the same.

We cannot lend credence to the testimony of Gaudencio P. Juan, petitioner's Forestry and Technical Consultant who claimed

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of all municipal buildings or municipal or city hall and in a public and conspicuous place in each *barrio* of the municipality of the province or city as the case may be. The notice of delinquency shall also be published once a week for three consecutive weeks, in a newspaper of general circulation in the province or city, if any there be, and announced by a crier at the market place for at least three market days.

Such notice shall specify the date upon which tax became delinquent, and shall state that personal property may be seized to effect payment. It shall also state that, at any time, before the seizure of personal property, payment may be made with penalty in accordance with the next following section, and further, that unless the tax and penalties be paid before the expiration of the year for which the tax is due, or the tax shall have been judicially set aside, the entire delinquent real property will be sold at public auction, and that thereafter the full title to the property will be and remain with the purchaser, subject only to the right of delinquent taxpayer or any other person in his behalf to redeem the sold property within one year from the date of sale.

Sec. 73. *Advertisement of sale of real property at public auction.* – After the expiration of the year for which the tax is due, the provincial or city treasurer shall advertise the sale at public auction of the entire delinquent real property, except real property mentioned in subsection (a) of Section forty hereof, to satisfy all the taxes and penalties due and the costs of sale. Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and of all municipal buildings in the province, or at the main entrance of the city or municipal hall in the case of cities, and in a public and conspicuous place in *barrio* or district wherein the property is situated, in English, Spanish and the local dialect commonly used, and by announcement at least three market days at the market by crier, and, in the discretion of the provincial or city treasurer, by publication once a week for three consecutive weeks in a newspaper of general circulation published in the province or city.

The notice, publication, and announcement by crier shall state the amount of the taxes, penalties and costs of sale; the date, hour, and place of sale, the name of the taxpayer against whom the tax was assessed; and the kind or nature of property and, if land, its approximate areas, lot number, and location stating the street and block number, district or *barrio*, municipality

to have been an employee since 1964,[24] that no notice of tax delinquency, demand for tax payment or collection notice was received and that there was no publication and posting of notice of sale held. According to him, his duties and responsibilities include: bringing out some technical matters to the company (*e.g.*, use of grazing lands) and preparing plans for implementation by the company (*e.g.*, occupation of the area, the conversion of the area for pasture purposes);[25] land and boundary disputes between petitioner and owners of adjoining areas;[26] planning some other plans for the implementation in the area like reforestation and other forestry cases;[27] and planning preparation of reports, uses of the land for forestry and agricultural purposes.[28] These, however, have nothing to do with the duty of ensuring the prompt and timely settlement of petitioner's realty taxes or of making any representation, for or in behalf of petitioner, with respondents in connection thereto. In fact, Juan categorically admitted that he is not the custodian of petitioner's corporate records:

ATTY. BANZON:

Q: It is not among your duties to keep records on file?
A: No, sir.

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and the province or city where the property to be sold is situated. Copy of the notice shall forthwith be sent either by registered mail or by messenger, or through the *barrio* captain, to the delinquent taxpayer, at his address as shown in the tax rolls or property tax record cards of the municipality or city where the property is located, or at his residence, if known to said treasurer or *barrio* captain: Provided, however, That a return of the proof of service under oath shall be filed by the person making the service with the provincial or city treasurer concerned.

[24] TSN, June 4, 2001, pp. 8, 10; TSN, July 9, 2001, p. 2.

[25] *Id.* at 8; *Id.* at 4.

[26] *Id.* at 8-9; *Id.* at 5-6.

[27] TSN, July 9, 2001, pp. 6-7.

[28] *Id.* at 7.

Q: Whose duties is it to keep in custody the records of the corporation?
A: Our records department, sir.

Q: Who heads the records department?
A: It is now Gil Herpe, sir.

Q: When did Mr. Herpe assume his position as the custodian of the corporation?
A: From 1989, sir.
Q: Up to the present?
A: Yes, sir.[29]

Same thing can be said of Atty. Domingo Lalaquit, the second and last witness who professed to be the legal counsel of petitioner since 1973. He noted that he handled petitioner's legal problems only when referred to him by Mr. Valeriano Bueno, then (but now deceased) President of petitioner.[30] With respect to the subject properties, at the time the matter was referred to him, he found out that these were already sold at public auction.[31] There is no showing, based on his own testimony, that he was involved in taking care of the legal concerns of the subject properties before or during its tax sale. No wonder, he is not aware of and did not receive any notices of assessment or tax delinquency from respondent Province for and in behalf of petitioner.

The Court cannot simply rely on the representation of Juan and Atty. Lalaquit that there was no notice of assessment and/or demand for payment of tax delinquency made by respondents because it was what Mr. Bueno told them so in a "conversation."[32] Conformably with the hearsay rule,[33] the trial court correctly

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[29] *Id.* at 8-9. (Emphasis ours.)

[30] TSN, August 27, 2001, p. 3.

[31] *Id.* at 4.

[32] TSN, June 4, 2001, pp. 10-11; TSN, August 27, 2001, p. 8.

[33] Rules of Court, Rule 130, Sec. 36.

allowed the questions propounded by petitioner's counsel to Juan and Atty. Lalaquit but only insofar as they testify that a "conversation" took place and not necessarily admitting as true the alleged utterance of Mr. Bueno.

Neither can We bank on Juan's mere assumption and speculation nor on his inconsistency, if not confused, testimony:

Q: When you said that the corporation was not notified by the Provincial Treasurer you are assuming that must have been so because you could not find any record of any notice?
A: I have not seen any notice, sir.

Q: And so you presumed that there must have been no notice?
A: Precisely, sir.

Q: When you said ["]precisely[,"] you mean ["]yes["]?
A: Yes, sir.

Q: In the same manner that when you said that you have not received any notice of assessment you surmised that there must have been no or you have no record of notice of assessment?

x x x x

That's why you assumed that there was no assessment?
A: Yes, sir.

Q: In the same manner when you [testified] that there was no demand made by the Provincial Treasurer you, according to you[,] you have not received any, you assumed that there was no demand because according to you all records were lost?
A: Yes, sir.

Q: When you stated that there was no levy, distraint, you have to give the same reason because that is your assumption and opinion on your part because you have no record of the levy?
A: We have not seen that, sir.

Q: You have not seen because according to you all records of the corporation were lost?
A: Not exactly[,] it must have been kept in the office, sir, but I have not noticed.

Q: What do you mean that you have no notice? In other words there must have been records but you have no notice?
A: Yes, sir.[34]

x x x x

ATTY. BANZON:

Q: x x x Why do you have to ask Mr. Bueno regarding the assessment?
A: Because he is concerned about the property, sir.

Q: But, you were the one who asked[,] it is not Mr. Bueno?
A: No, sir I did not ask Mr. Bueno.

Q: In your testimony of June 4 of this year the question asked of you was ["]did you not ask the president if there was a notice of assessment[?"] and your answer was ["yes, sir."]. Do you recall that you have asked that question and you made that answer?
A: Yes, sir.

Q: So, you asked Mr. Bueno?
A: No, sir I did not ask Mr. Bueno. [He] was the one [who probably] told me, sir.

Q: So, your answer to the question is not correct?
A: I think so, sir.

Q: Do you recall of any other question which you answered is not correct *(sic)*?
A: No more, sir.

Q: All are correct?
A: Maybe, sir.

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[34] TSN, August 10, 2001, pp. 3-5. (Emphasis ours.)

Q: When you said "maybe", you are not sure that your answer is not correct?
A: Specifically yes I said maybe.

Q: Do you know the meaning of ["]maybe["]?
A: Not sure, sir.

Q: When you said ["]maybe["], you are not sure that your other previous answers were correct?
A: Yes, sir.[35]

Reading through the transcript of stenographic notes unveils two likely scenarios that could have actually transpired in this case: either the notices sent by respondents were lost by petitioner, or the same were sent to but not received by petitioner without the fault of respondents. In both instances, We cannot invalidate the public auction or nullify the consolidation and transfer of title in favor of respondent Province.

Similar to what happened on its copy of Certificate of Filing of Amended Articles of Incorporation and Certificate of Filing of By-laws, Juan confessed that the notices sent by respondent Province were probably one of those corporate documents lost due to the "several" transfer of petitioner's office. During his cross-examination, he answered as follows:

Q: Why do you have to secure from the SEC[?] why you do not ask your *(sic)* secretary of the corporation who is the legal custodian of this corporation?
A: The papers could no longer be located after we transferred office several times, sir.

Q: What other papers that you cannot locate?

x x x x

A: There are other titles and documents that could not be located so we requested for certified true copy of these documents, sir.

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[35] TSN, July 9, 2001, pp. 12-13. (Emphasis ours.)

Q: And these papers may include notices which must have been sent to Valbueco regarding this property from the province of Bataan?
A: Yes, sir.

Q: And this may *(sic)* among those lost of the notices of assessment or levy?
A: We have not seen those documents, sir.

Q: You have not seen those documents because this *(sic)* was *(sic)* among those lost in your records?
A: Maybe, sir.

Q: The reason why you stated that you have not seen any of the documents coming from the Province of Bataan in your files?
A: Yes, sir.[36]

The testimony of Atty. Lalaquit also shows that petitioner changed its office address in 1975 without even informing respondent Province:

CROSS EXAM. BY ATTY. BANZON:

x x x x

Q: When you stated that . . . by the way, Mr. Bueno used to hold office at 7th Floor of Bank of Philippine Island *(sic)* Building at Ayala Avenue in Makati?
A: Yes, sir.

Q: That is his usual address?
A: From 1973 up to 1974 sir.

Q: And did you notify the treasurer's office regarding the change of address?
A: I did not sir.

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[36] TSN, July 9, 2001, pp. 10-11. (Emphasis ours.)

Q: At any rate, that address appears or appeared in all certificates of title involving properties in Bagac which is the subject matter of this action?
A: I am not very sure sir.

Q: And these are evident in the annexes of the complaint, is it not? And Valbueco Incorporporation *(sic)* and I quote, Valbueco Incorporation organized and existing under the laws of Republic of the Philippines with office at 7th Floor, Bank of Philippine Island *(sic)*, Building Ayala Avenue, Makati, Rizal?
A: If that appears in the document sir.

Q: There is also an office at the 4th Floor, ICOPHIL Bldg, 1081 Pedro Gil, Paco, Manila?
A: Yes, sir.

Q: That is for Valbueco Industrial and Development Corporation?
A: The group of companies of Mr. Bueno holds office in the whole building of ICOPHIL, sir.[37]

Under Section 73[38] of PD 464 –

x x x notices of the sale at public auction may be sent to the delinquent taxpayer, either (i) at the address as shown in the tax rolls or property tax record cards of the municipality or city where the property is located or (ii) at his residence, if known to such treasurer or barrio captain. Plainly, Section 73 gives the treasurer the option of where to send the notice of sale. In giving the treasurer the option, nowhere in the wordings is there an indication of a requirement that notice must actually be received by the intended recipient. Compliance by the treasurer is limited to strictly following the provisions of the statute: he may send it at the address of the delinquent taxpayer as shown in the tax rolls or tax records or to the residence if known by him or the barrio captain.[39]

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[37] TSN, September 10, 2001, pp. 2-3. (Emphasis ours.)

[38] *Supra* note 23.

[39] *Aquino v. Quezon City*, 529 Phil. 486, 501 (2006).

In this case, it is reasonable to deduce that respondent Provincial Treasurer actually sent the notices at the address uniformly indicated in TCT No. 47377, 47378, 47379, 47380, 47381, 47382, 47385 and 47386, as well as in the tax declarations, which is 7th Floor, Bank of P.I. Bldg., Ayala Avenue, Makati, Rizal. The fault herein lies with petitioner, not with respondent Provincial Treasurer. It had a number of years to amend its address and provide a more updated and reliable one. By neglecting to do so, it should be aware of the chances it was taking should notices be sent to it. Respondent Provincial Treasurer cannot be faulted for presumably sending the notices to petitioner's address indicated in the land titles and tax declarations of the subject properties.

The principle We enunciated in *Valencia v. Jimenez*,[40] *Camo v. Riosa Boyco*,[41]and *Requiron v. Sinaban*[42] that there can be no presumption of regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale does not apply in the case at bar. By and large, these cases cited by petitioner involved facts that are way too different from the one found in the instant case. More importantly, in the present case, respondent Province, through its witness, Josephine Espino, unequivocally attested that the procedural requisites mandated by PD 464 were definitely observed. During her presentation, Espino stated that she is a Local Treasury Operation Officer IV of the Provincial Treasurer's Office since March 2000 and that she had previously served as Local Treasury Operations Officer and Local Revenue Collection Officer III of the Provincial Treasurer's Office, being in charge of collecting taxes.[43] Under oath, she declared to have personal knowledge of the fact that notice of tax delinquency was sent by the Provincial Treasurer's Office to petitioner. She could not, however, show any documentary proof mainly because the exclusive folder

[40] 11 Phil. 492, 498-499 (1908).

[41] 29 Phil. 437, 444-445 (1915).

[42] 447 Phil. 33, 46 (2003).

[43] TSN, September 27, 2002, pp. 2-3, 6; TSN, October 25, 2002, p. 2.

of petitioner's properties are now missing despite exercise of all possible means to locate them in other property files.[44] Considering the long time that elapsed between the public sale held sometime in 1987 or 1988 and the presentation of her testimony in 2002, it is also understandable that Espino could no longer remember the minute details surrounding the notices, publication, and posting that respondent Provincial Treasurer observed relative to the auction sale of the subject properties.

The Court, therefore, affirms the RTC's opinion that petitioner was not able to establish its cause of action for its failure to submit convincing evidence to establish a case and the CA's position that it must rely on the strength of its evidence and not on the weakness of respondents' claim. Indeed, in *Sapu-an v. Court of Appeals*,[45] We held:

> The general rule in civil cases is that the party having the burden of proof must establish his case by a preponderance of evidence. By "preponderance of evidence" is meant that the evidence as a whole adduced by one side is superior to that of the other.
>
> In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts on which they are testifying, the nature of such facts, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility as far as the same may legitimately appear at the trial. The court may also consider the number of witnesses, although the preponderance is not necessarily with the greatest number.
>
> It is settled that matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him.[46]

What petitioner has accomplished is only to cast doubts by capitalizing on the absence of documentary evidence on the

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

[45] G.R. No. 91869, October 19, 1992, 214 SCRA 701.

[46] *Sapu-an v. Court of Appeals, supra* note 45, at 706.

part of respondents. While such approach would succeed if carried out by the accused in criminal cases, plaintiffs in civil cases need to do much more to overturn findings of fact and credibility by the trial court, especially when the same had been affirmed by the CA. It must be stressed that overturning judgments in civil cases should be based on preponderance of evidence, and with the further qualification that, when the scales shall stand upon an equipoise, the court should find for the defendant.[47] The "equiponderance of evidence" rule states that when the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.[48]Under this principle, the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim; even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.[49]

WHEREFORE, the petition is **DENIED**. The assailed October 24, 2005 Decision and July 18, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 81191, which sustained the August 19, 2003 Decision of the Reional Trial Court, Branch 1, Balanga City, Bataan dismissing the case are hereby **AFFIRMED**.

SO ORDERED.

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

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[47] *Gomez v. Gomez-Samson*, 543 Phil. 436, 464 (2007).

[48] *Sapu-an v. Court of Appeals, supra* note 45, at 705, citing Moran, *Comments on the Rules of Court*, 1980 ed., Vol. 6, p. 134. See also *Spouses Azana v. Lumbo*, 547 Phil. 598, 602 (2007).

[49] *Id.* at 705-706, citing Moran, *Comments on the Rules of Court*, 1980 ed., Vol. 6, p. 135. See also *Spouses Azana v. Lumbo*, 547 Phil. 598, 602 (2007).

SECOND DIVISION

[G.R. No. 175900. June 10, 2013]

KAPISANANG PANGKAUNLARAN NG KABABAIHANG POTRERO, INC. and MILAGROS H. REYES, *petitioners, vs.* **REMEDIOS BARRENO, LILIBETH AMETIN, DRANREV F. NONAY, FREDERICK D. DIONISIO and MARITES CASIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT.— Forum shopping exists "when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court." What is truly important to consider in determining whether it exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by different *fora* upon the same issues.

2. ID.; ID.; ID.; NOT APPRECIATED ABSENT IDENTIY OF CAUSES OF ACTION; CASE PENDING IN DOLE INVOLVED VIOLATIONS OF LABOR STANDARDS WHILE CASE PENDING IN NLRC INVOLVED ILLEGAL DISMISSAL.— [T]here is no identity of causes of action between the cases pending with the DOLE and the NLRC. The DOLE CASE involved violations of labor standard provisions where an employer-employee relationship exists. On the other hand, the NLRC CASE questioned the propriety of respondents' dismissal. No less than the Labor Code provides for these two (2) separate remedies for distinct causes of action. More importantly, at the time the DOLE CASE was initiated, respondents' only cause of action was petitioners' violation of labor standard laws which falls within the jurisdiction of the DOLE. It was only after the same was filed that respondents were dismissed from employment, prompting the filing of the

NLRC CASE, which is within the mantle of the NLRC's jurisdiction. Under the foregoing circumstances, respondents had no choice but to avail of different *fora*.

APPEARANCES OF COUNSEL

Anthony R. Inventado for petitioners.
Frederico P. Quevedo for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the July 31, 2006 Decision[2] and December 18, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 81585, which affirmed with modification the June 30, 2003 Decision[4] of the National Labor Relations Commission (NLRC), finding respondents herein to have committed forum shopping but ordered the remand of NLRC NCR Case Nos. 00-10-05213-2001 and 00-10-05526-2001 to the NLRC for further proceedings on the matters of illegal dismissal, separation pay, damages, and attorney's fees.

The Facts

Petitioner Kapisanang Pangkaunlaran ng Kababaihang Potrero, Inc. (KPKPI) is a non-stock, non-profit, social service oriented corporation. Sometime in November 1997, the Technology and Livelihood Resource Center (TLRC) tapped KPKPI to participate in its microlending program and was granted

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

[2] *Id.* at 15-21. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Monina Arevalo Zenarosa and Ramon M. Bato, Jr., concurring.

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

[4] *Id.* at 24-28. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring.

a loan for microfinance or re-lending for the poor. As such, KPKPI hired respondents for its KPKPI Mile Program as follows:

Name	Date Hired	Position
1. Remedios Barreno	November, 1997	Training Officer
2. Lilibeth Ametin	January, 1999	Coordinator
3. Drandrev F. Nonay	June, 1997	Encoder
4. Frederick Dionisio	February 15, 1997	Officer-In-Charge
5. Marites Casio	June 26, 2001	CollectorMotivator[5]

On September 20, 2001, respondents filed a Complaint[6] before the Department of Labor and Employment-National Capital Region (DOLE-NCR) for underpayment of wages, non-payment of labor standard benefits, namely, legal/special holiday pay, 13th month pay and service incentive leave pay, and non-coverage with the Social Security System and Home Development Mutual Fund against KPKPI and its Program Manager, petitioner Milagros H. Reyes (Reyes), docketed as LSED-0109-IS-029 (DOLE CASE). During its pendency, however, respondent Barreno was served a memo signed by petitioner Reyes terminating her from employment effective October 1, 2001. On even date, respondent Barreno filed another Complaint[7] against petitioners, this time for illegal dismissal with prayer for reinstatement and payment of their money claims before the NLRC, docketed as NLRC-NCR North Sector Case No. 00-10-05213-2001.

Respondents Ametin, Nonay, Dionisio and Casio were also verbally informed by petitioner Reyes of their termination effective October 9, 2001, but they still reported for work until disallowed on October 15, 2001. This prompted the filing of their Complaint[8] dated October 16, 2001 with the NLRC, docketed as NLRC-NCR North Sector Case No. 10-05526-2001, which was subsequently consolidated with Barreno's Case No. 00-10-053-5213-2001 (NLRC CASE).

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[5] CA *rollo*, pp. 24-26.

[6] *Id.* at 60.

[7] *Id.* at 62.

[8] *Id.* at 63-64.

In petitioners' Position Paper[9] dated November 29, 2001, they claimed that respondents were not employees but mere volunteers who received allowances and reimbursements for their expenses. Hence, they are not entitled to recover their money claims. Further, petitioners averred that respondents committed forum shopping when they filed the NLRC CASE during the pendency of the DOLE CASE.

In respondents' Reply[10] dated December 19, 2001, they insisted that they were employees under the control of KPKPI, submitting in support thereof a copy of an office memorandum issued by petitioner Reyes respecting the rules on absences of all its employees. Respondents likewise denied having committed forum shopping, explaining that the DOLE CASE referred only to money claims and that it had already been withdrawn while the NLRC CASE involves the complaint for illegal dismissal with money claims.

Meanwhile, respondents filed a Motion to Withdraw Complaint[11] dated December 18, 2001 with regard to the DOLE CASE after having instituted the NLRC CASE. Records, however, show that the said motion was left unresolved.

The Ruling of the Labor Arbiter

In its Decision[12] dated June 28, 2002, the Labor Arbiter (LA) found no forum shopping, holding that the subsequent dismissal of the respondents affected the jurisdiction of the DOLE-NCR since illegal dismissal cases are beyond the latter's jurisdiction. Necessarily therefore, the case for money claims pending before the DOLE-NCR had to be consolidated with the illegal dismissal case before the NLRC.

Further, the LA found that respondents were employees of KPKPI and not mere volunteer members. Consequently, for failure to justify their dismissal and to observe the twin notice requirement

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[9] *Id.* at 80-84.

[10] *Id.* at 87-89.

[11] *Id.* at 85-86.

[12] *Rollo*, pp. 50-67. Penned by Labor Arbiter Melquiades Sol D. Del Rosario.

under the Labor Code, the LA held petitioners jointly and severally liable to pay respondents their backwages reckoned from the date of their dismissal on October 1, 2001 for respondent Barreno and October 9, 2001 for the remaining respondents which, as of June 1, 2002, had already accumulated in the amount of ₱54,639.00 each as well as separation pay for one (1) month for every year of service. Respondents were also awarded their claim for underpayment of their salaries limited to a period of three (3) years reckoned from the filing of their complaints, and attorney's fees equivalent to ten percent (10%) of the total monetary award. The rest of the money claims were denied for lack of factual and legal bases.

Aggrieved, petitioners filed a Memorandum of Appeal[13] dated September 5, 2002 with the NLRC and posted a surety bond in the amount of ₱559,000.00.[14] In turn, respondents filed their Opposition with Motion to Dismiss[15] dated November 20, 2002 questioning the sufficiency of the bond posted which, as required, was not equivalent to the total monetary award of ₱832,195.00 as computed by the NLRC's Computation Unit, exclusive of ten percent (10%) attorney's fees. Accordingly, respondents prayed for the dismissal of the appeal for failure to perfect the same.

The Ruling of the NLRC

In its Decision[16] dated June 30, 2003, the NLRC set aside the LA's ruling and dismissed respondents' complaints. Contrary to the LA's findings, it found respondents guilty of forum shopping in filing the same complaint against petitioners in two (2) *fora*, namely the DOLE and the NLRC.

Respondents filed a Motion for Reconsideration[17] dated August 19, 2003 questioning the aforementioned decision but the same was denied in the NLRC's Resolution[18] dated October 30, 2003.

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[13] CA *rollo*, pp. 39-43.
[14] *Id.* at 121.
[15] *Id.* at 113-120.
[16] *Rollo*, pp. 24-28.
[17] CA *rollo*, pp. 49-55.
[18] *Id.* at 58-59.

Ruling of the CA

In its Decision[19] dated July 31, 2006, the CA found no grave abuse of discretion to have been committed by the NLRC in giving due course to the appeal and in setting aside the LA's ruling. The CA agreed with the NLRC that respondents committed forum shopping in seeking their money claims before the DOLE and the NLRC. Nonetheless, it declared that the ends of justice would be better served if respondents would be given the opportunity to be heard on their complaint for illegal dismissal.

Anent the issue on insufficiency of the appeal bond, the CA accorded a liberal interpretation to the Labor Code provisions relating thereto and thus, deemed the same as not fatal. Accordingly, the CA ordered the remand of the case to the NLRC for further proceedings on the matter of illegal dismissal, separation pay, damages, and attorney's fees.

Both parties moved for reconsideration which the CA denied in its Resolution[20] dated December 18, 2006. Hence, petitioners KPKPI and Reyes filed the instant petition.

Issue Before the Court

The core issue raised for the Court's resolution is whether the CA erred in ordering the reinstatement and remand of the NLRC CASE to the NLRC despite its finding of forum shopping.

The Court's Ruling

The petition is bereft of merit.

At the outset, the Court finds that contrary to the findings of both the NLRC and the CA, respondents are not guilty of forum shopping. Thus, considering that the NLRC did not resolve the appeal on the merits but instead dismissed the case based on a finding of forum shopping, the Court concurs in the result arrived at by the CA in remanding the cases for illegal dismissal to the NLRC for resolution of the appeal.

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[19] *Rollo,* pp. 15-21.

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

Forum shopping exists "when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court."[21] What is truly important to consider in determining whether it exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by different *fora* upon the same issues.[22]

Applying the foregoing principles to the case at bar, respondents did not commit forum shopping. Clearly, there is no identity of causes of action between the cases pending with the DOLE and the NLRC. The DOLE CASE involved violations of labor standard provisions where an employer-employee relationship exists. On the other hand, the NLRC CASE questioned the propriety of respondents' dismissal. No less than the Labor Code provides for these two (2) separate remedies for distinct causes of action. More importantly, at the time the DOLE CASE was initiated, respondents' only cause of action was petitioners' violation of labor standard laws which falls within the jurisdiction of the DOLE. It was only after the same was filed that respondents were dismissed from employment, prompting the filing of the NLRC CASE, which is within the mantle of the NLRC's jurisdiction. Under the foregoing circumstances, respondents had no choice but to avail of different *fora*.

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[21] *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 734, citing *Maricalum Mining Corp. v. Brion*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 105-106.

[22] *Municipality of Taguig v. CA*, G.R. No. 142619, September 13, 2005, 469 SCRA 588, 595. (Citations omitted)

Nevertheless, records reveal that respondents withdrew the DOLE CASE after they had instituted the NLRC CASE. Pertinent on this point is the Court's pronouncement in *Consolidated Broadcasting System v. Oberio*,[23] *to wit*:

> Under Article 217 of the Labor Code, termination cases fall under the jurisdiction of Labor Arbiters. Whereas, Article 128 of the same Code vests the Secretary of Labor or his duly authorized representatives with the power to inspect the employer's records to determine and compel compliance with labor standard laws. The exercise of the said power by the Secretary or his duly authorized representatives is exclusive to cases where [the] employer-employee relationship still exits. **Thus, in cases where the complaint for violation of labor standard laws preceded the termination of the employee and the filing of the illegal dismissal case, it would not be in consonance with justice to charge the complainants with engaging in forum shopping when the remedy available to them at the time their causes of action arose was to file separate cases before different *fora***. x x x (Emphasis and underscoring supplied)

WHEREFORE, premises considered, the July 31, 2006 Decision and December 18, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 81585 are hereby **AFFIRMED**, with modification finding respondents not guilty of committing forum shopping. The National Labor Relations Commission is **DIRECTED** to resolve the appeal with reasonable dispatch.

SO ORDERED.

Brion (Acting Chairperson),[*] *del Castillo, Perez,* and *Leonen,*[**] *JJ.,* concur.

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[23] G.R. No. 168424, June 8, 2007, 524 SCRA 365, 372-373.

[*] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

SECOND DIVISION

[G.R. No. 181195. June 10, 2013]

FREDERICK JAMES C. ORAIS, *petitioner, vs.* **DR. AMELIA C. ALMIRANTE,** *respondent.*

SYLLABUS

POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DECISION; FINAL, EXECUTORY AND UNAPPEALABLE WHEN THE PERSON CHARGED IS ABSOLVED OR CONVICTED WITH MINOR PENALTY IMPOSED; EXCEPTION IN CASE OF GRAVE ABUSE OF DISCRETION.— The Court agrees with the CA that the instant Petition presents no opportunity to depart from past pronouncements – consistent with law and the rules of procedure of the Office of the Ombudsman – that where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable. Indeed, in one case, the Court went so far as to declare that in such cases, "it follows that the [Court of Appeals] has no appellate jurisdiction to review, rectify or reverse" the order or decision of the Ombudsman. But of course, the above principles are subject to the rule that decisions of administrative agencies which are declared final and unappealable by law are still "subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law[, or w]hen such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings."

APPEARANCES OF COUNSEL

Muntuerto Miel Duyong Co Law Offices for petitioner.
Antonio A. Almirante, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Where the respondent is absolved of the charge, or in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable. Indeed, in one case, the Court went so far as to declare that in such cases, the Court of Appeals (CA) had no appellate jurisdiction to review, rectify or reverse the order or decision of the Ombudsman.

This Petition for Review on *Certiorari*[1] seeks a review and setting aside of the CA's August 17, 2006 Decision,[2] as well as its December 10, 2007 Resolution[3] in CA-G.R. SP No. 82610, entitled "*Frederick James C. Orais, petitioner, versus Dr. Amelia C. Almirante, respondent.*"

Factual Antecedents

In 2003, petitioner Frederick James C. Orais, Veterinary Quarantine Inspector-Seaport of the Veterinary Quarantine Service-Seaport, Region VII Office of the Department of Agriculture (DA), filed with the Office of the Ombudsman a Complaint[4] for corruption and grave misconduct against his superior, herein respondent Dr. Amelia C. Almirante, Veterinary Quarantine Officer-Seaport. Docketed as OMB-V-A-03-0184-D, petitioner accused respondent of committing the following anomalies:

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[1] *Rollo*, pp. 12-28.

[2] *Id.* at 29-37; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[3] *Id.* at 38-39; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Priscilla Baltazar-Padilla and Francisco P. Acosta.

[4] *Id.* at 56-57.

1. Ordering, directing, persuading and inducing Veterinary Quarantine Inspector Luz Tabasa to receive money in check or in cash, from importers of meat products and other imported items for the preparation and issuance of Clearance Certificate[s] without [issuing any official receipt therefor];

2. Directly or indirectly request[ing] or receiv[ing] money in check or in cash [in the amount of ₱600.00] from importers of meat products and other goods allegedly as inspection fee without issuing official receipts therefor;

3. Knowingly approving [and/or] granting permit[,] authority or privilege to private or contractual workers of the office to perform some veterinary quarantine functions, like allowing them to board and inspect domestic vessels carrying quarantine products or items, conduct quarantine inspections on imported items in ports or inland quarantine sites, issue quarantine permits, etc.;

4. Knowingly approving and granting monetary considerations to private or contractual workers whom x x x respondent authorized or permitted to perform some veterinary quarantine services; and

5. Lack of *delicadeza* or lack of professionalism, justness and sincerity; knowingly allowing a situation [where she and her husband Oscar Almirante work in the same office, with the latter as her subordinate, thus creating doubt or suspicion that she is granting favors or undue advantage to the latter in the assignment of quarantine inspections].[5]

In support of his Complaint, petitioner attached the affidavits of Luz Tabasa (Tabasa), Agriculturist II – Veterinary Quarantine Inspector; Dr. Verna Agriam (Agriam), Bohol Veterinary Quarantine Officer; and Alfredo Barbon (Barbon), Janitor-Utility employed by Perfect Clean General Services, janitorial and maintenance contractor.[6]

In her March 27, 2003 Affidavit,[7] Tabasa alleged that private contractual employees including Barbon, who are not DA

[5] *Id.* at 30.

[6] *Id.* at 58-59, 64-65, 67-68.

[7] *Id.* at 58-59.

employees, were assigned by respondent to perform quarantine functions like inspection of imported cargoes in cold storages/ warehouses/processing plants and the preparation and issuance of clearance certificates, commodity clearance for export, and shipping permits; that in the preparation and issuance of clearance certificates, no official receipt is issued but the money paid therefor is remitted to respondent, who would only issue an acknowledgment receipt signed by her; and that for every inspection she made, she was given ₱250.00 by respondent.

Agriam, on the other hand, alleged in her April 2, 2003 Affidavit[8] that respondent defied Special Orders of the Regional Director of DA Region 7 which assigned her (Agriam) to the Veterinary Quarantine Services at Seaport, refusing to honor said orders of assignment; that instead, she was assigned at DA Region 7 Regulatory Division, Cebu City; that respondent allowed and authorized janitors and contractual employees employed by a private manpower agency to perform quarantine functions like issuance of quarantine permits, inspection of domestic vessels, and veterinary inspections, despite an August 9, 2002 Memorandum[9] issued to her by the Regional Executive Director which ordered her to desist from the practice.

Barbon's March 27, 2003 Affidavit[10] stated that he was employed by Perfect Clean General Services, manpower contractor; that apart from his actual duty as janitor, respondent likewise authorized him to perform quarantine services, namely: to inspect imported products or items at quarantine sites owned by companies such as Tennessee Feedmill, Popular Feedmill, and Upland Feedmill; to board and inspect local/domestic vessels for quarantine services; to disinfect chicken dung of some clients; and to issue quarantine domestic shipping permits. Barbon added that for every inspection he made, respondent gave him ₱100.00, while respondent kept the additional ₱500.00 as her share; that

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

[9] *Id.* at 66.

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

he had been performing quarantine services until the latter part of 2002; and that he performed overtime work but was not given overtime pay therefor.

In her June 16, 2003 Counter-Affidavit,[11] respondent claimed that there was no truth to the accusations against her; that all payments were received by the DA Regulatory Division through its duly authorized Collection Officers who issue the proper official receipts therefor, pursuant to Orders of Payment issued by respondent; that all Clearance Certificates were issued by the Veterinary Quarantine Office, and not by respondent; that the payments made for which acknowledgment receipts were issued do not cover Clearance Certificates, but reimbursements/payments made to quarantine personnel for their overtime services, transportation, meals, lodging and other expenses incurred in the examination and inspection of imported animal meat/by-products, which is authorized under DA Administrative Order No. 22, series of 1993[12] (DAO 22) issued by then Acting Secretary of Agriculture Joemari D. Gerochi; that petitioner's accusation that respondent received money from importers of meat products as "inspection fee" without issuing official receipts is untrue, and is not supported by specifics as to which importers, transactions, or dates are covered, and the exact amounts she allegedly received; that if indeed importers were aggrieved or victimized, said importers would have complained or come forward, yet none has come out to complain or act as petitioner's witness; that the amounts given to Tabasa and Barbon as alleged in their affidavits were duly authorized payments pursuant to DAO 22 for their transportation, meals, lodging, etc., and were not bribes or donations from respondent; that petitioner and Tabasa were motivated by hatred and resentment for respondent's refusal to sign their respective Daily Time Records (DTRs) on account of their multiple absences and irregular reporting to work, which have become constant sources of disagreement and conflict between them.[13]

[11] *Id.* at 69-73.
[12] *Id.* at 157-158.
[13] *Id.* at 78-86.

In a June 29, 2003 Reply-Affidavit,[14] petitioner submitted the respective Affidavits[15] of Rogelio C. Mainit (Mainit), DA utility driver, and Danilo E. Tidoso (Tidoso), representative of Gusay Customs Brokerage. Mainit merely alleged that he would serve as temporary/occasional driver to respondent and other quarantine personnel. Tidoso, on the other hand, claimed that he acted as customs broker to two importers of feed additives and supplements, and that for the inspection and clearance of these clients' imports, he would pay a flat rate of ₱700.00 per vessel to the Veterinary Quarantine Office, after which an acknowledgment receipt is issued therefor. To this, respondent explained that DAO 22 authorized the payment/reimbursement of transportation and other allowable expenses, including overtime, and the rate is agreed upon by her office and the importers' representatives or brokers, who find it difficult to liquidate their cash advances if payment thereof is made on contractual basis, and regardless of distance traveled by the inspector, volume of imported items, or whether inspection/service was carried out during regular working day, holiday or after office hours upon the request of the importer concerned.[16]

On July 18, 2003, petitioner filed a Supplemental Affidavit accusing respondent of refusal to obey office memoranda and other Special Orders issued by her superiors.[17] To this, respondent submitted her Supplemental Counter-Affidavit,[18] arguing that the flat rate payments for overtime work of quarantine personnel and reimbursements of transportation, meal and lodging expenses were the result of an agreement arrived at between her office and the representatives/brokers of the concerned importers who found it difficult to liquidate their cash advances if payments were instead made on a contractual basis.

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

[15] *Id.* at 89-91.

[16] *Id.* at 128-129.

[17] *Id.* at 129-131.

[18] *Id.* at 176-177.

Ruling of the Office of the Ombudsman

On July 31, 2003, the Office of the Ombudsman rendered its Decision[19] in favor of respondent, as follows:

> WHEREFORE, premises considered, the above entitled case filed against respondent **DR. AMELIA C. ALMIRANTE**, Veterinary Quarantine Officer-Seaport, Department of Agriculture, Regional Office No. 7, Veterinary Quarantine Service Seaport, Port of Cebu, Cebu City, is ***DISMISSED*** for lack of substantial basis.
>
> SO DECIDED.[20]

The Ombudsman held that respondent's acts were in accordance with law and the regulations of her office. There was no irregularity covering the issuance of Clearance Certificates; nor was it irregular to issue acknowledgment receipts covering payments for overtime and reimbursements of transportation, meal and lodging expenses incurred by quarantine personnel during the course of each quarantine inspection. These amounts were given directly to quarantine personnel who incurred the expenses per DAO 22; thus, no government official receipt is necessary as the proceeds do not go to the government coffers. Moreover, the flat rate for these payments/reimbursements was agreed upon jointly by the DA's Veterinary Quarantine Services-Seaport and the representatives/brokers of the importers concerned. The Ombudsman nevertheless observed that this procedure of payment/reimbursement as authorized under DAO 22 is susceptible to graft and corruption, as there is no transparency and the money collected is not subjected to audit. Still, it held that petitioner has not shown that the amounts received by respondent's office relative to this reimbursement scheme was pocketed by respondent; on the contrary, his witnesses attested that they received from respondent their respective overtime pay and reimbursements for incurred expenses during their quarantine inspections.

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[19] *Id.* at 125-133.

[20] *Id.* at 133. Emphases in the original.

As for the charge of assigning contractual employees to perform quarantine services, the Ombudsman held that the matter should have been properly addressed to respondent's superiors, and not the respondent solely, as the matter of assigning, utilizing, or deputizing quarantine personnel is not for the sole account of respondent, but constitutes a Department-wide responsibility.

Regarding the petitioner's accusations of violation of office memoranda and other Special Orders issued by the DA, the Ombudsman dismissed them as trivial, noting that these accusations relate to the internal operation and management of the Regional Office, which it could not interfere with lest it be accused of directly running the affairs of the office. It added that the evidence suggests that contrary to petitioner's allegations, respondent did not disobey any of these memoranda and Special Orders.

Finally, the Ombudsman held that as respondent was not actuated by a dishonest purpose, she may not be held liable for grave misconduct.

Petitioner moved for reconsideration,[21] but in a November 4, 2003 Order,[22] the same was denied.

Petitioner thus filed a Petition for *Certiorari*[23] with the CA.

Ruling of the Court of Appeals

On August 17, 2006, the CA issued the assailed Decision dismissing the Petition for lack of merit.

The CA held that decisions of the Ombudsman in cases absolving the respondent of the charge are deemed final and unappealable, pursuant to the Rules of Procedure of the Office of the Ombudsman, specifically Section 7,[24] Rule III of

[21] *Id.* at 102-108.

[22] *Id.* at 134-135.

[23] *Id.* at 109-124.

[24] SECTION 7. Finality and execution of decision.— Where the respondent is absolved of the charge, and in case of conviction where the

Administrative Order No. 7, as amended by Administrative Order No. 17 dated September 15, 2003. The appellate court added that absent compelling reasons, it may not disturb the findings of the Office of the Ombudsman in keeping with the principle of non-interference with the investigatory and prosecutorial powers of the office. Citing *Young v. Ombudsman*,[25] the CA held that practical considerations called for the application of this principle of non-interference, or else the courts will be swamped with petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman or compelling judicial review of the exercise of its otherwise discretionary functions.

Petitioner filed a Motion for Reconsideration,[26] but in the second assailed December 10, 2007 Resolution, the CA denied the same.

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penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from the receipt of the written decision or order denying the motion for reconsideration. (As amended by Adm. Order No. 14, and further amended by A.O. No. 14-A, s. 2000.)

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (The Revised Rules of Court of the Philippines, Central Book Supply, Inc., 2008 Twelfth Edition, pp. 604-605.)

[25] G.R. No. 110736, December 27, 1993, 228 SCRA 718.

[26] *Rollo*, pp. 136-142.

Issues

In this Petition, the following issues are raised:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT SIMPLY CONCURRED WITH THE OFFICE OF THE OMBUDSMAN IN DISMISSING (THE) COMPLAINT BY STATING THAT THE DISMISSAL "WAS DONE IN THE EXERCISE OF ITS INVESTIGATORY AND PROSECUTORY POWERS GRANTED BY LAW" X X X DESPITE KNOWING THE OMBUDSMAN'S FINDINGS (REGARDING) ONE OF THE QUESTIONABLE ACTS OF DR. AMELIA ALMIRANTE – *I.E.* THE ISSUANCE OF "ACKNOWLEDGMENT RECEIPT" – AS A "SYSTEM SUSCEPTIBLE TO GRAFT AND CORRUPTION."

THE HONORABLE COURT OF APPEALS ERRED WHEN IT SIMPLY DISMISSED (THE) PETITION FOR LACK OF MERIT.[27]

Petitioner's Arguments

In his Petition and Reply,[28] petitioner argues that with the finding of the Ombudsman that –

As explained by the respondent in her Supplemental Counter-Affidavit x x x, the flat rate of ₱700.00 was agreed upon between the Veterinary Quarantine Services-Seaport and the representatives or brokers of importers who feel difficult [sic] to liquidate their (representatives/brokers) cash advances from importers if payment is made on contractual basis. Anyway, importers are allowed to protest the billing if they see it did not reflect the actual services rendered by the quarantine personnel x x x.

As observed, this procedure wherein there is no transparency and the money is not subject to audit, creates doubt in the mind of the respondent's subordinates as to the actual amount paid by the importers and exact division/sharing of this amount. Moreover, this system is susceptible to graft and corruption.[29]

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[27] *Id.* at 20. Capitalization supplied.

[28] *Id.* at 235-238.

[29] *Id.* at 132.

there is sufficient basis to indict the respondent administratively. He argues that there are no definite guidelines regarding the collection of this flat rate and the issuance of acknowledgment receipts therefor, which practice, according to him, is "dangerous" and should be stopped.

Respondent's Arguments

In her Comment,[30] respondent argues that the Petition fails to raise questions of law, which thus places the case beyond the Court's power of review. She contends that, apart from the consistent policy of non-intervention with respect to the Office of the Ombudsman's sound exercise of discretion and the performance of its investigatory functions, this Court may not delve into the CA's factual finding that no dishonest motives attended respondent's performance of her duties in her office.

Our Ruling

The Court denies the Petition.

The Court agrees with the CA that the instant Petition presents no opportunity to depart from past pronouncements – consistent with law[31] and the rules of procedure[32] of the Office of the

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[30] *Id.* at 213-226.

[31] REPUBLIC ACT NO. 6770, or the Ombudsman Act of 1989, which provides:

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

x x x x

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

[32] Section 7, Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17 dated September 15, 2003. See Footnote 24.

Ombudsman – that where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable.[33] Indeed, in one case, the Court went so far as to declare that in such cases, "it follows that the [Court of Appeals] has no appellate jurisdiction to review, rectify or reverse"[34] the order or decision of the Ombudsman.

But of course, the above principles are subject to the rule that decisions of administrative agencies which are declared final and unappealable by law are still "subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law[, or w]hen such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings."[35]

However, there is no reason to apply the abovestated exception. The Court notes that the sole basis of the instant Petition rests on the Office of the Ombudsman's observation in its Decision that the practice and procedure for payment and reimbursement of overtime services, transportation, meal, and lodging expenses present an opportunity for graft and corruption and; that the issuance of mere acknowledgment receipts by respondent warrants the filing of charges against her. First of all, this

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[33] *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 431-432; *Office of the Ombudsman (Mindanao) v. Cruzabra*, G.R. No. 183507, February 24, 2010, 613 SCRA 549, 554-555; *Reyes, Jr. v. Belisario*, G.R. No. 154652, August 14, 2009, 596 SCRA 31, 43-45; *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546, 552; *Herrera v. Bohol*, 466 Phil. 905, 910-911 (2004); *Lopez v. Court of Appeals*, 438 Phil. 351, 358-359 (2002).

[34] *Republic v. Bajao*, G.R. No. 160596, March 20, 2009, 582 SCRA 53, 65, citing *Republic v. Francisco*, 539 Phil. 433, 450 (2006).

[35] *Republic v. Francisco, supra* at 450.

argument is flawed; if petitioner's argument is allowed, then charges should just as well be filed against all who are covered by the said practice and procedure, including the petitioner. They are all part of the system covered by DAO 22, which petitioner claims to be a defective system.

Secondly, the presumption of validity attaches to DAO 22. The work of quarantine inspection and providing quarantine services in general requires employees of the DA to be assigned to field work, to perform tasks outside the office where these quarantine personnel are assigned. It is inconceivable that an importer with tons of meat, vegetable or fish products should physically proceed to the DA office with the meat, vegetables or fish in tow just so the quarantine personnel therein could perform a quarantine inspection. DAO 22, which sets the guidelines on overtime service as well as transportation, meal and lodging expenses, and the rates to be charged therefor from importers (or what the administrative order refers to as "parties served") whose imports require on-site quarantine inspection by the DA, answers to the need for quarantine personnel to be mobile and dynamic, yet at minimum expense to the government. What is collected from the parties served goes directly to the quarantine personnel in the form of overtime pay or reimbursements for travel, meal and lodging expenses. There is very little room for allegations of corruption in this regard, contrary to what petitioner believes. All quarantine personnel receive what they deserve, by way of overtime pay and reimbursements for expenses. If they do not, they will naturally complain; and the first to complain should be the petitioner and his witnesses. Yet they have not claimed that they were short-changed for their services.

Thirdly, even if there be truth to petitioner's allegations that the practice could breed corruption, he certainly has not shown how, nor could he attribute the same to respondent, just as the Ombudsman could not.

An apparent reason for issuing acknowledgment receipts, rather than official receipts, with respect to amounts charged

under DAO 22 is that these amounts are not accountable funds which must go to the national coffers; they only cover the cost of the quarantine personnel's time and expenses, and are ultimately distributed to them in the form of overtime pay and reimbursements for expenses incurred during the performance of quarantine services. Besides, DAO 22 does not require the issuance of official receipts; indeed, in this regard it is silent.

Finally, if petitioner believes that DAO 22 is inherently infirm, or that there are irregularities or anomalies in its issuance and implementation, he should initiate the proper move to question the same. A direct challenge in court would settle any doubts as to its validity. As it stands, he, respondent and all others covered by it are simply acting pursuant to its mandate. Until it is invalidated, they must follow it to the letter.

WHEREFORE, the Petition is **DENIED**. The August 17, 2006 Decision and December 10, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 82610 are hereby **AFFIRMED**.

SO ORDERED.

Brion[*] *(Acting Chairperson), Perez, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[*] Per Special Order No. 1460 dated May 29, 2013.

[**] Per Special Order No. 1461 dated May 29, 2013.

SECOND DIVISION

[G.R. No. 187722. June 10, 2013]

SURIGAO DEL NORTE ELECTRIC COOPERATIVE, INC. and/or DANNY Z. ESCALANTE, *petitioners, vs.* **TEOFILO GONZAGA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; REVIEW LIMITED TO ERRORS OF LAW; EXCEPTIONS; IN CASE OF CONFLICT IN THE FINDINGS OF THE NLRC AND THE CA AS IN CASE AT BAR.— At the outset, it must be pointed out that the main issue in this case involves a question of fact. In this light, it is an established rule that the jurisdiction of the Court in cases brought before it from the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court is generally limited to reviewing errors of law as the former is not a trier of facts. In the Court's exercise of its power of review, thus, the findings of fact of the CA are conclusive and binding as it is not the former's function to analyze or weigh evidence all over again. However, one of the recognized exceptions to this rule is when there resides a conflict between the findings of facts of the NLRC and of the CA. In such instance, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts, as in this case. Accordingly, the Court proceeds to examine the cause and procedure attendant to the termination of Gonzaga's employment.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYER MUST ESTABLISH BY SUBSTANTIAL EVIDENCE THAT DISMISSAL WAS FOR A VALID CAUSE.— In termination cases, the burden of proof rests on the employer to show that the dismissal is for a valid cause. Failing in which, the law considers the matter a case of illegal dismissal. In this relation, the quantum of proof which the employer must discharge is substantial evidence which, as defined in case law, means that amount of relevant evidence as a reasonable mind might accept as adequate to support a

conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

3. REMEDIAL LAW; EVIDENCE; TECHNICAL RULES OF EVIDENCE LIBERALLY APPLIED.— [T]echnical rules of evidence are not strictly followed in labor cases and thus, their liberal application relaxes the same. x x x Labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them. In fact, labor officials should use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SERIOUS MISCONDUCT AND GROSS AND HABITUAL NEGLECT OF DUTY, PRESENT.— [C]onsidering the totality of circumstances in this case, the Court finds the evidence presented by the petitioners, as opposed to the bare denial of Gonzaga, sufficient to constitute substantial evidence to prove that he committed serious misconduct and gross and habitual neglect of duty to warrant his dismissal from employment. Such are just causes for termination which are explicitly enumerated under Article 296 of the Labor Code, as amended: x x x At any rate, Gonzaga had admitted that he failed to remit his collections daily in violation of SURNECO's company policy, rendering such fact conclusive and binding upon him. Therefore, for his equal violation of Section 7.2.2 of the Code of Ethics (failure to remit collections/monies), his dismissal is justified altogether.

5. ID.; ID.; TERMINATION PROCEDURE.— The statutory procedure for terminating an employee is found in Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Omnibus Rules). x x x Succinctly put, the foregoing procedure consists of (*a*) a first written notice stating the intended grounds for termination; (*b*) a hearing or conference where the employee is given the opportunity to explain his side; and (*c*) a second written notice informing the employee of his termination and the grounds therefor.

6. ID.; ID.; ID.; COMPANY PROCEDURE; FORMAL HEARING OR CONFERENCE MANDATORY IF REQUIRED BY COMPANY

RULES.— Jurisprudence dictates that it is not enough that the employee is given an "*ample opportunity to be heard*" if company rules or practices require a formal hearing or conference. In such instance, the requirement of a formal hearing and conference becomes mandatory. x x x The rationale behind this mandatory characterization is premised on the fact that company rules and regulations which regulate the procedure and requirements for termination, are generally binding on the employer. x x x In this relation, case law states that an employer who terminates an employee for a valid cause but does so through invalid procedure is liable to pay the latter nominal damages.

7. ID.; ID.; ID.; DISMISSAL FOR A JUST CAUSE WILL NOT BE INVALIDATED BY THE LACK OF STATUTORY DUE PROCESS; EMPLOYER LIABLE TO PAY NOMINAL DAMAGES.— In *Agabon v. NLRC* (*Agabon*), the Court pronounced that where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it llegal, or ineffectual. However, the employer should Indemnify the employee for the violation of his statutory rights. Thus, in *Agabon*, the employer was ordered to pay the employee nominal damages in the amount of ₱30,000.00. By analogy, the Court finds that the same principle should apply to the case at bar for the reason that an employer's breach of its own company procedure is equally violative of the laborer's rights, albeit not statutory in source. Hence, although the dismissal stands, the Court deems it appropriate to award Gonzaga nominal damages in the amount of ₱30,000.00. To clarify, Escalante, the general manager of SURNECO, does not stand to be solidarily liable with the company for the same since records are bereft of any indication that he either (*a*) assented to a patently unlawful act of the corporation or (*b*) is guilty of bad faith or gross negligence in directing its affairs.

BRION, *J.*, *separate concurring opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LABOR CASE ELEVATED TO THE COURT THROUGH A PETITION FOR REVIEW UNDER RULE 45 AFTER IT HAS BEEN RESOLVED BY THE COURT OF APPEALS THROUGH A PETITION FOR *CERTIORARI* UNDER RULE 65;

ELUCIDATED.— Pursuant to the established rules and jurisprudence, a labor case is generally elevated to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court, after it has been resolved by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. The object of a Rule 45 petition is to determine the correctness of the assailed decision, *i.e.*, whether the respondent court committed a reversible legal error in resolving the case. In contrast, the object of a Rule 65 petition is to determine jurisdictional error on the part of the respondent court, *i.e.*, whether the respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; FAILURE TO OBSERVE PROCEDURAL DUE PROCESS WILL NOT NULLIFY A LEGAL DISMISSAL BUT EMPLOYER SHOULD INDEMNIFY THE EMPLOYEE NOMINAL DAMAGES. — Gonzaga's misappropriation of the funds under his custody constitutes a just and valid cause for his dismissal. Nonetheless, as the *ponencia* found, Gonzaga was not afforded the procedural due process for failure of the petitioners to observe their own established policy in investigating erring employees. As ruled in *Agabon v. National Labor Relations Commission*, "[w]here the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights…" Hence, the employer should be required to pay the employee nominal damages, which has been set by jurisprudence at ₱30,000.00.

APPEARANCE OF COUNSEL

Reserva A. Filoteo Law Office for petitioners.
Egay Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the May 29, 2008 Decision[2] and March 30, 2009 Resolution[3] of the Cagayan de Oro City Court of Appeals (CA) in CA G.R. SP. No. 00267 which nullified the August 31, 2004[4] and February 1, 2005[5] Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. M-007354-2003 and instead, reinstated with modification the November 28, 2002 Decision[6] of Executive Labor Arbiter Rogelio P. Legaspi (LA) in NLRC Case No. RAB-13-01-00016-2002, finding respondent Teofilo Gonzaga (Gonzaga) to have been illegally dismissed.

The Facts

On October 13, 1993, petitioner Surigao Del Norte Electric Cooperative, Inc. (SURNECO) hired Gonzaga as its lineman. On February 15, 2000, he was assigned as Temporary Teller at SURNECO's sub-office in Gigaquit, Surigao Del Norte.[7]

On June 26, 2001, petitioner Danny Escalante (Escalante), General Manager of SURNECO, issued Memorandum Order No. 34, series of 2001 (Memorandum 34-01), with attached report of SURNECO's Internal Auditor, Pedro Denolos (Collection Report) and two (2) sets of summaries of collections and remittances (Summaries),[8] seeking an explanation from

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[1] *Rollo*, pp. 26-53.

[2] *Id.* at 11-17. Penned by Associate Justice Michael P. Elbinias, with Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, concurring.

[3] *Id.* at 20-23.

[4] *Id.* at 132-138. Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan, concurring.

[5] *Id.* at 144-145.

[6] *Id.* at 68-76.

[7] *Id.* at 68, 132.

[8] *Id.* at 214-240.

Gonzaga regarding his remittance shortages in the total amount of ₱314,252.23, covering the period from February 2000 to May 2001.[9]

On July 16, 2001, Gonzaga asked for an extension of three (3) weeks within which to submit his explanation since he needed to go over the voluminous receipts of collections and remittances with the assistance of an accountant. On the same day, he sent another letter, denying any unremitted amount on his part and thereby, requesting that the charges against him be lifted.[10] Attached to the same letter is an Audit Opinion[11] prepared by one Leonides Laluna (Laluna), a certified public accountant (CPA), stating that the Internal Auditor's Report cannot accurately establish any remittance shortage on Gonzaga's part since the amount of collections stated in the Summaries was not supported by any bills or official receipts.

In the meantime, SURNECO formed an Investigation Committee (Committee) to investigate Gonzaga's alleged remittance shortages. On July 30, 2001, the Committee sent Gonzaga an invitation to attend the investigation proceedings, in which he participated.[12] Pending investigation, Gonzaga was placed under preventive suspension from July 31 to August 29, 2001.[13]

On August 9, 2001, the Committee tendered its report, finding Gonzaga guilty of (*a*) gross and habitual neglect of duty under Section 5.2.15 of the Code of Ethics and Discipline for Rural Electric Cooperative (REC) Employees (Code of Ethics); (*b*) misappropriation of REC funds under Section 7.2.1 of the Code of Ethics; and (*c*) failure to remit collections/monies under Section 7.2.2 of the Code of Ethics. Thereafter, a notice of termination

[9] *Id.* at 132.

[10] *Id.* at 133.

[11] *Id.* at 243-244.

[12] *Id.* at 133.

[13] *Id.* at 71, 75.

was served on Gonzaga on September 13, 2001. Gonzaga sought reconsideration before SURNECO's Board of Directors but the latter denied the same after he presented his case.[14] On October 25, 2001, another notice of termination (Final Notice of Termination) was served on Gonzaga. Consequently, he was dismissed from the service on November 26, 2001.[15]

In view of the foregoing incidents, Gonzaga filed a complaint with the NLRC Regional Arbitration Branch No. XIII - Butuan City for illegal dismissal with payment of backwages including damages and attorney's fees, claiming that he was denied due process and dismissed without just cause. He alleged that while he was asked in Memorandum 34-01 to explain the ₱314,252.23 remittance shortage, he was nonetheless denied due process since the actual grounds for his dismissal, *i.e.*, gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies, were not indicated in the said memorandum.[16] He also claimed that petitioners' evidence failed to show any missing collection since (*a*) the attached Summary of Collections and Remittances dated June 7, 2001[17] did not bear any receipt numbers, both with respect to collections and remittances and (*b*) the other Summary of Collections and Remittances[18] only contained receipt numbers for the remittances and none for the collections.[19]

In defense, petitioners maintained that Gonzaga's dismissal was attended with due process and founded on a just and valid cause. They maintained that Gonzaga's remittance shortages accumulated to the amount of ₱314,252.23,[20] stressing that the

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[14] *Id.* at 133.

[15] *Id*.

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

[17] *Id.* at 223-240.

[18] *Id.* at 214-222.

[19] *Id.* at 70.

[20] *Id*. at 71.

so-called Collection Report was prepared by Gonzaga himself. Petitioners further argued that Gonzaga was given enough opportunity to defend himself during the investigation. Likewise, he was properly informed of the accusation against him since the charge of cash shortage has a direct and logical relation to the findings of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. In this regard, there was no conflict between the charge stated in Memorandum 34-01 and the grounds cited in the Final Notice of Termination.[21]

In reply, Gonzaga insisted that, contrary to petitioners' claim, the Summaries were prepared by SURNECO's internal auditor. He also added that the cooperative's proper procedure for the conduct of investigation, as outlined in Section 16.5 of the Code of Ethics was not followed; hence, he was denied due process.[22]

The LA's Ruling

On November 28, 2002, the LA rendered a Decision,[23] finding that petitioners were unable to show that Gonzaga's dismissal was just and valid and thus, ordered that the latter be reinstated to his former position without loss of seniority rights and with payment of full backwages, moral and exemplary damages, and attorney's fees.[24]

The LA found that the alleged shortages in Gonzaga's remittances were not proved since the actual receipts were not presented in evidence. The Summaries were not even signed by the preparer and neither did they reflect the receipt numbers of actual collection. Considering these deficiencies, there was no way of verifying whether the total amount remitted, as shown in the receipts, would tally with the amount actually collected.[25]

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[21] *Id.* at 71-72.

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

[23] *Id.* at 68-76.

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

[25] *Id.* at 73-74.

Further, the LA held that Gonzaga was not afforded due process because the mandatory procedure for the conduct of investigation, pursuant to Section 16.5 of the Code of Ethics, was not followed.[26]

Aggrieved, petitioners elevated the matter to the NLRC. On September 22, 2003, pending appeal, they submitted a Manifestation,[27] with annexed Audit Report dated September 15, 2003[28] (September 15, 2003 Audit Report) prepared by a certain Daphne Fetalvero-Awit, an independent CPA, as additional evidence to corroborate the Collection Report of SURNECO's internal auditor. The Cash Flow Summary attached to the September 15, 2003 Audit Report reflected a shortage of ₱328,974.02 in Gonzaga's remittances as of May 31, 2001.[29]

The NLRC's Ruling

In a Resolution dated August 31, 2004,[30] the NLRC vacated the ruling of the LA, finding Gonzaga to have been dismissed for a just and valid cause.

It observed that Gonzaga, by his admission, failed to subscribe to the company policy of remitting cash collections daily, claiming that the distance and cost of doing so made it impractical.[31] With respect to the imputed cash shortages, it did not give credence to Gonzaga's position in view of his general denial. In this light, the NLRC faulted Gonzaga for not demanding the production and examination of the collection receipts during the investigation proceedings, noting that the said omission meant that the collection receipts would confirm the shortage.[32]

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[26] *Id.* at 74-75.

[27] *Id.* at 109-114.

[28] *Id.* at 115-130.

[29] *Id.* at 130.

[30] *Id.* at 132-138.

[31] *Id.* at 136.

[32] *Id.* at 136-137.

Moreover, it ruled that the procedure laid down in the Code of Ethics is not mandatory. It is sufficient that Gonzaga, with the assistance of an accountant and a legal counsel, was given an ample opportunity to explain his side and also participate in the investigation proceedings.[33]

Gonzaga moved for reconsideration but the same was denied in a Resolution dated February 1, 2005.[34]

The CA's Ruling

In a Decision dated May 29, 2008,[35] the CA reversed and set aside the NLRC's ruling and, instead, reinstated the LA's decision with modification, deleting the award of moral and exemplary damages.[36]

It held that it is petitioners' duty to present substantial evidence to show that the dismissal was due to a just and valid cause which they, however, failed to do. Petitioners' evidence did not prove the imputed shortage in Gonzaga's collection since the numbers of the collection receipts were not indicated so as to compare them with the remittance receipts. Moreover, the CA did not give weight to the September 15, 2003 Audit Report, which was submitted for the first time before the NLRC, because Gonzaga was not given an opportunity to submit any counter-evidence in order to rebut the same. For insufficiency of evidence, it therefore ruled that the dismissal was illegal.[37]

Nonetheless, it found improper the award of moral and exemplary damages for lack of showing that petitioners acted in bad faith. Gonzaga was given ample opportunity to explain the alleged cash shortages, and an investigation, though informal,

[33] *Id.* at 137.

[34] *Id.* at 144-145.

[35] *Id.* at 11-17.

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

[37] *Id.* at 14-16.

was actually conducted by SURNECO to determine his liability. As such, petitioners did not act in bad faith.[38]

Petitioners filed a motion for reconsideration which was, however, denied in a Resolution dated March 30, 2009.[39]

In the said resolution, the CA held that the Summaries presented by petitioners remained insufficient as they failed to establish the voluminous character of the official receipts evidencing the amount of Gonzaga's collections and remittances as to render them admissible under Section 3(c), Rule 130[40] of the Rules of Court.[41] It also observed that apart from the fact that the September 15, 2003 Audit Report was belatedly filed with the NLRC eight (8) months after Gonzaga had filed his Comment to the Memorandum of Appeal, the said report was hearsay since the accountant who prepared the said report was not presented to testify on its veracity.[42]

Hence, the instant petition.

The Issue

The crux of the present controversy revolves around the propriety of Gonzaga's dismissal.

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

[39] *Id.* at 20-23.

[40] 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, except in the following cases:

x x x x

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; x x x x

[41] *Rollo*, pp. 20-21.

[42] *Id.* at 22.

The Court's Ruling

The petition is meritorious.

At the outset, it must be pointed out that the main issue in this case involves a question of fact. In this light, it is an established rule that the jurisdiction of the Court in cases brought before it from the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court is generally limited to reviewing errors of law as the former is not a trier of facts. In the Court's exercise of its power of review, thus, the findings of fact of the CA are conclusive and binding as it is not the former's function to analyze or weigh evidence all over again.[43]

However, one of the recognized exceptions to this rule is when there resides a conflict between the findings of facts of the NLRC and of the CA. In such instance, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts,[44] as in this case. Accordingly, the Court proceeds to examine the cause and procedure attendant to the termination of Gonzaga's employment.

A. Cause of termination.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a valid cause. Failing in which, the law considers the matter a case of illegal dismissal.[45] In this relation, the quantum of proof which the employer must discharge is substantial evidence which, as defined in case law, means that amount of relevant evidence as a reasonable mind

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[43] *Sugue v. Triumph International (Phils.), Inc.*, G.R. No.164804 and G.R. No. 164784, January 30, 2009, 577 SCRA 323, 331-332, citing *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580.

[44] *Dimagan v. Dacworks United, Incorporated and/or Cancino*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

[45] *Caltex Philippines, Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207, citing *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[46]

Applying the foregoing principles to this case, the Court finds that petitioners were able to prove, by substantial evidence, that there lies a valid cause to terminate Gonzaga's employment.

The Court concurs with the NLRC's finding that petitioners' evidence – which consists of the Collection Report, the Summaries, and the September 15, 2003 Audit Report with attached Cash Flow Summary – adequately supports the conclusion that Gonzaga misappropriated the funds of the cooperative. The data indicated therein show gaping discrepancies between Gonzaga's collections and remittances, of which he was accountable for. In this accord, the burden of evidence shifted to Gonzaga to prove that the reflected shortage was not attributable to him. However, despite being allowed to peruse the bills and receipts on record together with the assistance of an accountant and a counsel during the investigation proceedings, Gonzaga could not reconcile the amounts of his collections and remittances and, instead, merely interposed bare and general denials.

To note, petitioners could not be faulted for not presenting each and every bill or receipt due to their voluminous character. Corollarily, the Court takes judicial notice of the fact that documents of such nature could indeed consist of multiple pages; likewise, it is clear that petitioners only sought to establish a general result from the whole, *i.e.*, the total cash shortage. In this regard, the requirement that the offeror first establish the voluminous nature of the evidence sought to be presented, as discussed in the CA's March 30, 2009 Resolution, is dispensed with. Besides, technical rules of evidence are not strictly followed in labor cases[47] and thus, their liberal application relaxes the same.

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[46] *Id.*, citing *Philippine Commercial Industrial Bank v. Cabrera,* G.R. No. 160368, March 30, 2005, 454 SCRA 792, 803.

[47] Article 221 of the Labor Code reads:

Neither does the lack of collection receipt numbers, as Gonzaga alleges, suffice to exculpate him from the dismissal charges. This is because the said numbers had already been supplied by petitioners through their eventual submission of the Cash Flow Summary which was attached to the September 15, 2003 Audit Report. On this score, the Court observes that the CA should have considered the foregoing documents as they corroborate the evidence presented by the petitioners before the LA. Verily, labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[48] In fact, labor officials should use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[49]

Also, it cannot be said that with the admission of the said evidence, Gonzaga would be denied due process. Records show that he was furnished a copy of the Manifestation with the attached audit report on September 23, 2003 and the NLRC only rendered a decision on August 31, 2004. This interim period

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ART 221. *Technical Rules Not Binding and Prior Resort to Amicable Settlement*. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

[48] *Misamis Oriental II Electric Service Cooperative v. Cagalawan*, G.R. No. 175170, September 5, 2012, 680 SCRA 127, 139 citing *Iran v. NLRC*, 352 Phil. 261, 274 (1998).

[49] *Philippine Telegraph and Telephone Corporation v. NLRC and Toribiano*, 262 Phil. 491, 498-499 (1990). (citations omitted)

gave him ample time to rebut the same; however, he failed to do so.

Finally, the records are bereft of any showing that SURNECO's internal auditor was ill-motivated when he audited Gonzaga. Thus, there lies no reason for the Court not to afford full faith and credit to his report.

All told, considering the totality of circumstances in this case, the Court finds the evidence presented by the petitioners, as opposed to the bare denial of Gonzaga, sufficient to constitute substantial evidence to prove that he committed serious misconduct and gross and habitual neglect of duty to warrant his dismissal from employment. Such are just causes for termination which are explicitly enumerated under Article 296 of the Labor Code, as amended:[50]

> Article 296. *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious Misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> x x x x

At any rate, Gonzaga had admitted that he failed to remit his collections daily in violation of SURNECO's company policy, rendering such fact conclusive and binding upon him. Therefore, for his equal violation of Section 7.2.2 of the Code of Ethics (failure to remit collections/monies), his dismissal is justified altogether.

B. Termination procedure; statutory compliance.

The statutory procedure for terminating an employee is found in Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Omnibus Rules) which states:

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[50] Previously Article 282 of the Labor Code; renumbered by Republic Act No. 10151.

SEC. 2. *Standards of due process: requirements of notice.* – In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:[51]

> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Succinctly put, the foregoing procedure consists of (*a*) a first written notice stating the intended grounds for termination; (*b*) a hearing or conference where the employee is given the opportunity to explain his side; and (*c*) a second written notice informing the employee of his termination and the grounds therefor. Records disclose that petitioners were able to prove that they sufficiently complied with these procedural requirements:

First, petitioners have furnished Gonzaga a written first notice specifying the grounds on which his termination was sought.

In particular, Memorandum 34-01, which was issued on June 26, 2001, reads:[52]

> Attached is a report of Mr. Pedro A. Denolos, Internal Auditor, alleging that you incurred shortages as Teller of Sub-Office I which accumulated to THREE HUNDRED FOURTEEN THOUSAND TWO

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[51] Now Article 296 of the Labor Code, as amended; renumbered by Republic Act No. 10151.

[52] *Rollo*, p. 132.

HUNDRED FIFTY TWO PESOS AND TWENTY THREE CENTAVOS (₱314,252.23).

In this regard, please submit a written explanation within seventy two (72) hours from receipt of this memorandum why no disciplinary action shall be taken against you on this matter.

x x x x

As may be gleaned from the foregoing, not only was Gonzaga effectively notified of the charge of cash shortage against him, he was also given an ample opportunity to answer the same through written explanation. Notably, attached to Memorandum 34-01 are the Summaries which particularly detail the discrepancies in Gonzaga's collections *vis-à-vis* his remittances. As it turned out, Gonzaga submitted a letter to management on July 16, 2001, attaching therewith an Audit Opinion prepared by Gonzaga's accountant, Laluna, in order to preliminarily answer the charges against him.

While the actual grounds of Gonzaga's dismissal, *i.e.*, gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies, were not explicitly stated in Memorandum 34-01, these infractions are, however, implicit in the charge of cash shortage. Due to the direct and logical relation between these grounds, Gonzaga could not have been misled to proffer any mistaken defense or contrive any weakened position. Rather, precisely because of the substantial identity of these grounds, any defense to the charge of cash shortage equally constitutes an adequate defense to the charges of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. It stands to reason that the core of all these infractions is similar – that is, the loss of money to which Gonzaga was accountable – such that by reconciling the amounts purportedly missing, Gonzaga would have been exculpated from all these charges. Therefore, based on these considerations, the Court finds that the first notice requirement had been properly met.

Second, petitioners have conducted an informal inquiry in order to allow Gonzaga to explain his side. To this end, SURNECO formed an investigation committee to investigate Gonzaga's alleged remittance shortages. After its formation, an invitation was sent to Gonzaga to attend the investigation proceedings, in which he participated.[53] Apropos to state, Gonzaga never denied his participation during the said proceedings. Perforce, the second requirement had been equally complied with.

Third, a second written notice was sent to Gonzaga informing him of the company's decision to relieve him from employment, as well as the grounds therefor.

Records indicate that the Committee tendered its report on August 9, 2001, finding Gonzaga guilty of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. Subsequently, a notice of termination was served on Gonzaga on September 13, 2001, stating the aforesaid grounds. Thereafter, Gonzaga tried to appeal his dismissal before SURNECO's Board of Directors which was, however, denied after again being given an adequate opportunity to present his case.[54] On October 25, 2001, a Final Notice of Termination was served on Gonzaga which read as follows:

> For violation of the Code of Ethics and Discipline for REC Employees, specifically Sections 5.2.15, 7.2.1 and 7.2.2 you are hereby notified of the termination of your employment with this cooperative effective at the close of business hours on November 26, 2001.[55]

Based on the foregoing, it cannot be gainsaid that Gonzaga had been properly informed of the company's decision to dismiss him, as well as the grounds for the same. As such, the second notice requirement had been finally observed.

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[53] *Id.* at 133.

[54] *Ibid.*

[55] *Id.*

At this juncture, it must be pointed out that while petitioners have complied with the procedure laid down in the Omnibus Rules, they, however, failed to show that the established company policy in investigating employees was adhered to. In this regard, SURNECO's breach of its company procedure necessitates the payment of nominal damages as will be discussed below.

C. Company procedure; consequences of breach.

Jurisprudence dictates that it is not enough that the employee is given an "*ample opportunity to be heard*" if company rules or practices require a formal hearing or conference. In such instance, the requirement of a formal hearing and conference becomes mandatory. In *Perez v. Philippine Telegraph and Telephone Company*,[56] the Court laid down the following principles in dismissing employees:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b**) a formal hearing or conference becomes <u>mandatory</u> only when** requested by the employee in writing or substantial evidentiary disputes exists or **a company rule or practice requires it**, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing and conference" requirement in the implementing rules and regulations. [emphases and underscoring supplied]

The rationale behind this mandatory characterization is premised on the fact that company rules and regulations which regulate the procedure and requirements for termination, are generally binding on the employer. Thus, as pronounced in *Suico v. NLRC, et al.*:[57]

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[56] G.R. No. 152048, April 7, 2009, 584 SCRA 110, 127.

[57] G.R. Nos. 146762, 153584 and 163793, January 30, 2007, 513 SCRA 325, 343.

Company policies or practices are binding on the parties. Some can ripen into an **obligation on the part of the employer**, such as those which confer benefits on employees **or regulate the procedures and requirements for their termination**. [emphases supplied; citations omitted]

Records reveal that while Gonzaga was given an ample opportunity to be heard within the purview of the foregoing principles, SURNECO, however, failed to show that it followed its own rules which mandate that the employee who is sought to be terminated be afforded a formal hearing or conference. As above-discussed, SURNECO remains bound by – and hence, must faithfully observe – its company policy embodied in Section 16.5 of its own Code of Ethics which reads:

16.5. Investigation Proper. The conduct of investigation shall be open to the public. If there is no answer from the respondent, as prescribed, he shall be declared in default.

Direct examination of witnesses shall be dispensed with in the IAC. In lieu thereof, the IAC shall require the complainant and his witnesses to submit their testimonies in affidavit form duly sworn to subject to the right of the respondent or his counsel/s to cross-examine the complainant or his witnesses. Cross examination shall be confined only to material and relevant matter. Prolonged argumentation and other dilatory tactics shall not be entertained.

Accordingly, since only an informal inquiry[58] was conducted in investigating Gonzaga's alleged cash shortages, SURNECO failed to comply with its own company policy, violating the proper termination procedure altogether.

In this relation, case law states that an employer who terminates an employee for a valid cause but does so through invalid procedure is liable to pay the latter nominal damages.

In *Agabon v. NLRC* (*Agabon*),[59] the Court pronounced that where the dismissal is for a just cause, the lack of statutory

[58] *Rollo*, p. 16.

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

due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights.[60] Thus, in *Agabon*, the employer was ordered to pay the employee nominal damages in the amount of ₱30,000.00.[61]

By analogy, the Court finds that the same principle should apply to the case at bar for the reason that an employer's breach of its own company procedure is equally violative of the laborer's rights, albeit not statutory in source. Hence, although the dismissal stands, the Court deems it appropriate to award Gonzaga nominal damages in the amount of ₱30,000.00.

To clarify, Escalante, the general manager of SURNECO, does not stand to be solidarily liable with the company for the same since records are bereft of any indication that he either (*a*) assented to a patently unlawful act of the corporation or (*b*) is guilty of bad faith or gross negligence in directing its affairs.[62]

WHEREFORE, the petition is **GRANTED**. The May 29, 2008 Decision and March 30, 2009 Resolution of the Court of Appeals are hereby **SET ASIDE**. The August 31, 2004 and February 1, 2005 Resolutions of the National Labor Relations Commission in NLRC Case No. M-007354-2003 are hereby **REINSTATED** with the **MODIFICATION** that petitioner Surigao del Norte Electric Cooperative, Inc. be **ORDERED** to pay respondent Teofilo Gonzaga nominal damages in the amount of Thirty Thousand Pesos (₱30,000.00) on account of its breach of company procedure.

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[60] *Id.* at 616, citing *Reta v. NLRC,* G.R. No. 112100, May 27, 1994, 232 SCRA 613, 618.

[61] *Id.* at 620.

[62] *Carag v. NLRC,* G.R. No. 147590, April 2, 2007, 520 SCRA 28, 52, citing *McLeod v. NLRC,* G.R. No. 146667, January 23, 2007, 512 SCRA 222, 249; and *Spouses Santos v. NLRC,* G.R. No. 120944, 354 Phil. 918 (1998).

SO ORDERED.

Del Castillo, Perez and *Leonen,*[*] *JJ.,* concur.

Brion,[**] *J.,* see separate opinion.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I concur in the result. I write this opinion to put in the proper perspective the Court's treatment of labor cases elevated to us through a petition for review on *certiorari* under Rule 45 of the Rules of Court, from a decision of the Court of Appeals on petition for *certiorari* under Rule 65 of the Rules of Court.

Pursuant to the established rules and jurisprudence, a labor case is generally elevated to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court, after it has been resolved by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. The object of a Rule 45 petition is to determine the correctness of the assailed decision, *i.e.*, whether the respondent court committed a reversible legal error in resolving the case. In contrast, the object of a Rule 65 petition is to determine jurisdictional error on the part of the respondent court, *i.e.*, whether the respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction. In light of this review process, the Court takes on a unique approach in reviewing a CA decision on a labor case in that ***"we…examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations***

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[*] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

[**] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

Commission] decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct."[1] Hence, the question to ask is whether the CA correctly determined whether the NLRC committed grave abuse of discretion in ruling in this case. In this particular case, I believe that the CA erred in ascribing grave abuse of discretion on the part of the NLRC.

The CA ruled that the petitioners' evidence was insufficient to establish that the respondent Teofilo Gonzaga's dismissal as due to a just and valid cause. The CA ruled that "the petitioners' evidence did not prove the imputed shortage in Gonzaga's collection since the numbers of the collection receipts were not indicated so as to compare them with the remittance receipts."[2] But as pointed out by the *ponencia*, it was unnecessary to present the collection receipts due to their voluminous character.[3] Moreover, the petitioners have presented other documentary evidence, *i.e.*, the Collection Report, the Summaries, and the September 15, 2003 Audit Report, that sufficiently established the shortage of funds in Gonzaga's custody. In light of this evidence and Gonzaga's general denial, there was sufficient and reasonable basis for the NLRC to conclude that Gonzaga was liable for misappropriation; the NLRC's factual findings and legal conclusion are fully supported by the evidence and records of the case. It was, therefore, erroneous for the CA to ascribe grave abuse of discretion on the NLRC.

Gonzaga's misappropriation of the funds under his custody constitutes a just and valid cause for his dismissal. Nonetheless, as the *ponencia* found, Gonzaga was not afforded the procedural due process for failure of the petitioners to observe their own established policy in investigating erring employees. As ruled in *Agabon v. National Labor Relations Commission*,[4] "[w]here

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[1] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 343.

[2] *Ponencia*, p. 5.

[3] *Ponencia*, p. 7.

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

the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights…" Hence, the employer should be required to pay the employee nominal damages, which has been set by jurisprudence at ₱30,000.00.

In light of these considerations, I concur in the result with the *ponencia*.

SECOND DIVISION

[G.R. Nos. 187896-97. June 10, 2013]

AMANDO P. CORTES, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (VISAYAS), VICTORY M. FERNANDEZ, JULIO E. SUCGANG and NILO IGTANLOC,** *respondents.*

SYLLABUS

REMEDIAL LAW; JURISDICTION; *RE* DECISION OF THE OMBUDSMAN ON CONSOLIDATED ADMINISTRATIVE AND CRIMINAL COMPLAINT, PETITIONER MAY FILE A PETITION FOR REVIEW UNDER RULE 43 WITH THE COURT OF APPEALS OR PETITION FOR *CERTIORARI* UNDER RULE 65 BEFORE THE SUPREME COURT.— [I]n the case of *Fabian v. Desierto*, We ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure. Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman. We made the pronouncement in *Acuña v. Deputy Ombudsman for Luzon* that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari*

under Rule 65. Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a *certiorari* petition under Rule 65 before this Court.

APPEARANCES OF COUNSEL

Liberato R. Ibadlit for petitioner.

R E S O L U T I O N

PEREZ, *J.*:

The subject of this petition for review is the dismissal of the criminal and administrative complaints filed by petitioner Amando P. Cortes with the Office of the Ombudsman (Visayas) against respondents Victory M. Fernandez (Fernandez), Julio E. Sucgang (Sucgang) and Nilo Igtanloc (Igtanloc), who were sued in their capacity as Provincial Engineer, *Barangay* Captain of *Barangay* Soncolan and Grader Operator, respectively, of the Province of Aklan.

In his Complaint-Affidavit filed on 28 November 2006, petitioner charged respondents with violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and Misconduct. Petitioner alleged that during the period of 29 March 2006 to 1 April 2006, respondents utilized a heavy equipment grader owned by the Province of Aklan in levelling a portion of his land. Petitioner claimed that the portion of the land destroyed has an area of 1,125 square meters and that several fruit trees were destroyed. Petitioner impleaded Fernandez for the latter's failure to ascertain from the *Barangay* Captain whether the roads sought to be levelled were *barangay* roads, and for issuing a driver's trip ticket to the Grader Operator.[1]

In a Consolidated Evaluation Report dated 14 December 2006, the Office of the Ombudsman (Visayas) recommended

[1] *Rollo,* p. 37.

the dismissal of the cases due to the fact that two (2) other cases involving the same parties and issues had already been filed by petitioner.

Petitioner moved for the reconsideration of the Consolidated Evaluation Report. On 7 February 2008, the Office of the Ombudsman (Visayas) denied the motion for reconsideration.

Petitioner takes the appeal directly to this Court, *via* a petition for review on *certiorari*, pursuant to Section 27 of the Ombudsman Act, assailing the denial of his motion for reconsideration by the Office of the Ombudsman (Visayas).

Petitioner cites the following errors as grounds for the allowance of the petition:

(1) Respondent Ombudsman Office gravely erred when it dismissed the complaint-affidavit of herein petitioner on the ground that two cases involving the same issues as in the complaint-affidavit were previously filed by petitioner, as complainant therein.

(2) Respondent Ombudsman Office gravely erred in finding that a mere Inventory of *Barangay* Roads and Bridges as of 1999 could prevail over an Original Certificate of Title registered on 28 May 1985.

(3) Respondent Ombudsman Office gravely erred in allowing respondents Fernandez, Igtanloc and Sucgang, to grossly violate the constitutional mandate provided for in the Bill of Rights, 1987 Constitution of the Philippines.

(4) Respondent Ombudsman Office gravely erred in not expressing clearly and distinctly in its Order dated February 7, 2008 and Consolidated Evaluation Report dated December 14, 2006, the law on which it is based in careless disregard of a constitutional mandate.[2]

Petitioner refutes the finding of the Office of the Ombudsman (Visayas) that he had filed a similar administrative and criminal complaint against respondents. Petitioner claims that the

[2] *Id.* at 14-15.

complaints adverted to were filed by one Hernando Cortes and they pertained to another parcel of land that was also graded and levelled by respondents. Petitioner maintains that the affected portion of his land is covered by an original certificate of title and that a document such as the inventory of *barangay* roads upon which the authority to scrape and level *barangay* roads is based should have been first annotated as *lien* to petitioner's certificate of title. Petitioner stresses that respondents' actions violated his constitutional right to due process and that his property was taken without just compensation. Finally, petitioner assails the Consolidated Evaluation Report and Order of the Office of the Ombudsman (Visayas) for having been issued in violation of the constitutional requirement that decisions must state the factual and legal basis thereof.

In their Comment, the Office of the Solicitor General seeks the dismissal of the petition because petitioner availed of the wrong remedy. Moreover, the Office of the Solicitor General supports the dismissal of petitioner's complaint due to identity of issues and respondents in the previous and the present complaint.

Respondents also filed their respective Comments. Igtanloc denied levelling and grading a portion of petitioner's land. According to Igtanloc, he only followed the contours of the existing *barangay* road and did not widen or create a new one. Fernandez asserts that he was merely acting in his official capacity and exercising his duty in issuing a driver's trip ticket to Igtanloc. Sucgang characterizes the complaint as a case of the "second brother (Amando P. Cortes)" filing cases against the same respondents, raising the same issue that was previously disposed of by the same office, in the cases filed by his brother (Hernando P. Cortes).[3]

Petitioner, in filing this petition for review, committed a procedural misstep which warrants an outright dismissal.

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[3] *Id.* at 176.

Petitioner misconstrued Section 27 of Republic Act No. 6770 or the Ombudsman Act of 1989 and disregarded prevailing jurisprudence. Section 27 provides, in part, that:

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

This provision, insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases, had been declared unconstitutional by this Court as early as in the case of *Fabian v. Desierto*.[4] We ruled in *Fabian* that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure.[5]

Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman. We made the pronouncement in *Acuña v. Deputy Ombudsman for Luzon*[6] that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65.

Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a *certiorari* petition under Rule 65 before this Court. Neither of these two remedies was resorted to by petitioner.

By availing of a wrong remedy, this petition merits an outright dismissal.

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[4] G.R. No. 129742, 16 September 1998, 295 SCRA 470.

[5] *Id.* at 481-482.

[6] 490 Phil. 640, 649 (2005).

A review of the substantial merit of this petition would likewise yield to the same conclusion.

It appears that prior to the filing of the instant complaint, Atty. Hernando P. Cortes (Hernando) had filed both criminal and administrative complaints against respondents Igtanloc and Sucgang, who were the Grader Operator and *Barangay* Captain, respectively. These complaints involved the alleged grading and levelling of a portion of Hernando's property. On 15 August 2006, the Office of the Ombudsman issued a Decision on the administrative case docketed as OMB-V-A-06-0344-F and a Resolution on the criminal case docketed as OMB-V-C-06-0315-F, dismissing both complaints for lack of merit. Three months later, petitioner filed an administrative and criminal complaint bearing the same facts and issues. The cases, docketed as OMB-V-C-06-0577-K and OMB-V-A-06-0639-K, were consolidated by the Office of the Ombudsman. Petitioner additionally impleaded Fernandez as respondent. The Office of the Ombudsman (Visayas) dismissed the case on the ground that a similar complaint involving the same facts and issues had already been filed against the same respondents. The Office of the Ombudsman (Visayas) was referring to the Hernando complaint.

Records disclosed that Hernando and petitioner are not only brothers but are also registered as owners of the property allegedly levelled and graded by Igtanloc. In his complaints, Hernando alleged that he, together with Amando P. Cortes, is the registered owner of a land denominated as Lot 427, Psc 35, of Batan Cadastre, which is covered by Transfer Certificate of Title (TCT) No. T-34885.[7] However, TCT No. T-34885[8] could be traced back to the mother title, Original Certificate of Title (OCT) No. P-15197,[9] registered under the name of petitioner. The same OCT was attached to the complaints filed by petitioner, wherein he also asserted ownership over the subject property.

The facts point to the result that the previous and the present complaints, bearing complainants who are owners of the same

[7] *Rollo*, p. 102.

[8] *Id.* at 132.

[9] *Id.* at 131.

affected property, same respondents, same issues and same arguments, in reality are one and the same. The Office of the Ombudsman (Visayas) explained:

> To reiterate, the issues are identical and were in fact already resolved and decided upon by the assigned investigator handling the complaints which were filed earlier. To allow a similar complaint to proceed before the same forum using the same arguments and counter-arguments already raised and discussed in a previous complaint would cause endless litigations which is frowned upon by the courts. It is observed that there is identity of the rights asserted and reliefs prayed for which are being founded on the same facts. It also bears stressing that there is also identity with respect to the two preceding particulars in the two cases, such that any findings that may be rendered in the pending case, regardless of which party is successful, would amount to be a rehash of the other.
>
> This Office cannot allow the simple changing of complainants just to side step its earlier findings. Neither should it deviate or come out with a different view with what was already ruled upon by allowing the filing of another complaint.[10]

For failing to overcome the procedural hurdle and for lack of merit, the petition must be denied.

FOR THE FOREGOING CONSIDERATIONS, the petition is **DENIED**. The Order of the Office of the Ombudsman (Visayas) dated 7 February 2008 in OMB-V-C-06-0577-K and OMB-V-A-06-0639-K is **AFFIRMED**.

SO ORDERED.

Brion[*] *(Acting Chairperson), Del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[10] *Id.* at 26-27.

[*] Per Special Order No. 1460 dated 29 May 2013.

[**] Per Special Order No. 1461 dated 29 May 2013.

EN BANC

[G.R. No. 188716. June 10, 2013]

MELINDA L. OCAMPO, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; AUTHORITY; PRE AND POST AUDIT; AUDIT OF FIRST RETIREMENT BENEFIT PAID WAS PROPER AS PAYMENT OF SECOND RETIREMENT BENEFIT IS BEING CLAIMED UNDER THE SAME LAW.— We disagree with Ocampo that COA should not have audited the first retirement benefit paid to Ocampo as ERB Board Member. COA's plenary authority, consisting of pre and post audit, is enshrined in the Constitution, and as oft observed in jurisprudence. COA validly looked into the government expenditure relating to the first retirement benefit paid to Ocampo because she now claims payment of a second retirement benefit under the same law. Part of the scope of the COA's power, authority and duty is to "promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties."

2. POLITICAL LAW; ADMINISTRATIVE LAW; RETIREMENT BENEFITS UNDER RA 1568 AS AMENDED BY RA 3595; CLAIM FOR TWO SETS OF RETIREMENT BENEFITS FOR EACH OF THE TWO DIFFERENT RETIREMENTS MADE, IS NOT A CLAIM FOR DOUBLE COMPENSATION.— At the outset, it must be clarified that the claim of Ocampo for two (2) sets of retirement benefits under Republic Act No. 1568 is not, strictly speaking, a claim for double compensation prohibited under the first paragraph of Section 8, Article IX-B of the Constitution. Claims for double retirement benefits fall under the prohibition against the receipt of double compensation when they are based on exactly the same services and on the same creditable period. This is not, however, the case herein. In

this case, Ocampo is *not* claiming two (2) sets of retirement benefits for one and the same creditable period. Rather, Ocampo is claiming a set of retirement benefits for each of her two (2) retirements from the ERB. In other words, each set of retirement benefits claimed by Ocampo is based on distinct creditable periods *i.e.*, one for her term as member of the ERB and another for her term as chairman of the same agency. What Ocampo is merely claiming, therefore, is that she is entitled to two (2) sets of retirement benefits for her two (2) retirements from the ERB under Republic Act No. 1568, as amended.

3. ID.; ID.; ID.; ALLOWS PAYMENT OF ONLY A SINGLE GRATUITY AND A SINGLE ANNUITY OUT OF A SINGLE COMPENSABLE RETIREMENT FROM ANY ONE OF THE COVERED AGENCIES.— There is nothing in Republic Act No. 1568 as amended by Republic Act No. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, Republic Act No. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies. In fact, the contingency of multiple retirements from the same covered agency could not have been contemplated by the law. We can confirm this if we take into consideration that Republic Act No. 1568 is a law that, first and foremost, was intended to cover the retirement benefits of the chairmen and members of the COA (formerly the Office of the Auditor General) and of the Commission on Elections (COMELEC) and that it has been the consistent policy of the State, indeed since the 1935 Constitution, to prohibit any appointment of more than one term in the said constitutional bodies. Hence, Republic Act No. 1568, as it was passed and in its present form, cannot be said to have sanctioned the payment of more than one set of retirement benefits to a retiree as a consequence of multiple retirements in one agency. The mere circumstance that members and chairmen of the ERB may be appointed to serve therein for more than one term (but not for two consecutive terms) does not mean that they would be entitled a set of retirement benefits under Republic Act No. 1568 for each of their completed term. Section 1 of Executive Order No. 172 merely extends to members and chairmen of the ERB *similar* retirement benefits that retiring members and

chairmen of the COA and COMELEC are entitled to under the law. *Similar* does not mean greater.

4. ID.; ID.; ID.; TWO TYPES OF RETIREMENT BENEFITS; GRATUITY AND ANNUITY; APPLICATION IN CASE AT BAR.— Section 1 of Republic Act No. 1568 grants two (2) types of retirement benefits to a qualified retiree, *i.e.*, a *gratuity* or a lump sum payment and an *annuity* or monthly pension. x x x Applying the provision, We discern that Ocampo may recover **one gratuity** in an amount equivalent to her **last annual salary** *multiplied* by her **actual years of service** in the ERB but not to exceed five (5) years. In addition, Ocampo is entitled to receive only **one annuity** equivalent to the amount of her **last monthly salary**. While Ocampo is entitled to receive only one set of retirement benefits under Republic Act No. 1568, as amended, despite her two (2) retirements, **We believe that her subsequent stint as Chairman of the ERB and her consequent *second retirement* necessitated an adjustment of the retirement benefits she is entitled to under the law**. This is because Republic Act No. 1568, as amended, reckons the amount of gratuity on the retiree's **last annual salary** and **actual years of service** not exceeding five (5) years, and it bases the amount of annuity on the retiree's **last monthly salary**. Hence, for purposes of computing her gratuity, Ocampo's last annual salary shall be that which she was receiving at the time of her *second retirement* and her actual years of service shall be the sum of her years of service both as ERB member and chairman, but not to exceed five (5) years. On the other hand, for purposes of computing her annuity, Ocampo's last monthly salary shall be that which she was receiving monthly as of the date of her *second retirement*.

APPEARANCES OF COUNSEL

Bernarda M. Casas-Lavisores for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for *Certiorari* under Rule 65, in relation to Rule 64, of the Rules of Court assailing Decision No. 2008-017[1] dated 15 February 2008 and Decision No. 2009-038[2] dated 1 June 2009 of the Commission on Audit (COA) sustaining Notice of Disallowance (ND) No. 2003-021 dated 3 September 2003 disallowing the payment of retirement gratuity to petitioner Melinda L. Ocampo (Ocampo) as Board Member and Chairperson, respectively, of the Energy Regulatory Board (ERB), amounting to ₱1,449,450.48.

On 1 March 1996, Ocampo retired from the National Electrification Administration under Commonwealth Act No. 186[3] as amended, by Republic Act No. 1616,[4] after more than seventeen (17) years of service. Ocampo availed of the lump sum payment with a net gratuity of ₱358,917.01.

Three days thereafter, on 4 March 1996, under Letter of Appointment dated 16 February 1996, Ocampo assumed office as Board Member of the ERB. On 30 June 1998, upon expiration of her term, Ocampo retired under Executive Order No. 172, "Creating the Energy Regulatory Board" in relation to Republic Act No. 1568, "An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections." Ocampo availed of the five year lump sum benefit and the corresponding monthly pension to be paid out for the remainder of her life. This first gratuity lump sum payment

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

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

[3] Otherwise known as the Government Insurance Act.

[4] An Act further Amending Section 12 of Commonwealth Act Number One Hundred Eighty-Six, as amended, by prescribing the other modes of retirement and for other purposes.

based on sixty (60) months or five (5) years advance salary was immediately received by Ocampo after her retirement. Likewise, Ocampo began to receive her monthly pension.[5]

On 25 August 1998, Ocampo was again appointed, this time as Chairman of ERB with a term of four (4) years. On 15 August 2001, the ERB was abolished and replaced by the Energy Regulatory Commission (ERC) as a consequence of the enactment of Republic Act No. 9136, the Electric Reform Act of 2001. For the second time, Ocampo sought retirement under Executive Order No. 172. Ocampo's claim was endorsed by the then Chairperson of the ERC, Fe C. Barin (Chairperson Barin), to the Department of Budget and Management (DBM). Upon release by the DBM of the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA), Chairperson Barin approved the payment thereof to Ocampo.

However, on post-audit of the transaction with Ocampo as payee, State Auditor IV, Nelda R. Monterde (Auditor Monterde), issued Notice of Suspension (NS) No. 2002-002-101 dated 10 July 2002: (1) suspending payment of the amount of ₱1,452,613.71 covering Ocampo's second retirement gratuity computed on a pro-rata basis equivalent to only two years, eleven months, and twenty days;[6] and (2) requiring submission by the ERC of "legal basis for [the payment of] retirement gratuity twice under the same law (EO 172)."[7]

In a letter dated 23 July 2002, Chairperson Barin responded:

> 1. The application for retirement and or claims for retirement benefits of former Chairman Melinda L. Ocampo [were] endorsed to DBM for its proper disposition together with the pertinent information or circumstances attendant thereto. Please see the attached letter of endorsement dated April

[5] *Rollo*, pp. 99-100.

[6] *Id.* at 98.

[7] *Id.* at 26.

2, 2002 and the matrix of information on Chairman Ocampo's appointment and tenure in office. This was received by DBM on April 5, 2002.

2. In its letter dated April 24, 2002, the Department of Budget and Management (DBM) issued the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA) to cover the payment of Chairman Ocampo's second gratuity benefits.

3. Under the above-mentioned circumstances there was no more cogent reason nor basis for this Office to defer the release to Chairman Ocampo of the amount corresponding to the DBM approved gratuity benefits, especially considering the follow-up efforts by the beneficiaries. To do otherwise could expose the undersigned to charges of unreasonable delayed action.[8]

On 28 October 2002, Ocampo likewise wrote Auditor Monterde asking for the lifting of NS No. 2002-002-101 dated 10 July 2002 and asseverating her entitlement to the second retirement gratuity:

1. That the basic law (E.O. 172, as amended) provides no prohibition to receive second retirement gratuity;

2. That I retired under different positions, first as Board Member and second as Chairman of the Energy Regulatory Board;

3. Retirement laws are liberally construed in favor of the employee because the level of retirement compensation is below the cost of living requirements of a retiree. A grateful nation owes the retiree at the very least a liberal interpretation.[9]

Acting on Chairperson Barin's request for the lifting of NS No. 2002-001-101 dated 10 July 2002, the Legal and Adjudication Office-National (LAO-N) of the COA issued LAO-N-2003-132 dated 12 June 2003 denying the request:

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[8] *Id.* at 27.

[9] *Id.* at 29.

Of pertinence is the last paragraph of Section 1 of EO 172, quoted hereunder, thus:

> The Chairman and the Members of the Board, **upon completion of their terms or upon becoming eligible for retirement under existing laws** shall be entitled to **the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections**.

The retirement benefits of the Members of the Commission on Elections is found in RA 3595, amending RA 1568. Section 1 thereof states:

> Section 1. When the Auditor General or the [Chairman] or any Member of the Commission on Elections retires from the service for having completed his term [of office] x x x, he or his heirs shall be paid **in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement**, x x x; And, provided, further, That he shall receive **an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary that he was receiving on the date of retirement**, incapacity or resignation. (Emphasis theirs).

The above provision of law is integral to the matter on hand since RA 1568 merely extends to the Auditor General and the Chairman or any Member of the Commission on Elections the retirement benefits granted under RA 910. EO 172, on the other hand, explicitly provides that the Chairman and Members of the Board shall be entitled to the same retirement benefits given to the Chairman and Members of the COMELEC. Having claimed retirement benefits under EO 172 twice, x x x Ms. Ocampo, therefore, would in all certainty be receiving double pension for the remainder of [her life].

The above-situation is predictable considering that under Paragraph 2 of Section 1 of EO 172, a person may be appointed to the Board for a minimum of two terms, to wit: "No person may be appointed to serve more than two (2) successive terms in the Board." It follows then that upon meeting the condition of completion of terms or eligibility for retirement each time, the concerned official would apply for retirement benefits, as a matter of course. While this could have been the scenario, it bears emphasizing that EO 172, however, does not have a parallel provision that would allow a Board Member to

claim the full benefits of the law for as long as the number of term [of] office of such official would allow. The most practical solution that would not run counter to the prohibition against double pension is to deduct the amount of lump sum and monthly pensions already received on the first retirement under EO 172 from the gratuity claimed on the second retirement under the same law. While there is no hard and fast rule requiring such deduction, for reasons of equity however, it would be proper and logical that said benefits should nevertheless be deducted from the retirement pay to be received by the employee concerned. x x x.

x x x x

EO 172 sets forth the condition when the Chairman and the Members of the Board of the ERB shall be entitled to retirement benefits provided under RA 3595. For clarity, the condition is "upon completion of their terms or upon becoming eligible for retirement under existing laws." A quick review of the circumstances herein obtaining would show that x x x Ms. Ocampo had met such condition when [her] term [was] completed upon the abolition of ERB. As then ERB Chairman, [she was] originally appointed to a term of four years which was however shortened to less than three years. x x x Of equal importance is the fact that [she was] also eligible for retirement under existing laws. Records bear that x x x Ms. Ocampo had previously retired on March 3, 1996.

Section 1 of RA 3595 is clear as to the extent of the gratuity: lump sum of salary for one year, not exceeding five years, for every year of service plus the life pension. In the attached pertinent documents, it is shown that [Ocampo was] granted retirement gratuity in the amount of x x x ₱1,472,155.43, x x x computed as follows:

x x x x

Highest Monthly Salary (Per NOSA) x No. of Gratuity Months = Gratuity Pay

₱41,275.00 x 35.667 = [₱]1,472,155.43

As already mentioned, [she is] also entitled to an annuity payable monthly during the residue of [her] natural [life]. The payment of pension starts after the expiration of the five year period as provided for under Section 3 of RA 910, the retirement law of the Members of the Judiciary, thus:

> Section 3. Upon retirement a Justice of the Supreme Court or of the Court of Appeals shall be automatically entitled to a lump sum payment of the monthly salary that said Justice was receiving at the time of his retirement for five years, **and thereafter upon survival after the expiration of this period of five years, to a further annuity payable monthly during the residue of his natural life** equivalent to the amount of the monthly salary he was receiving on the date of his retirement. (Emphasis theirs).

In our jurisdiction, the legal precept is against double pension. The rule in construing or applying pension and gratuity laws is that, in the absence of express provision to the contrary, they will be so interpreted as to prevent any person from receiving double compensation x x x. There must be a provision, clear and unequivocal, to justify a double pension. x x x It is therefore, incumbent upon x x x Ms. Ocampo to show that they are exempt from this general rule.

The provision of second paragraph of Section 8 of Article IX-B of the Constitution which states "Pensions or gratuities shall not be considered as additional, double, or indirect compensation[,]" may not be invoked. This provision simply means that a retiree receiving pension or gratuity can continue to receive such pension or gratuity even if he accepts another government position to which compensation is attached x x x.

WHEREFORE, premises considered, the herein request for lifting of NS. No. 2002-001-101 (2002) is hereby DENIED.[10]

On motion for reconsideration of Ocampo, the COA LAO-N issued ND No. 2003-021 dated 3 September 2003 affirming NS No. 2002-001-101 disallowing Ocampo's receipt of a second retirement gratuity under Executive Order No. 172.

On appeal, COA, in Decision No. 2008-017 dated 15 February 2008, partially affirmed ND No. 2003-021 and allowed Ocampo's receipt of a pro-rated retirement gratuity based on her salary as Chairperson of the ERB:

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

WHEREFORE, in view of the foregoing, this Commission affirms in part the disallowance, under ND No. 2003-021 dated September 03, 2003, and rules that [Ocampo] is entitled to a pro-rata retirement gratuity, conformably to her years in service as Chairman of ERB which is, two years, eleven months and twenty days. In accordance with the computation prepared by the Office of the Supervising Auditor, Energy Regulatory Board hereto attached as Annex A and made an integral part hereof, of the total amount of ₱4,138,086.71, inclusive of gratuities and pensions, received by Ms. Ocampo only ₱2,688,636.23 is allowable. In fine, this Commission affirms the disallowance up to the amount of ₱1,449,450.48.

Accordingly, the monthly pension that [Ocampo] should receive shall only correspond to one monthly pension based on the computation of her last retirement benefit.

The Auditor concerned is hereby ordered to require the adjustment in the books of accounts of the agency as regards the payment of the first lump sum gratuity.[11]

In its Decision No. 2009-038 dated 1 June 2009, COA denied Ocampo's motion for reconsideration and affirmed the disallowance of the amount of ₱1,449,450.48 and of the double monthly for Ocampo.

Hence, this petition for *certiorari* alleging grave abuse of discretion by the COA.

The singular issue for our resolution is framed by Ocampo:

WHETHER OR NOT RESPONDENT COA ERRED IN RULING THAT PETITIONER IS ENTITLED TO RECEIVE ONLY THE BENEFITS CORRESPONDING TO HER RETIREMENT AS ERB CHAIR, AND THE PERIOD DURING WHICH SHE SERVED AS MEMBER OF THE SAID BOARD SHOULD BE MERELY TACKED IN TO THE PERIOD DURING WHICH SHE SERVED AS SUCH CHAIR.[12]

In sum, Ocampo posits that she should be separately paid retirement benefits for her respective terms as Board Member and Chairperson of the ERB. In other words, Ocampo claims

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

[12] *Id.* at 7.

two (2) lump sum payments, and payment thereafter of two (2) monthly pensions.

While Ocampo accedes that the "rule is against a retiree's receiving double pension," she claims exemption to the application thereof because of the absence of a prohibition, whether express or implied, in Executive Order No. 172 or Republic Act No. 3595 "for a covered official to retire twice thereunder and receive the corresponding benefits each time." Ocampo stresses that the applicable laws, Executive Order No. 172 and Republic Act No. 3595, were intended specifically to accord special privileges to covered government officials who are considered, for retirement purposes, on the same level as Members of Constitutional Commissions; and the "very enactment [of these laws] are unequivocal expressions of the intention to remove the covered officials from the operation of the general rule." Thus, a liberal interpretation thereof must follow.

The Office of the Solicitor General, in its Comment, ostensibly defending COA's stance, concluded that:

> Hence, [Ocampo] is entitled only to a pro-rata amount on her retirement gratuity to be computed based on her two (2) years, eleven (11) months and twenty (20) days actual creditable service as Chairman of ERB considering that she cannot anymore tack her previous stint as member of the Board of the ERB since her retirement benefits were already awarded to her.[13]

In her Reply, Ocampo counters that:

1. With due respect, the Comment of the OSG in behalf of COA did not fully support the COA Decision dated February 15, 2008 and Resolution dated June 1, 2009.

1.1 x x x [T]he OSG Comment argued that "[Ocampo] is entitled only to a pro-rata amount of her retirement gratuity to be computed based on her two (2) years, eleven (11) months, and twenty (20) days actual creditable service as Chairman of ERB x x x." This is contrary to the COA Decision dated February 15, 2008 being questioned which ruled that "[Ocampo] should have received only pro-rata amount on

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[13] *Id.* at 89.

her retirement gratuity to be computed based on two years and four months actual creditable service as Board Member of the ERB. Likewise [Ocampo] is entitled to a pro-rata retirement gratuity as ERB chairman, based on two years, eleven months, and twenty days of service as ERB Chairman."

1.2 x x x [T]he OSG x x x, posits that [Ocampo], after legally receiving the first gratuity pay equivalent to a lump sum of five years as Board member III of ERB in the total amount of Php1,784,040.00, is also entitled to a pro-rata computation of her retirement gratuity as ERB Chairman equivalent to two years, eleven months, and twenty days in the amount of Php1,452,613.71. However, the COA's Decision subject of this case ruled that [Ocampo] is entitled to the pro-rata computation of her retirement **BOTH** as ERB Board Member III and as ERB Chairman for a total of five (5) years, three (3) months, and 20 days in the total amount of Php 2,688,636.23 only.

1.3 x x x This is significant because in the COA Decision, [Ocampo] is being required to refund the amount of Php1,449,450.48 while in the OSG position before this Honorable Court, [Ocampo] will not refund any amount. x x x.[14] (Emphasis theirs).

Considering the foregoing asseverations, we list the following issues for our resolution:

1. Whether Ocampo is entitled to a second lump sum retirement gratuity as ERB Chairperson under Executive Order No. 172, given that she had already received in full, as admitted by Ocampo herself, a five year lump sum retirement gratuity as ERB Board Member;

2. Corollary thereto, whether Ocampo is entitled to double monthly pensions as part of her two retirement gratuities for having held the positions of ERB Board Member and Chairperson, respectively.

To obviate confusion, we state at the outset that the parties make no issue of Ocampo's second retirement as a consequence of the abolition of the ERB and its replacement by the ERC. The issues for our resolution relate only to Ocampo's retirement benefits in the two instances of her retirement from the ERB.

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[14] *Id.* at 97-98.

For easy reference, a recital of the applicable laws:

1. Section 1, paragraphs 2 and 6 of Executive Order No.172.

> [2]The term of office of the Chairman and the Board Members shall be four (4) years, but the first Chairman to be appointed shall hold office for four (4) years, and of the first four (4) Members, two (2) shall hold office for a term of two (2) years, and two (2) shall hold office for a term of three (3) years. No person may be appointed to serve more than two (2) successive terms in the Board.
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> x x x x
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> [6] The Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections.

2. Section 1 of Republic Act No. 3595.

> Section 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term [of] office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of [his] term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be; Provided, That in case of resignation, he has rendered not less than twenty years of service in the government: And, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation.

3. Item No. 4, Administrative Order No. 444.

4. Upon retirement, the lump sum of five years' gratuity as provided under R.A. 3595 for the Chairman/Commissioner of a Constitutional Commission shall be computed on the basis of the highest monthly salary plus the duly authorized transportation, living and

representation allowances in the last month prior to retirement or expiration of term.[15]

Textually, the rules on the retirement benefits under Executive Order No. 172, in relation to Republic Act No. 3595, are:

1. The employee must have completed his term of office, or become incapacitated to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office;

2. The lump sum is to be paid out according to the employee's number of years of service with the ERB;

3. The lump sum gratuity to be paid is the employee's salary for one year, **not to exceed five years**;[16]

4. The lump sum is based on the employee's last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be;

5. In case of resignation, the employee should have rendered not less than twenty years of service in the government; and,

6. The employee shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation.

In affirming ND No. 2003-021 dated 3 September 2003, the COA ruled that: (1) the phrase "for every year of service" limits the payment of the lump sum to the employee's length of service and does not automatically entitle an employee to a lump sum gratuity of five years; (2) Ocampo is not entitled to two (2) lump sum benefit of five years for each term as it would run counter to the "common-sense principle" laid down in jurisprudence; (3) payment to Ocampo of two retirement benefits under Executive Order No. 172 for both her retirements, albeit under different

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[15] *Id.* at 20.

[16] Emphasis supplied.

positions and offices, is unconstitutional as it violates the provision against additional or double compensation; and (4) ultimately, Ocampo should have received only a pro-rated amount on her retirement gratuity based on her two years and four months as ERB Board Member, and two years, eleven months and twenty days as ERB Chairperson.

We note that, while COA's decisions did not state whether Ocampo, for her first retirement gratuity, received the maximum lump sum benefit of five years which an employee may receive, Ocampo asseverated in her Reply, and the records of this case categorically show that for her retirement as ERB Board Member, she received the maximum lump sum benefit of five years although her actual creditable service for that position and period is less than five (5) years, *i.e.*, two years and four months. This has already been paid to, and received by Ocampo, and has never been the subject of any audit or disallowance by the COA prior to Ocampo's claim for a second retirement benefit as ERB Chairperson.

Ocampo is surprised, therefore, that her first retirement gratuity, which she had long received, was audited by the COA. In short, Ocampo argues that the foregoing expenditure is not the proper subject of COA's jurisdiction, as COA should confine itself to its disallowance of Ocampo's second retirement gratuity in the amount of ₱1,452,613.71 computed on a pro-rated basis equivalent to Ocampo's length of service as ERB Chairperson for two years, eleven months and twenty days.

In fact, in the dispositive portion of COA's Decision 2008-017, COA's pro-rated computation of Ocampo's first and second retirement benefits as ERB Board Member and Chairperson, respectively, exceeded the five-year limit set forth in the law. The pro-rated computation of COA of Ocampo's retirement benefits corresponded to Ocampo's total period of employment as both ERB Board Member and Chairperson for five (5) years, three (3) months, and twenty (20) days, in the total amount of ₱2,688,636.23. Thus, in the Decisions 2008-017 and 2009-038, COA affirmed the disallowance of ₱1,449,450.48. COA noted that Ocampo had already received the total amount of

₱4,138,086.71 as retirement benefits, and ordered the Auditor concerned to adjust the books of accounts of the agency respecting the payment of the first lump sum gratuity.

First. We disagree with Ocampo that COA should not have audited the first retirement benefit paid to Ocampo as ERB Board Member. COA's plenary authority, consisting of pre and post audit, is enshrined in the Constitution,[17] and as oft observed in jurisprudence.[18] COA validly looked into the government

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[17] **ART. IX-D, Section 2.**

1. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:

a. constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

b. autonomous state colleges and universities;

c. other government-owned or controlled corporations with original charters and their subsidiaries; and

d. such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgateaccounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

[18] *Development Bank of the Philippines v. Ballesteros*, 531 Phil. 677 (2006); *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, 527 Phil. 623 (2006).

expenditure relating to the first retirement benefit paid to Ocampo because she now claims payment of a second retirement benefit under the same law. Part of the scope of the COA's power, authority and duty is to "promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties."

Second. Before examining the correctness of the COA audit, however, it is imperative to ascertain first, in view of the circumstances herein obtaining, as to how much Ocampo is entitled to receive as retirement benefits under Executive Order No. 172 in relation to Republic Act No. 1568 as amended by Republic Act No. 3595. We can recall that Ocampo retired twice from the ERB under the following circumstances:

a. Ocampo first retired from the ERB on 30 June 1998, after serving a total of two (2) years and four (4) months as a member thereof (*first retirement*).

b. After her *first retirement*, Ocampo was re-appointed to the ERB, this time, as its chairman on 25 August 1998.

c. Ocampo retired once again from the ERB on 15 August 2001, after serving a total of two (2) years, eleven (11) months and twenty (20) days as chairman thereof (*second retirement*).

Owing to her two retirements from the ERB, Ocampo now claims that she is likewise entitled to two (2) sets of retirement benefits under Executive Order No. 172 in relation to Republic Act No. 1568 as amended by Republic Act No. 3595.

We disagree.

Claim of Ocampo for Two Sets of Retirement Benefits Not a Claim of Double Compensation

At the outset, it must be clarified that the claim of Ocampo for two (2) sets of retirement benefits under Republic Act No. 1568 is not, strictly speaking, a claim for double compensation prohibited

under the first paragraph of Section 8, Article IX-B of the Constitution. Claims for double retirement benefits fall under the prohibition against the receipt of double compensation when they are based on exactly the same services and on the same creditable period.[19] This is not, however, the case herein.

In this case, Ocampo is *not* claiming two (2) sets of retirement benefits for one and the same creditable period. Rather, Ocampo is claiming a set of retirement benefits for each of her two (2) retirements from the ERB. In other words, each set of retirement benefits claimed by Ocampo is based on distinct creditable periods *i.e.*, one for her term as member of the ERB and another for her term as chairman of the same agency.

What Ocampo is merely claiming, therefore, is that she is entitled to two (2) sets of retirement benefits for her two (2) retirements from the ERB under Republic Act No. 1568, as amended. Hence, in order to resolve her claim, what is only required is an interpretation of Republic Act No. 1568, as amended.

Republic Act No. 1568 as Amended Does Not Justify Payment of More than One Gratuity and Annuity as a Consequence of Several Retirements from the Same Agency

As can be seen from our discussion above, the success of Ocampo's claim actually depends on the existence of a provision in Republic Act No. 1568 that allows her to recover two (2) set of retirement benefits as a consequence of her two (2) retirements from the ERB. Ocampo hinges her claim for two (2) sets of retirement benefits **solely on the provisions of Republic Act No. 1568 as amended by Republic Act No. 3595**.

We rule against her.

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[19] See *Santos v. Court of Appeals*, 399 Phil. 298, 307-308 (2000).

There is nothing in Republic Act No. 1568 as amended by Republic Act No. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, Republic Act No. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies.

In fact, the contingency of multiple retirements from the same covered agency could not have been contemplated by the law. We can confirm this if we take into consideration that Republic Act No. 1568 is a law that, first and foremost, was intended to cover the retirement benefits of the chairmen and members of the COA (formerly the Office of the Auditor General) and of the Commission on Elections (COMELEC)[20] and that it has been the consistent policy of the State, indeed since the 1935 Constitution, to prohibit any appointment of more than one term in the said constitutional bodies. Hence, Republic Act No. 1568, as it was passed and in its present form, cannot be said to have sanctioned the payment of more than one set of retirement benefits to a retiree as a consequence of multiple retirements in one agency.

The mere circumstance that members and chairmen of the ERB may be appointed to serve therein for more than one term (but not for two consecutive terms)[21] does not mean that they would be entitled a set of retirement benefits under Republic Act No. 1568 for each of their completed term. Section 1 of Executive Order No. 172 merely extends to members and chairmen of the ERB *similar* retirement benefits that retiring members and chairmen of the COA and COMELEC are entitled to under the law. *Similar* does not mean greater.

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[20] Originally, Republic Act No. 1568 only covers retirement benefits of chairmen and members of the Commission on Audit (formerly the Office of the Auditor General) and the Commission on Elections. Presidential Decree No. 1582, however, extended the coverage of Republic Act No. 1568 to members of the Civil Service Commission.

[21] Section 1 of Executive Order No. 172.

Since Republic Act No. 1568, as amended by Republic Act No. 3595 clearly does not justify the payment of more than one gratuity and one annuity to a qualified retiree, Ocampo cannot claim two (2) sets of retirement benefits under the same law.

How Much Ocampo is Entitled to Recover As Retirement Benefits

Having settled that Ocampo is only entitled to receive **only one set of retirement benefits** under Republic Act No. 1568 as amended, We now proceed to the determination of how much Ocampo is entitled to receive as retirement benefits under the same law.

Section 1 of Republic Act No. 1568 grants two (2) types of retirement benefits to a qualified retiree, *i.e.*, a *gratuity* or a lump sum payment and an *annuity* or monthly pension, *viz*:

> Section 1. When the Auditor General or the Chairman or any Member of the Commission on Elections **retires from the service for having completed his term or office** or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of this term of office, **he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement**, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, **That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation**. (Emphasis supplied).

Applying the above provision, We discern that Ocampo may recover **one gratuity** in an amount equivalent to her **last annual salary** *multiplied* by her **actual years of service** in the ERB but not to exceed five (5) years. In addition, Ocampo is entitled to receive only **one annuity** equivalent to the amount of her **last monthly salary**.

While Ocampo is entitled to receive only one set of retirement benefits under Republic Act No. 1568, as amended, despite her

two (2) retirements, **We believe that her subsequent stint as Chairman of the ERB and her consequent *second retirement* necessitated an adjustment of the retirement benefits she is entitled to under the law**. This is because Republic Act No. 1568, as amended, reckons the amount of gratuity on the retiree's **last annual salary** and **actual years of service** not exceeding five (5) years, and it bases the amount of annuity on the retiree's **last monthly salary**.

Hence, for purposes of computing her gratuity, Ocampo's last annual salary shall be that which she was receiving at the time of her *second retirement* and her actual years of service shall be the sum of her years of service both as ERB member and chairman, but not to exceed five (5) years. On the other hand, for purposes of computing her annuity, Ocampo's last monthly salary shall be that which she was receiving monthly as of the date of her *second retirement*.

Third. We now come to COA's findings. As can be seen from the factual narration, the disallowance made by the COA with respect to some of the retirement benefits already received by Ocampo rests on a different premise than that We have settled in the previous discussions. Hence, for the sake of accuracy, We require a remand of this case to the COA with the following directives:

1. To recompute the gratuity and annuity of Ocampo in accordance with the principles enunciated in this Decision;
2. To require the adjustment of Ocampo's account to reflect such recomputed gratuity and annuity;
3. To compare such recomputed gratuity and annuity with the gratuity and annuity already received by Ocampo so far; and,
    a. In the event that the recomputed gratuity or annuity is greater than the gratuity or annuity already received by Ocampo, to allow the payment to Ocampo of only the excess,
    b. In the event that the recomputed gratuity or annuity is lesser than the gratuity or annuity already received

by Ocampo, to disallow the excess payments to Ocampo and require the refund thereof.

It is in this light that We are constrained to grant this petition.

WHEREFORE, premises considered, the petition is **GRANTED**. This case is remanded to the Commission on Audit with the following directives:

1. To recompute the gratuity and annuity of Ocampo in accordance with the principles enunciated in this Decision;
2. To require the adjustment of Ocampo's account to reflect such recomputed gratuity and annuity;
3. To compare such recomputed gratuity and annuity with the gratuity and annuity already received by Ocampo so far; and,
   a. In the event that the recomputed gratuity or annuity is greater than the gratuity or annuity already received by Ocampo, to allow the payment to Ocampo of only the excess,
   b. In the event that the recomputed gratuity or annuity is lesser than the gratuity or annuity already received by Ocampo, to disallow the excess payments to Ocampo and require the refund thereof.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio,[*] *J.,* on official leave.

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[*] On Official Leave under the Court's Wellness Program.

SECOND DIVISION

[G.R. No. 191752. June 10, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE ARMANDO CERVANTES CACHUELA and BENJAMIN JULIAN CRUZ IBAÑEZ,** *accused.*

BENJAMIN JULIAN CRUZ IBAÑEZ, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIME; ROBBERY WITH HOMICIDE; ELEMENTS .— "A special complex crime of robbery with homicide takes place when a homicide is committed either by reason, or on the occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery." In *People v. De Leon*, we held that "[h]omicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed (a) to 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 crime."

2. REMEDIAL LAW; EVIDENCE; OUT-OF-COURT IDENTIFICATION AND THE TEST TO DETERMINE ITS ADMISSIBILITY.— *People v. Algarme* explains the procedure for out-of-court identification and the test to determine its admissibility, as follows: Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face-to-face with the witness for

identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the ***totality of circumstances test*** where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

3. ID.; ID.; EXTRA-JUDICIAL CONFESSION; REQUIREMENTS.— An extrajudicial confession, to be admissible, must satisfy the following requirements: "(1) the confession must be voluntary; (2) it must be made with the assistance of a competent and independent counsel[,] preferably of the confessant's choice; (3) it must be express; and (4) it must be in writing."

4. ID.; ID.; CUSTODIAL INVESTIGATION.— "A custodial investigation is understood x x x as x x x any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. x x x It begins when there is no longer a general inquiry into an unsolved crime and the investigation has started to focus on a particular person as a suspect, *i.e.*, when the police investigator starts interrogating or exacting a confession from the suspect in connection with an allege offense. In *People v. Rapeza*, we explained that the lawyer called to be present during custodial investigations should, as far as reasonably possible, be the choice of the individual undergoing questioning. If the lawyer is furnished by the police for the accused, it is important that the lawyer should be competent, independent and prepared to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. x x x "An 'effective and vigilant counsel' necessarily and logically requires that the lawyer be present and [be] able to advise and assist his client from the time the confessant answers the first question

asked by the investigating officer until the signing of the extrajudicial confession." In addition, the extrajudicial confession of Nabilgas was not corroborated by a witness who was present at the time the written confession was made.

5. ID.; ID.; RULES OF ADMISSIBILITY; ADMISSION BY CONSPIRATOR; AS AN EXCEPTION TO *RES INTER ALIOS ACTA* RULE.— Nabilgas' extrajudicial confession is inadmissible in evidence against the appellants in view of the *res inter alios acta* rule. This rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them. An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy

6. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; ELUCIDATED.— Conviction can be secured "on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to [a] fair and reasonable conclusion proving that the accused is the author of the crime to the exclusion of all others." There can be conviction if the prosecution can establish the appellants' participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the accused, and none other, committed the imputed crime. "Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived

have been established; and (c) the combination of all the circumstances unavoidably leads to a finding of guilt beyond reasonable doubt. These circumstances must be consistent with one another, and the only rational hypothesis that can be drawn therefrom must be the guilt of the accused.

7. ID.; ID.; DISPUTABLE PRESUMPTIONS; THAT A PERSON FOUND IN POSSESSION OF A THING TAKEN IN THE DOING OF A RECENT WRONGFUL ACT IS THE TAKER AND THE DOER OF THE WHOLE ACT; NOT OVERCOME IN CASE AT BAR.— [A]ppellants failed to overcome the disputable presumption that "a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act[.]" To recall, Ibañez was at WSC two days before the robbery, asking questions to the company's secretary. Several days after the robbery, the appellants were caught trying to sell firearms that were reported stolen from WSC in separate entrapment operations; they could not satisfactorily explain how and why these guns came to their respective possession. The appellants likewise did not impute ill motive on the part of the arresting officers that would impel the latter to fabricate evidence against them. These factors lead to no other conclusion than that the appellants, to the exclusion of others, had robbed WSC. To our mind, the fact that the cartridge bullet shells found at the firing range (where the lifeless body of Rex had been discovered) matched with one of the guns recovered from Ibañez during the entrapment operation clinches the case against the appellants insofar as establishing the nexus between the robbery and the victim's killing. Notably, the gunshot wounds suffered by Rex also came from the same caliber of gun recovered from Ibañez. In the final analysis, the prosecution sufficiently established the direct and intimate connection between the robbery and the killing, and that the death of Rex had been committed by reason or on the occasion of the robbery. When homicide is committed by reason or on the occasion of a 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.

8. CRIMINAL LAW; ROBBERY WITH HOMICIDE; PENALTY AND DAMAGES IN CASE AT BAR.— Robbery with homicide is a single indivisible crime punishable with *reclusion perpetua* to death under

paragraph 1, Article 294 of the Revised Penal Code, as amended. We find that the trial and appellate courts correctly sentenced the appellants to suffer the penalty of *reclusion perpetua* only in the absence of any aggravating circumstance that attended the commission of the crime. We affirm the award of ₱50,000.00 civil indemnity and ₱50,000.00 moral damages to the heirs of Rex, as these awards conform to prevailing jurisprudence on robbery with homicide when the penalty imposed is only *reclusion perpetua*. We also affirm the award of ₱45,000.00 as actual damages, as the prosecution successfully proved this amount through a receipt. The CA ordered the appellants to restitute the amount of ₱1,093,947.50, representing of the value of the stolen firearms and ammunitions. We, however, increase this amount to the total amount of ₱1,481,000.00 as this is the value of the stolen items as proven by the evidence on record.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Jesse B. Matibag for accused-appellant.

D E C I S I O N

BRION,* *J.*:

We decide the appeal filed by appellants Jose Armando Cervantes Cachuela and Benjamin Julian Cruz Ibañez assailing the August 7, 2009 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR.-HC No. 03474. The CA decision affirmed with modification the July 14, 2008 decision[2] of the Regional Trial Court (*RTC*), Branch 196, Parañaque City, finding the appellants guilty beyond reasonable

* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Antonio L. Villamor; *rollo*, pp. 2-44.

[2] CA *rollo*, pp. 14-35.

doubt of the special complex crime of robbery with homicide, and sentencing them to suffer the penalty of *reclusion perpetua*.

The prosecution's evidence revealed that on July 23, 2004, Ibañez went to Weapons System Corporation (*WSC*) on board an old car, and told Henessy Auron, WSC's Secretary and Sales Representative, that he was the one who bought a gun barrel at the company's gun show in SM Megamall. Ibañez inquired from Henessy about the schedule and the rates of WSC's firing range and the amount of the membership fee of its gun club. He also asked the days when there are many people in the firing range, and whether Henessy was WSC's only female employee.[3]

At around 9:00 a.m. of July 26, 2004, Henessy arrived at WSC and rang the doorbell, but no one opened the door. She went to the back of the office where the firing range was located, and called Zaldy Gabao, another employee of WSC. Zaldy answered from inside the store but Henessy did not understand what he said. Henessy returned to the front door and called again. Zaldy replied that he could not open the door because his hands were tied. Henessy called Raymundo Sian, the company's operations manager, and informed him that Zaldy's hands had been tied. After one hour, the police arrived; they opened the gate at the back using acetylene. When Henessy and the police entered the premises, they saw that Zaldy had been handcuffed to the vault. Zaldy informed the police that the company's gunsmith, Rex Dorimon, was inside the firing range. The police entered the firing range, and saw the lifeless body of Rex.[4] Dr. Voltaire Nulud conducted an autopsy on the body of Rex, and found that the victim suffered several gunshot wounds on the head, thorax and abdomen, caused by a .45 pistol.[5]

The National Bureau of Investigation (*NBI*) received an information from an asset that the group of Cachuela was involved

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[3] TSN, June 9, 2005, pp. 19-23.

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

[5] Records, p. 546.

in the robbery of WSC and in the killing of one of its employees; and that Cachuela had been looking for prospective buyers of firearms. The NBI formed an entrapment team and proceeded to Bacoor, Cavite to execute the operation. Upon their arrival, Melvin Nabilgas approached them and told them that he had been sent by Cachuela and Ibañez to look for buyers of firearms. The police introduced themselves and told Nabilgas that they were conducting an entrapment operation against the suspects of the robbery at WSC. Nabilgas surrendered to the police, and gave the names of the other persons involved in the crime.[6]

Thereafter, the asset contacted Cachuela and informed him that Nabilgas had already talked to the buyers, and that they would like to see the firearms being sold. Cachuela set up a meeting with the buyers at a gasoline station in Naic, Cavite. NBI Special Investigator Allan Lino, Supervising Agent Jerry Abiera and the asset went to the agreed place. Cachuela came and talked to them, and brought them inside his house where Cachuela showed them several firearms. When the agents inquired from Cachuela whether the firearms had legal documentation, the latter sensed that the meeting was a set-up. The NBI agents arrested Cachuela before he could make any move. The agents recovered four (4) firearms[7] from Cachuela's house, including a .9 mm Bernardelli with serial number T1102-03E000151.[8]

The NBI conducted a follow-up operation on Ibañez whom the asset also contacted. Ibañez directed the asset to bring the prospective buyers to his residence in Imus, Cavite. The NBI agents went to Imus and there met Ibañez whom they saw inside a Nissan California car bearing plate no. PMN 645. Lino, Abiera and the asset entered the car, and asked Ibañez

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[6] TSN, July 7, 2005, pp. 8-15.

[7] The other firearms recovered from Cachuela were a .22 Cooley Model 600 with serial number 9196; a .45 Federal Caliber Pistol Receiver with serial number 502173; and a .45 Llama Pistol with serial number 07-04-15949-96.

[8] TSN, July 7, 2005, pp. 15-18.

where the firearms were. Ibañez brought out two (2) firearms, and showed them to the agents. The agents asked whether the guns had legal documentation; they then arrested Ibañez when they sensed that he was already becoming suspicious. The agents recovered two guns from Ibañez, *viz.*: a .45 Glock 30 with serial number FML 245 and a .45 Llama with serial number 04490Z.[9]

At the NBI Main Office, Zaldy pointed to the appellants, during a police line-up, as the persons responsible for the robbery at WSC and for the killing of Rex.[10] Nabilgas also executed a handwritten confession implicating the appellants and Zaldy in the crime.[11]

The prosecution filed an Information[12] for robbery with homicide before the RTC against the appellants, Nabilgas and Zaldy, docketed as Criminal Case No. 04-0943. The accused all pleaded not guilty on arraignment.[13] Trial on the merits ensued thereafter. During trial, Zaldy died.[14]

In its decision dated July 14, 2008, the RTC found the appellants guilty beyond reasonable doubt of the special complex crime of robbery with homicide, and sentenced them to suffer the penalty of *reclusion perpetua*. It also ordered them to pay, jointly and severally, the heirs of Rex ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The trial court likewise ordered the appellants to pay Hector C. Rodriguez, Jr.[15] ₱1,563,300.00, representing the value of the firearms and ammunitions stolen from WSC. Excepted from the conviction was Nabilgas whom the RTC acquitted on ground of reasonable doubt.

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[9] *Id.* at 24-27.

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

[11] *Id.* at 31.

[12] Records, p. 2.

[13] *Id.* at 166-169.

[14] *Id.* at 620-621.

[15] The Branch Manager of Arms Depot Philippines, Inc.

The appellants filed an appeal with the CA, docketed as CA-G.R. CR.-HC No. 03474. In its decision of August 7, 2009, the CA affirmed the RTC decision with the following modifications: (a) the appellants were ordered to pay Arms Depot Philippines, Inc. the amount of ₱1,093,947.50, representing the value of the stolen firearms and ammunitions from WSC, with interest at the rate of 6% per annum from the date of the decision until fully paid; and (b) they are likewise ordered to pay, jointly and severally, the heirs of Rex ₱45,000.00 as actual damages with interest at the rate of 6% per annum from the date of the decision until fully paid.

The CA held that the following pieces of circumstantial evidence showed that the appellants robbed WSC and killed Rex during the course of this robbery: (1) Ibañez visited WSC two days before the robbery and asked several questions from Henessy; (2) a robbery occurred at WSC where 53 firearms and several ammunitions worth ₱1,563,300.00 had been stolen; (3) among the firearms stolen were a .9 mm Bernardelli with serial number T1102-03E000151 and a .45 Glock 30 with serial number FML 245; (4) Rex, a gunsmith working in WSC, was found dead at the firing range; (5) Rex sustained gunshot wounds on different parts of his body; (6) Cachuela and Ibañez were caught trying to sell the .9 mm Bernardelli, with serial number T1102-03E000151, and the .45 Glock 30, with serial number FML 245, respectively, in separate entrapment operations; and (7) Cachuela and Ibanez were unable to explain how they came into possession of the stolen firearms.

The CA ruled that the totality of these circumstances point to the appellants as the perpetrators of the special complex crime of robbery with homicide. It disregarded the appellants' defenses of alibi, denial and frame-up for being self-serving. The CA likewise found unmeritorious the appellants' argument that the firearms confiscated from them were inadmissible in evidence, pointing out that the seizures were the result of lawful entrapment operations. It further held that the appellants failed to impute any ill or improper motive against the police officers who conducted the entrapment operations.

Our Ruling

In this final review, we **deny** the appeal, and resolve to increase the amount for restitution by the appellants to Arms Depot Philippines, Inc. from ₱1,093,947.50 to ₱1,481,000.00.

"A special complex crime of robbery with homicide takes place when a homicide is committed either by reason, or on the occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[16]

Admissibility of the out-of-court identification and the extrajudicial confession

Lino testified that Zaldy identified the appellants as the persons involved in the robbery of WSC and in the killing of Rex in a police line-up held at the NBI Main Office on Taft Avenue, Manila. We note that Zaldy did not testify in court since he was brought to the National Center for Mental Health, and subsequently died there during the trial. For this reason, we examine with greater scrutiny Lino's testimony regarding Zaldy's alleged out-of-court identification.

People v. Algarme[17] explains the procedure for out-of-court identification and the test to determine its admissibility, as follows:

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[16] *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 601, 621; citations omitted.

[17] *Id.* at 617-618, citing *People v. Teehankee, Jr.*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face-to-face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the ***totality of circumstances test*** where they consider the following factors, *viz*.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. [italics and emphasis supplied]

In the present case, Lino merely stated that Zaldy, during a police line-up, identified the appellants as the persons involved in the robbery of WSC and in the killing of Rex. Lino did not state when the line-up took place; how this line-up had been conducted; who were the persons in the line-up with the appellants (if there were indeed other persons included in the line-up); and whether the line-up was confined to persons of the same height and built as the appellants. Lino likewise did not indicate who accompanied Zaldy before and during the line-up, and whether there had been the possibility of prior or contemporaneous improper insinuations on Zaldy regarding the appearance of the appellants.

To our mind, Lino's failure to state relevant details surrounding the police line-up is a glaring omission that renders unreliable Zaldy's out-of-court identification. No way exists for the courts to evaluate the factors used in determining the admissibility and reliability of out-of-court identifications, such as the level of certainty demonstrated by the witness at the identification; the length of time between the crime and the identification; and the suggestiveness of the identification procedure. The absence of an independent in-court identification by Zaldy additionally justifies our strict treatment and assessment of Lino's testimony.

The records also bear out that Nabilgas executed an extrajudicial confession[18] at the NBI Main Office, where he implicated the appellants and Zaldy in the crime charged. During trial, he repudiated this confession, and claimed that he had been tortured by the NBI agents, and that he was forced to copy a previously prepared statement.

After a careful examination of the evidence on hand, we hold that Nabilgas' extrajudicial confession is inadmissible in evidence. The Court has consistently held that an extrajudicial confession, to be admissible, must satisfy the following requirements: "(1) the confession must be voluntary; (2) it must be made with the assistance of a competent and independent counsel[,] preferably of the confessant's choice; (3) it must be express; and (4) it must be in writing."[19]

We point out that Nabilgas was already under custodial investigation by the authorities when he executed the alleged written confession. "A custodial investigation is understood x x x as x x x any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. x x x It begins when there is no longer a general inquiry into an unsolved crime and the investigation has started to focus on a particular person as a suspect, *i.e.*, when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.[20]

In *People v. Rapeza*,[21] we explained that the lawyer called to be present during custodial investigations should, as far as reasonably possible, be the choice of the individual undergoing

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[18] Records, p. 21.

[19] See *People v. Bacor*, 366 Phil. 197, 212 (1999).

[20] See *People v. Morial*, 415 Phil. 310, 329 (2001); citation omitted, italics supplied.

[21] G.R. No. 169431, April 4, 2007, 520 SCRA 596, 623-624, citing *People v. Deniega*, 321 Phil. 1028, 1041-1042 (1995); italics supplied.

questioning. If the lawyer is furnished by the police for the accused, it is important that the lawyer should be competent, independent and prepared to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights.

After a close reading of the records, we rule that Nabilgas' confession was not made with the assistance of a competent and independent counsel. The services of Atty. Melita Go, the lawyer who acted in Nabilgas' behalf, were provided by the very same agency investigating Nabilgas – the NBI itself; she was assigned the task despite Nabilgas' open declaration to the agency's investigators that he already had a lawyer in the person of Atty. Donardo Paglinawan. Atty. Paglinawan confirmed this fact when he stated that he was already representing Nabilgas at the time his client made the alleged confession. Nabilgas also testified that Atty. Go did not disclose that she was a lawyer when she was called to assist him; she merely represented herself to be a mere witness to the confession. There was also nothing in the records to show that Atty. Go ascertained whether Nabilgas' confession was made voluntarily, and whether he fully understood the nature and the consequence of his extrajudicial confession and its impact on his constitutional rights.

To be sure, this is not the kind of assistance required of lawyers in a custodial investigation. "An 'effective and vigilant counsel' necessarily and logically requires that the lawyer be present and [be] able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession."[22] In addition, the extrajudicial confession of Nabilgas was not corroborated by a witness who was present at the time the written confession was made. We note in this regard that the prosecution did not present Atty. Go at the witness

[22] See *People v. Tomaquin*, 478 Phil. 885, 901 (2004).

stand despite hints made during the early stages of the trial that she would be presented.

At any rate, Nabilgas' extrajudicial confession is inadmissible in evidence against the appellants in view of the *res inter alios acta* rule. This rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them.

An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy.[23]

This exception, however, does not apply in the present case since there was no other piece of evidence presented, aside from the extrajudicial confession, to prove that Nabilgas conspired with the appellants in committing the crime charged. Conspiracy cannot be presumed and must be shown as distinctly and conclusively as the crime itself. Nabilgas, in fact, was acquitted by the trial court due to insufficiency of evidence to prove his participation in the crime.

Sufficiency of the proven circumstantial evidence

In view of the inadmissibility of Zaldy's out-of-court identification and Nabilgas' extrajudicial confession, the

[23] See *People v. Bokingo*, G.R. No. 187536, August 10, 2011, 655 SCRA 313, 332-333.

prosecution's case rests purely on circumstantial evidence. Conviction can be secured "on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to [a] fair and reasonable conclusion proving that the accused is the author of the crime to the exclusion of all others."[24] There can be conviction if the prosecution can establish the appellants' participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the accused, and none other, committed the imputed crime.[25]

"Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances unavoidably leads to a finding of guilt beyond reasonable doubt. These circumstances must be consistent with one another, and the only rational hypothesis that can be drawn therefrom must be the guilt of the accused."[26]

In our view, no doubt exists, based on the appellants' actions, that their primary objective was to rob WSC, and that the killing of Rex was done on occasion, or by reason, of the robbery: **first**, Ibañez went to WSC on July 23, 2004, and inquired from Henessy about the schedule and the rates of the firing range, the amount of the membership fee of the company's gun club, the days when there are many people in the firing range, and whether she was the only female employee of the company;

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[24] *People v. Umayam*, 431 Phil. 23, 32 (2002).

[25] See *People v. Biglete*, G.R. No. 182920, June 18, 2012, 673 SCRA 546, 554.

[26] See *People v. Romero*, G.R. No. 181041, February 23, 2011, 644 SCRA 210, 214; citation omitted.

second, when Henessy arrived at WSC at 9:00 a.m. on July 26, 2004, Zaldy informed her that he cannot open the front door because his hands were tied; **third**, Henessy called the company's operations manager and informed him that Zaldy had been tied; **fourth**, the police saw Zaldy handcuffed to the vault when they opened the back gate; **fifth**, the police saw the lifeless body of Rex lying on the floor with several gunshot wounds when they entered the firing range; **sixth**, the operations manager discovered that 53 guns and several ammunitions had been missing from the gun store, including a .9 mm Bernardelli with serial number T1102-03E000151 and a .45 Glock 30 with serial number FML 245; **seventh**, the NBI agents caught Cachuela trying to sell the .9 mm Bernardelli with serial number T1102-03E000151 in an entrapment operation in Cavite; **eighth**, the NBI agents caught Ibañez trying to sell the .45 Glock 30 with serial number FML 245 and a .45 Llama with serial number 04490Z in a follow-up entrapment operation in Cavite; **ninth**, Cachuela and Ibañez were unable to explain how they came into possession of the stolen firearms; **tenth**, Police Inspector Armin Austria, the PNP Forensic Firearm Examiner, found that the 98 pieces of .45 fired cartridge cases found at the crime scene were fired from the .45 Llama with serial number 04490Z recovered from Ibañez;[27] and **finally**, Dr. Nulud conducted an autopsy on the body of Rex, and found that the victim suffered several gunshot wounds on the head, thorax, and abdomen caused by a .45 pistol.

From these established circumstances, the overriding intention of the appellants cannot but be to rob WSC; the killing of Rex was merely incidental to the robbery. "Intent to rob is an internal act, but may be inferred from proof of violent unlawful taking of personal property."[28] Rex was killed to facilitate the robbery;

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[27] Per Firearms Identification Report No. FAIS-080-A-2004, no conclusion could be rendered as to whether the seven other .45 fired bullets submitted for examination had been fired from the Llama .45 pistol with serial number 04490Z.

[28] See *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 193, citing *People v. De Jesus*, 473 Phil. 405, 407 (2004).

he was also the person who would have been a witness to the crime. In *People v. De Leon*,[29] we held that "[h]omicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed (a) to 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."

In this regard, we cannot overlook the fact that another WSC employee – Zaldy – was not killed, but merely tied to the vault. The Court cannot second-guess on what could have been behind the malefactors' decision to spare Zaldy's life, but we note that Zaldy became one of the accused in this case after the Office of the City Prosecutor found probable cause to indict him in the crime, as the robbery could have been the result of an "inside job." Unfortunately, Zaldy was unable to testify during trial since the RTC ordered that he be brought to the National Center for Mental Health for treatment. Accordingly, Nabilgas' extrajudicial confession (which we ruled to be inadmissible) was the only evidence linking Zaldy to the crime. For lack of evidence, we cannot make any definite conclusion and can only speculate on Zaldy's involvement in the crime charged.

We find it worthy to stress that the appellants failed to overcome the disputable presumption that "a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act[.]"[30] To recall, Ibañez was at WSC two days before the robbery, asking questions to the company's secretary. Several days after the robbery, the appellants were caught trying to sell firearms that were reported stolen from WSC in separate entrapment operations; they could not satisfactorily explain how and why these guns came to their respective possession. The appellants likewise did not impute ill motive on the part of the arresting officers that would impel the latter to fabricate evidence

[29] *Id.* at 194.

[30] Rules of Court, Rule 131, Section 3(j).

against them. These factors lead to no other conclusion than that the appellants, to the exclusion of others, had robbed WSC.

To our mind, the fact that the cartridge bullet shells found at the firing range (where the lifeless body of Rex had been discovered) matched with one of the guns recovered from Ibañez during the entrapment operation clinches the case against the appellants insofar as establishing the nexus between the robbery and the victim's killing. Notably, the gunshot wounds suffered by Rex also came from the same caliber of gun[31] recovered from Ibañez. In the final analysis, the prosecution sufficiently established the direct and intimate connection between the robbery and the killing, and that the death of Rex had been committed by reason or on the occasion of the robbery. When homicide is committed by reason or on the occasion of a 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.[32]

The penalty and the awarded civil indemnities

Robbery with homicide is a single indivisible crime punishable with *reclusion perpetua* to death under paragraph 1, Article 294 of the Revised Penal Code, as amended. We find that the trial and appellate courts correctly sentenced the appellants to suffer the penalty of *reclusion perpetua* only in the absence of any aggravating circumstance that attended the commission of the crime.

We affirm the award of ₱50,000.00 civil indemnity and ₱50,000.00 moral damages to the heirs of Rex, as these awards conform to prevailing jurisprudence on robbery with homicide when the penalty

[31] The records do not indicate the gun's serial number.

[32] See *People v. Ebet*, G.R. No. 181635, November 15, 2010, 634 SCRA 689, 705-706.

imposed is only *reclusion perpetua*.[33] We also affirm the award of ₱45,000.00 as actual damages, as the prosecution successfully proved this amount through a receipt.

The CA ordered the appellants to restitute the amount of ₱1,093,947.50, representing of the value of the stolen firearms and ammunitions. We, however, increase this amount to the total amount of ₱1,481,000.00 as this is the value of the stolen items as proven by the evidence on record.[34]

WHEREFORE, in light of all the foregoing, the decision of the Court of Appeals dated August 7, 2009 in CA-G.R. CR.-HC No. 03474 is **AFFIRMED** with the **MODIFICATION** that the amount to be restituted by the appellants to Arms Depot Philippines, Inc. be increased from ₱1,093,947.50 to ₱1,481,000.00.

SO ORDERED.

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

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[33] See *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 260.

[34] Records, pp. 71-73.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1461 dated May 29, 2013.

SECOND DIVISION

[G.R. No. 194382. June 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLORIA CALUMBRES *y* AUDITOR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RULE THAT FINDINGS OF TRIAL COURT IS RESPECTED; NOT APPLICABLE WHEN SOME FACTS OF WEIGHT ARE OVERLOOKED.— While it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal, such rule does not apply when the trial court overlooked, misapprehended, or misapplied facts of weight or substance that would point to a different conclusion.

2. ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; CANNOT BE REPLACED BY MERE PRESUMPTION OF REGULAR PERFORMANCE OF DUTY; CASE AT BAR.— [P]resumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence. Nothing less than evidence of guilt beyond reasonable doubt can erase the postulate of innocence. And this burden is met not by placing in distrust the innocence of the accused but by obliterating all doubts as to his culpability. The solo performance by SPO1 Dela Victoria of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti,* which is the illegal object itself, in serious doubt. No definite answer can be established regarding the question as to who possessed what from the time of the alleged apprehension until the trial of the case. We are left in doubt whether or not the sachet of *shabu* allegedly seized from Calumbres was the very same object offered in court as the *corpus delicti,* or if a sachet of anything was in fact seized from Calumbres. x x x SPO1 Dela Victoria's claim that the sachet of *shabu* presented in court was the same one confiscated from Calumbres, cannot be taken

at its face value, solely on the presumption of regularity of one's performance of duty. SPO1 Dela Victoria blatantly broke all the rules established by law to safeguard the identity of a *corpus delicti*. To allow this to happen is to abandon everything that has been said about the necessity of proving an unbroken chain of custody of the *corpus delicti.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This is an appeal from the 25 August 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00242-MIN entitled *People of the Philippines v. Gloria Calumbres y Auditor*, affirming the 16 May 2005 Judgment in Criminal Case No. 2004-293 of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City. The RTC found accused guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, in an Information which alleged –

That on April 6, 2004 at about 5:30 o'clock in the afternoon at Sto. Niño, Barangay 31, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused without being authorized by law, did then and there wilfully, unlawfully and criminally sell, trade, dispense, deliver, distribute, and give away to another (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride locally known as shabu weighing 0.09 gram[,] accused knowing the same to be a dangerous drug, in consideration of the amount of One Hundred Pesos (Php 100.00) in different denominations one of which is a Twenty Peso bill with serial Number EZ203528.[1]

[1] CA *rollo*, p. 48.

As summarized in the appealed Court of Appeals decision, the facts are as follows:

On 6 April 2004, at around 5:30 p.m., SPO1 Reynaldo Dela Victoria (SPO1 Dela Victoria), the prosecution's lone witness, was in his office at the Special Operation Unit of the City Drug Enforcement Unit at the Cogon Public Market in Cagayan de Oro City when an informant reported to him that someone was selling *shabu* at Sto. Niño, *Brgy*. 31.

SPO1 Dela Victoria then hired a *faux*-buyer, giving the latter five twenty-peso bills marked money, and, riding a *trisikad,* the duo proceeded to the area that the informant described. SPO1 Dela Victoria claimed to have positioned himself at a strategic place where he could see the transaction. He saw his *poseur*-buyer handing something to Gloria Calumbres (Calumbres) after receiving something from the latter; the *poseur*-buyer's pre-arranged signal followed, prompting him to immediately approach Calumbres. He ordered her not to move, *"police mi, ayaw lihok,"* shocking the accused into disbelief. He took the money from Calumbres and retrieved the suspected *shabu* from the *faux*-buyer who was standing two meters away.

SPO1 Dela Victoria brought Calumbres to his office at the Cogon Market for booking. He claimed he recorded the incident in the police blotter, prepared a request for laboratory analysis of the confiscated item and allegedly took a photograph, which, according to his testimony, was not developed, however, due to budget constraints.[2]

A laboratory report on the confiscated item showed the white substance to be *shabu*.

Calumbres maintained her innocence and presented this defense:

Calumbres was at the ACCP Used Clothing Enterprise (*ukay-ukay*) when she snatched a wallet of a man, a customer of the store. She was caught, however, when the man's wife saw

[2] *Id.* at 49-50.

what she did. She was brought to the police station at Precinct 2 in the Cogon Market where Police Inspector Celso Montel interrogated her.

Minutes later, SPO1 Dela Victoria arrived. He investigated her and told her he was the one in charge in the security of the area where she snatched the wallet. He promised her release if she would give him three cell-phone units. At that time, however, she had none. She just arrived from Iligan City and the man from whom she snatched the wallet was supposedly her first victim.

Calumbres' defense was corroborated by Relian Abarrientos (Abarrientos), a store employee who witnessed the whole incident. Abarrientos testified that in April 2004, a woman tried to snatch a wallet from a man inside the store. The man's wife caught her and the snatcher was detained at the Cogon Police Station. Abarrientos claimed that this was the only incident that happened in the store.

The RTC convicted Calumbres as charged and sentenced her to life imprisonment, thus:

> WHEREFORE, in the light of the foregoing consideration, this Court hereby finds the accused Gloria Calumbres *y* Auditor GUILTY beyond reasonable doubt of the crime charged in the information and sentences the accused GLORIA CALUMBRES *y* AUDITOR to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php 500,000.00).[3]

Finding no reversible error in the RTC ruling, the Court of Appeals affirmed the trial court's decision; hence, this appeal on the following grounds: *first*,the prosecution failed to prove the accused's guilt beyond reasonable doubt; *second*, the police failed to follow the chain of custody rule as required under Section 21(1), Article II of Republic Act No. 9167.

RULING OF THE COURT

We resolve to **ACQUIT** Calumbres on the following grounds:

[3] *Id.* at 55-56.

While it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal, such rule does not apply when the trial court overlooked, misapprehended, or misapplied facts of weight or substance that would point to a different conclusion. In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of the accused.

First, that Calumbres was arrested and brought to Precinct 2 at the Cogon Police Station, after she was caught snatching a man's wallet, was duly recorded in its police blotter.[4] The police blotter shows that she was arrested due to pickpocketing, a fact which was also corroborated by the testimony in open court of the store-employee who witnessed the whole incident.

The circumstance of Calumbres' arrest and the charge as reflected in the police blotter at Precinct 2 which was for pickpocketing, when compared to the succeeding charge for the sale of illegal drugs which was blottered at the Special Operation Unit of the City Drug Enforcement Unit casts serious doubt as to her culpability to the crime of illegal sale of *shabu*. The same crimes were committed and blottered on the same day, separated only by hours. There was no record that while in custody in the police station that she was released. Rather, the succeeding records reveal that she was already being charged for illegal sale of *shabu*, this time at the Special Operation Unit of the City Drug Enforcement Unit, which happens to be also located in Cogon Market.

Second, SPO1 Dela Victoria's credibility must be thoroughly looked into, being the lone arresting officer who allegedly took custody of the confiscated *shabu* and the five twenty-peso bills supposedly used by his *poseur*-buyer to buy the *shabu* from Calumbres. It did not escape us that while there were five 20-peso bills used, only one of them was presented in court. SPO1 Dela Victoria also claimed to have taken a photograph

[4] *Id.* at 51.

of the confiscated items but he failed to present it in court on the lame excuse that there was no money to have the picture developed; and, alone, he inventoried these items without the participation of the accused and in the absence of the authorities, in blatant disregard of Section 21, Article II of Republic Act No. 9165.

The details of SPO1 Dela Victoria's testimony reveal lapses too, which, if connected, cast reasonable doubt on the guilt of Calumbres. His informant never identified Calumbres as the drug pusher; what his informant told him was that drug sale was ongoing at Sto. Nino, *Brgy*. 31, prompting him to hire a *faux*-buyer.[5] At that time, the information was still unverified and the seller of *shabu* unidentified. Without the informant's details of who the pusher was, it was incomprehensible how a *poseur*-buyer, randomly and instantly hired, would have been able to identify Calumbres as the pusher.

Third, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of SPO1 Dela Victoria's official duty.

It is noteworthy however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.[6] Nothing less than evidence of guilt beyond reasonable doubt can erase the postulate of innocence. And this burden is met not by placing in distrust the innocence of the accused but by obliterating all doubts as to his culpability.[7]

The solo performance by SPO1 Dela Victoria of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti*, which is the illegal object itself, in serious doubt. No definite answer can be established

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[5] *Id.* at 49.

[6] *Zafra v. People,* G.R. No. 190749, 25 April 2012, 671 SCRA 396, 404.

[7] *Id.*

regarding the question as to who possessed what from the time of the alleged apprehension until the trial of the case. We are left in doubt whether or not the sachet of *shabu* allegedly seized from Calumbres was the very same object offered in court as the *corpus delicti*, or if a sachet of anything was in fact seized from Calumbres.

As we held in *Zafra v. People*:

> Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty. 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.[8]

Section 21, paragraph 1, Article II of Republic Act No. 9165 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 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**. (Emphasis supplied).

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 reads:

[8] *Id.* at 405.

(a) 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**: *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).

SPO1 Dela Victoria's claim that the sachet of *shabu* presented in court was the same one confiscated from Calumbres, cannot be taken at its face value, solely on the presumption of regularity of one's performance of duty. SPO1 Dela Victoria blatantly broke all the rules established by law to safeguard the identity of a *corpus delicti*. To allow this to happen is to abandon everything that has been said about the necessity of proving an unbroken chain of custody of the *corpus delicti.*

We reiterate that this Court will never waver in ensuring that the prescribed procedures in the handling of the seized drugs should be observed. In *People v. Salonga*,[9] we acquitted the accused for the failure of the police to inventory and photograph the confiscated items. We also reversed a conviction in *People v. Gutierrez,*[10] for the failure of the buy-bust team to inventory and photograph the seized items without justifiable grounds. *People v. Cantalejo*[11] also resulted in an acquittal because no inventory or photograph was ever made by the police.

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[9] G.R. No. 186390, 2 October 2009, 602 SCRA 783, 794-795.

[10] G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101.

[11] G.R. No. 182790, 24 April 2009, 586 SCRA 777, 783-784.

We reached the same conclusions in the recent cases of *People v. Capuno*,[12] *People v. Lorena*,[13] and *People v. Martinez*,[14] all in obedience to the basic and elementary precept that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. At the base, of course, is the constitutional presumption of innocence unless and until the contrary is shown.

WHEREFORE, premises considered, we **REVERSE and SET ASIDE** the Decision of the Court of Appeals dated 25 August 2010 in CA-G.R. CR-HC No. 00242-MIN. Gloria Calumbres *y* Auditor is hereby **ACQUITTED** for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Brion[*] *(Acting Chairperson), del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[12] G.R. No. 185715, 19 January 2011, 640 SCRA 233.

[13] G.R. No. 184954, 10 January 2011, 639 SCRA 139.

[14] G.R. No. 191366, 13 December 2010, 637 SCRA 791.

[*] Per Special Order No. 1460 dated 29 May 2013.

[**] Per Special Order No. 1461 dated 29 May 2013.

SECOND DIVISION

[G.R. No. 197049. June 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIA JENNY REA *y* GUEVARRA and ESTRELLITA TENDENILLA,** *accused-appellants.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— The crime of illegal recruitment in large scale is committed upon concurrence of these (3) elements, namely: (1) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code; (2) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; and (3) the offenders commit the acts against three or more persons, individually or as a group.

2. ID.; RECRUITMENT AND PLACEMENT; ILLEGAL RECRUITMENT; ELUCIDATED.— Recruitment and placement is defined in Article 13(b) of the Labor Code as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring worker; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." Simply put, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes. x x x To prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.

3. CRIMINAL LAW; CONSPIRACY.— Conspiracy may be deduced from the mode and manner in which the offense was perpetrated; or from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.

4. LABOR AND SOCIAL LEGISLATION; LARGE SCALE ILLEGAL RECRUITMENT TANTAMOUNT TO ECONOMIC SABOTAGE; PENALTY.— [A]ppellants were correctly found guilty of large scale illegal recruitment tantamount to economic sabotage. Under Section 7(b) of Republic Act No. 8042, the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office and *Remollo Raz & Redillas law Offices* for accused-appellants.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 10 January 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03178 affirming the judgment of conviction of appellants Maria Jenny Rea *y* Guevarra (Rea) and Estrellita Tendenilla (Tendenilla) for the crime of illegal recruitment rendered by the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, in Criminal Case No. MC-005-9493-H.

In the Information before the RTC, appellants and Ginette Azul (Azul) were charged with illegal recruitment committed as follows:

That in the period from June 2005 to August 23, 2005, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with a certain "Edith", whose true name and present whereabout is still unknown and mutually helping one another, representing themselves to have the capacity of contracting, enlisting

[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring. *Rollo*, pp. 2-16.

and transporting Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously, recruit and promise employment/job placement abroad specifically in London, United Kingdom as caregivers and general services for a fee in the following amount of ₱100,000.00 from Michael Niño Soriano *y* Torres, ₱150,000.00 from Maricel Tumamao *y* Coloma, ₱250,000.00 from Dandy Mendoza Paller, ₱150,000.00 from Rebecca Villa[l]una *y* Bernardo, ₱200,000.00 from Nyann Pasquito *y* Saiasa, ₱120,000.00 from Alvaro Trinidad Pili and ₱132,000.00 from Cyrus Chavez *y* Fallaria, without first securing the required license and authority from the Department of Labor and Employment, and without any capacity and means to deploy workers abroad despite receipt of the aforestated fees, accused failed to deploy them as workers, which acts were committed and carried out by a group of more than three (3) persons conspiring and confederating with one another and the same was committed against more than three (3) persons, hence, the offense is considered committed by a syndicate or in large scale, in violation of the aforementioned law.[2] (Underscoring not supplied).

Appellants were arrested while Azul remained at large.

Appellants pleaded not guilty on arraignment. At the pre-trial, the parties stipulated on the following facts:

1. Identity of the accused as the same person charged in the information;
2. The jurisdiction of this Honorable Court;
3. That accused was arrested by the operatives of Anti-Illegal Recruitment Task Force upon information given by the private complainants;
4. The existence of the following documents: referral letter addressed to the Office of the City Prosecutor of Mandaluyong City, joint affidavit of arrest executed by the arresting officers; sworn statement of the private complainants and booking and information sheet;
5. That accused has no knowledge of the fact that private complainants [were] repatriated upon arrival in Thailand;

[2] Records, p. 104.

6. That accused was arrested without warrant of arrest by the elements of Anti-Illegal Recruitment Task Force.[3]

Trial ensued.

The six (6) private complainants, Alvaro Trinidad (Alvaro), Michael Soriano (Michael), Rebecca Villaluna (Rebecca), Maricel Tumamao (Maricel), Nyann Pasquito (Nyann), and Cyrus Chavez (Cyrus), testified for the prosecution.

Azul owns Von Welt Travel Agency located in Quezon City, while Tendenilla owns Charles Visa Consultancy in Intramuros, Manila. Rea is Tendenilla's employee and babysitter.

Alvaro first came to Von Welt Travel Agency, upon recommendation of a friend, to apply for employment in the United States. When said employment did not materialize, Azul introduced him to Tendenilla on 25 June 2005. Tendenilla represented that she can send Alvaro to work in London. Alvaro gave ₱114,000.00 to Azul.[4]

Responding to a newspaper advertisement, Michael went to Von Welt Travel Agency to inquire about a job offer in the United States. Michael was first unable to come up with the placement fee. He returned one year later and was introduced by Azul to Tendenilla to discuss the process of employment in London. He initially gave ₱70,000.00 to Azul, who handed it to Tendenilla. Before he left, he paid another ₱30,000.00.[5]

Alvaro and Michael left for Thailand on 3 July 2005. They were accompanied by Rea to Malaysia in obtaining a non-immigrant visa. Upon returning to Thailand, they were transferred into a barrack where they were eventually arrested and deported last 12 August 2005.[6]

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[3] *Id*. at 84.

[4] TSN, 2 March 2006, pp. 3-11.

[5] TSN, 25 April 2006, pp. 7-13.

[6] *Id*. at 15-23; TSN, 2 March 2006, pp. 15-19.

Rebecca met Azul, Tendenilla, and Rea at a training center in Roces Avenue, Quezon City where they had a briefing for applicants for employment to London sometime on 27 or 28 June 2005. She went to Azul's house to pay ₱150,000.00 with her understanding that it would be given to Tendenilla. She was advised by Azul to wait for the plane ticket coming from Tendenilla.[7]

Maricel went to Von Welt Travel Agency to apply for employment as mushroom picker in London. When the supposed employment did not push through, Azul accompanied her to Tendenilla's travel agency in Intramuros. Tendenilla told her that she was an ex-consul in Vienna and that she could deploy people to the United States, London and Thailand. Maricel returned the following day and handed ₱100,000.00 to Azul, who in turn, counted it and eventually handed it over to Tendenilla.[8]

Maricel and Rebecca left for Thailand on 5 July 2005, accompanied by Tendenilla and Rea. Upon arriving in Thailand, they were instructed by Tendenilla to go to Malaysia to obtain a non-immigrant Thailand visa. They went to Penang, Malaysia to have her passport stamped. They returned to Bangkok the following day, and a week later, they were arrested by the immigration police and deported on 10 August 2005.[9]

Nyann and Cyrus met Azul, who promised them employment as caregivers in London, through Cyrus' mother on 15 July 2005 at the training center owned by Tendenilla. They were told by Azul that they have to go to Thailand while waiting for their working papers to be processed. Azul asked Nyan to prepare ₱200,000.00 as placement fee.[10] On 18 July 2005, Nyann and Cyrus left for Thailand. They met Tendenilla upon arriving

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[7] TSN, 1 February 2006, pp. 5-7.

[8] TSN, 21 March 2006, p. 7.

[9] *Id.* at 23-32; TSN, 1 February 2006, pp. 15-21.

[10] TSN, 14 February 2006, p. 4.

at a hotel in Thailand. Nyann handed her US$1,800.00[11] while Cyrus gave her ₱100,000.00,[12] both amounts allegedly represent partial payments for the processing of their visas. Tendenilla and a certain Sir Rey then brought them to a bus station bound for Hadyai, Thailand and told them to meet Mr. Chom who would bring them to Penang, Malaysia. After a 12-hour bus ride, they arrived in Hadyai and met Mr. Chom and other Filipino applicants. They rode in Mr. Chom's van going to Penang, Malaysia. Upon reaching Penang, they were asked to sign a fictitious employment contract to expedite the processing of their non-immigrant Thailand visas. After acquiring their visas, they went back to Bangkok, Thailand. They stayed in Patanakan, Thailand for seven (7) days together with other Filipino applicants, before they were arrested by Thailand immigration officers. They were detained for two (2) weeks and repatriated on 10 August 2005. Unaware of their plights, the father of Nyann even went to the training center in Quezon City and gave the remaining balance of the processing fee in the amount of ₱99,200.00 to Azul. Upon arriving in the Philippines, they went to the training center and met with Rea, who refused to divulge the whereabouts of Tendenilla.[13]

Tendenilla denied having recruited private complainants for work abroad. She claimed that she was a tour guide in Bangkok, Thailand. She organized tour groups, issued plane tickets and prepared vouchers and transportation in Thailand. She met Azul through Buenas Diaz Travel Agency and Azul was inquiring about the tour itinerary in travelling to *ASEAN* countries. She remembered seeing the private complainants once while they were in Hadyai, Thailand. She was arrested by an agent from Task Force Hunter and was charged with illegal recruitment. She believed that she was wrongfully charged because she was being made to pay for the actions of Azul, whom they could not locate.[14]

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[11] *Id.* at 12.

[12] TSN, 10 May 2006, p. 10.

[13] TSN, 14 February 2006, pp. 4-29.

[14] TSN, 19 September 2006, pp. 4-11.

Rea served as the babysitter of Tendenilla. She first met Michael and Alvaro when they all got their non-immigrant visa in Malaysia, while she knew the other private complainants through Azul, who asked her to meet them at the airport in Manila to deliver hotel vouchers. She came back to the Philippines on 19 July 2005. On 15 August 2005, she was taken by agents of Task Force Hunter, the Anti-Illegal Recruitment group under the Philippine National Police, and was informed of the charges against her.[15]

After trial, the RTC rendered judgment convicting appellants of the crime of illegal recruitment in large scale. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered finding accused MARIA JENNY REA *y* GUEVARRA and ESTRELLITA TENDENILLA GUILTY beyond reasonable doubt of Illegal Recruitment in large scale, and accordingly, they are each sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) plus costs.
>
> Accused are further ordered to indemnify each of the complainants, Michael Niño Soriano ₱100,000.00, Maricel Tumamao ₱150,000.00, Dandy Mendoza ₱250,000.00, Rebecca Villaluna ₱150,000.00, Nyann Pasquito ₱200,000.00, Alvaro Trinidad ₱120,000.00 and Cyrus Chavez ₱132,000.00.
>
> Meanwhile, let the case against accused G[i]nette Azul be placed in the archives to be revived upon her arrest and let *alias* warrant of arrest be issued against her.[16]

The trial court found that all elements of illegal recruitment in large scale were established through the testimonies of the private complainants and that appellants conspired to commit the crime.

On 10 January 2011, the Court of Appeals affirmed the trial court's decision.

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[15] TSN, 25 January 2007, pp. 4-16.

[16] CA *rollo*, pp. 25-26.

Appellants filed a notice of appeal upon receipt of the unfavorable decision. On 5 September 2011, this Court directed the parties to simultaneously submit their respective supplemental briefs. The Office of the Solicitor General (OSG) filed a Manifestation stating that it would no longer file any supplemental brief and would instead adopt its appellee's brief. Appellants meanwhile filed their Supplemental Brief and maintained that there was no sufficient evidence to prove that appellants offered jobs to the private complainants.

Appellants essentially argue that the prosecution has failed to establish their guilt beyond reasonable doubt. Appellants claim that their supposed criminal liability is attributed to their mere presence in Thailand at the time when the private complainants were also there. They assert that it was Azul, based on the testimonies of the private complainants, who promised employment abroad and who received payment from them. Rea avers that delivering a voucher, meeting people at the airport and sleeping in the house of Tendenilla can hardly qualify as recruitment activities.

The OSG defends the trial court's evaluation of the credibility of the prosecution witnesses. The OSG posits that the testimonies of private complainants clearly establish that Tendenilla made representations that she could provide employment abroad. The OSG also implicates Rea as a co-conspirator by her presence when private complainants paid their placement fees and at the training center during the orientation of private complainants; and by accompanying private complainants to Thailand.

The crime of illegal recruitment in large scale is committed upon concurrence of these (3) elements, namely: (1) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code; (2) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; and (3) the offenders commit the acts against three or more persons, individually or as a group.[17]

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[17] *People v. Ganigan*, G.R. No. 178204, 20 August 2008, 562 SCRA 741, 747.

Recruitment and placement is defined in Article 13(b) of the Labor Code as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring worker; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not."

Simply put, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.[18]

That Tendenilla made misrepresentations concerning her purported power to recruit for overseas employment; and personally, or through Azul but on her behalf, collected placement fees from private complainants were clearly established from the testimonies of private complainants themselves, to wit:

Testimony of Alvaro Trinidad:

Q: Then you follow it up to her and again on June 2005 you went back also and she asked you to give her what amount?
A: Php114,000, your Honor.

Q: This is for what?
A: For another placement of another work in London, your Honor.

Q: Where you able to deliver the Php114,000?
A: Yes, your Honor.

Q: Where did you get this money?
A: I withdraw from the bank, your Honor.

Q: In other words the Php114,000 you gave to Ginette, how did you give to Ginette the Php114,000?
A: It was deposited in the bank, your Honor.

x x x x

[18] *People v. Gallo*, G.R. No. 185277, 18 March 2010, 616 SCRA 162, 176 citing *People v. Ganigan*, *id.* at 748.

Q: So you went back in the month of May and Ginette Azul told you that she has another employer?
A: Yes, Ma'am.

Q: And this one is for London?
A: Yes, Ma'am.

Q: And that you were asked again to pay another amount of placement fee?
A: Yes, Ma'am.

Q: Which you said Php114,000?
A: Yes, ma'am.

Q: Mr. Witness, what job would that be?
A: General services, Ma'am.

Q: Janitor also?
A: Yes Ma'am.

Q: What happened after that talked with Ginette Azul when she told you that she has another employer and you paid Php114,000?
A: Ginette Azul asked me to pay that amount, Ma'am.

Q: After you paid that Php114,000 to whom did you give [it to]?
A: Ginette Azul, Ma'am.

Q: When?
A: June 30, 2005, Ma'am.

Q: Do you have receipt to show that Ginette Azul received that amount?
A: (Witness handling the receipt to the public prosecutor)

x x x x

Q: After you paid that amount to Ginette Azul what happened?
A: Ginette Azul and Estrellita Tendenilla told me that I can leave already, Ma'am.

Q: Earlier you were just seeing with Ginette Azul on December 2004 until May of 2005 and in fact you were asked to pay again Php114,000?
A: Yes, ma'am.

Q: Because she has another employer in London?
A: Yes, Ma'am.

Q: How come you are now transacting with Ginette Azul and Estrellita Tendenilla?
A: It was Estrellita Tendenilla who knows a recruiter friend in Thailand, Ma'am.

Q: When for the first time did you meet Estrellita Tendenilla?
A: June 25, 2005, Ma'am.

Q: Where did you meet her?
A: Von Welt Office, Ma'am.

Q: The same Von Welt Office where you first met Ginette Azul?
A: Yes, Ma'am.

Q: Who introduced [you] to Tendenilla?
A: Ginette Azul, Ma'am.

Q: That was on June 25, 2005?
A: Yes, Ma'am.

Q: When you were introduced [to] Tendenilla by Ginette Azul, I mean I am referring to you and Tendenilla, did you talk?
A: Yes, Ma'am.

Q: What did you talk about?
A: Tendenilla make sure that we could reach London, Ma'am.

Q: Under what circumstances why did Tendenilla assured you that you can go to London?
A: Tendenilla told me that she has an employer, Ma'am.

Q: What kind of employer?
A: British employer, Ma'am.

Q: Did you also apply for job with Estrellita Tendenilla?
A: Yes, Ma'am.

Q: When?
A: June 30, when I paid, Ma'am.

Q: Not on June 25 when you met her?
A: Sorry, June 25, Ma'am.

Q: Exactly, if you can recall what did Tendenilla tell you?
A: She assured that we could reach London, Ma'am.

Q: What was the assurance?
A: Tendenilla has an employer a British in London, Ma'am.

Q: Did she tell you the name of the employer?
A: Robert Lease, I can not recall, Ma'am.

Q: What else did Tendenilla tell you, if any?
A: Estrellita Tendenilla told me that Robert Lease is the adviser of the Prime Minister of Thailand, Ma'am.

Q: She told you that?
A: Yes, Ma'am.

Q: What else did she tell you?
A: She also told me that he has a lot of plastic factory in Thailand, Ma'am.

Q: What else did she tell you?
A: That's what I remember, Ma'am.

Q: You would be working as janitor?
A: Yes, Ma'am.

Q: How much?
A: 1,000 to 1,200 U.S. dollar, Ma'am.

Q: Who said that you would be receiving 1,000 to 1,200 U.S. dollar?
A: Estrellita Tendenilla, Ma'am.

Q: When did she tell you that?
A: June 25 when we applied for work, Ma'am.

COURT:

Q: Did you not say that it was Ginette Azul whom you gave money?
A: Yes, your Honor.

Q: How did this Tendenilla come into the picture?
A: The money I paid to Ginette Azul is for London, your Honor.

Q: So because it was for London how did this Tendenilla come into the picture?
A: She has the one with employer for London, your Honor.

Q: Where was Tendenilla when Ginette Azul received the money[?]
A: She was also in the office of Ginette Azul, your Honor.

Q: Was she present?
A: Yes, your Honor.

Q: Who were person present when Tendenilla received the money?
A: Ginette Azul and Estrellita Tendenilla, your Honor.[19]

Testimony of Rebecca Villaluna:

x x x x

Q: You mentioned a while ago that you saw Maria Jenny Rea and Estrellita Tendenilla in the house of Ginette Azul?
A: Yes, Ma'am, together with Estrellita Tendenilla when we had our briefing.

Q: What was the briefing all about?
A: According to Estrellita Tendenilla[,] we will go to London and while waiting for the processing of our papers for London

[19] TSN, 2 March 2006, pp. 10-13.

we will work at Singapore or Hongkong our salary is 50,000.00 a month, Sir.

Q: Who was giving the briefing?
A: Estrellita Tendenilla in front of Ginette Azul, Ma'am.

x x x x

Q: Then, Madam Witness, after that briefing what happened next[?]
A: After the briefing I went to the house of Ginette Azul to pay Php150,000.00, Ma'am.

Q: What was that Php150,000.00?
A: For the processing of papers going to London, Ma'am.

Q: Whom did you give the Php150,000.00?
A: Ginette Azul to be given to Estrellita Tendenilla, Ma'am.

Q: Are you saying to this Honorable Court that the Php150,000.00 was received by Ginette Azul?
A: Yes, ma'am.

Q: When was that?
A: That was June 2, 2005, Ma'am.

Q: And after you paid Php150,000.00 to Ginette Azul what happened next?
A: She told me to wait for the ticket to be given by Estrellita Tendenilla, Ma'am.

Q: Who gave you that advice?
A: Ginette Azul, Ma'am.

Q: When did she give that advice?
A: When I paid Php150,000.00, July 2, Ma'am.

Q: In what place?
A: In her house in Mandaluyong, Ma'am.[20]

[20] TSN, 1 February 2006, pp. 5-7.

Testimony of Michael Soriano:

Q: Under what circumstances did you meet Estrellita Tendenilla?
A: With Ginette Azul discussing the processing of employment to London in their office in Intramuros, Ma'am.

x x x x

Q: During your meeting did you discuss anything to her?
A: Yes, your Honor.

Q: What?
A: She discussed the process of employment in going to London, your Honor.

Q: Was there any proposal made to you by Tendenilla?
A: Yes, your Honor.

Q: What was the proposal?
A: They will send us to Hongkong temporarily, your Honor.

Q: Did you accept the proposal?
A: Yes, your Honor.

Q: When you accepted their proposal what happened?
A: I went to the office of Ginette Azul to give the placement fee, your Honor.

x x x x

Q: When did you go to the office of Ginette Azul?
A: My first payment was on June 23, 2005, Ma'am.

Q: How much did you pay?
A: In my first placement fee I paid Php70,000, Ma'am.

Q: To whom did you give the Php70,000?
A: In that office Ginette Azul and Estrellita Tendenilla, Ma'am.

Q: Why?
A: Because Ginette Azul told us that in a few days we will be leaving for Hongkong, Ma'am.

Q: You said that you gave Php70,000.00 to Ginette Azul?
A: Yes, Ma'am.

Q: But Estrellita Tendenilla was also present?
A: Yes, Ma'am.

x x x x

Q: So you paid Php70,000 to Ginette Azul?
A: Yes, Ma'am.

COURT:

Q: What was that Php70,000 for?
A: The whole placement fee is Php120,000.00.

Q: What was that Php70,000 for?
A: The down payment for the Php150,000 placement.

PROS. DIMAGUILA

Q: How do you know that the placement fee for a job in London is Php120,000?
A: Ginette Azul told us, Ma'am.

Q: After you gave the Php70,000 to Ginette Azul what happened next?
A: Estrellita Tendenilla was present and I saw that she gave the whole money to Estrellita Tendenilla.

Q: Who gave the whole money?
A: Ginette Azul, Ma'am.

Q: Referring to Php70,000?
A: Yes, Ma'am.

Q: What happened next?
A: After the other lady also an applicant paid the placement fee Estrellita Tendenilla left, Ma'am.

x x x x

Q: What happened after that information from Ginette Azul?
A: On June 27[,] I returned to the office, Ma'am.

Q: Whose office?
A: Office of Ginette Azul, Ma'am.

Q: In Mandaluyong?
A: Yes, Ma'am.

Q: Why did you return?
A: To deposit another Php30,000, Ma'am.

Q: Aside from the Php70,000 you also gave Php30,000 on June 27?
A: Yes, Ma'am.

Q: Who received your Php30,000?
A: Ginette Azul, Ma'am.

Q: Do you have any document to prove that Ginette Azul received the Php30,000?
A: She didn't issue any receipt, Ma'am.

Q: Then what happened after you gave Php30,000?
A: I went home and through phone she informed me that there is a tentative flight in July 1 for Bangkok, Ma'am.

Q: You were applying for a job in London?
A: Yes, Ma'am.

x x x x

Q: Were you able to fly for Bangkok?
A: Yes, Ma'am, July 3, 2005.

Q: Who provided you with your ticket in Bangkok?
A: During that day Ginette Azul handed me my ticket, passport and papers.

Q: Then what happened after you were given ticket and passport?
A: We [flew] to Bangkok and stayed in a hotel, first class hotel, Ma'am.

Q: You said we, who were with you?
A: With other 9 applicants, Ma'am.

Q: Who else?
A: With Ginette Azul and other applicants, Ma'am.

Q: So you were 9 applicants, yourself and Ginette Azul?
A: Yes, Ma'am.

Q: What happened when you were in Bangkok?
A: In a few days they arrived, Ma'am.

Q: Who arrived?
A: Ginette Azul and Estrellita Tendenilla, Ma'am.

x x x x

Q: But Jenny Rea how was she introduced to you by Ginette Azul?
A: During our travel going to Malaysia, Estrellita Tendenilla told us that Jenny Rea will assist us to claim our visa in Penang, Malaysia, Ma'am.

Q: In other words you went to Malaysia?
A: Yes, ma'am.

Q: Who accompanied you to Malaysia?
A: Jenny Rea *y* Guevarra.

Q: What happened when you went to Malaysia?
A: We claimed for a non-immigrant visa and stayed in a hotel in one day.

Q: Do you have any proof to that effect that you were given a non-immigrant visa?
A: Xerox copy of the visa and my passport, Ma'am.

x x x x

Q: What happened after that?
A: We stayed there until we were brought by the immigration police.

Q: Why were you arrested?
A: They told us, when we were presented to the press, that we have a false visa, Thailand visa.

Q: Were you detained?
A: Yes, Ma'am.

Q: For how long?
A: July 27 to August 12.[21]

Testimony of Maricel Tumamao:

Q: When you went to Charles Visa Consultancy you were about to meet Mrs. Estrellita Tendenilla?
A: Yes, ma'am.

Q: And that you did not meet her in the office because it was already late?
A: No, ma'am.

Q: So what happened next, Madam Witness?
A: So we proceeded to the hotel, ma'am.

Q: What hotel?
A: Cherry Blossom Hotel, ma'am.

Q: Where is it located?
A: In Malate, ma'am.

Q: With whom Madam Witness?
A: With Ginette Azul, ma'am.

Q: So what happened at Cherry Blossom Hotel?
A: Mrs. Tendenilla was there, ma'am.

Q: So you m[e]t with Mrs. Tendenilla?
A: Yes, ma'am.

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[21] TSN, 25 April 2006, pp. 4-18.

Q: So what happened next?
A: So she told us what will happen and what we are going to do, ma'am.

Q: Who said "*kung ano ang gagawin namin at ano ang mangyayari?*"
A: Mrs. Tendenilla, ma'am.

Q: What did she tell you?
A: She told that she is an ex-consul in Vienna and that she could deploy people and she was able to deploy people in U.S., London and Bangkok, ma'am.

Q: What else did she tell you?
A: And the complete placement fee is three hundred thousand pesos (₱300,000.00) and she told us we should prepare first the ₱150,000.00 and if they are able to go in London then the remaining ₱150,000.00 will be salary deduction, ma'am.

x x x x

Q: In what job are you applying for United Kingdom?
A: Caregiver, ma'am.

Q: During your first meeting with Mrs. Tendenilla aside from the placement fee and job offer what else did she tell you if there was any?
A: She told that while we are waiting for our working permit to London she will give us a job in Bangkok, ma'am.

Q: What did you do after that meeting with Mrs. Tendenilla?
A: I think it over and decided it was alright, ma'am.

Q: So what did you do next?
A: I prepared the placement fee which is ₱150,000.00, ma'am.

Q: After you prepared the amount of ₱150,000.00 for placement fee what else did you do?
A: Then I went back to Ginette Azul, ma'am.

Q: When?
A: In Charles Visa Consultancy, ma'am.

Q: When?
A: Last June 23, 2005, ma'am.

Q: Why did you go back to Charles Visa?
A: I am going to pay, ma'am.

Q: You are going to pay?
A: Yes, ma'am.

Q: And what is it that your *(sic)* are going to pay?
A: The placement fee according to Mrs. Tendenilla, ma'am.

Q: What job you are applying?
A: As caregiver in London, ma'am.

Q: Whom did you meet at Charles Visa Consultancy?
A: G[i]nette Azul was there and also Mrs. Tendenilla and also Jenny Rea, ma'am.

Q: What happened when you were there at Charles Visa Consultancy?
A: I handed to G[i]nette Azul the money, ma'am.

Q: How much?
A: Amounting to ₱100,000.00, ma'am.

Q: And did she receive it?
A: Yes, ma'am.[22]

Testimony of Nyanne Pasquitto:

x x x x

Q: Under what circumstances did you come to know Ginette Azul?
A: Ginette Azul promised Elma Chavez that we will be employed abroad as caregivers, ma'am.

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[22] TSN, 21 March 2006, pp. 14-19.

Q: That was on July 15, 2005?
A: Yes, ma'am.

x x x x

Q: What else happened while you were at the training center?
A: Ginette Azul promised us that we will be employed as caregiver in United Kingdom, ma'am.

x x x x

Q: In relation to that what documents, if any, did Ginette Azul require from you?
A: Our resume, record from school including diploma and NBI, ma'am.

Q: What job are you applying for?
A: Caregiver, ma'am.

Q: What else were asked from you?
A: Placement fee or processing fee for visa, ma'am.

Q: How much?
A: ₱200,000.00 ma'am, for London visa.

Q: Who asked you to prepare ₱200,000.00?
A: Ginette Azul, ma'am.

x x x x

Q: Then what else happened?
A: My parents make [made] an arrangement to Ginette Azul that we are going to give the money at the time of our departure, ma'am.

Q: How much?
A: $1,800.00 U.S. dollars, ma'am.

Q: When did you give that?
A: July 18, 2005, ma'am.

Q: To whom did you give that amount?
A: To Ginette Azul, ma'am.

Q: What happened after you gave $1,800.00 U.S. dollars?
A: She gave me a receipt, ma'am, then she handed me the money, ma'am.

Q: What money?
A: That $1,800.00 U.S. dollars, ma'am and according [to] her upon arrival in Thailand I will be meeting with Estrellita Tendenilla at First House Hotel, that I will give the money to Estrellita Tendenilla because Estrellita Tendenilla knows already about that because that will be for the processing fee of our papers, ma'am.[23]

Testimony of Cyrus Chavez:

Q: How did you come to know Estrellita Tendenilla?
A: For my local Philippine employer named Ginette Azul, ma'am. She actually called my Mom and offered the job for me, she was actually looking for me when I was at home so she just told my Mom about the offer for employment, ma'am.

Q: Who is that she is referring to when she offered job employment?
A: It was Ginette Azul but the main employer is Estrellita Tendenilla, ma'am.

x x x x

Q: When did you meet Estrellita Tendenilla for the first time?
A: July 18, ma'am.

Q: What year?
A: 2005, ma'am.

Q: Where at?
A: In Thailand, ma'am.

Q: You made mention of a Philippine local employer a certain Ginette Azul?
A: Yes, ma'am. She was actually the one who told me about the job offered me in United Kingdom. She also told me

[23] TSN, 14 February 2006, pp. 4-9.

that I have to give a placement of ₱100,000.00 initial payment, ma'am.

Q: When was that made, Mr. Witness?
A: In July 16, 2005, ma'am.

Q: Where?
A: In Roces Avenue in Pantranco, ma'am.

Q: What happened during that meeting?
A: She gave me a brief introduction of the job, ma'am. She told me about the placement fee of ₱100,000.00 but the total placement fee is ₱350,000.00, ma'am. I could just give the initial amount of ₱100,000.00 and she also said that the main employer is Estrellita Tendenilla but informed me that Estrellita Tendenilla is in Thailand, ma'am.

Q: What else were told you by Ginette Azul?
A: She told me about a job in United Kingdom as a caregiver and I would have a salary of ₱150,000.00, ma'am.

Q: What happened after that meeting?
A: I was interested and later on told my Mom about it and she decided already that if I could continue and then after that we decided to meet Ginette Azul that the day after, the day before, ma'am.

x x x x

Q: So you gave initial payment of ₱100,000.00?
A: No it was not actually me, ma'am.

Q: Who gave the initial payment of ₱100,000.00?
A: It's my Mom who met her in Ermita, ma'am.

Q: You're referring to Ginette Azul?
A: Yes, ma'am.

Q: How did you know that she was giving ₱100,000.00.
A: My Mom just told me that she already met Ginette Azul and gave the money of ₱100,000.00, ma'am.

Q: Do you have proof to show that ₱100,000.00 was given to Ginette Azul?
A: Yes, ma'am I have a receipt, ma'am.

x x x x

Q: This happened after your mother gave the ₱100,000.00?
A: Yes, that same day, Your Honor.

Q: In the afternoon?
A: In the afternoon I met Ginette Azul personally, also with my Mom and my girlfriend and gave us the ticket, Your Honor.

Q: Ticket bound for Thailand?
A: Yes, ma'am.

Q: Were you able to go to Thailand?
A: Yes, ma'am. I've been in Thailand in July 18, 2005, ma'am?

Q: Who were with you?
A: I was with my girlfriend also, ma'am.

Q: What happened when you arrive in Thailand?
A: When I was in Thailand I was met by Thailander tourist guide named Mickey and he brought us to First House Hotel in Bangkok, Thailand. There was also an applicant there named Susan and said that we just have to wait because Estrellita Tendenilla is coming to pick us up, ma'am.

Q: Were you able to meet Estrellita Tendenilla?
A: When I met her in Bangkok I already gave the placement fee to her because Ginette Azul told us to give the placement fee personally to her, ma'am.

COURT:

Q: To?
A: To Estrellita Tendenilla, Your Honor.

Q: How many days you stayed there?
A: For just thirty (30) minutes, Your Honor.

x x x x

Q: Where?
A: First House Hotel, Your Honor, in July 18, 2005.

Q: Where in the Hotel lobby?
A: Yes, Your Honor.

Q: That's where you gave the balance?
A: The initial ₱100,000.00, Your Honor.

Q: All in all you already gave ₱200,000.00?
A: No, Your Honor. When I was bound to go to Thailand when I was about to [board] the plane, Ginette have told us to personally give the money to Estrellita Tendenilla, Your Honor.

Q: So the money which your mother gave to her was returned back to you?
A: Yes, Your Honor, because I will be the one [to] personally give it to Estrellita Tendenilla, Your Honor.

PROS. DIMAGUILA:

Q: So it was received by Estrellita Tendenilla?
A: Yes, ma'am.

Q: Do you have receipt that it was received by Estrellita Tendenilla?
A: She did not give any receipt, ma'am.[24]

As culled from the testimonies of the private complainants, it was established that first, they all met Tendenilla through Azul; second, Tendenilla personally, or through Azul, assured them that she has the power and capacity to deploy workers to London; third, they also paid Tendenilla, directly or through Azul, placement fees in the amounts ranging from ₱100,000.00 to ₱200,000.00 each; fourth, they were sent first to Thailand while waiting for the processing of their working visas to London;

[24] TSN, 10 May 2006, pp. 4-10.

fifth, they travelled to Penang, Malaysia to obtain a non-immigrant Thailand visa to validate their stay in Thailand; and sixth, they were arrested and deported back to the Philippines by the Thailand immigration office.

To prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.[25]

The first element of large scale illegal recruitment was proven by the testimonies of the private complainants which the trial court found to be credible and convincing. We find that they were given in a clear, positive and straightforward manner. Between the positive and categorical testimonies of private complainants and the unsubstantiated denials of appellants, we give more weight to the former.

The certification issued by the Philippine Overseas Employment Administration that Tendenilla is not licensed to recruit workers for overseas employment constitutes the second element of the crime of illegal recruitment.

The third element is likewise satisfied when at least six (6) individuals filed the case, claimed and in fact, were found to have been defrauded by appellants.

As for Rea's participation as a principal, it was likewise established by the testimonies of the following witnesses, to wit:

Testimony of Alvaro Trinidad:

PROS. DIMAGUILA:

Q: Who assisted you while in Thailand?
A: Ginette Azul, JR and Tendenilla, Ma'am.

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[25] *People v. Ocden*, G.R. No. 173198, 1 June 2011, 650 SCRA 124, 142.

Q: Who is JR?
A: Ma Jenny Rea Guevarra, Ma'am.

Q: When for the first time did you meet Ma Jenny y Guevarra?
A: In Bangkok, Ma'am.

Q: When?
A: July 3, Ma'am.

Q: Where did you meet Jenny Rea?
A: Hotel in Bangkok, Ma'am.

x x x x

Q: After July 6 what happened?
A: They brought me at the border, your Honor.

Q: Border of what?
A: Thailand and Malaysia, your Honor.

PROS. DIMAGUILA:

Q: Who were with you?
A: JR, ma'am.

Q: You are referring to Jenny Rea?
A: Yes, Ma'am.

Q: Who else?
A: Estrellita Tendennilla, Ma'am.

Q: Who else?
A: Ginette Azul, Ma'am.

Q: Who else?
A: My other companions 8 of them, Ma'am.

Q: What happened?
A: JR took our visa at Thailand Embassy, Ma'am.[26]

[26] TSN, 2 March 2006, pp. 16-17.

Testimony of Michael Soriano:

Q: How about Jenny Rea who introduced to you Jenny Rea?
A: Ginette Azul, Sir.

Q: And what is the participation of Jenny Rea?
A: She was one of the person who sent us in the airport, Sir.

Q: She brought you to the airport?
A: Yes, Sir.

Q: That's all?
A: And also in Malaysia, Sir.

Q: In other words Ginette Azul was the one who promised employment to you?
A: No, Sir, Estrellita Tendenilla.

Q: Was she not the one who processed your visa?
A: No, Sir.

Q: Who processed your visa?
A: Jenny Rea, Sir.

Q: Did you give your name to Jenny Rea to process your visa?
A: No, Sir.

Q: How did she process your visa?
A: She assisted us in going to Penang, Sir.

Q: So Jenny Rea was the one who assisted you in processing your visa?
A: Yes, Sir.

Q: You mentioned that she assisted you in?
A: Applying for non-immigrant visa, Sir.[27]

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[27] TSN, 25 April 2006, pp. 29-30.

Testimony of Rebecca Villaluna:

Q: Who promised you employment for London?
A: Estrellita Tendenilla, Sir.

Q: How about Ginette Azul?
A: She was just listening, Sir.

Q: Whom did you give money?
A: Ginette Azul.

Q: But the one who promised you employment abroad was?
A: Estrellita Tendenilla.

Q: So, the only participation of Jenny Rea was to assist you in giving you allowance when you were in Bangkok?
A: Yes, Sir.

x x x x

Q: And another participation of Jenny Rea was she asked you to sign a form?
A: Yes, Sir.

Q: For what was that form?
A: For Korea and Singapore, Sir.

x x x x

Q: Does this Jenny Rea when you were in Bangkok helping you?
A: Yes, Sir.

Q: Jenny Rea did not deceive you?
A: No, she was the one who helped us, she is the companion of Estrellita Tendenilla.

ATTY. ENCINAS:

No further question.

COURT:

She is presently detained?

A: Yes, your Honor.

Q: She is detained because you filed a case against her?
A: Yes, your Honor.

Q: Including your companion?
A: Yes, your Honor.

Q: My question to you now is based on your earlier answer when it was propounded to you by the defense counsel that this accused did not deceived you and in fact she was the one helping what is now your position insofar as this case is concerned?
A: She was one of the companion[s] of Estrellita Tendenilla that Estrellita Tendenilla (*sic*) was the one who find ways to get money, your Honor.

Q: So, this accused is one of the companions of Estrellita Tendenilla?
A: Yes, your Honor.

Q: So you are not absolving [her] from any liability that's what you mean?
A: I was not absolving her because she was the companion of Estrellita Tendenilla.[28]

Testimony of Maricel Tumamao:

Q: You said you [were] able to leave for Thailand?
A: Yes, ma'am.

Q: Where you accompanied by some other persons?
A: Yes, ma'am.

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[28] TSN, 1 February 2006, pp. 28-31.

Q: Who were with you?
A: Mrs. Tendenilla and Jenny Rea accompanied us in Thailand, ma'am.

X x x x

Q: What happened upon you[r] [arrival] at Bangkok?
A: Jenny Rea and Mrs. Tendenilla brought us to the hotel, ma'am.[29]

Testimony of Nyann Pasquito:

COURT:

So when for the first time did you meet Estrellita Tendenilla?

A: July 18, 2005, Your Honor.

Q: Where?
A: First House Hotel in Thailand, Your Honor.

Q: What about Maria Jenny Rea?
A: August 13, 2005, Your Honor.

Q: That was before your departure to Thailand?
A: Pardon, Your Honor.

Q: That was before or after your departure to Thailand?
A: After, Your Honor.

Q: So after you were repatriated already that's the first time you [met] Maria Jenny Rea?
A: Yes, Your Honor.

Q: So during the whole dealings regarding your employment for abroad these two (2) accused, you never met these two (2) accused?
A: Yes, Your Honor.

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[29] TSN, 21 March 2006, pp. 24-26.

Q: While you were dealing regarding your supposed employment abroad accused Jenny Rea and Estrellita Tendenilla were not part of this?
A: They were part, Your Honor.

Q: In what way were they part of the dealing?
A: Estrellita Tendenilla promised me for employment abroad, Your Honor.

Q: Where did she promise you?
A: In Bangkok, Thailand, Your Honor.

COURT:

That is why my question to you is, during the transaction here in the Philippines before you were deployed abroad, before you left for any country while you were still here in the Philippines while you were still processing your papers, the supposed employment abroad, did you meet Maria Jenny Rea and Estrellita Tendenilla?
A: No, Your Honor, because they were in Thailand according to Ginette Azul, Your Honor. Ginette Azul told us that once we arrived [in] Thailand we will meet personally Estrellita Tendenilla, Your Honor.

Q: In the Philippines there was no occasion for you to meet Estrellita Tendenilla and Maria Jenny Rea?
A: Yes, Your Honor.

Q: But when you reached Thailand you only [met] Estrellita Tendenilla?
A: Yes, Your Honor.

Q: And it is in Thailand where [you met] Estrellita Tendenilla regarding your possible employment in London?
A: Yes, Your Honor.

Q: As?
A: Caregiver, Your Honor.

Q: But this did not materialize because you were repatriated to our country?
A: Yes, Your Honor.

Q: Back to the Philippines that is when you meet for the first time Maria Jenny Rea?
A: Yes, Your Honor, when we went back to the training center according to Maria Jenny Rea that she will not tell us what province did this Estrellita Tendenilla was at that time and according to her also Estrellita Tendenilla was with an employer recruiting teachers and nurses, Your Honor.

COURT:

So that's the first time you met Maria Jenny Rea only?
A: Yes, Your Honor.

Q: Based on all your answers there was no transaction, there was no promise or any job employment coming from Jenny Rea?
A: She also promised me, Your Honor.[30]

Testimony of Cyrus Chavez:

Q: What happened when you went to Roces Avenue?
A: I went there with my girlfriend, ma'am, we met Jenny Rea one of the accused, ma'am.

Q: What happened during your meeting with Jenny Rea?
A: She said, "you just have to wait we [are] already processing your paper and if you want to reimburse your money you have just to wait because we're already recruiting some of the applicants and the money that the applicants will be giving are the one[s] will (sic) be giving back to you." Ma'am.

Q: It was Jenny Rea who told you that?
A: Yes, ma'am and they actually using some other people's money to pay us back. Then after that she also said that, "*hinding-hindi namin ilalabas si Estrellita Tendenilla sa*

[30] TSN, 14 February 2006, pp. 34-37.

inyo, hindi naming siya isusuko at hindi naming siya ipakikita."

Q: It was Jenny Rea who told you that?
A: Yes, ma'am, because they thought we're all very angry, ma'am. *"Hindi namin siya ilalabas, kailangan maghintay kayo nandiyan na ang papers ninyo, gumastos na kami ng pera diyan, maghintay kayo."*[31]

Rea's complicity was proven by her participation during the recruitment at the training center; the fact that she accompanied Rebecca and Maricel on their flight to Thailand; her presence in the hotel in Thailand; the accommodation she provided while in Thailand; that she accompanied complainants to Malaysia to obtain a non-immigrant visas; and when she offered to re-deploy the disgruntled complainants, this time, to Korea.

Conspiracy may be deduced from the mode and manner in which the offense was perpetrated; or from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[32]

It is equally clear from the narration of private complainants that appellants, together with Azul, conspired to commit the crime of illegal recruitment. Azul referred all private complainants to Tendenilla, who made representations that she could deploy them abroad. It was either Azul or Tendenilla who received the payment of placement fees. And as previously stated, Rea met some of the complainants at the training center, and accompanied some of them while in Thailand. Their actions showed unity of purpose and, taken all together, leave no doubt that they are co-conspirators.

We reiterate the findings of the Court of Appeals, to wit:

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[31] TSN, 10 May 2006, pp. 25-26.

[32] *People v. Pansacala,* G.R. No. 194255, 13 June 2012, 672 SCRA 549, 559.

In the case at bar, it cannot be doubted that both accused-appellants indispensably cooperated and coordinated in illegally recruiting the private complainants. From the evidence, it can be seen that the success of the scheme depended on accused-appellants' joint efforts. Estrellita Tendenilla directly dealt with the private complainants, promising them employment, demanding money from them, conducting dubious trainings, and sending them to Thailand. Maria Jenny Rea, on the other hand, covered the next phase of the process, that is, travelling with the private complainants to Thailand, bringing them to the border of Thailand and Malaysia, securing their fraudulent non-immigrant visas, and accompanying them back to the Philippines.[33]

Based on the foregoing, appellants were correctly found guilty of large scale illegal recruitment tantamount to economic sabotage.

Under Section 7(b) of Republic Act No. 8042,[34] the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage. Thus, the trial court, as affirmed by the appellate court, is correct in imposing the penalty of life imprisonment and a fine of ₱500,000.00 for each of the appellants.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 03178 affirming the trial court's conviction of appellants Maria Jenny Rea *y* Guevarra and Estrellita Tendenilla for large scale illegal recruitment is **AFFIRMED**.

SO ORDERED.

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

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[33] *Rollo,* p. 15.

[34] *The Migrant Workers and Overseas Filipinos Act of 1995.*

[*] Per Special Order No. 1460 dated 29 May 2013.

[**] Per Special Order No. 1461 dated 29 May 2013.

SECOND DIVISION

[G.R. No. 198732. June 10, 2013]

CHRISTIAN CABALLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL PROTECTION OF CHILDREN UNDER RA 7610; CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; "DUE TO THE COERCION OR INFLUENCE OF ANY ADULT";ELEMENTS.— Section 5(b), Article III of RA 7610 pertinently reads: SEC. 5. *Child Prostitution and Other Sexual Abuse*. - Children, whether male or female, who for money, profit, or any other consideration or ***due to the coercion or influence of any adult***, syndicate or group, indulge in sexual intercourse or lascivious conduct, **are deemed to be children exploited in** prostitution and **other sexual abuse**. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: x x x (b) **Those who commit the act of sexual intercourse or lascivious conduct with a child** exploited in prostitution or **subject to other sexual abuse**; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period x x x x As determined in the case of *Olivarez v. CA*, the elements of the foregoing offense are the following: (*a*) The accused commits the act of sexual intercourse or lascivious conduct; (*b*) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (*c*) The child, whether male or female, is below 18 years of age.

2. ID.; ID.; ID.; ID.; COVERS CASES WHERE THE MINOR MAY HAVE BEEN COERCED OR INTIMIDATED INTO SEXUAL INTERCOURSE OF LASCIVIOUS CONDUCT, NOT NECESSARILY FOR MONEY OR PROFIT; ELUCIDATED.—

To put things in proper perspective, it must be pointed out that RA 7610 was meant to advance the state policy of affording "special protection to children from ***all forms* of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development***" and in such regard, "provide sanctions for their commission." It also furthers the "best interests of children" and as such, its provisions are guided by this standard. Driven by the foregoing considerations, Congress crafted Article III of the same law in order to penalize child prostitution and other forms of sexual abuse. Section 5 thereof provides a definition of who is considered a "child exploited in prostitution and other sexual abuse." As illumined in *Olivarez*, citing *People v. Larin* and *Amployo v. People*, the final version of the aforesaid provision was a product of various deliberations to expand its original coverage to cases where the minor may have been coerced or intimidated into sexual intercourse or lascivious conduct, not necessarily for money or profit. x x x As it is presently worded, Section 5, Article III of RA 7610 provides that **when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult**, the child is deemed to be a ***"child exploited in prostitution and other sexual abuse."*** In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development. In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when ***there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will***. Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse **involves the element of influence which manifests in a variety of forms**. It is defined as: The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. To note, the term "*influence*" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— It is undisputed that AAA was only 17 years old at the time of the commission of the crime and is hence, considered a child under the law. In this respect, AAA was not capable of fully understanding or knowing the import of her actions and in consequence, remained vulnerable to the cajolery and deception of adults, as in this case. Based on this premise, jurisprudence settles that consent is immaterial in cases involving a violation of Section 5, Article III of RA 7610; as such, the argument that AAA and Caballo were sweethearts remains irrelevant. x x x [C]oupled with AAA's minority is Caballo's seniority. Records indicate that Caballo was 23 years old at the time of the commission of the offense and therefore, 6 years older than AAA, more or less. The age disparity between an adult and a minor placed Caballo in a stronger position over AAA so as to enable him to force his will upon the latter. Caballo's actions effectively constitute overt acts of coercion and influence. Records reveal that Caballo repeatedly assured AAA of his love for her, and even, promised to marry her. In addition, he also guaranteed that she would not get pregnant since he would be using the "withdrawal method" for safety. Irrefragably, these were meant to influence AAA to set aside her reservations and eventually give into having sex with him, with which he succeeded. [A]t least, with respect to the parties' first sexual encounter, it is observed that the brash and unexpected manner in which Caballo pursued AAA to her room and pressed on her to have sex with him, effectively placed her in, to a certain extent, a position of duress. An important factor is that AAA refused Caballo's incipient advances and in fact, asked him to leave. However, AAA eventually yielded. Thus, it stands to reason that she was put in a situation deprived of the benefit of clear thought and choice. In any case, the Court observes that any other choice would, nonetheless, remain tarnished due to AAA's minority as above-discussed. Hence, considering that Caballo's acts constitute "coercion" and "influence" within the context of the law, and that AAA indulged in sexual intercourse and/or lascivious conduct with Caballo due to the same, she is deemed as a "child exploited in prostitution and other sexual abuse."

APPEARANCES OF COUNSEL

F.C. Cabilao and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the January 28, 2011 Decision[2] and September 26, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 27399-MIN which affirmed with modification the April 1, 2003 Decision of the Regional Trial Court of Surigao City, Branch 30 (RTC), finding petitioner Christian Caballo (Caballo) guilty beyond reasonable doubt of violating Section 10(a), Article VI of Republic Act No. 7610[4] (RA 7610), otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," in relation to Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases).

The Facts

On March 16, 1999, an Information[5] was filed charging Caballo of violation of Section 10(a), Article VI of RA 7610 which

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[1] *Rollo*, pp. 8-27.

[2] *Id.* at 30-45. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba, concurring.

[3] *Id.* at 46-47. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Melchor Quirino C. Sadang and Zenaida Galapate Laguilles, concurring.

[4] "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES."

[5] *Rollo*, pp. 31-32.

was later amended on May 28, 1999, to include statements pertaining to the delivery of private complainant AAA's[6] baby. The Amended Information[7] reads:

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, until June 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23 year old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of [*worldly*] *experience of AAA who was only 17 years old at that time, having been born on November 3, 1980, did then and there wilfully, unlawfully and feloniously commit sexual abuse upon said AAA, by persuading and*

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23 year old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of [*worldly*] *experience of AAA who was only 17 years old at that time, did then and there wilfully, unlawfully and feloniously commit sexual abuse upon said AAA, by persuading and inducing the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.*

CONTRARY TO LAW.

Surigao City, Philippines, March 16, 1999.

[6] 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 the names of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006).

[7] *Rollo*, p. 32.

inducing the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy and delivery of a baby on March 8, 1999, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

Surigao City, Philippines, May 28, 1999.

Upon arraignment, Caballo pleaded not guilty to the aforesaid charges.[8]

Based on the records, the undisputed facts are as follows:

AAA, then 17 years old, met Caballo, then 23 years old, in her uncle's place in Surigao City. Her uncle was a choreographer and Caballo was one of his dancers. During that time, AAA was a sophomore college student at the University of San Carlos and resided at a boarding house in Cebu City. On January 17, 1998, Caballo went to Cebu City to attend the Sinulog Festival and there, visited AAA. After spending time together, they eventually became sweethearts.[9] Sometime during the third week of March 1998, AAA went home to Surigao City and stayed with her uncle. In the last week of March of the same year, Caballo persuaded AAA to have sexual intercourse with him. This was followed by several more of the same in April 1998, in the first and second weeks of May 1998, on August 31, 1998 and in November 1998, all of which happened in Surigao City, except the one in August which occurred in Cebu.[10] In June 1998, AAA became pregnant and later gave birth on March 8, 1999.[11]

During the trial, the prosecution asserted that Caballo was only able to induce AAA to lose her virginity due to promises of marriage and his assurance that he would not get her pregnant

[8] *Id.* at 33.

[9] *Id.* at 33.

[10] *Id.* at 34-35.

[11] *Id.* at 35-36

due to the use of the "withdrawal method." Moreover, it claimed that Caballo was shocked upon hearing the news of AAA's pregnancy and consequently, advised her to have an abortion. She heeded Caballo's advice; however, her efforts were unsuccessful. Further, the prosecution averred that when AAA's mother confronted Caballo to find out what his plans were for AAA, he assured her that he would marry her daughter.[12]

Opposed to the foregoing, Caballo claimed that during their first sexual intercourse, AAA was no longer a virgin as he found it easy to penetrate her and that there was no bleeding. He also maintained that AAA had (3) three boyfriends prior to him. Further, he posited that he and AAA were sweethearts who lived-in together, for one (1) week in a certain Litang Hotel and another week in the residence of AAA's uncle. Eventually, they broke up due to the intervention of AAA's parents. At a certain time, AAA's mother even told Caballo that he was not deserving of AAA because he was poor. Lastly, he alleged that he repeatedly proposed marriage to AAA but was always rejected because she was still studying.[13]

The RTC's Ruling

In a Decision dated April 1, 2003, the RTC found Caballo guilty beyond reasonable doubt of violation of Section 10(a), Article VI of RA 7610, in relation to Section 2 of the Rules on Child Abuse Cases. Accordingly, it sentenced Caballo to suffer imprisonment for an indeterminate period ranging from *prision correccional*, in its maximum period of four (4) years, two (2) months and one (1) day, as minimum, to *prision mayor* in its minimum period of six (6) years, eight (8) months and one (1) day, as maximum. It also ordered Caballo to pay AAA moral damages in the amount of ₱50,000.00.[14]

Aggrieved, Caballo elevated the case to the CA.

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[12] *Id.* at 33-36.

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

[14] *Id.* at 31.

The CA's Ruling

In a Decision dated January 28, 2011,[15] the CA dismissed the appeal and affirmed with modification the RTC's ruling, finding Caballo guilty of violating Section 5(b), Article III of RA 7610.

It ruled that while the Amended Information denominated the crime charged as violation of Section 10(a), Article VI of RA 7610, the statements in its body actually support a charge of violation of Section 5(b), Article III of RA 7610.[16]

On the merits of the case, it found that the evidence adduced by the prosecution clearly showed that Caballo persuaded, induced and enticed AAA, then a minor, to have carnal knowledge with him. Towards this end, Caballo repeatedly assured AAA of his love and even went on to promise marriage to her. He also assured AAA that she would not get pregnant because he would be using the "withdrawal method." Thus, it was upon these repeated coaxing and assuring words that AAA succumbed to Caballo's evil desires which deflowered and got her pregnant. On this score, it observed that consent is immaterial in child abuse cases involving sexual intercourse and lascivious conduct and therefore, the sweetheart defense remains unacceptable.[17] It also found basis to sustain the award of moral damages.[18]

Caballo filed a motion for reconsideration which was, however, denied on September 26, 2011.[19]

Hence, the instant petition.

The Issue

The core of the present controversy revolves around the interpretation of the phrase ***"due to the coercion or influence***

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[15] *Id.* at 30-45.

[16] *Id.* at 40.

[17] *Id.* at 41-43.

[18] *Id.* at 44.

[19] *Id.* at 46-47.

of any adult" which would thereby classify the victim as a "**child exploited in prostitution and other sexual abuse**" as found in Section 5, Article III of RA 7610. Consequently, the interpretation which the Court accords herein would determine whether or not the CA erred in finding Caballo guilty of violating paragraph (b) of the same proviso.

In his petition, Caballo essentially argues that his promise to marry or his use of the "withdrawal method" should not be considered as "persuasion" or "inducement" sufficient to convict him for the aforementioned offense, asserting that these should be coupled with some form of coercion or intimidation to constitute child abuse. He further alleges that he and AAA were sweethearts which thus, made the sexual intercourse consensual.

In its Comment,[20] respondent advances the argument that there was "sexual abuse" within the purview of RA 7610 as well as the Rules on Child Abuse Cases since it was only upon Caballo's repeated assurances and persuasion that AAA gave in to his worldly desires. Likewise, it points out that the sweetheart theory, as relied on by Caballo, deserves scant consideration in view of the Court's ruling in *Malto v. People* (*Malto*).[21]

The Court's Ruling

The petition has no merit.

Section 5(b), Article III of RA 7610 pertinently reads:

SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or ***due to the coercion or influence of any adult***, syndicate or group, indulge in sexual intercourse or lascivious conduct, **are deemed to be children exploited in** prostitution and **other sexual abuse**.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: x x x

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[20] *Id.* at 58-76.

[21] G.R. No. 164733, September 21, 2007, 533 SCRA 643, 653-668.

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child** exploited in prostitution or **subject to other sexual abuse**; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period x x x (Emphasis and underscoring supplied)

As determined in the case of *Olivarez v. CA* (*Olivarez*),[22] the elements of the foregoing offense are the following:

(*a*) The accused commits the act of sexual intercourse or lascivious conduct;

(*b*) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

(*c*) The child, whether male or female, is below 18 years of age.

In this case, the existence of the ***first*** and ***third*** elements remains undisputed. Records disclose that **Caballo had succeeded in repeatedly having sexual intercourse with AAA** who, during all those instances, **was still a minor**. *Thus, the only bone of contention lies in the presence of the second element*. On this note, the defense submits that AAA could not be considered as a "child exploited in prostitution and other sexual abuse" since the incidents to do not point to any form of "coercion" or "influence" on Caballo's part.

The argument is untenable.

To put things in proper perspective, it must be pointed out that RA 7610 was meant to advance the state policy of affording "special protection to children from ***all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development***" and in such regard, "provide sanctions for their commission."[23] It also furthers the "best

[22] G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473.

[23] Section 2, Article I of RA 7610 provides in part:

interests of children" and as such, its provisions are guided by this standard.[24]

Driven by the foregoing considerations, Congress crafted Article III of the same law in order to penalize child prostitution and other forms of sexual abuse. Section 5 thereof provides a definition of who is considered a "child exploited in prostitution and other sexual abuse." As illumined in *Olivarez*,[25] citing *People v. Larin*[26] and *Amployo v. People*,[27] the final version of the aforesaid provision was a product of various deliberations to expand its original coverage to cases where the minor may

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SEC. 2. *Declaration of State Policy and Principles*. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

[24] Section 2, Article I of RA 7610 provides in part:

Section 2. *Declaration of State Policy and Principles*. — x x x **The best interests of children shall be the paramount consideration in all actions concerning them**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. (Emphasis supplied)

[25] *Supra* note 22, at 474-476.

[26] G.R. No. 128777, October 7, 1998, 297 SCRA 309, 319-320.

[27] G.R. No. 157718, April 26, 2005, 457 SCRA 282, 295.

have been coerced or intimidated into sexual intercourse or lascivious conduct, not necessarily for money or profit, *viz*:

The second element, *i.e.*, that the act is performed with a child exploited in prostitution or subjected to other sexual abuse, is likewise present. As succinctly explained in *People v. Larin*:

> **A child is deemed** exploited in prostitution or **subjected to other sexual abuse, when the child indulges in** sexual intercourse or **lascivious conduct** (a) for money, profit, or any other consideration; or (b) **under the coercion or influence of any adult, syndicate or group**...
>
> It must be noted that the law covers not only a situation in which a child is abused for profit, **but also one in which a child, through coercion or intimidation, engages in lascivious conduc**t.

We reiterated this ruling in *Amployo v. People*:

> ... As we observed in *People v. Larin*, Section 5 of Rep. Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation...

Thus, a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. In this case, Cristina was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. Furthermore, it is inconsequential that the sexual abuse occurred only once. As expressly provided in Section 3(b) of R.A. 7610, the abuse may be habitual or not. It must be observed that Article III of R.A. 7610 is captioned as "*Child Prostitution and Other Sexual Abuse*" **because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit**. **The law covers not only child prostitution but also other forms of sexual abuse**. This is clear from the deliberations of the Senate:

> *Senator Angara*. I refer to line 9, 'who for money or profit.' I would like to amend this, Mr. President, *to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit,* so that we can cover those situations and not leave loophole in this section.

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR *DUE TO THE COERCION OR INFLUENCE* OF ANY ADULT, SYNDICATE OR GROUP INDULGE, *et cetera*.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that *there may be situations where the child may not have been used for profit* or ...

The President Pro Tempore. *So, it is no longer prostitution. Because the essence of prostitution is profit.*

Senator Angara. *Well, the Gentleman is right.* ***Maybe the heading ought to be expanded***. *But, still, the President will agree that that is a form or manner of child abuse*.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, *et cetera*.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, 'Child Prostitution,' shall we change that too?

Senator Angara. *Yes, Mr. President,* ***to cover the expanded scope***.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved. (Emphasis and underscoring supplied)

As it is presently worded, Section 5, Article III of RA 7610 provides that **when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult**, the child is deemed to be a ***"child exploited in prostitution and other sexual abuse."*** In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when ***there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will***.[28] Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse **involves the element of influence which manifests in a variety of forms**. It is defined as:

The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

To note, the term "*influence*" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective."[29] Meanwhile, "coercion"

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[28] *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 395.

[29] The Law Dictionary <http://thelawdictionary.org/undue-influence> (visited May 27, 2013)

is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."[30]

In view of the foregoing, the Court observes that Caballo's actuations may be classified as "coercion" and "influence" within the purview of Section 5, Article III of RA 7610:

First, the most crucial element is AAA's minority. It is undisputed that AAA was only 17 years old at the time of the commission of the crime and is hence, considered a child under the law.[31] In this respect, AAA was not capable of fully understanding or knowing the import of her actions and in consequence, remained vulnerable to the cajolery and deception of adults, as in this case.

Based on this premise, jurisprudence settles that consent is immaterial in cases involving a violation of Section 5, Article III of RA 7610; as such, the argument that AAA and Caballo were sweethearts remains irrelevant. The *Malto* ruling is largely instructive on this point:

For purposes of sexual intercourse and lascivious conduct in child abuse cases under RA 7610, the sweetheart defense is unacceptable. *A child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person.*

The language of the law is clear: it seeks to punish "[t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse."

Unlike rape, therefore, *consent is immaterial in cases involving violation of Section 5, Article III of RA 7610*. The mere act of having sexual intercourse or committing lascivious conduct with a child who

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[30] The Law Dictionary, 2nd Ed. <http://thelawdictionary.org/Black's Law Dictionary coercion> (visited May 27, 2013)

[31] Section 3 of RA 7610 provides*:*

SEC. 3. *Definition of Terms*. –

(a) "Children" refers to person **below eighteen (18) years of age** or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition x x x (Emphasis supplied)

is exploited in prostitution or subjected to sexual abuse constitutes the offense. **It is a *malum prohibitum*, an evil that is proscribed**.

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. **(Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.** x x x x[32] (Emphasis and underscoring supplied; citations omitted)

Second, coupled with AAA's minority is Caballo's seniority. Records indicate that Caballo was 23 years old at the time of the commission of the offense and therefore, 6 years older than AAA, more or less. The age disparity between an adult and a minor placed Caballo in a stronger position over AAA so as to enable him to force his will upon the latter.

Third, Caballo's actions effectively constitute overt acts of coercion and influence. Records reveal that Caballo repeatedly assured AAA of his love for her, and even, promised to marry her. In addition, he also guaranteed that she would not get pregnant since he would be using the "withdrawal method" for safety. Irrefragably, these were meant to influence AAA to set aside her reservations and eventually give into having sex with him, with which he succeeded.

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[32] *Malto v. People*, *supra* note 21, at 661-663. (Citation omitted)

Fourth, at least, with respect to the parties' first sexual encounter, it is observed that the brash and unexpected manner in which Caballo pursued AAA to her room and pressed on her to have sex with him, effectively placed her in, to a certain extent, a position of duress. An important factor is that AAA refused Caballo's incipient advances and in fact, asked him to leave. However, AAA eventually yielded. Thus, it stands to reason that she was put in a situation deprived of the benefit of clear thought and choice. In any case, the Court observes that any other choice would, nonetheless, remain tarnished due to AAA's minority as above-discussed.

Hence, considering that Caballo's acts constitute "coercion" and "influence" within the context of the law, and that AAA indulged in sexual intercourse and/or lascivious conduct with Caballo due to the same, she is deemed as a "child exploited in prostitution and other sexual abuse"; as such, the second element of the subject offense exists.

In fine, finding all elements to be present, the Court hereby sustains Caballo's conviction for violation of Section 5(b), Article III of RA 7610.

WHEREFORE, the petition is **DENIED**. The January 28, 2011 Decision and September 26, 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 27399-MIN are hereby **AFFIRMED**.

SO ORDERED.

Brion[*] *(Acting Chairperson), del Castillo, Perez,* and *Leonen,*[**] *JJ.,* concur.

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[*] Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

THIRD DIVISION

[G.R. No. 200094. June 10, 2013]

BENIGNO M. VIGILLA, ALFONSO M. BONGOT, ROBERTO CALLESA, LINDA C. CALLO, NILO B. CAMARA, ADELIA T. CAMARA, ADOLFO G. PINON, JOHN A. FERNANDEZ, FEDERICO A. CALLO, MAXIMA P. ARELLANO, JULITO B. COSTALES, SAMSON F. BACHAR, EDWIN P. DAMO, RENATO E. FERNANDEZ, GENARO F. CALLO, JIMMY C. ALETA, and EUGENIO SALINAS, *petitioners, vs.* **PHILIPPINE COLLEGE OF CRIMINOLOGY, INC. and/or GREGORY ALAN F. BAUTISTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED.— Well-settled is the rule that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court. Hence, as correctly declared by the CA, the following NLRC factual findings are binding and conclusive on this Court.

2. ID.; ID.; ID.; RULE THAT PETITION BE ACCOMPANIED BY MATERIAL DOCUMENTS AS WOULD SUPPORT THE PETITION; FAILURE TO COMPLY WARRANTS DISMISSAL OF PETITION.— Petitioners requested the Court to take a look at such releases, waivers and quitclaims, particularly their contents and the handwriting, but they failed to attach to the records copies of the said documents which they claimed to have been forged. The petition is dismissible on this ground alone. The Rules of Court require the petition to be accompanied by such material portions of the record as would support the petition. Failure to comply with the requirements regarding "the

contents of and the documents which should accompany the petition" is a ground for the dismissal of the appeal.

3. ID.; EVIDENCE; DOCUMENTARY EVIDENCE; PRESUMPTION OF AUTHENTICITY AND THE EXECUTION OF A DULY NOTARIZED DOCUMENT; NOT DISPUTED BY THE MERE ABSENCE OF RECORD OF SUCH DOCUMENT IN THE CONCERNED NOTARY SECTION.— [M]ere unsubstantiated allegations of lack of voluntariness in executing the documents will not suffice to overcome the presumption of authenticity and due execution of a duly notarized document. As correctly held by the NLRC, "such notarization gives evidence of their due execution." Petitioners contend that the alleged notarization of the releases, waivers and quitclaims by one Atty. Ramil Gabao did not take place, because there were no records of such documents in the Notary Section of Manila. Thus, the *prima facie* evidence thereof has been disputed. The Court is not moved. Respondents should not be penalized for the failure of the notary public to submit his Notarial Report. In *Destreza v. Rinoza-Plazo,* this Court stated that "the notarized deed of sale should be admitted as evidence despite the failure of the Notary Public in submitting his notarial report to the notarial section of the RTC Manila."

4. COMMERCIAL LAW; CORPORATION LAW; REVOCATION OF CERTIFICATE OF INCORPORATION; EXECUTED RELEASES WAIVERS AND QUITCLAIMS ARE VALID AND BINDING.— The executed releases, waivers and quitclaims are valid and binding notwithstanding the revocation of MBMSI's Certificate of Incorporation. The revocation does not result in the termination of its liabilities. Section 122 of the Corporation Code provides for a three-year winding up period for a corporation whose charter is annulled by forfeiture or otherwise to continue as a body corporate for the purpose, among others, of settling and closing its affairs. Even if said documents were executed in 2009, six (6) years after MBMSI's dissolution in 2003, the same are still valid and binding upon the parties and the dissolution will not terminate the liabilities incurred by the dissolved corporation pursuant to Sections 122 and 145 of the Corporation Code. In the case of *Premiere Development Bank v. Flores,* the Court held that a corporation is allowed to settle and close its affairs even after the winding up period of three (3) years.

5. LABOR AND SOCIAL LEGISLATION; LABOR ONLY CONTRACTOR; SOLIDARILY LIABLE WITH THE EMPLOYER.— [T]he basis of the solidary liability of the principal with those engaged in labor-only contracting is the last paragraph of Article 106 of the Labor Code, which in part provides: *"In such cases [labor-only contracting], the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."* Recently, this Court reiterated this solidary liability of labor-only contractor in the case of *7K Corporation v. NLRC* where it was ruled that the principal employer is solidarily liable with the labor-only contractor for the rightful claims of the employees.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; JOINT AND SOLIDARY OBLIGATIONS; PAYMENT BY ONE OF THE SOLIDARY DEBTORS EXTINGUISHES THE OBLIGATION; CASE AT BAR.— Considering that MBMSI, as the labor-only contractor, is solidarily liable with the respondents, as the principal employer, then the NLRC and the CA correctly held that the respondents' solidary liability was already expunged by virtue of the releases, waivers and quitclaims executed by each of the petitioners in favor of MBMSI pursuant to Article 1217 of the Civil Code which provides that *"payment made by one of the solidary debtors extinguishes the obligation."* This Court has constantly applied the Civil Code provisions on solidary liability, specifically Articles 1217 and 1222, to labor cases. The Court holds that the releases, waivers and quitclaims executed by petitioners in favor of MBMSI redounded to the respondents' benefit. The liabilities of the respondents to petitioners are now deemed extinguished. The Court cannot allow petitioners to reap the benefits given to them by MBMSI in exchange for the releases, waivers and quitclaims and, again, claim the same benefits from PCCr.

APPEARANCES OF COUNSEL

Corazon S. Agustin for petitioners.
Puno & Puno Law Office for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 16, 2011 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 120225, which affirmed the February 11, 2011 Resolution[2] and the April 28, 2011[3] Resolution of the National Labor Relations Commission *(NLRC)*. The two NLRC resolutions affirmed with modifications the July 30, 2010 Decision[4] of the Labor Arbiter *(LA)* finding that (a) Metropolitan Building Services, Inc. *(MBMSI)* was a labor-only contractor; (b) respondent Philippine College of Criminology Inc. *(PCCr)* was the petitioners' real principal employer; and (c) PCCr acted in bad faith in dismissing the petitioners. The NLRC, however, declared that the claims of the petitioners were settled amicably because of the releases, waivers and quitclaims they had executed.

The Antecedents

PCCr is a non-stock educational institution, while the petitioners were janitors, janitresses and supervisor in the Maintenance Department of PCCr under the supervision and control of Atty. Florante A. Seril *(Atty. Seril)*, PCCr's Senior Vice President for Administration. The petitioners, however, were made to understand, upon application with respondent school, that they were under MBMSI, a corporation engaged in providing janitorial services to clients. Atty. Seril is also the President and General Manager of MBMSI.

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[1] *Rollo*, pp. 8-22, penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Fourth Division, Manila.

[2] *Id.* at 241-260.

[3] *Id.* at 287-290.

[4] *Id.* at 178-201.

Sometime in 2008, PCCr discovered that the Certificate of Incorporation of MBMSI had been revoked as of July 2, 2003. On March 16, 2009, PCCr, through its President, respondent Gregory Alan F. Bautista *(Bautista)*, citing the revocation, terminated the school's relationship with MBMSI, resulting in the dismissal of the employees or maintenance personnel under MBMSI, except Alfonso Bongot *(Bongot)* who was retired.

In September, 2009, the dismissed employees, led by their supervisor, Benigno Vigilla *(Vigilla)*, filed their respective complaints for illegal dismissal, reinstatement, back wages, separation pay (for Bongot), underpayment of salaries, overtime pay, holiday pay, service incentive leave, and 13th month pay against MBMSI, Atty. Seril, PCCr, and Bautista.

In their complaints, they alleged that it was the school, not MBMSI, which was their real employer because (a) MBMSI's certification had been revoked; (b) PCCr had direct control over MBMSI's operations; (c) there was no contract between MBMSI and PCCr; and (d) the selection and hiring of employees were undertaken by PCCr.

On the other hand, PCCr and Bautista contended that (a) PCCr could not have illegally dismissed the complainants because it was not their direct employer; (b) MBMSI was the one who had complete and direct control over the complainants; and (c) PCCr had a contractual agreement with MBMSI, thus, making the latter their direct employer.

On September 11, 2009, PCCr submitted several documents before LA Ronaldo Hernandez, including releases, waivers and quitclaims in favor of MBMSI executed by the complainants to prove that they were employees of MBMSI and not PCCr.[5] The said documents appeared to have been notarized by one Atty. Ramil Gabao. A portion of the releases, waivers and quitclaims uniformly reads:

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

For and in consideration of the total amount of _____, as and by way of separation pay due to the closure of the Company brought about by serious financial losses, receipt of the total amount is hereby acknowledged, I _____, x x x forever release and discharge x x x METROPOLITAN BUILDING MAINTENANCE SERVICES, INC., of and from any and all claims, demands, causes of actions, damages, costs, expenses, attorney's fees, and obligations of any nature whatsoever, known or unknown, in law or in equity, which the undersigned has, or may hereafter have against the METROPOLITAN BUILDING MAINTENANCE SERVICES, INC., whether administrative, civil or criminal, and whether or not arising out of or in relation to my employment with the above company or third persons.[6]

Ruling of the Labor Arbiter

After due proceedings, the LA handed down his decision, finding that (a) PCCr was the real principal employer of the complainants ; (b) MBMSI was a mere adjunct or alter ego/ labor-only contractor; (c) the complainants were regular employees of PCCr; and (d) PCCr/Bautista were in bad faith in dismissing the complainants.

The LA ordered the respondents (a) to reinstate petitioners except Bongot who was deemed separated/retired; (b) to pay their full back wages from the date of their illegal dismissal until actual reinstatement (totaling ₱2,963,584.25); (c) to pay Bongot's separation or retirement pay benefit under the Labor Code (amounting to ₱254,010.00); (d) to pay their 3-year Service Incentive Leave Pay (₱4,245.60 each) except Vigilla (₱5,141.40); (e) to pay all the petitioners moral and exemplary damages in the combined amount of ₱150,000.00; and finally (f) to pay 10% of the total computable award as Attorney's Fees.

The LA explained that PCCr was actually the one which exercised control over the means and methods of the work of the petitioners, thru Atty. Seril, who was acting, throughout the time in his capacity as Senior Vice President for

[6] *Id.* at 49.

Administration of PCCr, not in any way or time as the supposed employer/general manager or president of MBMSI.

Despite the presentation by the respondents of the releases, waivers and quitclaims executed by petitioners in favor of MBMSI, the LA did not touch on the validity and authenticity of the same. Neither did he discuss the effects of such releases, waivers and quitclaims on petitioners' claims.

Ruling of the NLRC

Not satisfied, the respondents filed an appeal before the NLRC. In its Resolution, dated February 11, 2011, the NLRC affirmed the LA's findings. Nevertheless, the respondents were excused from their liability by virtue of the releases, waivers and quitclaims executed by the petitioners. Specifically, the NLRC pointed out:

> As Respondent MBMSI and Atty. Seril, together are found to be labor only contractor, they are solidarily [liable] with Respondent PCCr and Gregory Alan F. Bautista for the valid claims of Complainants pursuant to Article 109 of the Labor Code on the [solidary] liability of the employer and indirect employer. This liability, however, is effectively expunged by the acts of the 17 Complainants of executing Release, Waiver, and Quitclaims (pp. 170-184, Records) in favor of Respondent MBMSI. The liability being joined, the release of one redounds to the benefit of the others, pursuant to Art. 1217 of the Civil Code, which provides that "[P]ayment made by one of the solidary debtors extinguishes the obligation. x x x."[7]

In their motion for reconsideration, petitioners attached as annexes their affidavits denying that they had signed the releases, waivers, and quitclaims. They prayed for the reinstatement *in toto* of the July 30, 2010 Decision of the LA.[8] MBMSI/Atty. Seril also filed a motion for reconsideration[9] questioning the declaration of the NLRC that he was solidarily liable with PCCr.

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[7] *Id.* at. 259.

[8] *Id.* at 275.

[9] *Id.* at 278-284.

On April 28, 2011, NLRC modified its February 11, 2011 Resolution by affirming the July 30, 2010 Decision[10] of the LA only in so far as complainants Ernesto B. Ayento and Eduardo B. Salonga were concerned. As for the other 17 complainants, the NLRC ruled that their awards had been superseded by their respective releases, waivers and quitclaims.

The seventeen (17) complainants filed with the CA a petition for *certiorari* under Rule 65 faulting the NLRC with grave abuse of discretion for absolving the respondents from their liability by virtue of their respective releases, waivers and quitclaims.

Ruling of the Court of Appeals

On September 16, 2011, the CA denied the petition and affirmed the two Resolutions of the NLRC, dated February 11, 2011 and April 28, 2011. The CA pointed out that based on the principle of solidary liability and Article 1217[11] of the New Civil Code, petitioners' respective releases, waivers and quitclaims in favor of MBMSI and Atty. Seril redounded to the benefit of the respondents. The CA also upheld the factual findings of the NLRC as to the authenticity and due execution of the individual releases, waivers and quitclaims because of the failure of petitioners to substantiate their claim of forgery and to overcome the presumption of regularity of a notarized document. Petitioners'

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[10] *Id.* at 178-201.

[11] Art. 1217. **Payment made by one of the solidary debtors extinguishes the obligation**. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (Emphasis ours.)

motion for reconsideration was likewise denied by the CA in its January 4, 2012 Resolution.

Hence, this petition under Rule 45 challenging the CA Decision anchored on the following

GROUNDS

The Hon. Court of Appeals COMMITTED REVERSIBLE ERRORS when:

A. IT CONSIDERED RESPONDENT METROPOLITAN BUILDING MAINTENANCE SERVICES, INC.'S LIABILITY AS SOLIDARY TO RESPONDENT PHILIPPINE COLLEGE OF CRIMINOLOGY, INC., WHEN IN FACT THERE IS NO LEGAL BASIS TO THAT EFFECT.

B. IT DID NOT AFFIRM THE DECISION OF THE HON. LABOR ARBITER, DATED JULY 30, 2010, AS TO 17 PETITIONERS IN THIS CASE, DISREGARDING THE CORPORATION LAW AND JURISPRUDENCE OF THE HON. SUPREME COURT IN SO FAR AS QUITLCLAIMS, RELEASE AND WAIVERS ARE CONCERNED IN LABOR CASES.

C. IT AFFIRMED THE DECISION OF THE HON. NATIONAL LABOR RELATIONS COMMISSION, THAT THE 17 COMPLAINANTS HAVE SETTLED THEIR CLAIMS BY VIRTUE OF ALLEGED RELEASES, WAIVERS AND QUITCLAIMS SIGNED BY THE COMPLAINANTS IN FAVOR OF METROPOLITAN BUILDING MAINTENANCE, INC.

D. IT DID NOT TAKE INTO CONSIDERATION SUBSTANTIAL EVIDENCE OF PETITIONERS/ COMPLAINANTS DISPUTING THE ALLEGED WAIVERS, RELEASES AND QUITCLAIMS, INCLUDING THE ALLEGED NOTARIZATION THEREOF.[12]

The petition fails.

The grounds cited by the petitioners boil down to this basic issue: whether or not their claims against the respondents were

[12] *Rollo,* pp. 41-42.

amicably settled by virtue of the releases, waivers and quitclaims which they had executed in favor of MBMSI.

In resolving this case, the Court must consider three (3) important sub-issues, to wit:

(a) whether or not petitioners executed the said releases, waivers and quitclaims;

(b) whether or not a dissolved corporation can enter into an agreement such as releases, waivers and quitclaims beyond the 3-year winding up period under Section 122 of the Corporation Code; and

(c) whether or not a labor-only contractor is solidarily liable with the employer.

The Releases, Waivers and Quitclaims are Valid

Petitioners vehemently deny having executed any release, waiver or quitclaim in favor of MBMSI. They insist that PCCr forged the documents just to evade their legal obligations to them, alleging that the contents of the documents were written by one person, whom they identified as Reynaldo Chavez, an employee of PCCr, whose handwriting they were familiar with.[13]

To begin with, their posture was just an afterthought. Petitioners had several opportunities to question the authenticity of the said documents but did not do so. The records disclose that during the proceedings before the LA, PCCr submitted several documents, including the subject releases, waivers and quitclaims executed on September 11, 2009 in favor of MBMSI,[14] but petitioners never put their genuineness and due execution at issue. These were brought up again by the respondents in their Memorandum of Appeal,[15] but again petitioners did not bother to dispute them.

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[13] *Id.* at 415.

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

[15] *Id.* at 202-221.

It was *only after* the NLRC's declaration in its February 11, 2011 Resolution that the claims of petitioners had been settled amicably by virtue of the releases, waivers and quitclaims, that petitioners, in their motion for reconsideration,[16] denied having executed any of these instruments. This passiveness and inconsistency of petitioners will not pass the scrutiny of this Court.

At any rate, it is quite apparent that this petition raises questions of fact inasmuch as this Court is being asked to revisit and assess anew the factual findings of the CA and the NLRC regarding the validity, authenticity and due execution of the subject releases, waivers and quitclaims.

Well-settled is the rule that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve.[17] Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court.[18] Hence, as correctly declared by the CA, the following NLRC factual findings are binding and conclusive on this Court:

> We noted that the individual quitclaims, waivers and releases executed by the complainants showing that they received their separation pay from MBMSI were duly notarized by a Notary Public. Such notarization gives *prima facie* evidence of their due execution. Further, said releases, waivers, and quitclaims were not refuted nor disputed by complainants herein, thus, we have no recourse but to uphold their due execution.[19]

Even if the Court relaxes the foregoing rule, there is still no reason to reverse the factual findings of the NLRC and the CA. What is on record is only the self-serving allegation of petitioners that the releases, waivers and quitclaims were mere forgeries. Petitioners failed to substantiate this allegation. As correctly found

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[16] *Id.* at 262-275.

[17] *Alfaro v. CA*, 416 Phil. 310, 318 (2001).

[18] *Acevedo v. Advanstar Company, Inc.*, 511 Phil. 279, 287 (2005).

[19] *Rollo*, p. 259.

by the CA: "petitioners have not offered concrete proof to substantiate their claim of forgery. Allegations are not evidence."[20]

On the contrary, the records confirm that petitioners were really paid their separation pay and had executed releases, waivers and quitclaims in return. In his motion for reconsideration of the February 11, 2011 Resolution of the NLRC, Atty. Seril, President and General Manager of MBMSI, stated that the amount of ₱2,000,000.00 "was coursed by PCCr to me, to be handed to the complainants, through its employee, Rey Chavez."[21]

Petitioners requested the Court to take a look at such releases, waivers and quitclaims, particularly their contents and the handwriting, but they failed to attach to the records copies of the said documents which they claimed to have been forged. The petition is dismissible on this ground alone. The Rules of Court require the petition to be accompanied by such material portions of the record as would support the petition.[22] Failure to comply with the requirements regarding "the contents of and the documents which should accompany the petition" is a ground for the dismissal of the appeal.[23]

Moreover, mere unsubstantiated allegations of lack of voluntariness in executing the documents will not suffice to overcome the presumption of authenticity and due execution of a duly notarized document. As correctly held by the NLRC, "such notarization gives *prima facie* evidence of their due execution."[24]

Petitioners contend that the alleged notarization of the releases, waivers and quitclaims by one Atty. Ramil Gabao did not take place, because there were no records of such documents in the Notary Section of Manila. Thus, the *prima facie* evidence thereof has been disputed.

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[20] *Id.* at 70.

[21] *Id.* at 283.

[22] RULES OF COURT, RULE 45, Sec. 4.(d).

[23] *Id.* Rule 56, Sec. 5, par. (d).

[24] *Rollo*, p. 259.

The Court is not moved. Respondents should not be penalized for the failure of the notary public to submit his Notarial Report. In *Destreza v. Rinoza-Plazo*,[25] this Court stated that "the notarized deed of sale should be admitted as evidence despite the failure of the Notary Public in submitting his notarial report to the notarial section of the RTC Manila." The Court expounded:

> It is the swearing of a person before the Notary Public and the latter's act of signing and affixing his seal on the deed that is material and not the submission of the notarial report. Parties who appear before a notary public to have their documents notarized should not be expected to follow up on the submission of the notarial reports. They should not be made to suffer the consequences of the negligence of the Notary Public in following the procedures prescribed by the Notarial Law.[26]

It would have been different if the notary public was not a lawyer or was not commissioned as such. In this regard, however, petitioners offered no proof.

On the Revocation of MBMSI's Certificate of Incorporation

Petitioners further argue that MBMSI had no legal personality to incur civil liabilities as it did not exist as a corporation on account of the fact that its Certificate of Incorporation had been revoked on July 2, 2003. Petitioners ask this Court to exempt MBMSI from its liabilities because it is no longer existing as a corporation.

The Court cannot accommodate the prayer of petitioners.

The executed releases, waivers and quitclaims are valid and binding notwithstanding the revocation of MBMSI's Certificate of Incorporation. The revocation does not result in the termination of its liabilities. Section 122[27] of the Corporation Code provides

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[25] G.R. No. 176863, October 30, 2009, 604 SCRA 775.

[26] *Id.* at 783-784.

[27] Sec. 122. Corporate liquidation. — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or

for a three-year winding up period for a corporation whose charter is annulled by forfeiture or otherwise to continue as a body corporate for the purpose, among others, of settling and closing its affairs.

Even if said documents were executed in 2009, six (6) years after MBMSI's dissolution in 2003, the same are still valid and binding upon the parties and the dissolution will not terminate the liabilities incurred by the dissolved corporation pursuant to Sections 122 and 145[28] of the Corporation Code. In the case

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whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be **continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets**, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities. (Emphasis ours.)

[28] Sec. 145. Amendment or repeal. - No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, **nor any liability incurred by any such corporation**, stockholders, members, directors, trustees, or officers, **shall be removed or impaired** either **by the subsequent dissolution of said corporation** or by any subsequent amendment or repeal of this Code or of any part thereof. [Emphases supplied].

of *Premiere Development Bank v. Flores,*[29] the Court held that a corporation is allowed to settle and close its affairs even after the winding up period of three (3) years. The Court wrote:

> As early as 1939, this Court held that, although the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences, there is **no time limit** within which the trustees must complete a liquidation placed in their hands. What is provided in Section 122 of the Corporation Code is that the conveyance to the trustees must be made within the three-year period. But it may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The trustees to whom the corporate assets have been conveyed pursuant to the authority of Section 122 may sue and be sued as such in all matters connected with the liquidation.
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> Furthermore, Section 145 of the Corporation Code clearly provides that **"no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation." Even if no trustee is appointed or designated during the three-year period of the liquidation of the corporation, the Court has held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication.**[30] [Emphases supplied; citations omitted]

A Labor-only Contractor is Solidarily Liable with the Employer

The issue of whether there is solidary liability between the labor-only contractor and the employer is crucial in this case. If a labor-only contractor is solidarily liable with the employer, then the releases, waivers and quitclaims in favor of MBMSI will redound to the benefit of PCCr. On the other hand, if a labor-only contractor is not solidarily liable with the employer, the latter being directly liable,

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[29] G.R. No. 175339, December 16, 2008, 574 SCRA 66.

[30] *Id.* at 75-77.

then the releases, waivers and quitclaims in favor of MBMSI will not extinguish the liability of PCCr.

On this point, petitioners argue that there is no solidary liability to speak of in case of an existence of a labor-only contractor. Petitioners contend that under Article 106[31] of the Labor Code, a labor-only contractor's liability is not solidary as it is the employer who should be directly responsible to the supplied worker. They argue that Article 109[32] of the Labor Code (solidary liability of

[31] Art. 106. Contractor or subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[32] Art. 109. Solidary liability. The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

employer/indirect employer and contractor/subcontractor) and Article 1217 of the New Civil Code (extinguishment of solidary obligation) do not apply in this case. Hence, the said releases, waivers and quitclaims which they purportedly issued in favor of MBMSI and Atty. Seril do not automatically release respondents from their liability.

Again, the Court disagrees.

The NLRC and the CA correctly ruled that the releases, waivers and quitclaims executed by petitioners in favor of MBMSI redounded to the benefit of PCCr pursuant to Article 1217 of the New Civil Code. The reason is that MBMSI is solidarily liable with the respondents for the valid claims of petitioners pursuant to Article 109 of the Labor Code.

As correctly pointed out by the respondents, the basis of the solidary liability of the principal with those engaged in labor-only contracting is the last paragraph of Article 106 of the Labor Code, which in part provides: *"In such cases [labor-only contracting], the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."*

Section 19 of Department Order No. 18-02 issued by the Department of Labor and Employment *(DOLE)*, which was still in effect at the time of the promulgation of the subject decision and resolution, interprets Article 106 of the Labor Code in this wise:

Section 19. Solidary liability. **The principal shall be** deemed as the direct employer of the contractual employees and therefore, **solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting),** 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not

attributable to the fault of the contractor or subcontractor. [Emphases supplied].

The DOLE recognized anew this solidary liability of the principal employer and the labor-only contractor when it issued Department Order No. 18-A, series of 2011, which is the latest set of rules implementing Articles 106-109 of the Labor Code. Section 27 thereof reads:

> Section 27. Effects of finding of labor-only contracting and/or violation of Sections 7, 8 or 9 of the Rules. **A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter's employees**, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.
>
> A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended. (Emphasis supplied.)

These legislative rules and regulations designed to implement a primary legislation have the force and effect of law. A rule is binding on the courts so long as the procedure fixed for its promulgation is followed and its scope is within the statutory authority granted by the legislature.[33]

Jurisprudence is also replete with pronouncements that a job-only contractor is solidarily liable with the employer. One of these is the case of *Philippine Bank of Communications v. NLRC*[34] where this Court explained the legal effects of a job-only contracting, to wit:

> Under the general rule set out in the first and second paragraphs of Article 106, an employer who enters into a contract with a contractor

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[33] *Victorias Milling Company, Inc., v. Social Security Commission*, 14 Phil. 555, 558 (1962).

[34] 230 Phil. 430 (1986).

for the performance of work for the employer, does not thereby create an employer-employees relationship between himself and the employees of the contractor. Thus, the employees of the contractor remain the contractor's employees and his alone. Nonetheless when a contractor fails to pay the wages of his employees in accordance with the Labor Code, the employer who contracted out the job to the contractor becomes jointly and severally liable with his contractor to the employees of the latter "to the extent of the work performed under the contract" as such employer were the employer of the contractor's employees. The law itself, in other words, establishes an employer-employee relationship between the employer and the job contractor's employees for a limited purpose, *i.e.*, in order to ensure that the latter get paid the wages due to them.

A similar situation obtains where there is "labor only" contracting. The "labor-only" contractor-*i.e* "the person or intermediary" - is considered "merely as an agent of the employer." The employer is made by the statute responsible to the employees of the "labor only" contractor as if such employees had been directly employed by the employer. Thus, where "labor-only" contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the "labor only" contractor, this time for a comprehensive purpose: "employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code." **The law in effect holds both the employer and the "labor-only" contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code.**[35] [Emphasis supplied].

The case of *San Miguel Corporation v. MAERC Integrated Services, Inc.*[36] also recognized this solidary liability between a labor-only contractor and the employer. In the said case, this Court gave the distinctions between solidary liability in legitimate job contracting and in labor-only contracting, to wit:

In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, *i.e.*, to ensure that the employees are paid their wages. The **principal employer becomes jointly and severally**

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[35] *Id.* at 439-440.

[36] 453 Phil. 543 (2003).

liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. **The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees**.[37] [Emphases supplied; Citations omitted]

Recently, this Court reiterated this solidary liability of labor-only contractor in the case of *7K Corporation v. NLRC*[38] where it was ruled that the principal employer is solidarily liable with the labor-only contractor for the rightful claims of the employees.

Conclusion

Considering that MBMSI, as the labor-only contractor, is solidarily liable with the respondents, as the principal employer, then the NLRC and the CA correctly held that the respondents' solidary liability was already expunged by virtue of the releases, waivers and quitclaims executed by each of the petitioners in favor of MBMSI pursuant to Article 1217 of the Civil Code which provides that *"payment made by one of the solidary debtors extinguishes the obligation."*

This Court has constantly applied the Civil Code provisions on solidary liability, specifically Articles 1217 and 1222,[39] to

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[37] *Id.* at 566-567.

[38] 537 Phil. 664 (2006).

[39] Art. 1222. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible.

labor cases. In *Varorient Shipping Co., Inc. v. NLRC*,[40] this Court held:

> The POEA Rules holds her, as a corporate officer, solidarily liable with the local licensed manning agency. Her liability is inseparable from those of Varorient and Lagoa. If anyone of them is held liable then all of them would be liable for the same obligation. **Each of the solidary debtors, insofar as the creditor/s is/are concerned, is the debtor of the entire amount; it is only with respect to his co-debtors that he/she is liable to the extent of his/her share in the obligation. Such being the case, the Civil Code allows each solidary debtor, in actions filed by the creditor/s, to avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertaining to his share [citing Section 1222 of the Civil Code].** He may also avail of those defenses personally belonging to his co-debtors, but only to the extent of their share in the debt. Thus, Varorient may set up all the defenses pertaining to Colarina and Lagoa; whereas Colarina and Lagoa are liable only to the extent to which Varorient may be found liable by the court.
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> x x x x
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> **If Varorient were to be found liable and made to pay pursuant thereto, the entire obligation would already be extinguished [citing Article 1217 of the Civil Code]** even if no attempt was made to enforce the judgment against Colarina. Because there existed a common cause of action against the three solidary obligors, as the acts and omissions imputed against them are one and the same, an ultimate finding that Varorient was not liable would, under these circumstances, logically imply a similar exoneration from liability for Colarina and Lagoa, whether or not they interposed any defense. [41] [Emphases supplied]

In light of these conclusions, the Court holds that the releases, waivers and quitclaims executed by petitioners in favor of MBMSI redounded to the respondents' benefit. The liabilities of the respondents to petitioners are now deemed extinguished. The Court cannot allow petitioners to reap the benefits given to

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[40] 564 Phil. 119 (2007).

[41] *Id.* at 128-130.

them by MBMSI in exchange for the releases, waivers and quitclaims and, again, claim the same benefits from PCCr.

While it is the duty of the courts to prevent the exploitation of employees, it also behooves the courts to protect the sanctity of contracts that do not contravene the law.[42] The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[43]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

[42] *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, 933 (1999).

[43] *Mercury Drug Corporation v. NLRC*, 258 Phil 384, 391 (1989).

SECOND DIVISION

[G.R. No. 202079. June 10, 2013]

FIL-ESTATE GOLF AND DEVELOPMENT, INC. and FIL-ESTATE LAND, INC., *petitioners, vs.* **VERTEX SALES AND TRADING, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CERTIFICATE OF STOCK AND TRANSFER OF SHARES; FAILURE TO DELIVER PURCHASED STOCK CERTIFICATES WITHIN A REASONABLE TIME IS BREACH OF CONTRACT THAT WARRANTS RESCISSION.— [In] *Raquel-Santos v. Court of Appeals*, the Court held that in "**a sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased**." x x x Section 63 of the Corporation Code provides: Sec. 63. Certificate of stock and transfer of shares. — x x x **Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.** x x x In this case, **Vertex fully paid the purchase price by February 11, 1999 but the stock certificate was only delivered on January 23, 2002** after Vertex filed an action for rescission against FEGDI. Under these facts, considered in relation to the governing law, FEGDI clearly failed to deliver the stock certificates, representing the shares of stock purchased by Vertex, within a reasonable time from the point the shares should have been delivered. This was a substantial breach of their contract that entitles Vertex the right to rescind the sale under Article 1191 of the Civil Code. It is not entirely correct to say that a sale had already been consummated as Vertex already enjoyed the rights a shareholder can exercise. The enjoyment of these rights cannot suffice where the law, by its express terms, requires a specific form to transfer ownership.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONDITIONAL OBLIGATIONS; RESCISSION; MUTUAL

RESTITUTION IS REQUIRED.— "Mutual restitution is required in cases involving rescission under Article 1191" of the Civil Code; such restitution is necessary to bring back the parties to their original situation prior to the inception of the contract. Accordingly, the amount paid to FEGDI by reason of the sale should be returned to Vertex.

3. ID.; ID.; CONTRACT; DISCUSSED.— "As a general rule, a contract is a meeting of minds between two persons. The Civil Code upholds the spirit over the form; thus, it deems an agreement to exist, provided the essential requisites are present. A contract is upheld as long as there is proof of consent, subject matter and cause. Moreover, it is generally obligatory in whatever form it may have been entered into. From the moment there is a meeting of minds between the parties, [the contract] is perfected."

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioners.
Bello Gozon Elma Parel Asuncion & Lucila for respondent.

D E C I S I O N

BRION,* *J.*:

Before the Court is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, filed by petitioners Fil-Estate Golf and Development, Inc. (*FEGDI*) and Fil-Estate Land, Inc. (*FELI*), assailing the decision[2] dated February 22, 2012 and the resolution[3] dated May 31, 2012 of the Court of Appeals (*CA*) in CA-G.R. CV No. 89296. The assailed CA rulings reversed the decision

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[1] *Rollo*, pp. 9-35.

[2] *Id.* at 43-53; penned by Justice Isaias P. Dicdican, and concurred in by Justices Jane Aurora C. Lantion and Ramon A. Cruz.

[3] *Id.* at 55-56.

dated March 1, 2007 of the Regional Trial Court (*RTC*) of Pasig City, Branch 161, in Civil Case No. 68791.[4]

THE FACTS

FEGDI is a stock corporation whose primary business is the development of golf courses. FELI is also a stock corporation, but is engaged in real estate development. FEGDI was the developer of the Forest Hills Golf and Country Club (*Forest Hills*) and, in consideration for its financing support and construction efforts, was issued several shares of stock of Forest Hills.

Sometime in August 1997, FEGDI sold, on installment, to RS Asuncion Construction Corporation (*RSACC*) one Class "C" Common Share of Forest Hills for ₱1,100,000.00. Prior to the full payment of the purchase price, RSACC sold, on February 11, 1999,[5] the Class "C" Common Share to respondent Vertex Sales and Trading, Inc. (*Vertex*). RSACC advised FEGDI of the sale to Vertex and FEGDI, in turn, instructed Forest Hills to recognize Vertex as a shareholder. For this reason, Vertex enjoyed membership privileges in Forest Hills.

Despite Vertex's full payment, the share remained in the name of FEGDI. Seventeen (17) months after the sale (or on July 28, 2000), Vertex wrote FEGDI a letter demanding the issuance of a stock certificate in its name. FELI replied, initially requested Vertex to first pay the necessary fees for the transfer. Although Vertex complied with the request, no certificate was issued. This prompted Vertex to make a final demand on March 17, 2001. As the demand went unheeded, Vertex filed on January 7, 2002 a Complaint for Rescission with Damages and Attachment against FEGDI, FELI and Forest Hills. It averred that the petitioners defaulted in their obligation as sellers when they failed and refused to issue the stock certificate covering the subject share despite repeated demands. On the basis of its rights under Article 1191 of the Civil Code, Vertex prayed for the rescission of the sale and demanded the reimbursement of the amount it paid (or ₱1,100,000.00), plus

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[4] *Id.* at 202-208; penned by Presiding Judge Nicanor A. Manalo, Jr.

[5] *Id.* at 17.

interest. During the pendency of the rescission action (or on January 23, 2002), a certificate of stock was issued in Vertex's name, but Vertex refused to accept it.

RULING OF THE RTC

The RTC dismissed the complaint for insufficiency of evidence. It ruled that delay in the issuance of stock certificates does not warrant rescission of the contract as this constituted a mere casual or slight breach. It also observed that notwithstanding the delay in the issuance of the stock certificate, the sale had already been consummated; the issuance of the stock certificate is just a collateral matter to the sale and the stock certificate is not essential to "the creation of the relation of shareholder."[6]

RULING OF THE CA

Vertex appealed the dismissal of its complaint. In its decision, the CA reversed the RTC and rescinded the sale of the share. Citing Section 63 of the Corporation Code, the CA held that there can be no valid transfer of shares where there is no delivery of the stock certificate. It considered the prolonged issuance of the stock certificate a substantial breach that served as basis for Vertex to rescind the sale.[7] The CA ordered the petitioners to return the amounts paid by Vertex by reason of the sale.

THE PARTIES' ARGUMENTS

FEGDI and FELI filed the present petition for review on *certiorari* to assail the CA rulings. They contend that the CA erred when it reversed the RTC's dismissal of Vertex's complaint, declaring that the delay in the issuance of a stock certificate constituted as substantial breach that warranted a rescission.

FEGDI argued that the delay cannot be considered a substantial breach because Vertex was unequivocally recognized as a shareholder of Forest Hills. In fact, Vertex's nominees became members of Forest Hills and fully enjoyed and utilized all its facilities.

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[6] *Id.* at 207.

[7] *Id.* at 51.

It added that RSACC also used its shareholder rights and eventually sold its share to Vertex despite the absence of a stock certificate. In light of these circumstances, delay in the issuance of a stock certificate cannot be considered a substantial breach.

For its part, FELI stated that it is not a party to the contract sought to be rescinded. It argued that it was just recklessly dragged into the action due to a mistake committed by FEGDI's staff on two instances. The first was when their counsel used the letterhead of FELI instead of FEGDI in its reply-letter to Vertex; the second was when they used the receipt of FELI for receipt of the documentary stamp tax paid by Vertex.

In its comment to the petition,[8] Vertex alleged that the fulfillment of its obligation to pay the purchase price called into action the petitioners' reciprocal obligation to deliver the stock certificate. Since there was delay in the issuance of a certificate for more than three years, then it should be considered a substantial breach warranting the rescission of the sale. Vertex further alleged that its use and enjoyment of Forest Hills' facilities cannot be considered delivery and transfer of ownership.

THE ISSUE

Given the parties' arguments, the sole issue for the Court to resolve is ***whether the delay in the issuance of a stock certificate can be considered a substantial breach as to warrant rescission of the contract of sale.***

THE COURT'S RULING

The petition lacks merit.

Physical delivery is necessary to transfer ownership of stocks

The factual backdrop of this case is similar to that of *Raquel-Santos v. Court of Appeals*,[9] where the Court held that in "**a**

[8] *Id.* at 350-372.

[9] G.R. Nos. 174986, 175071 and 181415, July 7, 2009, 592 SCRA 169, 197-198.

sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased."

In that case, Trans-Phil Marine Ent., Inc. (*Trans-Phil*) and Roland Garcia bought Piltel shares from Finvest Securities Co., Inc. (*Finvest Securities*) in February 1997. Since Finvest Securities failed to deliver the stock certificates, Trans-Phil and Garcia filed an action first for specific performance, which was later on amended to an action for rescission. The Court ruled that Finvest Securities' failure to deliver the shares of stock constituted substantial breach of their contract which gave rise to a right on the part of Trans-Phil and Garcia to rescind the sale.

Section 63 of the Corporation Code provides:

> SEC. 63. Certificate of stock and transfer of shares. – The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. **Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.** No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
>
> No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

In this case, **Vertex fully paid the purchase price by February 11, 1999 but the stock certificate was only delivered on January 23, 2002** after Vertex filed an action for rescission against FEGDI.

Under these facts, considered in relation to the governing law, FEGDI clearly failed to deliver the stock certificates, representing the shares of stock purchased by Vertex, within

a reasonable time from the point the shares should have been delivered. This was a substantial breach of their contract that entitles Vertex the right to rescind the sale under Article 1191 of the Civil Code. It is not entirely correct to say that a sale had already been consummated as Vertex already enjoyed the rights a shareholder can exercise. The enjoyment of these rights cannot suffice where the law, by its express terms, requires a specific form to transfer ownership.

"Mutual restitution is required in cases involving rescission under Article 1191" of the Civil Code; such restitution is necessary to bring back the parties to their original situation prior to the inception of the contract.[10] Accordingly, the amount paid to FEGDI by reason of the sale should be returned to Vertex. On the amount of damages, the CA is correct in not awarding damages since Vertex failed to prove by sufficient evidence that it suffered actual damage due to the delay in the issuance of the certificate of stock.

Regarding the involvement of FELI in this case, no privity of contract exists between Vertex and FELI. "As a general rule, a contract is a meeting of minds between two persons. The Civil Code upholds the spirit over the form; thus, it deems an agreement to exist, provided the essential requisites are present. A contract is upheld as long as there is proof of consent, subject matter and cause. Moreover, it is generally obligatory in whatever form it may have been entered into. From the moment there is a meeting of minds between the parties, [the contract] is perfected."[11]

In the sale of the Class "C" Common Share, the parties are only FEGDI, as seller, and Vertex, as buyer. As can be seen from the records, FELI was only dragged into the action when its staff used the wrong letterhead in replying to Vertex and issued the wrong receipt for the payment of transfer taxes. Thus FELI should be absolved from any liability.

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[10] *Laperal v. Solid Homes, Inc.*, 499 Phil. 367, 378 (2005).

[11] *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221, 235-236 (2002); citations omitted.

WHEREFORE, we hereby **DENY** the petition. The decision dated February 22, 2012 and the resolution dated May 31, 2012 of the Court of Appeals in CA-G.R. CV No. 89296 are **AFFIRMED with the MODIFICATION** that Fil-Estate Land, Inc. is **ABSOLVED** from any liability.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 202791. June 10, 2013]

PHILIPPINE TRANSMARINE CARRIERS, INC., *petitioner, vs.* **LEANDRO LEGASPI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT AFFECT THE STATUTORY FINALITY OF THE DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION WHERE THE PETITION IS FILED WITHIN THE 60-DAY REGLEMENTARY PERIOD.— Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period. In *St. Martin Funeral Home v. NLRC*, however, it was ruled that judicial review of decisions of the NLRC may be sought *via* a petition for *certiorari* before the CA under Rule 65

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1461 dated May 29, 2013.

of the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Hence, in cases where a petition for *certiorari* is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC. Accordingly, in this case, although the petition for *certiorari* was not filed within the 10-day period, petitioner timely filed it before the CA within the 60-day reglementary period under Rule 65. It has, thus, been held that the CA's review of the decisions or resolutions of the NLRC under Rule 65, particularly those which have already been executed, does not affect their statutory finality, considering that Section 4, Rule XI of the 2011 NLRC Rules of Procedure, provides that a petition for *certiorari* filed with the CA shall not stay the execution of the assailed decision unless a restraining order is issued.

2. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; WHEN PRESENT.— As the agreement was voluntarily entered into and represented a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. Respondent agreed to the stipulation that he would return the amount paid to him in the event that the petition for *certiorari* would be granted. Since the petition was indeed granted by the CA, albeit partially, respondent must comply with the condition to return the excess amount. The Court finds that the Receipt of the Judgment Award with Undertaking was a fair and binding agreement. It was executed by the parties subject to outcome of the petition. To allow now respondent to retain the excess money judgment would amount to his unjust enrichment to the prejudice of petitioner. Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. There is unjust enrichment when: 1. A person is unjustly benefited; and 2. Such benefit is derived at the expense of or with damages to another.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Rebene C. Carrera for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 5, 2012 Resolution[1] and July 20, 2012 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 116686, which denied the petitioner's motion to amend the dispositive portion of the June 29, 2011 CA Decision.

The Factual and Procedural Antecedents

Respondent Leandro Legaspi *(respondent)* was employed as Utility Pastry on board the vessel "Azamara Journey" under the employment of petitioner Philippine Transmarine Carriers, Inc. *(petitioner)*. Respondent's employment was covered by a Collective Bargaining Agreement *(CBA)* wherein it was agreed that the company shall pay a maximum disability compensation of up to US$60,000.00 only.

While on board the vessel, respondent suffered "Cardiac Arrest S/P ICD Insertation." He was checked by the ship's doctor and was prescribed medications. On November 14, 2008, respondent was repatriated to receive further medical treatment and examination. On May 23, 2009, the company-designated physician assessed his condition to be Disability Grade 2.

Not satisfied, respondent filed a complaint for full and permanent disability compensation against petitioner before the Labor Arbiter *(LA)*.

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[1] *Rollo*, pp. 37-41, penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Franchito N. Diamante.

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

The Labor Arbiter's Ruling

In its January 25, 2010 Decision,[3] the LA ruled in favor of respondent, the dispositive portion of which reads:

WHEREFORE, respondents *(now petitioner)* are hereby ordered to pay complainant jointly and severally, the following:

1. US$80,000.00 or its peso equivalent at the time of payment as permanent disability compensation;
2. US$1,320.00 or its peso equivalent as sick wages;
3. Attorney's fees equivalent to 10% of the total award.

SO ORDERED.

Notably, the LA awarded US$80,000.00 based on the ITF Cruise Ship Model Agreement for Catering Personnel, not on the CBA.

Not satisfied, petitioner appealed the LA decision before the National Labor Relations Commission *(NLRC)*.

The NLRC's Ruling

In its May 28, 2010 Decision, the NLRC affirmed the decision of the LA. Petitioner timely filed its motion for reconsideration but it was denied by the NLRC in its July 30, 2010 Resolution. On September 5, 2010, the NLRC issued the Entry of Judgment stating that its resolution affirming the LA decision had become final and executory.

On October 22, 2010, during the hearing on the motion for execution before the NLRC, petitioner agreed to pay respondent US$81,320.00. The terms and conditions of said payment were embodied in the Receipt of Judgment Award with Undertaking,[4] wherein respondent acknowledged receipt of the said amount and undertook to return it to petitioner in the event the latter's petition for *certiorari* would be granted, without prejudice to

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[3] *Rollo,* pp. 8-9.

[4] *Id.* at 75-77.

respondent's right to appeal. It was also agreed upon that the remaining balance would be given on the next scheduled conference. Pertinent portions of the said undertaking provide:

x x x x

3. That counsel (*of the petitioner)* manifested their willingness to tender the judgment award **without prejudice to the respondent's** *(now petitioner)* **right to file a Petition for *Certiorari*** and **provided, complainant** *(now respondent)* **undertakes to return the full amount without need of demand or a separate action in the event that the Petition for *Certiorari* is granted**;

4. That complainant's counsel was amenable to the arrangement and accepted the offer. NOW THEREFORE complainant and his counsel hereby acknowledge RECEIPT of the sum of EIGHTY-ONE THOUSAND THREE HUNDRED TWENTY AND 0/100 (US$81,320.00) covered by CITIBANK CHECK with No. 1000001161 dated October 21, 2010 payable to the order of LEANDRO V. LEGASPI and **UNDERTAKES to RETURN the entire amount to respondent PHILIPPINE TRANSMARINE CARRIERS, INC. in the event that the Petition for *Certiorari* is granted without prejudice to complainant's right to appeal.** Such undertaking shall be ENFORCEABLE by mere motion before this Honorable office without need of separate action.[5] [Emphases and underscoring supplied]

On November 8, 2010, petitioner timely filed a petition for *certiorari* with the CA.[6]

In the meantime, on March 2, 2011, the LA issued a writ of execution which noted petitioner's payment of the amount of US$81,320.00. On March 16, 2011, in compliance with the said writ, petitioner tendered to the NLRC Cashier the additional amounts of US$8,132.00 as attorney's fees and ₱3,042.95 as execution fee. In its Order, dated March 31, 2011, the LA ordered the release of the aforementioned amounts to respondent.

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[5] *Id.* at 76.

[6] *Id.* at 59-68.

The CA's Ruling

Unaware of a) the September 5, 2010 entry of judgment of the NLRC, b) the October 22, 2010 payment of US$81,320.00, and c) the writ of execution issued by the LA, the CA rendered its Decision, dated June 29, 2011. The CA *partially granted* the petition for *certiorari* and modified the assailed resolutions of the NLRC, awarding only US$60,000.00 pursuant to the CBA between Celebrity Cruise Lines and Federazione Italianaa Transporti CISL.

Petitioner then filed its Manifestation with Motion to Amend the Dispositive Portion, submitting to the CA the writ of execution issued by the LA in support of its motion. Petitioner contended that since it had already paid the total amount of US$89,452.00, it was entitled to the return of the excess payment in the amount of US$29,452.00.

In its assailed January 5, 2012 Resolution, the CA denied the motion and ruled that the petition should have been dismissed for being moot and academic not only because the assailed decision of the NLRC had become final and executory on September 5, 2010, but also because the said judgment had been satisfied on October 22, 2010, even before the filing of the petition for *certiorari* on November 8, 2010. In so ruling, the CA cited the pronouncement in *Career Philippines Ship Management v. Geronimo Madjus*[7] where it was stated that the satisfaction of the monetary award rendered the petition for *certiorari* moot.

Petitioner filed a motion for reconsideration but it was denied by the CA in its assailed July 20, 2012 Resolution.

Hence, this petition.

ISSUES

I. WHETHER THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR OF LAW IN RULING THAT PETITIONER IS ESTOPPED IN COLLECTING THE EXCESS PAYMENT IT MADE TO THE RESPONDENT

[7] G.R. No. 186158, November 22, 2010, 635 SCRA 619.

NOTWITHSTANDING THE RECEIPT OF JUDGMENT AWARD SIGNED BY THE RESPONDENT

II. WHETHER THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN INVOKING THE RULING OF *CAREER V. MADJUS*

Petitioner argues that it clearly filed its petition for *certiorari* within the 60-day reglementary period and, thus, the NLRC resolutions could not have attained finality. Citing *Delima v. Gois*,[8] petitioner avers that the NLRC cannot declare that a decision has become final and executory because the period to file the petition has not yet expired. Petitioner, thus, contends that the finality of the NLRC judgment did not render the petition moot and academic because such is null and void *ab initio.*

Petitioner also argues that the Receipt of the Judgment Award with Undertaking, which was never refuted by respondent, clearly stated that the payment of the judgment award was without prejudice to its right to file a petition for *certiorari* with the CA. Petitioner asserts that the case relied upon by the CA, *Career Philippines,* is not applicable as it is not on all fours with this case. Instead, it asserts that the applicable case should be *Leonis Navigation Co., Inc. v. Villamater*,[9] where it was held that the satisfaction of the monetary award by the employer does not render the petition for *certiorari* moot before the CA.

On the other hand, respondent reiterates the CA ruling, asserting that the voluntary satisfaction by petitioner of the full judgment award rendered the case moot, and insists that it was a clear indication that it had already been persuaded by the judiciousness and merits of the award for disability compensation. He also avers that this petition is merely pro-forma as it is a reiteration of petitioner's previous issues and arguments already resolved by the CA.

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[8] G.R. No. 178352, June 17, 2008, 554 SCRA 731.

[9] G.R. No. 179169, March 3, 2010, 614 SCRA 182.

The Court's Ruling

Petition for Certiorari, Not Moot

Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period.[10] In *St. Martin Funeral Home v. NLRC*,[11] however, it was ruled that judicial review of decisions of the NLRC may be sought via a petition for *certiorari* before the CA under Rule 65 of the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Hence, in cases where a petition for *certiorari* is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC.

Accordingly, in this case, although the petition for *certiorari* was not filed within the 10-day period, petitioner timely filed it before the CA within the 60-day reglementary period under Rule 65. It has, thus, been held that the CA's review of the decisions or resolutions of the NLRC under Rule 65, particularly those which have already been executed, does not affect their statutory finality,

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[10] **SECTION 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT.** - a) Finality of the Decisions, Resolutions or Orders of the Commission. - Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.

b) Entry of Judgment. - Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

x x x x

[11] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

considering that Section 4,[12] Rule XI of the 2011 NLRC Rules of Procedure, provides that a petition for *certiorari* filed with the CA shall not stay the execution of the assailed decision unless a restraining order is issued. In *Leonis Navigation*, it was further written:

> The CA, therefore, could grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.[13] Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision or resolution never became final and executory.[14]

Career Philippines not applicable

In *Career Philippines*, believing that the execution of the LA Decision was imminent after its petition for injunctive relief was denied, the employer filed before the LA a pleading embodying a conditional satisfaction of judgment before the CA and, accordingly, paid the employee the monetary award in the LA decision. In the said pleading, the employer stated

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[12] **SECTION 4. EFFECT OF PETITION FOR *CERTIORARI* ON EXECUTION. –** A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

[13] *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 363.

[14] *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 152568, February 16, 2004, 423 SCRA 122, 130.

that the conditional satisfaction of the judgment award was without prejudice to its pending appeal before the CA and that it was being made only to prevent the imminent execution.[15]

The CA later dismissed the employer's petition for being moot and academic, noting that the decision of the LA had attained finality with the satisfaction of the judgment award. This Court affirmed the ruling of the CA, interpreting the "conditional settlement" to be tantamount to an amicable settlement of the case resulting in the mootness of the petition for *certiorari*, considering (i) that the employee could no longer pursue other claims,[16] and (ii) that the employer could not have been compelled to immediately pay because it had filed an appeal bond to ensure payment to the employee.

Stated differently, the Court ruled against the employer because the conditional satisfaction of judgment signed by the parties was highly prejudicial to the employee. The agreement stated

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[15] "That this Conditional Satisfaction of Judgment Award is **without prejudice to herein respondent's Petition for *Certiorari* pending with the Court of Appeals** docketed as C.A. GR SP No. 104438 entitled "*Career Philippines Shipmanagement Ltd., vs. National Labor Relations Commission and Geronimo Madjus"* and this **Conditional Satisfaction of Judgment Award has been made only to prevent imminent execution** being undertaken by the NLRC and complainant."

(Emphases supplied)

[16] "5. That I understand that the payment of the judgment award of US$66,000.00 or its peso equivalent of PhP2,932,974.00 **includes all my past, present and future expenses and claims, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim**.

6. That I have no further claims whatsoever in any theory of law against the Owners of MV "Tama Star" because of the payment made to me. That I certify and warrant **that I will not file any complaint or prosecute any suit of action in the Philippines, Panama, Japan or any country against the shipowners and/or released parties** herein after receiving the payment of US$66,000.00 or its peso equivalent of PhP2,932,974.00."

(Underscoring and Emphases supplied)

that the payment of the monetary award was without prejudice to the right of the employer to file a petition for *certiorari* and appeal, while the employee agreed that she would no longer file any complaint or prosecute any suit of action against the employer after receiving the payment.

In contrast, in *Leonis Navigation*, after the NLRC resolution awarding disability benefits became final and executory, the employer paid the monetary award to the employee. The CA dismissed the employer's petition for *certiorari*, ruling that the final and executory decisions or resolutions of the NLRC rendered appeals to superior courts moot and academic. This Court disagreed with the CA and held that final and executed decisions of the NLRC did not prevent the CA from reviewing the same under Rule 65 of the Rules of Court. It was further ruled that the employee was estopped from claiming that the case was closed and terminated, considering that the employee's Acknowledgment Receipt stated that such was without prejudice to the final outcome of the petition for *certiorari* pending before the CA.

In the present case, the Receipt of the Judgment Award with Undertaking was fair to both the employer and the employee. As in *Leonis Navigation*, the said agreement stipulated that respondent should return the amount to petitioner if the petition for *certiorar*i would be granted but *without prejudice to respondent's right to appeal*. The agreement, thus, provided available remedies to both parties.

It is clear that petitioner paid respondent subject to the terms and conditions stated in the Receipt of the Judgment Award with Undertaking.[17] Both parties signed the agreement. Respondent neither refuted the agreement nor claimed that he was forced to sign it against his will. Therefore, the petition for *certiorari* was not rendered moot despite petitioner's satisfaction of the judgment award, as the respondent had obliged himself to return the payment if the petition would be granted.

[17] *Rollo*, p. 76.

Return of Excess Payment

As the agreement was voluntarily entered into and represented a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind.[18] Respondent agreed to the stipulation that he would return the amount paid to him in the event that the petition for *certiorari* would be granted. Since the petition was indeed granted by the CA, albeit partially, respondent must comply with the condition to return the excess amount.

The Court finds that the Receipt of the Judgment Award with Undertaking was a fair and binding agreement. It was executed by the parties subject to outcome of the petition. To allow now respondent to retain the excess money judgment would amount to his unjust enrichment to the prejudice of petitioner.

Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[19] There is unjust enrichment when:

1. A person is unjustly benefited; and
2. Such benefit is derived at the expense of or with damages to another.[20]

In the case at bench, petitioner paid respondent US$81,320.00 in the pre-execution conference plus attorney's fees of US$8,132.00 pursuant to the writ of execution. The June 29, 2011 CA Decision, however, modified the final resolution of the NLRC and awarded

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[18] *Bilbao v. Saudi Arabia Airlines*, G.R. No. 183915, December 14, 2011, 662 SCRA 540, 551.

[19] *GSIS v. COA*, G.R. No. 162372, September 11, 2012.

[20] Art. 22, CIVIL CODE.

only US$60,000.00 to respondent. If allowed to return the excess, the respondent would have been unjustly benefited to the prejudice and expense of petitioner.

Petitioner's claim of excess payment is further buttressed by, and in line with, Section 14, Rule XI of the 2011 NLRC Rules of Procedure which provides:

> EFFECT OF REVERSAL OF EXECUTED JUDGMENT. – Where the executed judgment is **totally or partially reversed or annulled** by the **Court of Appeals or the Supreme Court**, the Labor Arbiter shall, on motion, issue such orders of **restitution of the executed award**, except wages paid during reinstatement pending appeal. [Emphases supplied]

Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[21]

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Resolutions, dated January 5, 2012 and July 20, 2012, are hereby **REVERSED** and **SET ASIDE**. Respondent Leandro Legaspi is **ORDERED** to return the excess amount of payment in the sum of US$29,452.00 to petitioner Philippine Transmarine Carriers, Inc. The amount shall earn interest at the rate of 12% per annum from the finality of this judgment.

SO ORDERED.

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

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[21] *Alfaro v. CA*, 416 Phil. 310, 320 (2001).

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ACTS OF LASCIVIOUSNESS

Elements — The elements of acts of lasciviousness under Article 336 are: 1. that the offender commits any acts of lasciviousness or lewdness; 2. that it is done under any of the following circumstances: a) by using force or intimidation; b) when the offended party is deprived of reason or otherwise unconscious; or c) when the offended party is under 12 years of age; and 3. that the offended party is another person of either sex. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

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— Should relate to or be connected with the performance of the official functions and duties of a public officer. *(Id.)*

ADMINISTRATIVE LAW

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— The Civil Service Commission (CSC), the Department of Education (DepEd) and the Board of Professional Teachers-Professional Regulatory Commission (PRC) have concurrent jurisdiction over administrative cases against public school teachers. *(Id.)*

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Admission of a party — Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. (Manila Electric Co. *vs*. Heirs of Sps. Deloy, G.R. No. 192893, June 05, 2013) p. 427

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Appeal under Rule 43 of the Rules of Court — Should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for a reglementary period of 15 days from receipt of the order appealed from, a motion for extension of time to file petition within the 15-day period is considered timely filed. (Dr. Zenaida P. Pia *vs*. Hon. Margarito P. Gervacio, Jr., G.R. No. 172334, June 05, 2013) p. 196

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Dismissal of — Failure to comply with the requirements regarding the contents of and the documents which should accompany the petition is a ground for the dismissal of the appeal. (Vigilla *vs*. Philippine College of Criminology Inc. and/or Gregory Alan F. Bautista, G.R. No. 200094, June 10, 2013) p. 809

Factual findings of appellate court — Factual findings of the appellate court are not disturbed by the Supreme Court except when the factual findings of the trial court and appellate court are conflicting. (Sps. Tumibay *vs*. Sps. Lopez, G.R. No. 171692, June 03, 2013) p. 19

Factual findings of the trial court — Factual findings of the Regional Trial Court, particularly when affirmed by the Court of Appeals, are generally not disturbed on appeal. (People of the Phils. *vs*. Piosang, G.R. No. 200329, June 05, 2013) p. 519

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— A dismissal by the Court of Appeals of a Petition via Rule 65 for failure to file a Motion for Reconsideration may be assailed via Rule 45 of the Rules of Court. (Rep. of the Phils. *vs*. Bayao, G.R. No. 179492, June 05, 2013) p. 279

— As a general rule, only questions of law may be raised in a petition for review on certiorari because the court is not a trier of facts; when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court; exceptions: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is a grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of fact are conflicting; 6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7) when the findings are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the findings set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and 10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record. (Surigao Del Norte Electric Cooperative, Inc. and/or Danny Z. Escalante *vs*. Gonzaga, G.R. No. 187722, June 10, 2013) p. 676

— The Supreme Court is not a trier of facts and generally does not weigh anew evidence which lower courts have passed upon. (Sps. Agner *vs*. BPI Family Savings Bank, Inc., G.R. No. 182963, June 03, 2013) p. 82

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Legality of — The accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment. (Rodrigo Rontos *y* Dela Torre *vs*. People of the Phils., G.R. No. 188024, June 05, 2013) p. 328

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Code of Professional Responsibility — Prohibition against using information acquired in the course of employment under Rule 21.01 of the Code of Professional Responsibility is violated when a lawyer divulges information acquired in confidence even if such disclosure be made after the termination of the relation of attorney and client. (Dr. Teresita Lee *vs*. Atty. Amador L. Simando, A.C. No. 9537 [Formerly CBD Case No. 09-2489], June 10, 2013) p. 600

Conflict of interest — In the process of determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict. (Dr. Teresita Lee *vs*. Atty. Amador L. Simando, A.C. No. 9537 [Formerly CBD Case No. 09-2489], June 10, 2013) p. 600

— Three tests in determining whether a lawyer is guilty of representing conflict of interest: (1) whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client; (2) whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty; and (3) whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment. (Dr. Teresita Lee *vs.* Atty. Amador L. Simando, A.C. No. 9537 [Formerly CBD Case No. 09-2489], June 10, 2013) p. 600

Disbarment — Failure of a notary public to submit to the Clerk of Court of the RTC her Notarial Report, including the subject Deed of Sale which she notarized, constitutes deceitful conduct of an attorney that merits disbarment. (Peña *vs*. Atty. Christina C. Paterno, A.C. No. 4191, June 10, 2013) p. 582

— Its purpose is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence. *(Id.)*

Inexcusable negligence — Failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence which is a violation of the Code of Professional Responsibility. (Dagohoy *vs*. Atty. Artemio V. San Juan, A.C. No. 7944, June 03, 2013) p. 1

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Petition for — A motion for reconsideration is a condition sine qua non before a certiorari petition may lie except: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was ex parte or in which the petitioner had no opportunity to

object; and (i) where the issue raised is one purely of law or public interest is involved. (Rep. of the Phils. *vs*. Bayao, G.R. No. 179492, June 05, 2013) p. 279

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CSC Memorandum Circular No. 21, series of 1991 — While CSC Memorandum Circular No. 21, series of 1991, recognizes other means of recording employee attendance, the records must (1) provide the respective names and signatures of the employees; (2) indicate their time of arrival and departure; and (3) be subject to verification; an employee's personal record book cannot be accepted as a means to record one's attendance in his office. (OCAD *vs*. Magbanua, A.M. No. P-12-3048 (Formerly A.M. No. 11-3-29-MCTC), June 05, 2013) p. 148

Uniform Rules on Administrative Cases in the Civil Service — Disciplining authority is allowed the discretion to consider mitigating circumstances in the imposition of the appropriate penalty. (OCAD *vs*. Magbanua, A.M. No. P-12-3048 [Formerly A.M. No. 11-3-29-MCTC], June 05, 2013) p. 148

— The penalty of dismissal for grave misconduct must be tempered with compassion and mitigating circumstance. (Pat-Og, Sr. *vs*. CSC, G.R. No. 198755, June 05, 2013) p. 501

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Conduct required — A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. (OCAD *vs*. Martinez, A.M. No. P-06-2223 [Formerly A.M. No. 06-7-226-MTC], June 10, 2013) p. 612

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COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Chain of custody is established though there may be deviations from the required procedure, what is essential is the preservation of integrity and evidentiary value of the seized items. (People of the Phils. *vs*. Torres *y* Cruz, G.R. No. 191730, June 05, 2013) p. 398

— Non-adherence to the procedure on the seizure and custody of dangerous drugs does not make the arrest of the accused illegal or the seized item inadmissible in evidence; what was crucial was the proper preservation of the integrity and evidentiary value of the seized drugs. (Rodrigo Rontos *y* Dela Torre *vs*. People of the Phils., G.R. No. 188024, June 05, 2013) p. 328

— 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. (People of the Phils. *vs.* Torres *y* Cruz, G.R. No. 191730, June 05, 2013) p. 398

— Requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the

person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. (Rodrigo Rontos *y* Dela Torre *vs*. People of the Phils., G.R. No. 188024, June 05, 2013) p. 328

Illegal sale of dangerous drugs — Elements necessary to successfully prosecute an illegal sale of drugs case are: (1) The identity of the buyer and the seller, the object, and the consideration; and (2) The delivery of the thing sold and the payment therefor. (People of the Phils. *vs*. Torres *y* Cruz, G.R. No. 191730, June 05, 2013) p. 398

Prosecution for violation of — Credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers. (People of the Phils. *vs*. Torres *y* Cruz, G.R. No. 191730, June 05, 2013) p. 398

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Custodial investigation — Any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

Extrajudicial confessions — An extrajudicial confession, to be admissible, must satisfy the following requirements: (1) the confession must be voluntary; (2) it must be made with the assistance of a competent and independent counsel, preferably of the confessant's choice; (3) it must be express; and (4) it must be in writing. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

CONSPIRACY

Existence of — Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests; proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices. (People of the Phils. *vs*. Rea *y* Guevarra, G.R. No. 197049, June 10, 3013) p. 756

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Contempt of court — Defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity; to constitute contempt, the act must be done willfully and for illegitimate or improper purpose. (Lim-Lua *vs*. Lua, G.R. Nos. 175279-80, June 05, 2013) p. 211

Indirect contempt — A party and its counsel who deliberately or neglectfully delay the prompt termination of their case may be cited for indirect contempt of court. (Philworth Asias, Inc. *vs*. Phil. Commercial International Bank, G.R. No. 161878, June 05, 2013) p. 184

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Concept of — Discussed. (Fil-Estate Golf and Dev't., Inc. *vs*. Vertex Sales and Trading, Inc., G.R. No. 202079, June 10, 2013) p. 831

Interpretation of — Courts have no authority to alter a contract by construction or to make a new contract for the parties. (Heirs of Manuel Uy Ek Liong *vs*. Meer Castillo, G.R. No. 176425, June 05, 2013) p. 261

Requisites — Defined as a meeting of the minds between two persons whereby one binds himself, with respect to the other to give something or to render some service, a contract requires the concurrence of the following requisites: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and (c)

cause of the obligation which is established. (Heirs of Manuel Uy Ek Liong *vs*. Meer Castillo, G.R. No. 176425, June 05, 2013) p. 261

Rescission of contracts — Buyer's act of transferring title of subject land to his/her name despite non-payment of full price and without knowledge of seller constitutes substantial and fundamental breach of contract which entitles the seller to rescission of contract. (Sps. Tumibay *vs*. Sps. Lopez, G.R. No. 171692, June 03, 2013) p. 19

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COURT PERSONNEL

Court stenographer — Has no authority to prepare extrajudicial settlement of estate and receive money therefor. (Arienda *vs*. Monilla, A.M. No. P-11-2980 (Formerly OCA IPI No. 08-3016-P), June 10, 2013) p. 624

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OCA Circular No. 7-2003 — OCA Circular No. 7-2003 requires every Clerk of Court to maintain a registry book (logbook) in which all employees of that court shall indicate their daily time of arrival in and departure from the office and

check the accuracy of the DTRs prepared by the court employees by comparing them with the entries therein. (OCAD *vs*. Magbanua, A.M. No. P-12-3048 [Formerly A.M. No. 11-3-29-MCTC], June 05, 2013) p. 148

Penalty — The penalty to be imposed on an employee who is guilty of two or more offenses is that corresponding to the most serious offense. (Clemente *vs*. Bautista, A.M. No. P-10-2879 (Formerly A.M. OCA IPI No. 09-3048-P), June 03, 2013) p. 10

Simple misconduct — In preparing and finalizing the extrajudicial settlement of estate and receiving compensation for the same even when she is not a lawyer, respondent is guilty of simple misconduct, punishable under Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one month and one day to six months. (Arienda *vs*. Monilla, A.M. No. P-11-2980 [Formerly OCA IPI No. 08-3016-P], June 10, 2013) p. 624

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the complaint within the allowable period under Section 6 of the 1991 Revised Rules on Summary Procedure. (Garado *vs*. Judge Lizabeth Gutierrez-Torres, A.M. No. MTJ-11-1778 (Formerly OCA IPI No. 08-1966-MTJ), June 05, 2013) p. 158

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1994 DARAB RULES OF PROCEDURE

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DENIAL AND ALIBI

Defenses of — Both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (People of the Phils. *vs*. Piosang, G.R. No. 200329, June 05, 2013) p. 519

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive and categorical testimony and identification of an accused by the complainant; mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him. (People of the Phils. *vs*. Calara *y* Abalos, G.R. No. 197039, June 05, 2013) p. 477

(People of the Phils. *vs*. Bustamante *y* Aliganga, G.R. No. 189836, June 05, 2013) p. 362

(People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

DUE PROCESS

Administrative due process — The right to cross-examine is not an indispensable aspect of administrative due process. (Pat-Og, Sr. *vs*. CSC, G.R. No. 198755, June 05, 2013) p. 501

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Issue of ownership — Shall be resolved only to determine the issue of possession. (Manila Electric Co. *vs*. Heirs of Sps. Dionisio Deloy and Praxedes Martonito, G.R. No. 192893, June 05, 2013) p. 427

Possession — The person who has a Torrens title over a land is entitled to its possession. (Manila Electric Co. *vs*. Heirs of Sps. Dionisio Deloy and Praxedes Martonito, G.R. No. 192893, June 05, 2013) p. 427

EMINENT DOMAIN

Just compensation — Correct rate is 12% per annum reckoned from the time of taking of the property. (Sy *vs*. Local Government of Quezon City, G.R. No. 202690, June 05, 2013) p. 549

— The amount of just compensation is to be ascertained as of the time of the taking. *(Id.)*

EMPLOYEES' COMPENSATION

Disability benefits — Award of temporary or partial total disability benefits, when not supported by substantial evidence is not proper. (Oriental Shipmanagement Co., Inc. *vs*. Nazal, G.R. No. 177103, June 03, 2013) p. 45

EMPLOYMENT, TERMINATION OF

Dismissal of employees — Dismissal for a just cause will not be invalidated if done in breach of its own company procedure but the employer is liable to pay nominal damages. (Surigao Del Norte Electric Cooperative, Inc. and/or Danny Z. Escalante *vs*. Gonzaga, G.R. No. 187722, June 10, 2013) p. 676

— Employer must establish by substantial evidence that dismissal was for a valid cause. *(Id.)*

Just cause — Serious misconduct and habitual neglect of duty are just causes for termination which are explicitly enumerated under Article 296 of the Labor Code, as amended. (Surigao Del Norte Electric Cooperative, Inc. and/or Danny Z. Escalante *vs*. Gonzaga, G.R. No. 187722, June 10, 2013) p. 676

Procedural due process — It is not enough that the employee is given an ample opportunity to be heard if company rules or practices require a formal hearing or conference in which case the latter requirement becomes mandatory. (Surigao Del Norte Electric Cooperative, Inc. and/or Danny Z. Escalante *vs*. Gonzaga, G.R. No. 187722, June 10, 2013) p. 676

— Procedure consists of: (a) a first written notice stating the intended grounds for termination; (b) a hearing or conference where the employee is given the opportunity to explain his side; and (c) a second written notice informing the employee of his termination and the grounds therefor. *(Id.)*

— The following should be considered in terminating the services of employees: (1) the first written notice to be served on the employees should contain the specific causes or ground for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period x x x (2) after serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management x x x (3) after determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that:

(1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment; violation of right to statutory due process warrants the payment of indemnity in the form of nominal damages. (Unilever Phils., Inc. *vs.* Rivera, G.R. No. 201701, June 03, 2013) p. 124

Separation pay — As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay except as an act of "social justice" or on "equitable grounds"; in both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee. (Unilever Phils., Inc. *vs.* Rivera, G.R. No. 201701, June 03, 2013) p. 124

ESTOPPEL

Doctrine of — Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it. (Sps. Hojas *vs.* Philippine Amanah Bank, G.R. No. 193453, June 05, 2013) p. 444

EVIDENCE

Circumstantial evidence — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (People of the Phils. *vs.* Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

Equiponderance of evidence — When the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant. (Valbueco, Inc. *vs.* Province of Bataan, G.R. No. 173829, June 10, 2013) p. 633

Hearsay evidence rule — Court cannot rely on a representation made allegedly in a conversation. (Valbueco, Inc. *vs*. Province of Bataan, G.R. No. 173829, June 10, 2013) p. 633

Out of court identification, admissibility of — In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and identification; and, (6) the suggestiveness of the identification procedure. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

Proof beyond reasonable doubt — Presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence which can only be erased by proof beyond reasonable doubt. (People of the Phils. *vs*. Calumbres *y* Auditor, G.R. No. 194382, June 10, 2013) p. 747

Res inter alios acta, exception to — In order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

Substantial evidence — The quantum of evidence necessary to find an individual administratively liable is substantial evidence. (Dr. Zenaida P. Pia *vs*. Hon. Margarito P. Gervacio, Jr., G.R. No. 172334, June 05, 2013) p. 196

EXECUTIVE DEPARTMENT

Powers of the President — The power of the President to reorganize administrative regions carries with it the power to determine the regional center. (Rep. of the Phils. *vs*. Bayao, G.R. No. 179492, June 05, 2013) p. 279

FORUM SHOPPING

Existence of — Established when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court. (Kapisanang Pangkaunlaran ng Kababaihang Portrero, Inc. *vs*. Barreno, G.R. No. 175900, June 10, 2013) p. 654

— Not appreciated absent identity of causes of action in a case pending in DOLE involving violations of labor standard and a case pending in NLRC involving illegal dismissal. *(Id.)*

FRAME-UP

Defense of — Weak defense that requires clear and convincing evidence. (People of the Phils. *vs*. Gani *y* Tupas, G.R. No. 195523, June 05, 2013) p. 466

HABEAS CORPUS

Purpose — The lone purpose for the issuance of the writ of habeas corpus is to obtain relief for those illegally confined or imprisoned without sufficient legal basis. (Mr. Adonis *vs*. Superintendent Venancio Tesoro, G.R. No. 182855, June 05, 2013) p. 298

INFORMATION

Sufficiency of — Error in charging accused with rape of a demented person instead of rape of a person deprived of reason will not exonerate him who did not object to the

charge and all the elements of the crime were stated in the Information. (People of the Phils. *vs.* Caoile, G.R. No. 203041, June 05, 2013) p. 564

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Trademarks — A trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected without the obligation of filing or registration. (Ecole De Cuisine Manille *vs.* Renaud Cointreau & Cie, G.R. No. 185830, June 05, 2013) p. 305

— The requirement of prior actual use at the time of registration has already been dispensed with. *(Id.)*

JUDGES

Duties of — Judges are directed to dispose of the court's business promptly and decide case within the required periods. (Garado *vs.* Judge Lizabeth Gutierrez-Torres, A.M. No. MTJ-11-1778 (Formerly OCA IPI No. 08-1966-MTJ), June 05, 2013) p. 158

Undue delay in rendering a decision — Considered as a less serious charge. (Garado *vs.* Judge Lizabeth Gutierrez-Torres, A.M. No. MTJ-11-1778 (Formerly OCA IPI No. 08-1966-MTJ), June 05, 2013) p. 158

JUDGMENTS

Effect of — Only real parties in interest in an action are bound by the judgment therein and by the writs of execution and demolition issued pursuant thereto. (Green Acres Holdings, Inc. *vs.* Cabral, G.R. No. 175542, June 05, 2013) p. 235

Immutability of final judgments — Once a decision has attained finality, it becomes immutable and unalterable and may no longer be modified in any respect, whether the modification is to be made by the court that rendered it or by the highest court of the land except for correction of clerical errors, the so-called *nunc pro tunc* entries which cause

no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. (Natividad *vs*. Mariano, G.R. No. 179643, June 03, 2013) p. 57

Writ of execution — The writ of execution can only implement a decision embodied in the dispositive portion of a decision. (Green Acres Holdings, Inc. *vs*. Cabral, G.R. No. 175542, June 05, 2013) p. 235

JURISDICTION

Jurisdiction over the person — The court must first acquire jurisdiction over a party – either through valid service of summons or voluntary appearance - for the latter to be bound by a court decision. (Heirs of Manuel Uy Ek Liong *vs*. Meer Castillo, G.R. No. 176425, June 05, 2013) p. 261

Lack of jurisdiction — A party is estopped from raising the question of jurisdiction after actively participating in the proceedings and submitting the case for decision. (Pat-Og, Sr. *vs*. CSC, G.R. No. 198755, June 05, 2013) p. 501

LABOR CASES

Rules of procedure — Technical rules of evidence are not strictly followed in labor cases and thus, their liberal application relaxes the same; labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them. (Surigao Del Norte Electric Cooperative, Inc. and/or Danny Z. Escalante *vs*. Gonzaga, G.R. No. 187722, June 10, 2013) p. 676

LABOR CONTRACTING OR SUB-CONTRACTING

Labor-only contracting — The principal employer is solidarily liable with the labor-only contractor for the rightful claims of the employees. (Vigilla *vs*. Philippine College of Criminology Inc. and/or Gregory Alan F. Bautista, G.R. No. 200094, June 10, 2013) p. 809

LABOR LAWS

Legal dependent — Social legislations contemporaneous with the execution of the CBA have given a meaning to the term legal dependent, namely, Section 8(e) of the Social Security Law, Section 4 (f) of R.A. No. 7875, as amended by R.A. No. 9241, and Section 2(f) of Presidential Decree No. 1146, as amended by R.A. No. 8291, where what is controlling is the fact that the spouse, child, or parent is actually dependent for support upon the employee. (Phil. Journalists, Inc. *vs*. Journal Employee's Union [JEU], G.R. No. 192601, June 03, 2013) p. 94

LABOR RELATIONS

Collective bargaining agreement — The literal meaning of the stipulations of the collective bargaining agreement (CBA), as with every other contract control if they are clear and leave no doubt upon the intention of the contracting parties. (Phil. Journalists, Inc. *vs*. Journal Employee's Union [JEU], G.R. No. 192601, June 03, 2013) p. 94

LABOR STANDARDS

Principle of non-diminution of benefits — The continuity in the grant of the funeral and bereavement aid to regular employees for the death of their legal dependents has ripened into a company policy, the denial of which violated the law prohibiting the diminution of benefits. (Phil. Journalists, Inc. *vs*. Journal Employee's Union [JEU], G.R. No. 192601, June 03, 2013) p. 94

LAWS

Publication of — The requirement of publication is indispensable to give effect to the law. (Nagkakaisang Maralita ng Sitio Masigasig, Inc. *vs*. Military Shrine Services Philippine Veterans Affairs Office, Department of National Defense, G.R. No. 187587, June 05, 2013) p. 317

LIBEL

Administrative Circular No. 08-2008 — Benefits thereof not given retroactive application to a criminal case which has already become final and executory. (Mr. Adonis *vs*. Superintendent Venancio Tesoro, G.R. No. 182855, June 05, 2013) p. 298

LOANS

Interests — Interest rate of 23% per annum (p.a.) is not unconscionable. (Sps. Florentino and Aurea V. Mallari *vs*. Prudential Bank [now Bank of the Philippine Islands], G.R. No. 197861, June 05, 2013) p. 490

Penalty charge — 12% per annum (p.a.) penalty charge for default in the payment of loan obligation is valid. (Sps. Mallari *vs*. Prudential Bank [now Bank of the Philippine Islands], G.R. No. 197861, June 05, 2013) p. 490

MORTGAGES, FORECLOSURE OF

Right of redemption — Payment of redemption price is imperative as mere signified intention to redeem is insufficient. (Sps. Hojas *vs*. Philippine Amanah Bank, G.R. No. 193453, June 05, 2013) p. 444

MOTION FOR RECONSIDERATION

Period for filing — Delay of one day is not excused by mere claim of excusable negligence; the party invoking excusable negligence should be able to show that the procedural oversight or lapse is attended by a genuine miscalculation or unforeseen fortuitousness which ordinary prudence could not have guarded against so as to justify the relief sought. (Sy *vs*. Local Government of Quezon City, G.R. No. 202690, June 05, 2013) p. 549

MURDER

Attempted murder — If the victim's wounds are not fatal, the crime is only in its attempted stage. (People of the Phils. *vs*. Bernardo, G.R. No. 198789, June 03, 2013) p. 110

NATIONAL LABOR RELATIONS COMMISSION

Rules of procedure — Technicalities of law and procedure are interpreted very liberally and are not considered controlling in labor cases. (Oriental Shipmanagement Co., Inc. *vs*. Nazal, G.R. No. 177103, June 03, 2013) p. 45

NOTARIES PUBLIC

Duties — Lawyers commissioned as notaries public have the duty to keep a notarial register and forward the same to the proper clerk of court. (Peña *vs*. Atty. Christina C. Paterno, A.C. No. 4191, June 10, 2013) p. 582

OBLIGATIONS

Conditional obligations — Mutual restitution is required in cases involving rescission under Article 1191 of the Civil Code. (Fil-Estate Golf and Dev't., Inc. *vs*. Vertex Sales and Trading, Inc., G.R. No. 202079, June 10, 2013) p. 831

Joint and solidary obligations — Payment by one of the solidary debtors extinguishes the obligation. (Vigilla *vs*. Philippine College of Criminology Inc. and/or Gregory Alan F. Bautista, G.R. No. 200094, June 10, 2013) p. 809

Obligations with a penal clause — In obligations with a penal clause, the penalty generally substitutes the indemnity for damages and the payment of interest in case of non-compliance. (Heirs of Manuel Uy Ek Liong *vs*. Meer Castillo, G.R. No. 176425, June 05, 2013) p. 261

Waiver of notice or demand — A provision on waiver of notice or demand has been recognized as legal and valid. (Sps. Agner *vs*. BPI Family Savings Bank, Inc., G.R. No. 182963, June 03, 2013) p. 82

OBLIGATIONS, EXTINGUISHMENT OF

Payment — In civil case, one who pleads payment has the burden of proving it. (Sps. Agner *vs*. BPI Family Savings Bank, Inc., G.R. No. 182963, June 03, 2013) p. 82

OMBUDSMAN

Decision of— A decision of the Office of the Ombudsman is immediately executory even pending appeal. (Dr. Zenaida P. Pia *vs*. Hon. Margarito P. Gervacio, Jr., G.R. No. 172334, June 05, 2013) p. 196

— Ombudsman's decision is final, executory and unappealable when the person charged is absolved or convicted with a penalty of public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary except if it fails the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. (Orais *vs*. Dr. Amelia C. Almirante, G.R. No. 181195, June 10, 2013) p. 662

Remedy against decision on consolidated administrative and criminal complaint — Considering that the case was a consolidation of an administrative and a criminal complaint, petitioner had the option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a certiorari petition under Rule 65 before the Supreme Court. (Cortes *vs*. Office of the Ombudsman (Visayas), G.R. No. 187896-97, June 10, 2013) p. 699

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensability of illness — For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. (Maersk Filipinas Crewing Inc.,/Maersk Services Ltd., and/or Mr. Jerome delos Angeles *vs*. Mesina, G.R. No. 200837, June 05, 2013) p. 531

— If serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. *(Id.)*

Disability benefits disputes — In resolving disputes on disability benefits, the fundamental consideration has been that the POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. (Maersk Filipinas Crewing Inc.,/Maersk Services Ltd., and/or Mr. Jerome delos Angeles *vs*. Mesina, G.R. No. 200837, June 05, 2013) p. 531

Permanent total disability — Inability to work for more than 120 days and considering the nature of the disease of psoriasis entitles a seaman to permanent total disability benefits. (Maersk Filipinas Crewing Inc.,/Maersk Services Ltd., and/or Mr. Jerome delos Angeles *vs*. Mesina, G.R. No. 200837, June 05, 2013) p. 531

PRESUMPTIONS

Disputable presumptions — A person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

— Presumption of authenticity and due execution of a duly notarized document is not disputed by the mere absence of record of such document in the concerned notary section. (Vigilla *vs*. Philippine College of Criminology Inc. and/or Gregory Alan F. Bautista, G.R. No. 200094, June 10, 2013) p. 809

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Certificate of title — A certificate of title shall not be subject to collateral attack. (Green Acres Holdings, Inc. *vs*. Cabral, G.R. No. 175542, June 05, 2013) p. 235

Innocent purchaser for value — An innocent purchaser for value is one who, relying on the certificate of title, bought the property from the registered owner, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property. (Green Acres Holdings, Inc. *vs*. Cabral, G.R. No. 175542, June 05, 2013) p. 235

PUBLIC OFFICIALS AND EMPLOYEES

Conduct prejudicial to the best interest of the service — Teacher's act of selling overpriced book/compilation to her students whose refusal to buy could result in the latter's failure in the subject constitutes conduct prejudicial to the best interest of the service as it tarnishes the image and integrity of her public office. (Dr. Pia *vs*. Hon. Gervacio, Jr., G.R. No. 172334, June 05, 2013) p. 196

QUALIFYING CIRCUMSTANCES

Treachery — The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim. (People of the Phils. *vs*. Calara *y* Abalos, G.R. No. 197039, June 05, 2013) p. 477

— The presence of two conditions is necessary to constitute treachery, to wit: (1) that the victim was not in the position to defend himself at the time of the attack; and (2) the means of execution were deliberately or consciously adopted. (People of the Phils. *vs*. Bernardo, G.R. No. 198789, June 03, 2013) p. 110

QUIETING OF TITLE

Cloud on title — A cloud on title consists of (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. (Green Acres Holdings, Inc. *vs*. Cabral, G.R. No. 175542, June 05, 2013) p. 235

Requisites — For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy. (Green Acres Holdings, Inc. *vs*. Cabral, G.R. No. 175542, June 05, 2013) p. 235

RAPE

Carnal knowledge — Full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary, to conclude that carnal knowledge took place; the mere touching of the external genitalia by a penis that is capable of consummating the sexual act is sufficient to constitute carnal knowledge. (People of the Phils. *vs*. Pamintuan *y* Sahagun, G.R. No. 192239, June 05, 2013) p. 414

Commission of — Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief; the victim may choose to keep quiet rather than expose her defilement to the cruelty of public scrutiny; only when the delay is unreasonable or unexplained may it work to discredit the complainant. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

— Elements of rape are (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force and intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age. (People of the Phils. *vs*. Bustamante *y* Aliganga, G.R. No. 189836, June 05, 2013) p. 362

— Lust is no respecter of time and place. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

Intimidation as an element — Failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

Mental retardation of rape victim — Carnal knowledge of a mental retardate incapable of giving consent to a sexual act is rape under Art. 266-A, par. 1(B) of the Revised Penal Code. (People of the Phils. *vs*. Caoile, G.R. No. 203041, June 05, 2013) p. 564

— Lack of knowledge that victim is a mental retardate makes accused guilty only of simple rape. *(Id.)*

Prosecution for — The accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things; by the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence. (People of the Phils. *vs*. Bustamante *y* Aliganga, G.R. No. 189836, June 05, 2013) p. 362

Qualified rape — Death penalty proper for qualified rape but is modified to *reclusion perpetua* without eligibility for parole under R.A. No. 9346. (People of the Phils. *vs*. Gani *y* Tupas, G.R. No. 195523, June 05, 2013) p. 466

— To justify the imposition of the death penalty, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the Information and duly proved during the trial. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

Statutory rape — Elements are: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented. (People of the Phils. *vs*. Pamintuan *y* Sahagun, G.R. No. 192239, June 05, 2013) p. 414

— Following Republic Act No. 9346, the penalty of *reclusion perpetua* in lieu of death, without the eligibility of parole is correctly imposed and the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages is properly awarded. (People of the Phils. *vs*. Piosang, G.R. No. 200329, June 05, 2013) p. 519

RECRUITMENT AND PLACEMENT OF WORKERS

Illegal recruitment in large scale — The crime of illegal recruitment in large scale is committed upon concurrence of these (3) elements, namely: (1) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code; (2) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; and (3) the offenders commit the acts against three or more persons, individually or as a group. (People of the Phils. *vs*. Rea *y* Guevarra, G.R. No. 197049, June 10, 3013) p. 756

Recruitment and placement — Recruitment and placement is defined in Article 13(b) of the Labor Code as any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. (People of the Phils. *vs*. Rea *y* Guevarra, G.R. No. 197049, June 10, 3013) p. 756

RETIREMENT

Gratuity — Distinguished from annuity. (Ocampo *vs*. COA, G.R. No. 188716, June 10, 2013) p. 706

Retirement benefits — Claim for two (2) sets of retirement benefits under Republic Act No. 1568 based on distinct creditable periods is not, strictly speaking, a claim for double compensation prohibited under the first paragraph of Section 8, Article IX-B of the Constitution. (Ocampo *vs*. COA, G.R. No. 188716, June 10, 2013) p. 706

— Republic Act No. 1568 as amended by Republic Act No. 3595 allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies. *(Id.)*

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*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

Penalty and damages — Robbery with homicide is a single indivisible crime punishable with *reclusion perpetua* in the absence of any aggravating circumstance that attended its commission and the award of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, actual damages and the value of the stolen items as proven. (People of the Phils. *vs*. Cervantes Cachuela, G.R. No. 191752, June 10, 2013) p. 728

RULES OF COURT

Liberal application of — Mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires. (Sy *vs.* Local Government of Quezon City, G.R. No. 202690, June 05, 2013) p. 549

SALES

Capacity to buy — The prohibition against lawyers acquiring by purchase or assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession applies only during the pendency of the suit. (Heirs of Manuel Uy Ek Liong *vs.* Meer Castillo, G.R. No. 176425, June 05, 2013) p. 261

Contract to sell — A bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price. (Sps. Tumibay *vs.* Sps. Lopez, G.R. No. 171692, June 03, 2013) p. 19

SHARES OF STOCK

Certificate of stock and transfer of shares — Failure to deliver purchased stock certificates within a reasonable time is a breach of contract that warrants rescission. (Fil-Estate Golf and Dev't., Inc. *vs.* Vertex Sales and Trading, Inc., G.R. No. 202079, June 10, 2013) p. 831

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application — Covers cases where the minor may have been coerced or intimidated into sexual intercourse or lascivious conduct, not necessarily for money or profit. (Caballo *vs.* People of the Phils., G.R. No. 198732, June 10, 2013) p. 792

Section 5 (b), Article III of — The elements of child prostitution and other sexual abuse due to the coercion or influence of any adult are the following: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child, whether male or female, is below 18 years of age. (Caballo *vs.* People of the Phils., G.R. No. 198732, June 10, 2013) p. 792

Sexual abuse — The elements of sexual abuse under Section 5, Article III of R.A. No. 7610, to wit: 1. the accused commits the act of sexual intercourse or lascivious conduct; 2. the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3. the child, whether male or female, is below 18 years of age. (People of the Phils. *vs.* Lomaque, G.R. No. 189297, June 05, 2013) p. 338

SUMMONS

Extraterritorial service — Extraterritorial service of summons is not for the purpose of vesting the court with jurisdiction, but for the purpose of complying with the requirements of fair play or due process, so that the defendant will be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff, and he can thereby take steps to protect his interest if he is so minded. (Allen A. Macasaet *vs.* Francisco R. Co, Jr., G.R. No. 156759, June 05, 2013) p. 167

— The service of the summons fulfills two fundamental objectives, namely: (a) to vest in the court over the person of the defendant; and (b) to afford to the defendant the opportunity to be heard on the claim brought against him. *(Id.)*

Purpose — The purpose of summons in an action *in rem* or *quasi in rem* is not the acquisition of jurisdiction over the defendant but mainly to satisfy the constitutional

requirement of due process. (Allen A. Macasaet *vs*. Francisco R. Co, Jr., G.R. No. 156759, June 05, 2013) p. 167

Service of — The rule on personal service is to be rigidly enforced; substituted service may be used only as prescribed and in the circumstances authorized by statute. (Allen A. Macasaet *vs*. Francisco R. Co, Jr., G.R. No. 156759, June 05, 2013) p. 167

SUPPORT

Sufficiency and reasonableness of support — Judicial determination of support *pendente lite* in cases of legal separation and petitions for declaration of nullity or annulment of marriage are guided by the provisions of the Rules on provisional orders (A.M. No. 02-11-12-SC). (Lim-Lua *vs*. Lua, G.R. Nos. 175279-80, June 05, 2013) p. 211

Support pendente lite — A court does not need to delve fully into the merits of the case before it can settle an application for support *pendente lite*. (Lim-Lua *vs*. Lua, G.R. Nos. 175279-80, June 05, 2013) p. 211

TAX LAWS

Revised Rules of the Court of Tax Appeals — Submission of only one copy of the said petition and their failure to attach therewith a certified true copy of the RTC's decision constitute mere formal defects which may be relaxed in the interest of substantial justice. (Metro Manila Shopping Mecca Corp. *vs*. Toledo, G.R. No. 190818, June 05, 2013) p. 375

— The reglementary period for filing a petition for review provided under Section 3, Rule 8 of the RRCTA is extendible. *(Id.)*

TAXATION

Local taxes, refund of — Section 196 of the Local Government Code reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: first, the taxpayer concerned must file a written

claim for refund/credit with the local treasurer; and second, the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit. (Metro Manila Shopping Mecca Corp. *vs*. Toledo, G.R. No. 190818, June 05, 2013) p. 375

Tax sale — There can be no presumption of regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale. (Valbueco, Inc. *vs*. Province of Bataan, G.R. No. 173829, June 10, 2013) p. 633

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Application for inclusion in the list of agrarian reform beneficiaries — Submission of only one copy of the said petition and their failure to attach therewith a certified true copy of the RTC's decision constitute mere formal defects which may be relaxed in the interest of substantial justice. (Metro Manila Shopping Mecca Corp. *vs*. Toledo, G.R. No. 190818, June 05, 2013) p. 375

Stages in the transfer of the landholding to the agricultural lessee — The transfer of the landholding to the agricultural lessee under P.D. No. 27 is accomplished in two stages: (1) issuance of a Certificate of Land Title (CLT) to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is a "deemed owner"; and (2) issuance of an Emancipation Patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary. (Natividad *vs*. Mariano, G.R. No. 179643, June 03, 2013) p. 57

Transfer of landholding — Transfer of ownership over tenanted rice and/corn lands after October 21, 1972 must only be in favor of actual tenant-tillers thereon. (Borromeo *vs*. Mina, G.R. No. 193747, June 05, 2013) p. 454

UNJUST ENRICHMENT

Concept of — There is unjust enrichment when: 1. a person is unjustly benefited; and 2. such benefit is derived at the expense of or with damages to another. (Phil. Transmarine Carriers, Inc. *vs*. Legaspi, G.R. No. 202791, June 10, 2013) p. 838

UNLAWFUL DETAINER

Complaint for — Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he/she will vacate on demand, failing which, an action for unlawful detainer will lie. (Manila Electric Co. *vs*. Heirs of Sps. Dionisio Deloy and Praxedes Martonito, G.R. No. 192893, June 05, 2013) p. 427

WITNESSES

Credibility of — Although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant. (People of the Phils. *vs*. Calara *y* Abalos, G.R. No. 197039, June 05, 2013) p. 477

— Competence and credibility of mentally deficient rape victims as witnesses have been upheld where it is shown that they can communicate their ordeal capably and consistently. (People of the Phils. *vs*. Caoile, G.R. No. 203041, June 05, 2013) p. 564

— 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*. Calumbres *y* Auditor, G.R. No. 194382, June 10, 2013) p. 747

(People of the Phils. *vs*. Gani *y* Tupas, G.R. No. 195523, June 05, 2013) p. 466

(People of the Phils. *vs*. Torres *y* Cruz, G.R. No. 191730, June 05, 2013) p. 398

— Testimonies of rape child-victims are respected, more so when corroborated by an eyewitness and the medico-legal findings. (People of the Phils. *vs*. Piosang, G.R. No. 200329, June 05, 2013) p. 519

— Where the issue is the extent of credence to be properly given to the declaration made by witnesses, the findings of the trial court are accorded great weight and respect except when it appears in the records that the trial court overlooked, ignored or disregarded some facts or circumstances of weight or significance which if considered would have altered the result. (People of the Phils. *vs*. Lomaque, G.R. No. 189297, June 05, 2013) p. 338

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