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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 159691. June 13, 2013]

HEIRS OF MARCELO SOTTO, REPRESENTED BY: LOLIBETH SOTTO NOBLE, DANILO C. SOTTO, CRISTINA C. SOTTO, EMMANUEL C. SOTTO and FILEMON C. SOTTO; and SALVACION BARCELONA, AS HEIR OF DECEASED MIGUEL BARCELONA, *petitioners, vs.* **MATILDE S. PALICTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS.— *Res judicata* exists when as between the action sought to be dismissed and the other action these elements are present, namely; (1) the former judgment must be final; (2) the former judgment must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) the former judgment must be a judgment on the merits; and (4) there must be between the first and subsequent actions (*i*) identity of parties or at least such as representing the same interest in both actions; (*ii*) identity of subject matter, or of the rights asserted and relief prayed for, the relief being founded on the same facts; and, (*iii*) identity of causes of action in both actions such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; MERE SUBSTANTIAL IDENTITY OF PARTIES OR EVEN COMMUNITY OF INTERESTS BETWEEN PARTIES IN THE PRIOR AND SUBSEQUENT CASES IS SUFFICIENT.— In all the five cases (Civil Case No. CEB-24293 included), an identity of parties existed because the parties were the same, or there was privity among them, or some of the parties were successors-in-interest litigating for the same thing and under the same title and in the same capacity. An absolute identity of the parties was not necessary, because a shared identity of interest sufficed for *res judicata* to apply. Moreover, mere substantial identity of parties, or even community of interests between parties in the prior and subsequent cases, even if the latter were not impleaded in the first case, would be sufficient. As such, the fact that a previous case was filed in the name of the Estate of Sotto only was of no consequence.

3. ID.; ID.; ID.; ID.; NATURE.— Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive about the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate.

4. ID.; ID.; ID.; ID.; GROUNDS.— The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation –*interest reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same

cause – *nemo debet bis vexari pro una et eadem causa.* A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness.

5. ID.; ID.; FORUM SHOPPING; HOW COMMITTED.— [F]orum shopping, according to *Ao-as v. Court of Appeals,* may be committed as follows*:* "As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). If the forum shopping is not considered willful and deliberate, the *subsequent cases* shall be dismissed *without prejudice* on one of the two grounds mentioned above. However, if the forum shopping is willful and deliberate, *both* (or *all,* if there are more than two) actions shall be dismissed *with prejudice*."

APPEARANCES OF COUNSEL

M.B. Mahinay & Associates for petitioners.

Remigio P. Torres for respondent.

D E C I S I O N

BERSAMIN, *J.*:

We start this decision by expressing our alarm that this case is the fifth suit to reach the Court dividing the several heirs of the late Don Filemon Y. Sotto (Filemon) respecting four real properties that had belonged to Filemon's estate (Estate of Sotto).

The first case (*Matilde S. Palicte v. Hon. Jose O. Ramolete, et al.*, G.R. No. 55076, September 21, 1987, 154 SCRA 132) held that herein respondent Matilde S. Palicte (Matilde), one

of four declared heirs of Filemon, had validly redeemed the four properties pursuant to the assailed deed of redemption, and was entitled to have the title over the four properties transferred to her name, subject to the right of the three other declared heirs to join her in the redemption of the four properties within a period of six months.

The second was the civil case filed by Pascuala against Matilde (Civil Case No. CEB-19338) to annul the former's waiver of rights, and to restore her as a co-redemptioner of Matilde with respect to the four properties (G.R. No. 131722, February 4, 1998).

The third was an incident in Civil Case No. R-10027 (that is, the suit brought by the heirs of Carmen Rallos against the Estate of Sotto) wherein the heirs of Miguel belatedly filed in November 1998 a motion for reconsideration praying that the order issued on October 5, 1989 be set aside, and that they be still included as Matilde's co-redemptioners. After the trial court denied their motion for reconsideration for its lack of merit, the heirs of Miguel elevated the denial to the CA on *certiorari* and prohibition, but the CA dismissed their petition and upheld the order issued on October 5, 1989. Thence, the heirs of Miguel came to the Court on *certiorari* (G.R. No. 154585), but the Court dismissed their petition for being filed out of time and for lack of merit on September 23, 2002.

The fourth was *The Estate of Don Filemon Y. Sotto, represented by its duly designated Administrator, Sixto Sotto Pahang, Jr. v. Matilde S. Palicte, et al.* (G.R. No. 158642, September 22, 2008, 566 SCRA 142), whereby the Court expressly affirmed the ruling rendered by the probate court in Cebu City in Special Proceedings No. 2706-R entitled *Intestate Estate of the Deceased Don Filemon Sotto* denying the administrator's motion to require Matilde to turn over the four real properties to the Estate of Sotto.

The fifth is this case. It seems that the disposition by the Court of the previous cases did not yet satisfy herein petitioners despite their being the successors-in-interest of two of the declared

heirs of Filemon who had been parties in the previous cases either directly or in privity. They now pray that the Court undo the decision promulgated on November 29, 2002, whereby the Court of Appeals (CA) declared their action for the partition of the four properties as already barred by the judgments previously rendered, and the resolution promulgated on August 5, 2003 denying their motion for reconsideration.

The principal concern here is whether this action for partition should still prosper notwithstanding the earlier rulings favoring Matilde's exclusive right over the four properties.

Antecedents

Filemon had four children, namely: Marcelo Sotto (Marcelo), Pascuala Sotto-Pahang (Pascuala), Miguel Barcelona (Miguel), and Matilde. Marcelo was the administrator of the Estate of Sotto. Marcelo and Miguel were the predecessors-in-interest of petitioners.

In June 1967, Pilar Teves (Pilar) and other heirs of Carmen Rallos (Carmen), the deceased wife of Filemon, filed in the Court of First Instance (CFI) of Cebu City a complaint against the Estate of Sotto (Civil Case No. R-10027) seeking to recover certain properties that Filemon had inherited from Carmen, and damages. The CFI rendered judgment awarding to Pilar and other heirs of Carmen damages of ₱233,963.65, among other reliefs. To satisfy the monetary part of the judgment, levy on execution was effected against six parcels of land and two residential houses belonging to the Estate of Sotto. The levied assets were sold at a public auction. Later on, Matilde redeemed four of the parcels of land in her own name (*i.e.*, Lots No. 1049, No. 1051, No. 1052 and No. 2179-C), while her sister Pascuala redeemed one of the two houses because her family was residing there. On July 9, 1980, the Deputy Provincial Sheriff of Cebu executed a deed of redemption in favor of Matilde, which the Clerk of Court approved.

On July 24, 1980, Matilde filed in Civil Case No. R-10027 a motion to transfer to her name the title to the four properties. However, the CFI denied her motion, and instead declared

the deed of redemption issued in her favor null and void, holding that Matilde, although declared in Special Proceedings No. 2706-R as one of the heirs of Filemon, did not qualify as a successor-in-interest with the right to redeem the four properties. Matilde directly appealed the adverse ruling to the Court via petition for review, and on September 21, 1987, the Court, reversing the CFI's ruling, granted Matilde's petition for review but allowed her co-heirs the opportunity to join Matilde as co-redemptioners for a period of six months before the probate court (*i.e.*, RTC of Cebu City, Branch 16) would grant her motion to transfer the title to her name.[1]

The other heirs of Filemon failed to exercise their option granted in the decision of September 21, 1987 to join Matilde as co-redemptioners within the six-month period. Accordingly, on October 5, 1989, the trial court issued an order in Civil Case No. R-10027 approving Matilde's motion to transfer the title of the four lots to her name, and directing the Register of Deeds of Cebu to register the deed of redemption and issue new certificates of title covering the four properties in Matilde's name.

It appears that Pascuala, who executed a document on November 25, 1992 expressly waiving her rights in the four properties covered by the deed of redemption, changed her mind and decided to file on September 23, 1996 in the RTC in Cebu City a complaint to seek the nullification of her waiver of rights, and to have herself be declared as a co-redemptioner of the four properties (Civil Case No. CEB-19338). However, the RTC dismissed Civil Case No. CEB-19338 on the ground of its being barred by laches. Pascuala then assailed the dismissal of Civil Case No. CEB-19338 in the CA through a petition for *certiorari* (C.A.-G.R. SP No. 44660), which the CA dismissed on November 21, 1997. Undeterred, Pascuala appealed the dismissal of her petition for *certiorari* (G.R. No. 131722), but the Court denied due course to her petition on February 4, 1998

[1] *Matilde S. Palicte v. Hon. Jose O. Ramolete, et al.*, G.R. No. 55076, September 21, 1987, 154 SCRA 132.

because of her failure to pay the docket fees and because of her certification against forum shopping having been signed only by her counsel.

In November 1998, the heirs of Miguel filed a motion for reconsideration in Civil Case No. R-10027 of the RTC of Cebu City, Branch 16, praying that the order issued on October 5, 1989 be set aside, and that they be included as Matilde's co-redemptioners. After the RTC denied the motion for reconsideration for its lack of merit on April 25, 2000, they assailed the denial by petition for *certiorari* and prohibition (C.A.-G.R. SP No. 60225). The CA dismissed the petition for *certiorari* and prohibition on January 10, 2002. Thereafter, they elevated the matter to the Court *via* petition for *certiorari* (G.R. No. 154585), which the Court dismissed on September 23, 2002 for being filed out of time and for lack of merit.

On September 10, 1999, the heirs of Marcelo, specifically: Lolibeth Sotto Noble, Danilo C. Sotto, Cristina C. Sotto, Emmanuel C. Sotto, Filemon C. Sotto, and Marcela C. Sotto; and the heirs of Miguel, namely: Alberto, Arturo and Salvacion, all surnamed Barcelona (herein petitioners), instituted the present action for partition against Matilde in the RTC of Cebu City, Branch 20 (Civil Case No. CEB-24293).[2] Alleging in their complaint that despite the redemption of the four properties having been made in the sole name of Matilde, the four properties still rightfully belonged to the Estate of Sotto for having furnished the funds used to redeem the properties, they prayed that the RTC declare the four properties as the assets of the Estate of Sotto, and that the RTC direct their partition among the heirs of Filemon.

It is notable at this juncture that the heirs of Pascuala did not join the action for partition whether as plaintiffs or defendants.[3]

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[2] *Rollo*, pp. 63-74.

[3] *Id.* at 43-45; see also *The Estate of Don Filemon Y. Sotto v. Palicte*, G.R. No. 158642, September 22, 2008, 566 SCRA 142, 144-146.

Instead of filing her answer, Matilde moved to dismiss the complaint,[4] stating that: (*a*) petitioners had no cause of action for partition because they held no interest in the four properties; (*b*) the claim was already barred by prior judgment, estoppel and laches; (*c*) the court had no jurisdiction over the action; and (*d*) a similar case entitled *Pahang v. Palicte* (Civil Case No. 19338) had been dismissed with finality by Branch 8 of the RTC in Cebu City.

On November 15, 1999, the RTC granted Matilde's motion to dismiss and dismissed the complaint,[5] holding that Civil Case No. CEB-24293 was already barred by prior judgment considering that the decision in G.R. No. 55076, the order dated October 5, 1989 of the RTC in Civil Case No. R-10027, and the decision in G.R. No. 131722 had all become final, and that the cases had involved the same parties, the same subject matter, the same causes of action, and the same factual and legal issues. The RTC observed that it was bereft of jurisdiction to annul the rulings of co-equal courts that had recognized Matilde's exclusive ownership of the four properties.

Following the denial by the RTC of their motion for reconsideration,[6] petitioners appealed the dismissal of Civil Case No. CEB-24293 to the CA, which promulgated its judgment on November 29, 2002 affirming the dismissal.[7] After the CA denied petitioners' motion for reconsideration,[8] they brought this present appeal to the Court.

In the meantime, the Estate of Sotto, through the administrator, moved in the probate court (Special Proceedings No. 2706-R)

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[4] *Rollo,* pp. 75-85.

[5] *Id.* at 97-103.

[6] *Id.* at 124.

[7] *Id.* at 42-55; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) and concurred in by Associate Justice Romeo A. Brawner (later Presiding Justice but already retired, now deceased) and Associate Justice Danilo B. Pine (retired).

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

to require Matilde to account for and turn over the four properties that allegedly belonged to the estate, presenting documentary evidence showing that Matilde had effected the redemption of the four properties with the funds of the estate in accordance with the express authorization of Marcelo.[9] The probate court granted the motion, but subsequently reversed itself upon Matilde's motion for reconsideration. Hence, the Estate of Sotto appealed (G.R. No. 158642), but the Court promulgated its decision on September 22, 2008 adversely against the Estate of Sotto.[10]

Issue

Petitioners insist that this action for partition was not barred by the prior judgment promulgated on September 21, 1987 in G.R. No. 55076, because they were not hereby questioning Matilde's right to redeem the four properties but were instead raising issues that had not been passed upon in G.R. No. 55076, or in any of the other cases mentioned by the CA; that the issues being raised here were, namely: (*a*) whether or not the redemption of the four properties by Matilde was in accordance with the agreement between her and Marcelo; and (*b*) whether or not the funds used to redeem the four properties belonged to the Estate of Sotto;[11] that there could be no bar by *res judicata* because there was no identity of parties and causes of action between this action and the previous cases; that the captions of the decided cases referred to by the CA showed that the parties there were different from the parties here; and that it had not been shown that this action and the other cases were based on the same causes of action.[12]

The sole decisive question is whether or not the present action for partition was already barred by prior judgment.

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[9] *Id.* at 27.

[10] *The Estate of Don Filemon Y. Sotto v. Palicte*, G.R. No. 158642, September 22, 2008, 566 SCRA 142.

[11] *Rollo,* pp. 33-35.

[12] *Id.* at p. 37.

Ruling

The appeal lacks merit.

Petitioners argue here that the four properties be declared as part of the Estate of Sotto to be partitioned among the heirs of Filemon because the funds expended by Matilde for the redemption of the properties came from the Estate of Sotto.

Their argument was similar to that made in *The Estate of Don Filemon Y. Sotto v. Palicte*,[13] the fourth case to reach the Court, where the Court explicitly ruled as follows:

> All these judgments and order upholding Matilde's exclusive ownership of the subject properties became final and executory except the action for partition which is still pending in this Court. The judgments were on the merits and rendered by courts having jurisdiction over the subject matter and the parties.
>
> There is substantial identity of parties considering that the present case and the previous cases involve the heirs of Filemon. There is identity of parties not only when the parties in the case are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.
>
> There is identity of causes of action since the issues raised in all the cases essentially involve the claim of ownership over the subject properties. Even if the forms or natures of the actions are different, there is still identity of causes of action when the same facts or evidence support and establish the causes of action in the case at bar and in the previous cases.
>
> Hence, the probate court was correct in setting aside the motion to require Matilde to turn over the subject properties to the estate considering that Matilde's title and ownership over the subject properties have already been upheld in previous final decisions and order. This Court will not countenance the estate's ploy to countermand the previous decisions sustaining Matilde's right over the subject properties. A party cannot evade the application of the

[13] *Supra* note 10, at 152-153.

principle of *res judicata* by the mere expediency of varying the form of action or the relief sought, or adopting a different method of presenting the issue, or by pleading justifiable circumstances.

WHEREFORE, we DENY the petition. We AFFIRM the Orders dated 20 December 2002 and 2 June 2003 issued by the Regional Trial Court of Cebu City, Branch 16, in SP. PROC. No. 2706-R. Costs against petitioner.

SO ORDERED.

For this the fifth case to reach us, we still rule that *res judicata* was applicable to bar petitioners' action for partition of the four properties.

Res judicata exists when as between the action sought to be dismissed and the other action these elements are present, namely; (1) the former judgment must be final; (2) the former judgment must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) the former judgment must be a judgment on the merits; and (4) there must be between the first and subsequent actions (*i*) identity of parties or at least such as representing the same interest in both actions; (*ii*) identity of subject matter, or of the rights asserted and relief prayed for, the relief being founded on the same facts; and, (*iii*) identity of causes of action in both actions such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[14]

The first three elements were present. The decision of the Court in G.R. No. 55076 (the first case), the decision of the

[14] *Chu v. Cunanan,* G.R. No. 156185, September 12, 2011, 657 SCRA 379, 391; *Custodio v. Corrado,* G.R. No. 146082, July 30, 2004, 435 SCRA 500, 508; *Progressive Development Corporation, Inc. v. Court of Appeals,* G.R. No. 123555, January 22, 1999, 301 SCRA 637, 648-649; *De Knecht v. Court of Appeals*, G.R. No. 108015, May 20, 1998, 290 SCRA 223; *Carlet v. Court of Appeals*, G.R. No. 114275, July 7, 1997, 275 SCRA 97, 106; *Suarez v. Court of Appeals*, G.R. No. 83251, January 23, 1991, 193 SCRA 183, 187; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court,* G.R. Nos. 66059-60, December 4, 1989, 179 SCRA 728, 736.

Court in G.R. No. 131722 (the second case), the order dated October 5, 1989 of the RTC in Civil Case No. R-10027 as upheld by the Court in G.R. No. 154585 (the third case), and the decision in G.R. No. 158642 (the fourth case) – all of which dealt with Matilde's right to the four properties – had upheld Matilde's right to the four properties and had all become final. Such rulings were rendered in the exercise of the respective courts' jurisdiction over the subject matter, and were adjudications on the merits of the cases.

What remains to be determined is whether Civil Case No. CEB-24293 and the previous cases involved the same parties, the same subject matter, the same causes of action, and the same factual and legal issues.

We find that, indeed, Civil Case No. CEB-24293 was no different from the previous cases as far as parties, subject matter, causes of action and issues were concerned. In other words, Civil Case No. CEB-24293 was an undisguised relitigation of the same settled matter concerning Matilde's ownership of the four properties.

First of all, petitioners, as plaintiffs in Civil Case No. CEB-24293, were suing in their capacities as the successors-in-interest of Marcelo and Miguel. Even in such capacities, petitioners' identity with the parties in the previous cases firmly remained. In G.R. No. 55076 (the first case), in which Matilde was the petitioner while her brother Marcelo, the administrator of the Estate of Sotto, was one of the respondents, the Court affirmed Matilde's redemption of the four properties notwithstanding that it gave the other heirs of Filemon the opportunity to join as co-redemptioners within a period of six months. When the other heirs did not ultimately join as Matilde's co-redemptioners within the period allowed by the Court, the trial court in Civil Case No. R-10027 rightly directed the Register of Deeds to issue new certificates of title covering the properties in Matilde's name. In Civil Case No. CEB-19338 (the second case), the action Pascuala brought against Matilde for the nullification of Pascuala's waiver of rights involving the four properties, the

trial court dismissed the complaint upon finding Pascuala barred by laches from asserting her right as Matilde's co-redemptioner. The CA and, later on, the Court itself (G.R. No. 131722) affirmed the dismissal by the trial court. In Civil Case No. R-10027, the trial court denied the motion of the heirs of Miguel (who are petitioners herein) to include them as co-redemptioners of the properties on the ground of laches and *res judicata*. Again, the CA and, later on, the Court itself (G.R. No. 154585) affirmed the denial. In G.R. No. 158642 (the fourth case), the Court upheld the ruling of the probate court in Special Proceedings No. 2706-R denying the administrator's motion to require Matilde to turn over the four real properties to the Estate of Sotto.

In all the five cases (Civil Case No. CEB-24293 included), an identity of parties existed because the parties were the same, or there was privity among them, or some of the parties were successors-in-interest litigating for the same thing and under the same title and in the same capacity.[15] An absolute identity of the parties was not necessary, because a shared identity of interest sufficed for *res judicata* to apply.[16] Moreover, mere substantial identity of parties, or even community of interests between parties in the prior and subsequent cases, even if the latter were not impleaded in the first case, would be sufficient.[17] As such, the fact that a previous case was filed in the name of the Estate of Sotto only was of no consequence.

Secondly, the subject matter of all the actions (Civil Case No. CEB-24293 included), was the same, *that is*, Matilde's right to the four properties. On the one hand, Matilde insisted that she had the exclusive right to them, while, on the other hand, the other declared heirs of Filemon, like petitioners'

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[15] *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 242.

[16] *Cruz v. Court of Appeals*, G.R. No. 135101, May 31, 2000, 332 SCRA 747, 753.

[17] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 199.

predecessors-in-interest, maintained that the properties belonged to the Estate of Sotto.

And, lastly, a judgment rendered in the other cases, regardless of which party was successful, would amount to *res judicata* in relation to Civil Case No. CEB-24293.

Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive about the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate.[18]

Section 47 (*b*) Rule 39 of the *Rules of Court* institutionalizes the doctrine of *res judicata* in the concept of bar by prior judgment, *viz*:

> Section 47. *Effect of judgments and final orders*.—The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> xxx xxx xxx
>
> (*b*) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> xxx xxx xxx

[18] *Chu v. Cunanan*, G.R. No. 156185, September 12, 2011, 657 SCRA 379, 391.

The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation –*interest reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same cause – *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness.[19] The doctrine is to be applied with rigidity because:

> x x x the maintenance of public order, the repose of society, and the quiet of families require that what has been definitely determined by competent tribunals shall be accepted as irrefragable legal truth. So deeply is this principle implanted in xxx jurisprudence that commentators upon it have said, the *res judicata* renders white that which is black and straight that which is crooked. *Facit excurvo rectum, ex albo nigrum.* No other evidence can afford strength to the presumption of truth it creates, and no argument can detract from its legal efficacy.[20]

What we have seen here is a clear demonstration of unmitigated forum shopping on the part of petitioners and their counsel. It should not be enough for us to just express our alarm at petitioners' disregard of the doctrine of *res judicata*. We do not justly conclude this decision unless we perform one last unpleasant task, which is to demand from petitioners' counsel, Atty. Makilito B. Mahinay, an explanation of his role in this

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[19] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252, 257-258.

[20] *Jeter v. Hewitt*, 63 U.S. (22 How.) 352 (1859).

pernicious attempt to relitigate the already settled issue regarding Matilde's exclusive right in the four properties. He was not unaware of the other cases in which the issue had been definitely settled considering that his clients were the heirs themselves of Marcelo and Miguel. Moreover, he had represented the Estate of Sotto in G.R. No. 158642 (*The Estate of Don Filemon Y. Sotto v. Palicte*).

Under the circumstances, Atty. Mahinay appears to have engaged in the prejudicial practice of forum shopping as much as any of his clients had been. If he was guilty, the Court would not tolerate it, and would sanction him. In this regard, forum shopping, according to *Ao-as v. Court of Appeals*,[21] may be committed as follows:

> As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). If the forum shopping is not considered willful and deliberate, the *subsequent cases* shall be dismissed *without prejudice* on one of the two grounds mentioned above. However, if the forum shopping is willful and deliberate, *both* (or *all*, if there are more than two) actions shall be dismissed *with prejudice*.

WHEREFORE, the Court **DENIES** the petition for review; **AFFIRMS** the decision promulgated on November 29, 2002; and **ORDERS** petitioners to pay the costs of suit.

The Court **DIRECTS** Atty. Makilito B. Mahinay to show cause in writing within ten days from notice why he should not be sanctioned as a member of the Integrated Bar of the Philippines for committing a clear violation of the rule prohibiting forum-shopping by aiding his clients in asserting the same claims at least twice.

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[21] G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354-355.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172892. June 13, 2013]

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **BUREAU OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 8424 (THE TAX CODE OF 1997); CORPORATION RETURNS; RETURN OF CORPORATION CONTEMPLATING DISSOLUTION OR REORGANIZATION; TAX CLEARANCE REQUIREMENT; DOES NOT APPLY TO BANKS ORDERED PLACED UNDER LIQUIDATION BY THE MONETARY BOARD.— *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue* ruled that Section 52(C) of the Tax Code of 1997 is not applicable to banks ordered placed under liquidation by the Monetary Board, and a tax clearance is not a prerequisite to the approval of the project of distribution of the assets of a bank under liquidation by the PDIC. Thus, this Court has held that the RTC, acting as liquidation court under Section 30 of the New Central Bank Act, commits grave abuse of discretion in ordering the PDIC, as liquidator of a bank ordered closed by the Monetary Board,

[*] Vice Associate Justice Bienvenido L. Reyes, who penned the decision under review, pursuant to the raffle of May 8, 2013.

to first secure a tax clearance from the appropriate BIR Regional Office, and holding in abeyance the approval of the project of distribution of the assets of the closed bank by virtue thereof.

2. ID.; ID.; SECTION 52(C) THEREOF PERTAINS ONLY TO A REGULATION OF THE RELATIONSHIP BETWEEN THE SECURITIES AND EXCHANGE COMMISSION AND THE BUREAU OF INTERNAL REVENUE WITH RESPECT TO CORPORATIONS CONTEMPLATING DISSOLUTION OR REORGANIZATION.— Section 52(C) of the Tax Code of 1997 pertains only to a regulation of the relationship between the SEC and the BIR with respect to corporations contemplating dissolution or reorganization. On the other hand, banks under liquidation by the PDIC as ordered by the Monetary Board constitute a special case governed by the special rules and procedures provided under Section 30 of the New Central Bank Act, which does not require that a tax clearance be secured from the BIR.

3. MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); PROCEEDINGS IN RECEIVERSHIP AND LIQUIDATION; ONLY A FINAL TAX RETURN IS REQUIRED TO SATISFY THE INTEREST OF THE BUREAU OF INTERNAL REVENUE IN THE LIQUIDATION OF A CLOSED BANK.— [O]nly a final tax return is required to satisfy the interest of the BIR in the liquidation of a closed bank, which is the determination of the tax liabilities of a bank under liquidation by the PDIC. In view of the timeline of the liquidation proceedings under Section 30 of the New Central Bank Act, it is unreasonable for the liquidation court to require that a tax clearance be first secured as a condition for the approval of project of distribution of a bank under liquidation.

4. ID.; ID.; ID.; THE DEBTS AND LIABILITIES OF THE BANK UNDER LIQUIDATION ARE TO BE PAID IN ACCORDANCE WITH THE RULES ON CONCURRENCE AND PREFERENCE OF CREDITS UNDER THE CIVIL CODE.— The position of the BIR, insisting on prior compliance with the tax clearance requirement as a condition for the approval of the project of distribution of the assets of a bank under liquidation, is contrary to both the letter and intent of the law on liquidation of banks by the PDIC. x x x The law expressly

provides that debts and liabilities of the bank under liquidation are to be paid in accordance with the rules on concurrence and preference of credit under the Civil Code. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, such as the corporate income tax, will come only in ninth place in the order of preference. On the other hand, if the BIR's contention that a tax clearance be secured first before the project of distribution of the assets of a bank under liquidation may be approved, then the tax liabilities will be given absolute preference in all instances, including those that do not fall under Articles 2241(1) and 2242(1) of the Civil Code. In order to secure a tax clearance which will serve as proof that the taxpayer had completely paid off his tax liabilities, PDIC will be compelled to settle and pay first all tax liabilities and deficiencies of the bank, regardless of the order of preference under the pertinent provisions of the Civil Code. Following the BIR's stance, therefore, only then may the project of distribution of the bank's assets be approved and the other debts and claims thereafter settled, even though under Article 2244 of the Civil Code such debts and claims enjoy preference over taxes and assessments due the National Government. The BIR effectively wants this Court to ignore Section 30 of the New Central Bank Act and disregard Article 2244 of the Civil Code. However, as a court of law, this Court has the solemn duty to apply the law. It cannot and will not give its imprimatur to a violation of the laws.

APPEARANCES OF COUNSEL

Office of the General Counsel (PDIC) for petitioner.
Robert D. Panopio for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *Certiorari*[1] of the Decision[2] and Resolution[3] dated December 29, 2005 and May 5, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 80816.

In Resolution No. 1056 dated October 26, 1994, the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) prohibited the Rural Bank of Tuba (Benguet), Inc. (RBTI) from doing business in the Philippines, placed it under receivership in accordance with Section 30 of Republic Act No. 7653, otherwise known as the "New Central Bank Act," and designated the Philippine Deposit Insurance Corporation (PDIC) as receiver.[4]

Subsequently, PDIC conducted an evaluation of RBTI's financial condition and determined that RBTI remained insolvent. Thus, the Monetary Board issued Resolution No. 675 dated June 6, 1997 directing PDIC to proceed with the liquidation of RBTI. Accordingly and pursuant to Section 30 of the New Central Bank Act, PDIC filed in the Regional Trial Court (RTC) of La Trinidad, Benguet a petition for assistance in the liquidation of RBTI. The petition was docketed as Special Proceeding Case No. 97-SP-0100 and raffled to Branch 8.[5]

In an Order[6] dated September 4, 1997, the trial court gave the petition due course and approved it.

As an incident of the proceedings, the Bureau of Internal Revenue (BIR) intervened as one of the creditors of RBTI. The

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

[2] *Rollo*, pp. 44-50; penned by Associate Justice Sesinando E. Villon with Associate Justices Edgardo P. Cruz and Juan Q. Enriquez, Jr., concurring.

[3] *Id.* at 51-52.

[4] *Id.* at 45.

[5] *Id.* at 44-45.

[6] *Id.* at 56.

BIR prayed that the proceedings be suspended until PDIC has secured a tax clearance required under Section 52(C) of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997" or the "Tax Code of 1997," which provides:

> SEC. 52. *Corporation Returns.* –
>
> xxx xxx xxx
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* – Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.
>
> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

In an Order[7] dated February 14, 2003, the trial court found merit in the BIR's motion and granted it:

> WHEREFORE, petitioner PDIC is directed to secure the necessary tax clearance provided for under Section 45(C) of the 1993 National Internal Revenue Code and now Section 52(C) of the 1997 National Internal Revenue Code and to secure the same from the BIR District Office No. 9, La Trinidad, Benguet.
>
> Further, petitioner PDIC is directed to submit a comprehensive liquidation report addressed to creditor Bangko Sentral and to remit the accounts already collected from the pledged assets to said Bangko Sentral.

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

> Claimant Bangko Sentral may now initiate collection suits directly against the individual borrowers.
>
> In the event that the collection efforts of Bangko Sentral against individual borrowers may fail, Bangko Sentral shall proceed against the general assets of the Rural Bank of Tuba Benguet.
>
> Finally, Annex "A" attached to the manifestation and motion dated November 29, 2002 [of PDIC] is considered as partial satisfaction of the obligation of the Rural Bank of Tuba (Benguet) Inc., to Bangko Sentral.[8]

PDIC moved for partial reconsideration of the Order dated February 14, 2003 with respect to the directive for it to secure a tax clearance. It argued that Section 52(C) of the Tax Code of 1997 does not cover closed banking institutions as the liquidation of closed banks is governed by Section 30 of the New Central Bank Act. The motion was, however, denied in an Order[9] dated September 16, 2003.

PDIC thereafter brought the matter to the Court of Appeals by way of a petition for *Certiorari* under Rule 65 of the Rules of Court. In its petition, docketed as CA-G.R. SP No. 80816, PDIC asserted that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in applying Section 52(C) of the Tax Code of 1997 to a bank ordered closed, placed under receivership and, subsequently, under liquidation by the Monetary Board.[10]

In its Decision dated December 29, 2005, the appellate court agreed with the trial court that banks under liquidation by PDIC are covered by Section 52(C) of the Tax Code of 1997. Thus, the Court of Appeals affirmed the Orders dated February 14, 2003 and September 16, 2003 and dismissed PDIC's petition.[11]

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[8] *Id.*

[9] *Id.* at 59.

[10] *Id.* at 47.

[11] *Id.*

PDIC sought reconsideration but it was denied.[12]

Hence, this petition.

PDIC insists that Section 52(C) of the Tax Code of 1997 is not applicable to banks ordered placed under liquidation by the Monetary Board of the BSP. It argues that closed banks placed under liquidation pursuant to Section 30 of the New Central Bank Act are not "corporations contemplating liquidation" within the purview of Section 52(C) of the Tax Code of 1997. As opposed to the liquidation of all other corporations, the Monetary Board, not the Securities and Exchange Commission (SEC), has the power to order or approve the closure and liquidation of banks. Section 52(C) of the Tax Code of 1997 applies only to corporations under the supervision of the SEC.[13]

For its part, the BIR counters that the requirement of a tax clearance under Section 52(C) of the Tax Code of 1997 is applicable to rural banks undergoing liquidation proceedings under Section 30 of the New Central Bank Act. For the BIR, the authority given to the BSP to supervise banks does not mean that all matters regarding banks are exclusively under the power of the BSP. Thus, banking corporations are still subject to reasonable regulations imposed by the SEC on corporations. The purpose of a tax clearance requirement under Section 52(C) of the Tax Code of 1997 is to ensure the collection of income taxes due to the government by imposing upon a corporation undergoing liquidation the obligation of reporting the income it earned, if any, for the purpose of determining the amount of imposable tax.[14]

The petition succeeds.

This Court has already resolved the issue of whether Section 52(C) of the Tax Code of 1997 applies to banks ordered placed under liquidation by the Monetary Board, that is, whether

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[12] *Id.* at 51-52.

[13] *Id.* at 3-61; Petition.

[14] *Id.* at 78-96; Comment.

a bank placed under liquidation has to secure a tax clearance from the BIR before the project of distribution of the assets of the bank can be approved by the liquidation court.

In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue[15] ruled that Section 52(C) of the Tax Code of 1997 is not applicable to banks ordered placed under liquidation by the Monetary Board,[16] and a tax clearance is not a prerequisite to the approval of the project of distribution of the assets of a bank under liquidation by the PDIC.[17]

Thus, this Court has held that the RTC, acting as liquidation court under Section 30 of the New Central Bank Act, commits grave abuse of discretion in ordering the PDIC, as liquidator of a bank ordered closed by the Monetary Board, to first secure a tax clearance from the appropriate BIR Regional Office, and holding in abeyance the approval of the project of distribution of the assets of the closed bank by virtue thereof.[18] Three reasons have been given.

First, Section 52(C) of the Tax Code of 1997 pertains only to a regulation of the relationship between the SEC and the BIR with respect to corporations contemplating dissolution or reorganization. On the other hand, banks under liquidation by the PDIC as ordered by the Monetary Board constitute a special case governed by the special rules and procedures provided under Section 30 of the New Central Bank Act, which does not require that a tax clearance be secured from the BIR.[19] As explained in *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc.*:

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[15] 540 Phil. 142 (2006).

[16] *Id.* at 161.

[17] *Id.* at 169.

[18] *Id.*

[19] *Id.* at 161-165.

Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1[20] regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. x x x.

xxx xxx xxx

Section 30 of the New Central Bank Act lays down the proceedings for receivership and liquidation of a bank. The said provision is silent as regards the securing of a tax clearance from the BIR. The omission, nonetheless, cannot compel this Court to apply by analogy the tax clearance requirement of the SEC, as stated in Section 52(C) of the Tax Code of 1997 and BIR-SEC Regulations No. 1, since, again, the dissolution of a corporation by the SEC is a totally different proceeding from the receivership and liquidation of a bank by the BSP. This Court cannot simply replace any reference by Section 52(C) of the Tax Code of 1997 and the provisions of the BIR-SEC Regulations No. 1 to the "SEC" with the "BSP." To do so would be to read into the law and the regulations something that is simply not there, and would be tantamount to judicial legislation.[21]

Second, only a final tax return is required to satisfy the interest of the BIR in the liquidation of a closed bank, which is the determination of the tax liabilities of a bank under liquidation by the PDIC. In view of the timeline of the liquidation proceedings under Section 30 of the New Central Bank Act, it is unreasonable for the liquidation court to require that a tax clearance be first secured as a condition for the approval of project of distribution of a bank under liquidation.[22] This point has been elucidated thus:

[T]he alleged purpose of the BIR in requiring the liquidator PDIC to secure a tax clearance is to enable it to determine the tax liabilities of the closed bank. It raised the point that since the PDIC, as receiver and liquidator, failed to file the final return of RBBI for the year

[20] *Id.* at 159. This Regulations issued jointly by the BIR and the SEC in 1985, when the Tax Code of 1977 was still in effect, and a provision similar to Section 52(C) of Republic Act No. 8424 could be found in Section 46(C) thereof.

[21] *Id.* at 162-165.

[22] *Id.* at 166-169.

its operations were stopped, the BIR had no way of determining whether the bank still had outstanding tax liabilities.

To our mind, what the BIR should have requested from the RTC, and what was within the discretion of the RTC to grant, is not an order for PDIC, as liquidator of RBBI, to secure a tax clearance; but, rather, for it to submit the final return of RBBI. The first paragraph of Section 30(C) of the Tax Code of 1997, read in conjunction with Section 54 of the same Code, clearly imposes upon PDIC, as the receiver and liquidator of RBBI, the duty to file such a return. x x x.

xxx xxx xxx

Section 54 of the Tax Code of 1997 imposes a general duty on all receivers, trustees in bankruptcy, and assignees, who operate and preserve the assets of a corporation, regardless of the circumstances or the law by which they came to hold their positions, to file the necessary returns on behalf of the corporation under their care.

The filing by PDIC of a final tax return, on behalf of RBBI, should already address the supposed concern of the BIR and would already enable the latter to determine if RBBI still had outstanding tax liabilities.

The unreasonableness and impossibility of requiring a tax clearance before the approval by the RTC of the Project of Distribution of the assets of the RBBI becomes apparent when the timeline of the proceedings is considered.

The BIR can only issue a certificate of tax clearance when the taxpayer had completely paid off his tax liabilities. The certificate of tax clearance attests that the taxpayer no longer has any outstanding tax obligations to the Government.

Should the BIR find that RBBI still had outstanding tax liabilities, PDIC will not be able to pay the same because the Project of Distribution of the assets of RBBI remains unapproved by the RTC; and, if RBBI still had outstanding tax liabilities, the BIR will not issue a tax clearance; but, without the tax clearance, the Project of Distribution of assets, which allocates the payment for the tax liabilities, will not be approved by the RTC. It will be a chicken-and-egg dilemma.[23]

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[23] *Id.* at 166-168.

Third, it is not for this Court to fill in any gap, whether perceived or evident, in current statutes and regulations as to the relations among the BIR, as tax collector of the National Government; the BSP, as regulator of the banks; and the PDIC, as the receiver and liquidator of banks ordered closed by the BSP. It is up to the legislature to address the matter through appropriate legislation, and to the executive to provide the regulations for its implementation.[24]

There is another reason. The position of the BIR, insisting on prior compliance with the tax clearance requirement as a condition for the approval of the project of distribution of the assets of a bank under liquidation, is contrary to both the letter and intent of the law on liquidation of banks by the PDIC. In this connection, the relevant portion of Section 30 of the New Central Bank Act provides:

> Section 30. *Proceedings in Receivership and Liquidation.*— xxx.
>
> xxx xxx xxx
>
> If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:
>
> (1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

[24] *Id.* at 169.

(2) **convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines** and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.[25] (Emphasis supplied.)

The law expressly provides that debts and liabilities of the bank under liquidation are to be paid in accordance with the rules on concurrence and preference of credit under the Civil Code. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, such as the corporate income tax, will come only in ninth place in the order of preference.[26] On the other hand, if the BIR's contention that a tax clearance be secured first before the project of distribution of the assets of a bank under liquidation may be approved, then the tax liabilities will be given absolute preference in all instances, including those that do not fall under Articles 2241(1) and 2242(1) of the Civil Code. In order to secure a tax clearance which will serve as proof that the taxpayer had completely paid off his tax liabilities, PDIC will be compelled to settle and pay first all tax liabilities and deficiencies of the bank, regardless of the order of preference under the pertinent provisions of the Civil Code. Following the BIR's stance, therefore, only then may

[25] *Id.* at 162-164.

[26] *Id.* at 168.

the project of distribution of the bank's assets be approved and the other debts and claims thereafter settled, even though under Article 2244 of the Civil Code such debts and claims enjoy preference over taxes and assessments due the National Government. The BIR effectively wants this Court to ignore Section 30 of the New Central Bank Act and disregard Article 2244 of the Civil Code. However, as a court of law, this Court has the solemn duty to apply the law. It cannot and will not give its imprimatur to a violation of the laws.

WHEREFORE, the petition is hereby **GRANTED**. The Court further rules as follows:

(a) the Decision dated December 29, 2005 and Resolution dated May 5, 2006 of the Court of Appeals in CA-G.R. SP No. 80816 are **REVERSED** and **SET ASIDE**;

(b) the Orders dated February 14, 2003 and September 16, 2003 of the Regional Trial Court of La Trinidad, Benguet sitting as liquidation court of the closed RBTI, in Special Proceeding Case No. 97-SP-0100 are **NULLIFIED** and **SET ASIDE**, insofar as they direct the Philippine Deposit Insurance Corporation to secure a tax clearance, for having been rendered with grave abuse of discretion;

(c) the PDIC, as liquidator, is **ORDERED** to submit to the BIR the final tax return of RBTI, in accordance with the first paragraph of Section 52(C), in connection with Section 54, of the Tax Code of 1997; and

(d) the Regional Trial Court of La Trinidad, Benguet is **ORDERED** to resume the liquidation proceedings in Special Proceeding Case No. 97-SP-0100 in order to determine all the claims of the creditors, including that of the National Government, as determined and presented by the BIR; and, pursuant to such determination, and guided accordingly by the provisions of the Civil Code on preference of credit, to review and approve the project of distribution of the assets of RBTI.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 176838. June 13, 2013]

DEPARTMENT OF AGRARIAN REFORM, as represented by Fritzi C. Pantoja, in her capacity as the Provincial Agrarian Reform Officer, DAR-Laguna, *petitioner, vs.* **PARAMOUNT HOLDINGS EQUITIES, INC., JIMMY CHUA, ROJAS CHUA, BENJAMIN SIM, SANTOS C. TAN, WILLIAM C. LEE and STEWART C. LIM,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; THE JURISDICTION THEREOF IS LIMITED TO THE ADJUDICATION OF AGRARIAN REFORM CASES.— The jurisdiction of the DARAB is limited under the law, as it was created under Executive Order (E.O.) No. 129-A specifically to assume powers and functions with respect to the adjudication of **agrarian reform cases** under E.O. No. 229 and E.O. No. 129-A. Significantly, it was organized under the Office of the Secretary of Agrarian Reform. The limitation on the authority of it to mere agrarian reform matters is only consistent with the extent of DAR's quasi-judicial powers under R.A. No. 6657 and E.O. No. 229 x x x. [N]ot every sale or transfer of agricultural

land would warrant DARAB's exercise of its jurisdiction. The law is specific that the property must be shown to be under the coverage of agrarian reform laws.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); AGRARIAN DISPUTE; DEFINED.— Section 3(d) of R.A. No. 6657 defines an agrarian dispute in this manner: "(d) Agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under R.A. 6657 and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

3. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE JURISDICTION OF A TRIBUNAL, INCLUDING A QUASI-JUDICIAL OFFICE OR GOVERNMENT AGENCY, OVER THE NATURE AND SUBJECT MATTER OF A COMPLAINT IS DETERMINED BY THE MATERIAL ALLEGATIONS THEREIN AND THE CHARACTER OF THE RELIEF PRAYED FOR; CASE AT BAR.— Basic is the rule that the "jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for irrespective of whether the petitioner or complainant is entitled to any or all such reliefs." Upon the Court's perusal of the records, it has determined that the PARO's petition with the PARAD failed to indicate an agrarian dispute. Specifically, the PARO's petition failed to sufficiently allege any tenurial or agrarian relations that affect the subject parcels of land. Although it mentioned a pending petition for coverage filed with DAR by supposed farmers-tillers, there was neither such claim as a fact from DAR, nor a categorical

statement or allegation as to a determined tenancy relationship by the PARO or the Secretary of Agrarian Reform.

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); SALE OF PROPERTIES ALREADY CLASSIFIED AS "INDUSTRIAL" LONG BEFORE THE EFFECTIVITY THEREOF IS NOT COVERED BY THE COMPREHENSIVE AGRARIAN REFORM PROGRAM AND THE REQUIREMENT FOR A CLEARANCE; CASE AT BAR.— Even during the proceedings before the PARAD, the respondents have raised the pendency with the Regional Trial Court of Biñan, Laguna of Civil Case No. B-5862, an appeal from the decision of the Municipal Trial Court of Santa Rosa, Laguna in Civil Case No. 2478. The records indicate that when the matter was elevated to the CA *via* the petition docketed as CA G.R. SP No. 68110, the appellate court declared the subject properties to have long been reclassified from "agricultural" to "industrial." x x x An appeal from the CA's decision was denied by the Court in a Resolution dated June 18, 2003. The Housing Land Use Regulatory Board has affirmed through a Certification dated May 22, 1991 that the zoning ordinance referred to was approved on December 2, 1981. Thus, the respondents correctly argued that since the subject properties were already classified as "industrial" long before the effectivity of the CARL, their sale could not have been covered by the CARP and the requirement for a clearance. Significantly, DAR failed to refute said allegation, which the Court finds duly supported by documents that form part of the case records.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Vladimir B. Bumatay for respondents.

D E C I S I O N

REYES, *J.*:

This resolves the Petition for Review[1] filed by petitioner Department of Agrarian Reform (DAR) to assail the Decision[2] dated October 12, 2006 and Resolution[3] dated January 10, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 89693, which granted Paramount Holdings Equities, Inc., Jimmy Chua, Rojas Chua, Benjamin Sim, Santos C. Tan, William C. Lee and Stewart C. Lim's (respondents) appeal from the rulings of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 12284.

The Antecedents

The case stems from the petition[4] docketed as DARAB Case No. R 0403-0009-02, filed with the Office of the Provincial Adjudicator (PARAD) by the DAR through Provincial Agrarian Reform Officer (PARO) Felixberto Q. Kagahastian. The petition sought to nullify the sale to the respondents of several parcels of land, with details of the sale as follows:

Vendee	*Title No.*	*Area Covered*	*New Title*	*Vendor*
Jimmy C. Chua and Rojas Chua	T-37140	71,517 square meters	T-196706	Golden Mountain Agricultural Development Corporation
Paramount Holdings Equities, Inc.	T-37141	14,634 sq m	T-196705	Golden Mountain Agricultural Development Corporation

[1] *Rollo*, pp. 9-31.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring; *id.* at 33-47.

[3] *Id.* at 49-50.

[4] *Id.* at 181-186.

Paramount Holdings Equities, Inc.	T-37139	17,203 sq m	T-196704	Golden Mountain Agricultural Development Corporation
William C. Lee and Steward C. Lim	T-37137	68,078 sq m	T-196707	Green Mountain Agricultural Development Corporation
Benjamin Sim and Santos C. Tan	T-37138	66,114 sq m	T-196708	Green Mountain Agricultural Development Corporation

The PARO argued that the properties were agricultural land yet their sale was effected without DAR Clearance as required under Republic Act No. 6657 (R.A. No. 6657), otherwise known as the Comprehensive Agrarian Reform Law (CARL). Allegedly, the PARO came to know of the transactions only after he had received a directive from the Secretary of Agrarian Reform to investigate the matter, following the latter's receipt of a letter-request from persons[5] who claimed to be the tenant-farmers of the properties' previous owners.[6]

The respondents opposed the petition, contending that since the matter involves an administrative implementation of R.A. No. 6657, the case is cognizable by the Secretary of Agrarian Reform, not the DARAB. They also sought the petition's dismissal on the grounds of prescription, *litis pendentia*, *res judicata* and forum shopping.

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[5] Rommel Federazo, Ronnie Federazo, Reynaldo Rapasin, Cesar Belen, Enocencia Allanes, Hospicio Samson, Ely Ramos, Leonides Federazo, Romy Alano, Severino Malborbor, Virgilio Alano, Gregorio Cane, Antonio Valdez, Noel Agnes, Lourdes Samson, Benjamin Espenia and Roque Esperon; *id.* at 35.

[6] *Id.* at 184.

The Ruling of the PARAD

On October 16, 2002, Provincial Adjudicator Virgilio M. Sorita (PA Sorita) issued a Resolution[7] dismissing the petition for lack of jurisdiction. He explained:

> Petitioner further argued that the jurisdiction of the Department of Agrarian Reform Adjudication Board includes and [is] not limited to *those involving sale, alienation, mortgage, foreclosure, preemption and redemption of agricultural lands* under the coverage of CARP or other agrarian laws. These provisions were originally lifted from Presidential Decree 946. The emphasis [is] on the phrase **under the coverage of CARP or other agrarian laws** which definitely refers to land already placed under the Comprehensive Agrarian Reform Program under R.A. 6657, lands already placed under Presidential Decree 27, landed estate acquired by Land Bank of the Philippines and administered by the Department of Agrarian Reform pursuant to the Provision of R.A. 3844 as amended and lands under the Settlement and Resettlement Project also administered by the Department of Agrarian Reform for the simple reason that disputes and controversies arising from these areas are agrarian reform matters. It does not include the sale, disposition or alienation of private lands not administered by the DAR to private individuals such [as] in this instant case.
>
> Petitioner also argued that jurisdiction of the Adjudication Board also covers violation of the Rules and Guidelines in the implementation of the Comprehensive Agrarian Reform Program. This is true but such violation is only confined to violations committed by beneficiaries of the program not like in the instant case, otherwise, jurisdiction lies on the Regional Trial Court acting as Special Agrarian Court as clearly provided by law.[8] (Underscoring ours)

Furthermore, PA Sorita cited the absence of any showing that the petition was filed with the knowledge and authority of the Solicitor General, as the official counsel of the government being the aggrieved party in the dispute.

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[7] *Id.* at 187-190.

[8] *Id.* at 189.

The DAR's motion for reconsideration was denied, prompting the filing of an appeal with the DARAB.

The Ruling of the DARAB

The DARAB granted the appeal *via* a Decision[9] dated August 18, 2004. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and/or SET ASIDE. A new judgment is rendered nullifying the Deeds of Sale in question dated September 5, 1989 and ordering the Register of Deeds of Laguna to cancel the aforesaid Deeds of Sale, as well as the Transfer Certificates of Title issued to the respective private respondents concerned.
>
> SO ORDERED.[10]

Contrary to the findings of PA Sorita, the DARAB ruled that: *first*, the failure of the parties to the sale to obtain the required clearance indicates that their transactions were fraudulent;[11] *second*, the PARO had the personality to file the petition even in the absence of the Solicitor General's assistance, citing Memorandum Circular No. 2, series of 2001 (Circular No. 2), and the policy of DAR to "acquire and distribute all lands covered by RA 6657[,] including those subject of illegal transfers x x x";[12] and *third*, the DARAB has the jurisdiction over the case, since its jurisdiction under Circular No. 2 covers the cancellation of deeds of conveyance and corresponding transfer certificates of title over agricultural lands.[13]

The denial[14] of the respondents' motion for reconsideration led to the filing of a petition with the CA.

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[9] *Id.* at 51-62.

[10] *Id.* at 61.

[11] *Id.* at 59.

[12] *Id.* at 60.

[13] *Id.* at 61.

[14] *Id.* at 63-64.

The Ruling of the CA

On October 12, 2006, the CA rendered the assailed Decision,[15] the dispositive portion of which reads:

> **WHEREFORE**, the instant petition is **GRANTED**. The appealed Decision (dated August 18, 2004) and Resolution (dated March 16, 2005) of the Department of Agrarian Reform Adjudication Board-Central Office, Elliptical Road, Diliman, Quezon City are **ANNULLED** and **SET ASIDE**. The Petition in DARAB Case No. R-0403-0009-02 is hereby **DISMISSED**. No pronouncement as to costs.
>
> SO ORDERED.[16]

The CA emphasized that the DARAB's jurisdiction over the dispute should be determined by the allegations made in the petition. Since the action was essentially for the nullification of the subject properties' sale, it did not involve an agrarian suit that is within the DARAB's jurisdiction.

DAR's motion for reconsideration was denied in a Resolution[17] dated January 10, 2007. Hence, this petition.

The Present Petition

The Court has issued on June 6, 2007 a Resolution[18] denying the petition on the following grounds: (a) DAR's failure to attach proof of service of the petition upon the CA as required by Section 3, Rule 45 in relation to Section 5(d), Rule 56 of the Rules of Court; (b) the DAR's failure to accompany the petition with clearly legible duplicate original or certified true copies of the assailed CA decision and resolution, in violation of Sections 4(d) and 5 of Rule 45, in relation to Section 5(d) of Rule 56; (c) the petition was prepared by the DAR Region IV-Legal Assistance Division without the concurrence of the Office

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[15] *Id.* at 33-47.

[16] *Id.* at 46.

[17] *Id.* at 49-50.

[18] *Id.* at 70-A to 70-B.

of the Solicitor General (OSG); and (d) the petition failed to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution as to warrant the exercise by the Court of its discretionary appellate jurisdiction.

On October 15, 2007,[19] the Court resolved to grant DAR's motion to reconsider the dismissal, after it filed its compliance and the OSG, its appearance and manifestation that it was adopting the petition and motion for reconsideration filed by DAR.

On December 10, 2008, the Court again resolved to deny the petition on the ground of the OSG's failure to obey a lawful order of the Court, following its failure to file the required reply despite the Court's grant of its several motions for extension.[20] On April 20, 2009, the Court resolved to grant DAR's motion for reconsideration and accordingly, reinstate the petition.[21]

The main issue for the Court's resolution is: Whether or not the DARAB has jurisdiction over the dispute that seeks the nullification of the subject properties' sale.

This Court's Ruling

The Court answers in the negative.

The jurisdiction of the DARAB is limited under the law, as it was created under Executive Order (E.O.) No. 129-A specifically to assume powers and functions with respect to the adjudication of **agrarian reform cases** under E.O. No. 229 and E.O. No. 129-A.[22] Significantly, it was organized under the

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[19] *Id.* at 117.

[20] *Id.* at 294.

[21] *Id.* at 315-316.

[22] SECTION 13. *Agrarian Reform Adjudication Board.*—There is hereby created an Agrarian Reform Adjudication Board **under the Office of the Secretary**. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of the Secretary as members. A Secretariat shall be constituted to support the Board. **The Board shall**

Office of the Secretary of Agrarian Reform. The limitation on the authority of it to mere agrarian reform matters is only consistent with the extent of DAR's quasi-judicial powers under R.A. No. 6657 and E.O. No. 229, which read:

SECTION 50 [of R.A. No. 6657]. *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).

SECTION 17 [of E.O. No. 229]. *Quasi-Judicial Powers of the DAR*.—The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters **involving implementation of agrarian reform**, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

Thus, Sections 1 and 2, Rule II of the DARAB New Rules of Procedure, which was adopted and promulgated on May 30, 1994 and came into effect on June 21, 1994, identify the specific extent of the DARAB's and PARAD's jurisdiction, as they read:

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:

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assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board.

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

c) **The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP**;

d) Those cases arising from, or connected with membership or representation in compact farms, farmers' cooperatives and other registered farmers' associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) **Those involving the sale, alienation, mortgage, foreclosure, pre-emption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws**;

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.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

h) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECTION 2. *Jurisdiction of the Regional and Provincial Adjudicator*.—The RARAD and the PARAD shall have concurrent

original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction. (Emphasis supplied)

Consistent with the aforequoted legal provisions, we emphasized in *Heirs of Candido Del Rosario v. Del Rosario*[23] that the jurisdiction of the PARAD and the DARAB is only limited to cases involving agrarian disputes, including incidents arising from the implementation of agrarian laws. Section 3(d) of R.A. No. 6657 defines an agrarian dispute in this manner:

(d) Agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under R.A. 6657 and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

Basic is the rule that the "jurisdiction of a tribunal, including a quasi- judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for irrespective of whether the petitioner or complainant is entitled to any or all such reliefs."[24] Upon the Court's perusal of the records, it has determined that the PARO's petition with the PARAD failed to indicate an agrarian dispute.

Specifically, the PARO's petition failed to sufficiently allege any tenurial or agrarian relations that affect the subject parcels of land. Although it mentioned a pending petition for coverage

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[23] G.R. No. 181548, June 20, 2012, 674 SCRA 180.

[24] *Del Monte Philippines, Inc. Employees Agrarian Reform Beneficiaries Cooperative (DEARBC) v. Sangunay*, G.R. No. 180013, January 31, 2011, 641 SCRA 87, 96.

filed with DAR by supposed farmers-tillers, there was neither such claim as a fact from DAR, nor a categorical statement or allegation as to a determined tenancy relationship by the PARO or the Secretary of Agrarian Reform. The PARO's petition merely states:

> 3.3 That the Provincial Office only came to know very recently about such transaction when the Office received on two separate occasion[s] a memorandum directive dated 22 October and 25 April 2002 from the Office of the DAR Secretary to investigate and if warranted file a corresponding petition for nullification of such transaction **anent the petition for coverage of the actual occupants farmers-tillers led by spouses Josie and Lourdes Samson who informed the Office of the DAR Secretary about such transaction**. x x x[25] (Emphasis ours)

It is also undisputed, that even the petition filed with the PARAD failed to indicate otherwise, that the subject parcels of land had not been the subject of any notice of coverage under the Comprehensive Agrarian Reform Program (CARP). Clearly, the PARO's cause of action was merely founded on the absence of a clearance to cover the sale and registration of the subject parcels of land, which were claimed in the petition to be agricultural.

Given the foregoing, the CA correctly ruled that the DARAB had no jurisdiction over the PARO's petition. While the Court recognizes the legal requirement for clearances in the sale and transfer of agricultural lands, the DARAB's jurisdiction over such disputes is limited by the qualification under Rule II, Section 1, paragraphs (c) and (e) of the DARAB New Rules of Procedure, which read:

> c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands **under the administration and disposition of the DAR or LBP;**
>
> xxx xxx xxx
>
> e) Those involving the sale, alienation, mortgage, foreclosure, pre emption and redemption of agricultural lands **under**

[25] *Rollo,* p. 184.

> **the coverage of the CARP or other agrarian laws[.]** (Emphasis ours)

Even Circular No. 2 cited in the Decision[26] dated August 18, 2004 on the authority of the PARO to file petitions with the PARAD in case of illegal transfers presupposes the fulfillment of the conditions in the cited Section 1, paragraphs (c) and (e), Rule II of the DARAB Rules and Section 50 of R.A. No. 6657. The pertinent provisions of Circular No. 2 read:

> SECTION 4. *Operating Procedures*.—**The procedures for annulment of deeds of conveyance executed in violation of RA 6657 are as follows:**
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> xxx xxx xxx
>
> b) The Chief, Legal Division, of the Provincial Agrarian Reform Office, shall have the following responsibilities:
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> xxx xxx xxx
>
> 2. If there was illegal transfer, file a petition for annulment of the deed of conveyance in behalf of the PARO before the Provincial Agrarian Reform Adjudicator (PARAD). The petition shall state the material facts constituting the violation and pray for the issuance of an order from the PARAD directing the ROD to cancel the deed of conveyance and the TCT generated as a result thereof. **As legal basis therefor, the petition shall cite Section 50 of RA 6657 and Rule II, Section 1(c) and (e) of the DARAB New Rules of Procedure**;
>
> xxx xxx xxx
>
> 6. In the event of an adverse decision or a denial of the petition, file a Notice of Appeal within the 15-day reglementary period with the DARAB, and, thereafter, transmit the records of the case to the Director, Bureau of Agrarian Legal Assistance (BALA), for prosecution of the appeal.

Clearly, not every sale or transfer of agricultural land would warrant DARAB's exercise of its jurisdiction. The law is specific

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[26] *Id.* at 60.

that the property must be shown to be under the coverage of agrarian reform laws. As the CA correctly ruled:

> It is easily discernable x x x that the cause of action of the [DAR] sufficiently established a suit for the declaration of the sale of the subject landholdings null and void (in violation of Administrative Order No. 1, Series of 1989). Obviously, **it does not involve an agrarian suit, hence, does not fall under the jurisdiction of the DARAB. It must be emphasized that, "(t)here must be a tenancy relationship between the party litigants for the DARAB to validly take cognizance of a controversy."** (*Suarez vs. Saul*, 473 SCRA 628). Also, it is necessary that the controversy must relate to "tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements," (Section 3 (d), Chapter I in relation to Section 50, Chapter XII, R.A. 6657 and Section 1, Rule II, DARAB Rules of [Procedure]). Here, an allegation to declare null and void a certain sale of a landholding does not *ipso facto* make the case an agrarian dispute.[27] (Emphasis ours)

Our finding on the DARAB's lack of jurisdiction over the PARO's petition renders it needless for the Court to discuss the other issues that are raised in the petition. In any case, the Court finds it worthy to discuss that the original petition remains dismissible on the merits.

Even during the proceedings before the PARAD, the respondents have raised the pendency with the Regional Trial Court of Biñan, Laguna of Civil Case No. B-5862, an appeal from the decision of the Municipal Trial Court of Santa Rosa, Laguna in Civil Case No. 2478. The records indicate that when the matter was elevated to the CA *via* the petition docketed as CA G.R. SP No. 68110, the appellate court declared the subject properties to have long been reclassified from "agricultural" to "industrial." Thus, the CA Decision dated September 23, 2002 in CA-G.R. SP No. 68110 reads in part:

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[27] *Id.* at 44-45.

As to the nature of the subject lands, the tax declarations of real property, the annual receipts for real estate taxes paid, and zoning ordinance, providing for the Town Comprehensive Land Use Plan of Sta. Rosa, Laguna, have always classified the lands as "industrial." Moreover, as certified by the Municipal Agrarian Reform Office of Sta. Rosa, Laguna, there is no record of tenancy or written agricultural leasehold contract with respect to the subject lands, nor are the same covered by Operation Land Transfer pursuant to **P.D. 27**. Thus, for being industrial in nature, the subject lands are outside the ambit of existing agricultural tenancy laws.[28] (Citations omitted)

An appeal from the CA's decision was denied by the Court in a Resolution dated June 18, 2003.[29]

The Housing Land Use Regulatory Board has affirmed through a Certification[30] dated May 22, 1991 that the zoning ordinance referred to was approved on December 2, 1981. Thus, the respondents correctly argued that since the subject properties were already classified as "industrial" long before the effectivity of the CARL, their sale could not have been covered by the CARP and the requirement for a clearance. Significantly, DAR failed to refute said allegation, which the Court finds duly supported by documents that form part of the case records.

WHEREFORE, premises considered, the petition is **DISMISSED**. The Decision dated October 12, 2006 and Resolution dated January 10, 2007 of the Court of Appeals in CA-G.R. SP No. 89693 are **AFFIRMED.**

SO ORDERED.

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

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[28] *Id.* at 169.

[29] *Id.* at 171.

[30] *Id.* at 251.

FIRST DIVISION

[G.R. No. 182957. June 13, 2013]

ST. JOSEPH ACADEMY OF VALENZUELA FACULTY ASSOCIATION (SJAVFA)-FUR CHAPTER-TUCP, *petitioner, vs.* **ST. JOSEPH ACADEMY OF VALENZUELA and DAMASO D. LOPEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; A FINDING THEREOF ENTITLES AN EMPLOYEE TO THE TWIN REMEDIES OF REINSTATEMENT AND PAYMENT OF BACKWAGES.— Generally, the finding of illegal dismissal entitles an employee to the twin remedies of reinstatement and payment of backwages. Article 279 of the Labor Code states, in part, that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. These twin remedies – reinstatement and payment of backwages – make the dismissed employee whole who can then look forward to continued employment.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE SECRETARY OF LABOR AND EMPLOYMENT AND THE COURT OF APPEALS AND THE CONCLUSIONS DERIVED THEREFROM ARE GENERALLY BINDING ON THE SUPREME COURT IF AMPLY SUPPORTED BY EVIDENCE ON RECORD; CASE AT BAR.— In this case, the SOLE and the CA were one in ruling that there was no illegal dismissal committed by SJAV against the non-licensees. As both stressed by the SOLE and the CA, R.A. No. 7836 provides that no person shall engage in teaching and/or act as professional teacher unless he is a duly registered professional teacher, and a holder of a valid

certificate of registration and a valid professional license or a holder of a valid special/temporary permit. Obviously, aside from the finding that there was no illegal dismissal, the non-licensees cannot be reinstated since they do not possess the necessary qualification for them to be engaged in teaching and/or act as professional teachers. This conclusion binds the Court, especially in the absence of any circumstance that militates against such conclusion. The rule is that the findings of fact of the SOLE and the CA and the conclusions derived therefrom are generally binding on the Court if amply supported by evidence on record.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FINANCIAL ASSISTANCE; GRANTED TO LEGALLY DISMISSED EMPLOYEES SO LONG AS THE DISMISSAL WAS NOT DUE TO ANY SERIOUS MISCONDUCT REFLECTING THEIR MORAL CHARACTER.— [T]he Court, in exceptional cases, has granted financial assistance to legally dismissed employees as an act of "social justice" or based on "equity" so long as the dismissal was not for serious misconduct, does not reflect on the employee's moral character, or would involve moral turpitude. In *Nissan Motor Philippines, Inc. v. Angelo*, the Court ruled that, inspired by compassionate and social justice, it has in the past awarded financial assistance to dismissed employees when circumstances warranted such an award. Meanwhile, in *Pharmacia and Upjohn, Inc. v. Albayda, Jr.*, the Court held that an award to the employee of separation pay by way of financial assistance, equivalent to one-half (1/2) month's pay for every year of service, is equitable. The Court, in *Pharmacia*, noted, among others, that although the employee's actions constituted a valid ground to terminate his services, the same is not so reprehensible as to warrant complete disregard of his long years of service. Similarly in this case, the dismissal of the 13 non-licensees was due to their failure to possess teaching licenses. It was not due to any serious misconduct or infraction reflecting their moral character. Records also bear that they have been in the employ of SJAV from five (5) to nine (9) years, and as observed by the SOLE, SJAV has not shown any dissatisfaction with their teaching services, "otherwise, x x x, it would not have kept them under its [employ] for such quite a period of time." This

being the case, the Court, in keeping with equity and social justice, grants the award of financial assistance to the 13 non-licensees equivalent to one-half (½) month's pay for every year of service rendered with SJAV.

APPEARANCES OF COUNSEL

Arcinas & Arcinas for respondents.

R E S O L U T I O N

REYES, *J.*:

St. Joseph Academy of Valenzuela Faculty Association-FUR Chapter TUCP (petitioner), in behalf of thirteen (13) of its members, filed the present petition[1] seeking review of the Decision[2] dated January 11, 2008 and Resolution[3] dated May 20, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 81647, which deleted the reinstatement and award of backwages portions in the Secretary of Labor and Employment's (SOLE) Decision[4] dated September 9, 2003.

The dispute arose from a notice of strike filed by the petitioner against respondent St. Joseph Academy of Valenzuela (SJAV) for illegal termination and union busting. The SOLE assumed jurisdiction after the parties agreed to submit the case for voluntary arbitration.[5] Originally affected were nineteen (19) union members employed by SJAV as teachers. Four (4) of the members have already passed the teacher's board examinations, namely: (1) Reshiel R. Isagan; (2) Mary Grace C. Dimaunahan; (3) Novelyn

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[1] *Rollo,* pp. 3-27.

[2] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *id.* at 50-58.

[3] *Id.* at 60-61.

[4] Rendered by Secretary Patricia A. Sto. Tomas; *id.* at 30-48.

[5] *Id.* at 30.

I. Puyot; and (4) Elizabeth O. Nicol.[6] The SOLE ordered their reinstatement with full backwages up to the date of their actual reinstatement.[7]

The other 15 members are non-licensees. They are: (1) Lucita A. Marzan; (2) Ma. Erlinda H. Sarmiento; (3) Ma. Lourdes B. Alonzo; (4) Toni Socorro B. Eliseef (Eliseef); (5) Maureen F. Aliwalas; (6) Yvor Stanley A. Aquino; (7) Teresita M. Musa (Musa); (8) Luzviminda L. Cruz; (9) Glenda D. Pedrosa; (10) Ma. Theresa E. Oliveros; (11) Anna Lea C. Junsay; (12) Rebesita F. Ferry; (13) Bernadeth M. Salvador; (14) Maribeth S. Bandola; and (15) Jeneth W. Eugenio.[8] With regard to them, the SOLE ordered the reinstatement of those with a valid temporary or special permit with full backwages up to the date of their actual reinstatement. The SOLE, however, also ordered that they shall only serve for the remaining period corresponding to the period of validity of their permit.[9] The pertinent dispositive portion of the SOLE Decision provides:

> WHEREFORE, foregoing premises being duly considered, xxx.
>
> With respect to the fifteen (15) non-licensee teachers, only those who have submitted a valid temporary or special permit shall be reinstated to their former positions with full backwages computed from the time their compensation were withheld up to the date of their actual reinstatement. But they shall only serve for the remaining period corresponding to the period of validity of their permit.
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> xxx xxx xxx
>
> SO ORDERED.[10]

In ordering their reinstatement and the award of backwages, the SOLE ruled that even as probationary employees, the non-

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[6] *Id.* at 32.

[7] *Id.* at 48.

[8] *Id.* at 32.

[9] *Id.* at 48.

[10] *Id.*

licensees still enjoy security of tenure and SJAV should have given them the opportunity to comply with the license requirement mandated by Republic Act (R.A.) No. 7836.[11] Hence, the SOLE concluded that SJAV "should retain their services and backwages x x x from April 1, 2003 up to the date they are reinstated to their former positions."[12]

The CA, however, ruled that reinstatement is no longer possible inasmuch as it is the Department of Education, Culture and Sports that can assign the para-teachers[13] to schools as it may determine. Moreover, SJAV cannot be deprived of its right to choose its teachers and the positions have already been actually filled up.[14] The CA also deleted the award of backwages since, as found by the SOLE, there was no illegal dismissal committed by SJAV, the non-licensees not being its regular employees.[15]

The petitioner now beseeches the Court to restore the SOLE's award of backwages and for the award of separation pay in lieu of reinstatement, anchored on grounds of "equity and compassionate justice."[16] The petitioner admits that the non-licensees' temporary or special permits have already expired, thus making reinstatement impossible; it, however, asks for the award of separation pay and backwages given the non-licensees' years of service with SJAV, that they "somehow contributed" to the school's progress and they have been efficient

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[11] AN ACT TO STRENGTHEN THE REGULATION AND SUPERVISION OF THE PRACTICE OF TEACHING IN THE PHILIPPINES AND PRESCRIBING A LICENSURE EXAMINATION FOR TEACHERS AND OTHER PURPOSES.

[12] *Rollo*, p. 45.

[13] Under Section 26 of R.A. No. 7836, teachers who failed the licensure examination for professional teachers shall be eligible as *para-teachers* and be issued special or temporary permits by the Board [for Professional Teachers] and assigned by the DECS to schools it may determine under the circumstances.

[14] *Rollo*, p. 55.

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

[16] *Id.* at 22.

teachers.[17] The petitioner also stated that two (2) of the non-licensees, Eliseef and Musa, opted to pursue before the National Labor Relations Commission their claim for separation pay, which was decided by the Labor Arbiter in 2005 with the recommendation that "the federation dwell on the matter of complainants' benefits in a supplemental pleading if only to call the attention of the division justices to whom the case is assigned for decision."[18]

Expectedly, SJAV calls for the dismissal of the petition on the argument that since the non-licensees could not have become regular employees, then there can be no grant of backwages and reinstatement as it presupposes illegal termination of employees.[19]

Review of labor cases under Rule 45 of the Rules of Court

In *Phimco Industries, Inc. v. Phimco Industries Labor Association*,[20] the Court reiterated the basic approach in the review of CA decisions in labor cases, *viz*:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In

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[17] *Id.*

[18] *Id.* at 17.

[19] *Id.* at 106.

[20] G.R. No. 170830, August 11, 2010, 628 SCRA 119.

question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[21]

Applying the foregoing rule, the question now is whether the CA committed an error in deleting the award of backwages and reinstatement originally granted by the SOLE.

Reinstatement or payment of separation pay, and award of backwages proper only in cases of illegal dismissal

Generally, the finding of illegal dismissal entitles an employee to the twin remedies of reinstatement and payment of backwages.[22] Article 279 of the Labor Code states, in part, that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. These twin remedies – reinstatement and payment of backwages – make the dismissed employee whole who can then look forward to continued employment.[23]

[T]he law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, **this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final**. (Emphasis supplied)

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[21] *Id.* at 132, citing *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

[22] *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 92; *St. Luke's Medical Center, Inc. v. Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 80; *Velasco v. NLRC*, 525 Phil. 749, 761-762 (2006).

[23] *Velasco v. NLRC*, 525 Phil. 749, 761-762 (2006), citing *Santos v. NLRC*, 238 Phil. 161, 167 (1987).

xxx xxx xxx

> The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[24]

In this case, the SOLE and the CA were one in ruling that there was no illegal dismissal committed by SJAV against the non-licensees. As both stressed by the SOLE and the CA, R.A. No. 7836 provides that no person shall engage in teaching and/or act as professional teacher unless he is a duly registered professional teacher, and a holder of a valid certificate of registration and a valid professional license or a holder of a valid special/temporary permit.[25] Obviously, aside from the finding that there was no illegal dismissal, the non-licensees cannot be reinstated since they do not possess the necessary qualification for them to be engaged in teaching and/or act as professional teachers. This conclusion binds the Court, especially in the absence of any circumstance that militates against such conclusion. The rule is that the findings of fact of the SOLE and the CA and the conclusions derived therefrom are generally binding on the Court if amply supported by evidence on record.[26]

Consequently, the Court finds that the CA did not commit an error in ruling that reinstatement is not possible. In the

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[24] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 213, citing *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 288.

[25] Section 26.

[26] *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 169254, August 23, 2012, 679 SCRA 33, 53.

same light, the Court finds that the CA, likewise, did not commit an error in deleting the award of backwages. As previously stressed, payment of backwages and other benefits is justified only if the employee was illegally dismissed.[27]

Award of financial assistance as a measure of social justice and equity

Nevertheless, the Court, in exceptional cases, has granted financial assistance to legally dismissed employees as an act of "social justice" or based on "equity" so long as the dismissal was not for serious misconduct, does not reflect on the employee's moral character, or would involve moral turpitude.[28] In *Nissan Motor Philippines, Inc. v. Angelo*,[29] the Court ruled that, inspired by compassionate and social justice, it has in the past awarded financial assistance to dismissed employees when circumstances warranted such an award. Meanwhile, in *Pharmacia and Upjohn, Inc. v. Albayda, Jr.*,[30] the Court held that an award to the employee of separation pay by way of financial assistance, equivalent to one-half (½) month's pay for every year of service, is equitable. The Court, in *Pharmacia*, noted, among others, that although the employee's actions constituted a valid ground to terminate his services, the same is not so reprehensible as to warrant complete disregard of his long years of service.

Similarly in this case, the dismissal of the 13 non-licensees[31] was due to their failure to possess teaching licenses. It was not due to any serious misconduct or infraction reflecting their moral character. Records also bear that they have been in the employ

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[27] *Lansangan v. Amkor Technology Philippines, Inc.*, G.R. No. 177026, January 30, 2009, 577 SCRA 493, 500.

[28] *Villaruel v. Yeo Han Guan*, G.R. No. 169191, June 1, 2011, 650 SCRA 64, 72-73; *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 123294, October 20, 2010, 634 SCRA 18, 46-47.

[29] G.R. No. 164181, September 14, 2011, 657 SCRA 520.

[30] G.R. No. 172724, August 23, 2010, 628 SCRA 544.

[31] Excluded are Eliseef and Musa.

of SJAV from five (5) to nine (9) years,[32] and as observed by the SOLE, SJAV has not shown any dissatisfaction with their teaching services, "otherwise, x x x, it would not have kept them under its [employ] for such quite a period of time."[33]

This being the case, the Court, in keeping with equity and social justice, grants the award of financial assistance to the 13 non-licensees equivalent to one-half (½) month's pay for every year of service rendered with SJAV.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The Decision dated January 11, 2008 and Resolution dated May 20, 2008 of the Court of Appeals in CA-G.R. SP No. 81647 are **MODIFIED** and respondent St. Joseph Academy of Valenzuela is hereby **ORDERED** to pay the thirteen (13) non-licensees financial assistance equivalent to one-half (½) month's pay for every year of service.

The case is remanded to the Department of Labor and Employment for proper computation of the award in accordance with this Decision.

SO ORDERED.

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

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[32] *Rollo,* p. 43.

[33] *Id.* at 45.

FIRST DIVISION

[G.R. No. 184589. June 13, 2013]

DEOGENES O. RODRIGUEZ, *petitioner, vs.* **HON. COURT OF APPEALS and PHILIPPINE CHINESE CHARITABLE ASSOCIATION, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; GENERALLY A CONCLUSIVE EVIDENCE OF THE OWNERSHIP OF THE LAND REFERRED THEREIN.— The real purpose of the Torrens system is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*," to avoid the possibility of losing his land. A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein. A strong presumption exists that Torrens titles are regularly issued and that they are valid.

2. ID.; ID.; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); CERTIFICATE OF TITLE; SHALL NOT BE SUBJECT TO COLLATERAL ATTACK.— Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, explicitly provides that "[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." In *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, the Court declared that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose. A collateral attack is made when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.

3. ID.; ID.; LAND REGISTRATION AUTHORITY; TASKED TO EXTEND ASSISTANCE TO COURTS IN ORDINARY AND CADASTRAL LAND REGISTRATION PROCEEDINGS.— The LRA exists for the sole purpose of

implementing and protecting the Torrens system of land titling and registration. x x x The duty of LRA officials to issue decrees of registration is ministerial in the sense that they act under the orders of the court and the decree must be in conformity with the decision of the court and with the data found in the record. They have no discretion in the matter. However, if they are in doubt upon any point in relation to the preparation and issuance of the decree, these officials ought to seek clarification from the court. They act, in this respect, as officials of the court and not as administrative officials, and their act is the act of the court. They are specifically called upon to "extend assistance to courts in ordinary and cadastral land registration proceedings."

4. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; THE ALLOWANCE OR DISALLOWANCE THEREOF RESTS ON THE SOUND DISCRETION OF THE COURT.— [I]ntervention is governed by Rule 19 of the Rules of Court x x x. Although Rule 19 is explicit on the period when a motion to intervene may be filed, the Court allowed exceptions in several cases, *viz*: "This rule, however, is not inflexible. Interventions have been allowed even beyond the period prescribed in the Rule, when demanded by the higher interest of justice. Interventions have also been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court, when the petition for review of the judgment has already been submitted for decision before the Supreme Court, and even where the assailed order has already become final and executory. x x x In fine, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. We stress again that Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice. Its purpose is not to hinder or delay, but to facilitate and promote the administration of justice."

APPEARANCES OF COUNSEL

R.R. Barrales and Associates for petitioner.

Gancayco Balasbas and Associates Law Offices for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the Decision[1] dated May 26, 2008 and Resolution[2] dated September 17, 2008 of the Court of Appeals in CA-G.R. SP No. 101789 for having been rendered with grave abuse of discretion amounting to lack of jurisdiction. Said Decision and Resolution reversed and set aside the Orders dated April 10, 2007[3] and November 22, 2007[4] of the Regional Trial Court (RTC), Branch 75, San Mateo, Rizal, in Land Registration (Reg.) Case No. N-5098 (LRC Rec. No. N-27619).

The facts are as follows.

On January 29, 1965, Purita Landicho (Landicho) filed before the Court of First Instance (CFI) of Rizal an Application for Registration of a piece of land, measuring 125 hectares, located in Barrio Patiis, San Mateo, Rizal (subject property), which was docketed as Land Reg. Case No. N-5098.[5] On November 16, 1965, the CFI rendered a Decision[6] evaluating the evidence presented by the parties as follows:

> It has been established by the evidence adduced by [Landicho] that the parcel of land under consideration was formerly several smaller parcels owned and possessed by the spouses Felix San Pascual and Juanita Vertudes, Ignacio Santos and Socorro Santos, Caconto

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[1] *Rollo*, pp. 57-70; penned by Associate Justice Agustin S. Dizon with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 71-73; penned by Associate Justice Regalado E. Maambong with Associate Justices Celia C. Librea-Leagogo and Sixto C. Marella, Jr., concurring.

[3] *Id.* at 114-117.

[4] *Id.* at 118-119.

[5] CA *rollo*, p. 316.

[6] *Rollo*, pp. 76-79; penned by Judge Andres Reyes.

Cayetano and Verneta Bartolome, Gavino Espiritu and Asuncion Cruz, and Lucio Manuel and Justina Ramos, all of whom in January 1960, executed instruments of conditional sale of their respective parcels of land in favor of [Landicho], x x x, and on July 20, 1965 all of them executed jointly a final deed of absolute sale x x x which superseded the conditional sale. Gavino Espiritu, one of the vendors, fifty-five years old, farmer, resident of Barrio Geronimo, Montalban, Rizal, testified that he and his co-vendors have been in possession of the parcel of land since 1930 and that the possession of [Landicho], together with her predecessors in interest, has been open, peaceful, continuous and adverse against the whole world in the concept of an owner. It has also been established that the parcel of land is within the Alienable or Disposable Block-I of I.C. Project No. 26 of San Mateo, Rizal, x x x; that the parcel of land is classified as "montañoso" with an assessed value of ₱12,560.00 under Tax Dec. No. 7081, x x x, taxes due to which for the current year had been paid, x x x; and that the same is not mortgaged or affected by any encumbrance.

The oppositor did not present testimonial evidence but presented the report of investigation of Land Investigator Pedro R. Feliciano dated August 23, 1965, x x x which stated substantially that during the investigation and ocular inspection it has been ascertained that no public land application is involved and that no reservation is affected thereby, and therefore, he believed that the opposition already filed can be withdrawn; x x x, 1st Indorsement dated August 24, 1965 of the District Land Officer, District No. 7, Bureau of Lands, to the Director of Lands, recommending that, in view of said report of investigation, the opposition be withdrawn; and x x x, office memorandum of the Chief, Records Division, Bureau of Land, addressed to the Chief, Legal Division, dated September 23, 1965, to the effect that according to the records, plan Psu-201023 is not covered by any kind of public land application or patent.

It is therefore clear from the evidence on record that the applicant is entitled to the benefits provided by Section 48, of C.A. No. 141, as amended.[7]

In the end, the CFI decreed:

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[7] *Id.* at 77-78.

WHEREFORE, the Court hereby confirms the title of the applicant, Purita Landicho, of legal age, married to Teodorico Landicho, Filipino, resident of 74-A South 19th St., Quezon City, to the parcel of land under consideration and orders the registration thereof in her name and personal circumstances aforementioned.

The opposition of the Director of Lands is hereby dismissed.

Once this decision becomes final and executory, let the order for the issuance of the decree issue.[8]

Upon finality of its Decision dated November 16, 1965, the CFI issued an Order[9] on December 22, 1965 directing the Commissioner of the Land Registration Commission (LRC) "to comply with Section 21 of Act No. 2347"[10] on the issuance of a decree and original certificate of title (OCT).

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[8] *Id.* at 78-79.

[9] *Id.* at 80.

[10] Act No. 2347 is entitled "An Act to provide for the reorganization of the Courts of First Instance and of the Court of Land Registration," Section 21 of which reads:

SEC. 21. *Of the decree.* — Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the Chief of the General Land Registration Office, who shall prepare the decree in accordance with section forty of Act Numbered Four hundred and ninety-six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. The register shall then comply with the duties assigned to him in section forty-one of Act Numbered Four hundred and ninety-six.

Sections 40 and 41 of Act No. 496, otherwise known as the Land Registration Act, referred to in the aforequoted provision, described in detail the steps in the issuance of a decree of registration and OCT, to wit:

SEC. 40. Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife. If the owner is under disability, it shall state the nature of the disability, and if a minor shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, and may contain any

Eventually, on July 11, 1966, Jose D. Santos (Santos), Register of Deeds (ROD) for the Province of Rizal, issued Transfer Certificate of Title (TCT) No. 167681[11] in Landicho's name covering the subject property. Notably, ROD Santos issued to Landicho a TCT rather than an OCT for the subject property; and although TCT No. 167681 stated that it was issued pursuant to Decree No. 1480, no other detail regarding the decree and the original registration of the subject property was filled out.

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other matter properly to be determined in pursuance of this Act. The decree shall be stated in a convenient form for transcription upon the certificate of title hereinafter mentioned.

SEC. 41. Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the Chief of the General Land Registration Office, who shall prepare the decree in accordance with Section forty of Act Numbered Four hundred and ninety[-]six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. The register of deeds shall transcribe the decree in a book to be called the "Registration Book," in which a leaf, or leaves, in consecutive order shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one. The register of deeds shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words "Owner's duplicate certificate," and deliver the same to the owner, or to his attorney duly authorized. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. The certified copy of the decree of registration shall be filed and numbered by the register of deeds with reference noted on it to the place of record of the original certificate of title: *Provided, however*, That when an application includes land lying in more than one province, or one province and the city of Manila, the court shall cause the part lying in each province or in the city of Manila to be described separately by metes and bounds in the decree of registration, and the clerk shall send to the register of deeds for each province, or the city of Manila, as the case may be, a copy of the decree containing a description of the land within that province or city, and the register of deeds shall register same and issue an owner's duplicate thereof, and thereafter for all matters pertaining to registration under this Act the portion in each province or city shall be treated as a separate parcel of land.

[11] *Rollo*, pp. 81-83.

The subject property was thereafter sold several times, and as the old TCTs of the vendors were cancelled, new TCTs were accordingly issued to the buyers. The sale of the subject property could be traced from Landicho to Blue Chips Projects, Inc. (BCPI), which acquired TCT No. 344936 in its own name on November 10, 1971; then to Winmar Poultry Farm, Inc. (WPFI), TCT No. 425582, November 5, 1973; and finally, to herein respondent Philippine Chinese Charitable Association, Inc. (PCCAI), TCT No. 482970, July 15, 1975.[12]

Meanwhile, A. Doronila Resources Dev., Inc. (ADRDI)[13] instituted Civil Case No. 12044, entitled *A. Doronila Resources Dev., Inc. v. Court of Appeals*, which was still pending before the RTC, Branch 167, of Pasig City as of 2008. ADRDI asserted ownership over the subject property, which was a portion of a bigger tract of land measuring around 513 hectares, covered by TCT No. 42999, dated February 20, 1956, in the name of said corporation. This bigger tract of land was originally registered in the name of Meerkamp Co. under OCT No. 301, pursuant to Decree No. 1480, GLRO Record No. 2429, issued on November 22, 1906. ADRDI caused the annotation of a notice of *lis pendens* (as regards Civil Case No. 12044) on TCT No. 344936 of BCPI. Subsequently, based on the ruling of this Court in *A. Doronila Resources Dev., Inc. v. Court of Appeals*,[14] ADRDI was also able to have its notice of adverse claim over the subject property annotated on TCT Nos. 344936 and 425582 of BCPI and WPFI, respectively. ADRDI subsequently transferred the subject property to Amado Araneta (Araneta) to whom TCT No. 70589 was issued on March 25, 1983.

On November 14, 1996, Landicho executed a Deed of Absolute Sales (sic) over the subject property in favor of herein petitioner Deogenes O. Rodriguez (Rodriguez). Two years later, on June 1, 1998, Landicho died.

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[12] *Id.* at 84-89.

[13] Sometimes spelled as "A. Doronilla Dev., Inc."

[14] 241 Phil. 28 (1988).

Seven years hence, or on May 18, 2005, Rodriguez filed an Omnibus Motion before the RTC, Branch 75, of San Mateo, Rizal, in Land Reg. Case No. N-5098. Rodriguez alleged therein that the Decision dated November 16, 1965 and Order dated December 22, 1965 of the CFI in Land Reg. Case No. N-5098 which confirmed Landicho's title over the subject property has not been executed. Rodriguez specifically stated that no decree of registration had been issued by the LRC Commissioner (now the Administrator of the Land Registration Authority [LRA]) and that no OCT had been ever issued by the ROD in Landicho's name. As Landicho's successor-in-interest to the subject property, Rodriguez prayed that:

> a. Upon the filing of the instant motion, the Clerk of Court of the Regional Trial Court of Pasig City be commanded to transmit to the Honorable Court the complete records and *expediente* of LRC No. x x x N-5098 (LRC Rec. No. N-27619);
>
> b. After hearing, the Honorable Court give due course to the instant motions and issue an Order as follows:
>
> > i. Directing the Administrator of the Land Registration [Authority] to issue the Decree of Registration, in accordance with the tenor of the Decision dated November 16, 1965 x x x and the Order dated December 22, 1965 x x x, in the name of the petitioner [Rodriguez];
> >
> > ii. Thereafter, ordering the Register of Deeds for Marikina City, through the Administrator of the Land Registration Administration as having direct supervisory authority there-over, to issue the Original Certificate of Title containing the Technical Description as duly confirmed in the said Decision and Order x x x in the name of the herein petitioner [Rodriguez].
>
> **PETITIONER** further prays for such other measures of relief as may be deemed just and equitable in the premises.[15]

In the course of the proceedings concerning the aforementioned Omnibus Motion, Rodriguez himself submitted as his Exhibit

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[15] *Rollo*, pp. 105-106.

"GG" TCT No. 482970 of PCCAI but alleged that said certificate of title was fictitious. Thus, the RTC issued on November 3, 2006 a subpoena commanding PCCAI to appear at the hearing of Land Reg. Case No. N-5098 set on November 8, 2006 at 9:00 a.m.; to bring its TCT No. 482970 and Tax Declaration No. SM-02-0229; and to testify in connection therewith.

On November 17, 2006, PCCAI filed before the RTC a Verified Motion for Leave to Intervene in Land Reg. Case No. N-5098. PCCAI justified its intervention by arguing that it was an indispensable party in the case, having substantial legal interest therein as the registered owner of the subject property under TCT No. 482970. PCCAI likewise pointed out that Rodriguez himself submitted a copy of TCT No. 482970, only alleging that said certificate was fictitious. PCCAI averred that Rodriguez maliciously failed to allege in his Omnibus Motion that TCT No. 482970 remains valid and subsisting, there being no direct action or final court decree for its cancellation. Rodriguez's Omnibus Motion constituted a collateral attack on the title of PCCAI, which is not sanctioned by law and jurisprudence. Consequently, PCCAI asked the RTC to allow its intervention in Land Reg. Case No. N-5098 so it could protect its vested rights and interests over the subject property; to note and admit its Answer-in-Intervention; and to deny Rodriguez's Omnibus Motion for utter lack of merit.

The RTC favorably acted on Rodriguez's Omnibus Motion in an Order dated April 10, 2007, reasoning as follows:

> Initially, the issue of jurisdiction arose particularly as to whether this Court may take cognizance of the instant case previously assigned to the CFI Pasig and, subsequently, rule upon the Omnibus Motion of [Rodriguez] despite the lapse of more than forty (40) years after the finality of the Decision of November 16, 1965.
>
> Clearly, this Court has jurisdiction because, as earlier stated, the proceedings in this Court is merely a continuation of the land registration proceedings commenced in the CFI Pasig. More importantly, with the creation of this Court under the provisions of the Judiciary Reorganization Law, all cases involving properties

within its territorial jurisdiction, specifically in San Mateo, Rizal, were transferred to this Court (Sec. 44, Batas Pambansa Blg. 129).

Consequently, there is no legal impediment for this Court to reiterate the Decision dated November 16, 1965 and the Order dated December 22, 1966 because the Rules on execution of Judgment pertaining to civil cases are not applicable to this kind of proceedings. A final and executory judgment in a land registration case, being merely declaratory in nature, does not prescribe. (*Sta. Ana vs. Menla*, 1 SCRA 1294; *Heirs of Cristobal Marcos vs. de Banuvar*, 25 SCRA 316; *vda. De Barroga vs. Albano*, 157 SCRA 131; *Cacho v. Court of Appeals*, 269 SCRA 159)

Secondly, a more important issue was put to fore—whether this Court may issue a writ of execution directing the Land Registration Authority (LRA) to issue a decree of registration over the subject property and the Register of Deeds of the Province of Rizal to issue an original certificate of title in the name of [Rodriguez].

Consistency dictates and being a mere continuation of the CFI Pasig proceedings, this Court can only reiterate the directives in the Order dated December 22, 196[5]. It cannot, however, issue, as prayed for, a writ of execution directing the issuance of a decree of registration and an original certificate of title in the name of [Rodriguez].

Finally, during the proceedings in this case, this Court was made aware of the existence of claimants to the subject property. However, this Court cannot, at this time and in this proceedings, rule on the legality or illegality of these claims of ownership. It is best that these claims be ventilated in appropriate proceedings specifically sought to for this purpose.[16] (Underscoring deleted.)

The RTC decreed thus:

WHEREFORE, premises considered, the Order dated December 22, 1966 of the Court of First Instance of Pasig, Branch 6, is hereby REITERATED. The Land Registration Authority is directed to issue a decree of registration while the Register of Deeds of the Province of Rizal is likewise directed to issue an original certificate of title of the subject property, both in favor and in the name of applicant Purita Landicho, of legal age, married to Teodorico Landicho, Filipino

[16] *Id.* at 115-117.

and a resident of 74-A South 19th St., Quezon City, after compliance with issuance requirements and procedures.[17]

PCCAI filed a Motion for Reconsideration of the aforequoted Order of the RTC. The RTC resolved both the Motion for Leave to Intervene with the attached Answer-in-Intervention and Motion for Reconsideration of PCCAI in another Order dated November 22, 2007. The trial court held:

> This Court after receiving evidence that a Decision was rendered in favor of the applicants spouses Landicho as owner in fee simple of the subject parcels of land, and that no title was issued pursuant to the said Decision which has become final and executory even after an Order to that effect was issued, merely reiterated the said Order for the implementation of the Decision dated November 16, 1966, signed by the Hon. Andres Reyes as Judge. In other words, Intervention would not be allowed after the Decision has become final and executory. The issue in the instant Petition is the issuance of a decree of registration and nothing more is being tried.
>
> WHEREFORE, premises considered, the Motion For Leave To Intervene and the Motion for Reconsideration filed by the PCCAI are both ***DENIED***.[18]

The LRA, upon receipt of a copy of the RTC Order dated April 10, 2007, filed a Manifestation dated February 4, 2008 informing the trial court that it cannot comply with said Order since there were already two existing titles covering the subject property, *i.e.*, TCT No. 70589 of Araneta (traced back to OCT No. 301 of Meerkamp Co.) and TCT No. 482970 of PCCAI (traced back to Landicho's TCT No. 167681); and to issue a decree of registration and OCT in Landicho's name would only further aggravate the problem of double titling. The LRA also explained that the ROD issued a TCT, rather than an OCT, to Landicho for the subject property in 1966, following the Order dated July 7, 1966 of then LRC Commissioner Antonio H. Noblejas (Noblejas), who took cognizance of the fact that the

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[17] *Id.* at 117.

[18] *Id.* at 119.

subject property, as part of a bigger parcel of land, was already registered under OCT No. 301 in the name of Meerkamp Co., pursuant to Decree No. 1480 under GLRO Record No. 2429 issued in 1906. LRC Commissioner Noblejas additionally stated in his Order that:

> The new transfer certificate of title to be issued by virtue hereof is deemed to have been derived from Transfer Certificate of Title No. N-1. (Under Decree No. 1480 dated November 22, 1906) which should be deemed cancelled with respect to the said property and that the issuance of the same has been effected without the presentation of the owners duplicate of subsisting certificate of title.[19] (Emphasis deleted.)

At around the same time, PCCAI filed a Petition for *Certiorari* and Prohibition before the Court of Appeals, docketed as CA-G.R. SP No. 101789, assailing the Orders dated April 10, 2007 and November 22, 2007 of the RTC for having been issued without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction. PCCAI acknowledged that it is the ministerial duty of the RTC to issue a writ of execution for a final and executory decision/order; however, PCCAI argued that when subsequent facts and circumstances transpired which renders the execution of the final and executory decision/order unjust or inequitable, then the trial court should refrain from issuing a writ of execution. PCCAI likewise asserted that the RTC, as a land registration court, did not have the jurisdiction to resolve conflicting claims of ownership over the subject property. PCCAI lastly maintained that it was an indispensable party in Land Reg. Case No. N-5098 and that it should have been allowed by the RTC to intervene during the hearing of Rodriguez's Omnibus Motion for the execution of the Decision dated November 16, 1965 and Order dated December 22, 1965 of the CFI.

The Court of Appeals, in a Decision dated May 26, 2008, found merit in the Petition of PCCAI. The appellate court gave great weight and credence to the Manifestation dated

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[19] CA *rollo*, p. 317.

February 8, 2008 of the LRA reporting the double titling and conflicting claims over the subject property. The Court of Appeals held that:

> The Land Registration Authority, being the repository of land registration documents and the administrative agency with the necessary expertise concerning land registration matters, We cannot but agree with the above-quoted Manifestation. Moreover, from the above facts admitted by the parties and the LRA, it cannot be denied that there are conflicting claims on the ownership of the property which cannot be passed upon by the lower court as a land registration court for lack of jurisdiction.[20]

The Court of Appeals additionally opined that the intervention of PCCAI in Land Reg. Case No. N-5098 was proper given the circumstances:

> Anent the issue of intervention, in the case of *Information Technology of the Philippines vs. Comelec, G.R. 159139, August 22, 2006*, the following doctrine was enunciated, to wit:
>
> > *"The basic doctrinal rule is that final judgments may no longer be modified,* ***except only to correct clerical errors or mistakes, or when the judgment is void, or if supervening events or circumstances that transpire after the finality of the decision render its execution unjust and inequitable****. In the interest of substantial justice, this Court has allowed exceptions to this rule. A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may, with leave of court, be allowed to intervene in the action."*
>
> We are not unmindful that [PCCAI] filed its Intervention when the decision of the case was already final and executory and during the execution stage of the case. However, the supervening event which is the issuance of a decree of registration which was already implemented and enforced upon [the] order of the Administrator of the LRC way back in July 11, 1966 when the LRC issued TCT

[20] *Rollo*, p. 68.

No. 167861 in the name of Purita Landicho instead of an OCT makes the said intervention proper and well-taken.

From the foregoing, it appears absurd and senseless that an OCT be issued in favor of Mr. Rodriguez. Furthermore, it is in the paramount interest of justice that the assailed orders be not implemented, [PCCAI] being an indispensable party in the execution and/or implementation of the said orders. The non-execution of the said orders will prevent further disarray, confusion and complexity on the issue of who is or who should be the real owner of the subject land which is a matter that can be threshed out in a proper case for quieting of title between adverse claimants.[21]

Based on the foregoing, the appellate court adjudged:

All told, the assailed orders were issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.

WHEREFORE, the assailed orders are **REVERSED AND SET ASIDE**. Accordingly, [Rodriguez, RTC Presiding Judge Josephine Zarate-Fernandez, the LRA Administrator, and Marikina City ROD] are enjoined to cease and desist from implementing the said orders pending the outcome of a proper case before an appropriate court where the issue of ownership of the subject land can be put to rest.[22]

Rodriguez moved for reconsideration of the foregoing Decision but was denied by the Court of Appeals in a Resolution dated September 17, 2008.

Aggrieved, Rodriguez sought recourse from this Court through the present Petition, arguing that:

I

THE [COURT OF APPEALS] HAD ACTED WITHOUT JURISDICTION WHEN IT RENDERED AN OPEN-ENDED JUDGMENT.

A

THE [COURT OF APPEALS] HAD ABDICATED ITS JURISDICTION TO RESOLVE DISPUTES ON THE MERE

[21] *Id.* at 68-69.

[22] *Id.* at 69.

MANIFESTATION OF THE LRA THAT THERE WERE ISSUES OF OWNERSHIP WHICH HAVE FIRST TO BE RESOLVED.

B

THE [COURT OF APPEALS] HAS RESOLVED AN ISSUE WHICH WAS IRRELEVANT AND IMMATERIAL OR HAD OTHERWISE BEEN RESOLVED.

II

THE [COURT OF APPEALS] HAD COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION IN RULING THAT THE [PCCAI] HAD LEGAL STANDING TO PREVENT OR SUSPEND THE OPERATION OF THE LAND REGISTRATION LAWS BY WAY OF THE ISSUANCE OF THE ORDER DIRECTING THE LAND REGISTRATION ADMINISTRATOR TO COMPLY WITH THE ORDER DATED DECEMBER 16, 1965.

A

THE [PCCAI] HAD NO RIGHT TO INTERVENE IN LRC NO. N-5098.

B

THE [PCCAI] CANNOT CLAIM BUYER IN GOOD FAITH STATUS AS ITS TITLE WAS DEFECTIVE ON ITS FACE.

III

[RODRIGUEZ] IS ENTITLED TO THE CORRECTIVE AND PREROGATIVE WRIT OF *CERTIORARI* TO INSURE THAT THE LAND REGISTRATION LAWS ARE PROPERLY AND FULLY IMPLEMENTED.[23]

The instant Petition has no merit.

At the outset, the Court finds unmeritorious Rodriguez's claim that the Court of Appeals rendered an open-ended judgment. In the dispositive portion of its Decision dated May 26, 2008,

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

the Court of Appeals clearly and categorically "**REVERSED AND SET ASIDE**" the Orders dated April 10, 2007 and November 22, 2007 of the RTC in Land Reg. Case No. N-5098. The cease and desist order of the appellate court in the second line of the same dispositive portion is therefore a superfluity. Obviously, by reversing and setting aside the foregoing Orders, there is nothing more to implement. The phrase "pending the outcome of a proper case before an appropriate court where the issue of ownership of the subject land can be put to rest[,]"[24] does not mean that the very same Orders which were reversed and set aside by the Court of Appeals could later on be revived or reinstated; rather it means that the remedies sought by Rodriguez can be litigated and granted in an appropriate proceeding by a court with proper jurisdiction.

To clarify matters, it must be stressed that the issue brought before the Court of Appeals did not involve the question of the ownership. The appellate court only concerned itself with the proper execution of the November 16, 1965 Decision in Land Reg. Case No. N-5098 but, due to the intricacy of the matter, was compelled to take notice of the controversy between Rodriguez and PCCAI, both of whom trace back their titles to Landicho. In view of these conflicting claims, Rodriguez now avers that because ROD Santos issued TCT No. 167681 for the subject property in Landicho's name, the November 16, 1965 Decision in Land Reg. Case No. N-5098 was not validly implemented since no OCT was issued.[25] Corollary to this, Rodriguez posits that PCCAI is not a buyer in good faith of the subject property and that the latter's TCT No. 482970 is spurious.

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[24] *Id.* at 69.

[25] Presidential Decree No. 1529, otherwise known as the Property Registration Decree, took effect on June 11, 1978. By the time Rodriguez filed his Omnibus Motion before the RTC on May 18, 2005, praying for the execution of the CFI Decision dated November 16, 1965 and Order dated December 22, 1965 in Land Reg. Case No. N-5098, the Property Registration Decree was already in effect. Relevant provisions of said Decree read:

PCCAI, on the other hand, insists that the issuance of TCT No. 167681 to Landicho, from which its own TCT No. 482970 may be traced back, was a valid execution of the said CFI decision.

The LRA, in its Manifestation dated February 4, 2008 filed before the RTC, explained that a TCT was issued to Landicho

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Section 30. *When judgment becomes final; duty to cause issuance of decree.* — The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days to be counted from the date of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases.

After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Commissioner for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration.

SEC. 39. *Preparation of Decree and Certificate of Title.* – After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from the entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

SEC. 40. *Entry of Original Certificate of Title.* – Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title, the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

because the subject property, as part of a bigger parcel of land, was already covered by Decree No. 1480 and OCT No. 301 dated November 22, 1906 in the name of Meerkamp Co. In other words, Landicho's TCT No. 167681 is a derivative of Decree No. 1480 and OCT No. 301 of Meerkamp Co. which were cancelled to the extent of the subject property.

Complicating the matter further is the pendency of Civil Case No. 12044 in the RTC, Branch 167, Pasig City. Not only is PCCAI questioning the right of Rodriguez to the issuance of an OCT pursuant to the November 16, 1965 Decision and December 22, 1965 Order of the CFI in Land Reg. Case No. N-5098, it is also defending the validity of TCT No. 482970 (which is a derivative of TCT No. 167681 issued to Landicho) against Araneta who holds TCT No. 70589 (which is a derivative of Meerkamp Co.'s OCT No. 301). In view of the foregoing, issuing an OCT covering the subject property to Rodriguez would give rise to a third certificate of title over the same property. Such act would only cause more confusion and complication, rather than the preservation, of the Torrens system of registration.

The real purpose of the Torrens system is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*," to avoid the possibility of losing his land. A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein. A strong presumption exists that Torrens titles are regularly issued and that they are valid.[26] In this case, PCCAI is the registered owner of the subject property under TCT No. 482970, which could be traced back to TCT No. 16781 issued to Landicho. As between PCCAI and Rodriguez, the former is better entitled to the protection of the Torrens system. PCCAI can rely on its TCT No. 482970 until the same has been annulled and/or cancelled.

Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, explicitly provides that

[26] *Ching v. Court of Appeals*, 260 Phil. 14, 23 (1990).

"[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."

In *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*,[27] the Court declared that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose. A collateral attack is made when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.

Land Reg. Case No. N-5098 was an application for registration of the subject property instituted by Landicho before the CFI, which was granted by the CFI in its Decision dated November 16, 1965. Rodriguez, asserting that he was Landicho's lawful successor-in-interest, filed an Omnibus Motion before the RTC in Land Reg. Case No. N-5098 seeking the issuance of a decree of registration and an OCT in his name for the subject property pursuant to the said CFI judgment. Rodriguez acknowledged the existence of TCT No. 482970 of PCCAI for the same property, but he simply brushed aside said certificate of title for allegedly being spurious. Still, Rodriguez did not pray that TCT No. 482970 be declared void and/or cancelled; and even if he did, the RTC had no jurisdiction to grant such relief in a land registration case. Rodriguez's Omnibus Motion in Land Reg. Case No. N-5098, under the circumstances, is a collateral attack on said certificate, which is proscribed under Section 48 of the Property Registration Decree.

If Rodriguez wants to have a decree of registration and OCT issued in his (or even in Landicho's name) for the subject property, he should have directly challenged the validity of the extant TCT No. 482970 of PCCAI for the very same property in an action specifically instituted for such purpose (*i.e.*, petition for annulment and/or cancellation of title, petition for quieting of title) and pray the said certificate of title be annulled or canceled.

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[27] G.R. No. 171209, June 27, 2012, 675 SCRA 145, 168.

The proper court in an appropriate action can try the factual and legal issues involving the alleged fatal defects in Landicho's TCT No. 167681 and/or its derivative TCTs, including TCT No. 482970 of PCCAI; the legal effects of Landicho's sale of the subject property to BCPI (the predecessor-in-interest of PCCAI) in 1971 and also to Rodriguez in 1996; and the good faith or bad faith of PCCAI, as well as Rodriguez, in purchasing the subject property. The resolution of these issues will ultimately be determinative of who between Rodriguez and PCCAI is the rightful owner of the subject property.

Clearly, the Court of Appeals cannot be faulted for according weight and credence to the Manifestation dated February 4, 2008 of the LRA.

The LRA exists for the sole purpose of implementing and protecting the Torrens system of land titling and registration.[28] In particular, it is tasked with the following functions:

> (1) Issue decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registrars of Land Titles and Deeds of the corresponding certificates of title;
>
> (2) Be the central repository of records relative to original registration of lands titled under the Torrens system, including subdivision and consolidation plans of titled lands; and
>
> (3) Extend assistance to courts in ordinary and cadastral land registration proceedings and to the other agencies of the government in the implementation of the land reform program.[29]

The duty of LRA officials to issue decrees of registration is ministerial in the sense that they act under the orders of the court and the decree must be in conformity with the decision of the court and with the data found in the record. They have no

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[28] http://www.lra.gov.ph/index.php?page=about_us_mission.

[29] Section 1 of Executive Order No. 649 dated February 9, 1981, in relation to Book IV, Title III, Chapter 9, Section 28 of Executive Order No. 292 dated July 25, 1987, otherwise known as the Administrative Code of 1987.

discretion in the matter. However, if they are in doubt upon any point in relation to the preparation and issuance of the decree, these officials ought to seek clarification from the court. They act, in this respect, as officials of the court and not as administrative officials, and their act is the act of the court. They are specifically called upon to "extend assistance to courts in ordinary and cadastral land registration proceedings."[30]

In *Ramos v. Rodriguez*,[31] the LRA filed a motion for reconsideration of the decision and order of the land registration court respectively granting registration of a parcel of land and directing the issuance of a decree of registration for the same. According to the LRA, there was already an existing certificate of title for the property. The land registration court granted the motion for reconsideration of the LRA and set aside its earlier decision and order. On appeal, the Court declared that the land registration court did not commit grave abuse of discretion in reversing itself because it was merely following the recommendation of the LRA, which was then acting as an agent of the court.

In another case, *Spouses Laburada v. Land Registration Authority*,[32] the Court refused to issue a writ of *mandamus* compelling the LRA to issue a decree of registration as ordered by a land registration court. The Court took into account the LRA report that the parcels of land were already registered and held:

> That the LRA hesitates in issuing a decree of registration is understandable. Rather than a sign of negligence or nonfeasance in the performance of its duty, the LRA's reaction is reasonable, even imperative. Considering the probable duplication of titles over the same parcel of land, such issuance may contravene the policy and the purpose, and thereby destroy the integrity, of the Torrens system of registration.[33]

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[30] *Atty. Gomez v. Court of Appeals*, 250 Phil. 504, 511 (1988).

[31] 314 Phil. 326 (1995).

[32] 350 Phil. 779 (1998).

[33] *Id.* at 789.

The LRA, in this case, filed the Manifestation dated February 4, 2008 to inform the RTC that the subject property is already covered by two TCTs, both "uncancelled and extant[;]" and for this reason, the LRA cannot comply with the RTC Order dated April 10, 2007, directing the issuance of a decree of registration and an OCT for the same property in Landicho's name, as it would "further aggravate the already existing problem of double titling[.]" In filing said Manifestation, the LRA was only faithfully pursuing its mandate to protect the Torrens system and performing its function of extending assistance to the RTC as regards Land Reg. Case No. N-5098. Contrary to Rodriguez's assertion, the Court of Appeals did not abdicate its jurisdiction when it granted the Petition for *Certiorari* and Prohibition of PCCAI largely based on the Manifestation of the LRA, since the LRA filed such a Manifestation as an officer of the court.

Finally, intervention is governed by Rule 19 of the Rules of Court, pertinent provisions of which read:

> SECTION 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.
>
> SECTION 2. *Time to intervene.* – The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

The subject property is presently covered by TCT No. 482970 in the name of PCCAI. As the registered owner, PCCAI clearly has a legal interest in the subject property. The issuance of another certificate of title to Rodriguez will adversely affect PCCAI, constituting a cloud on its TCT No. 482970.

Although Rule 19 is explicit on the period when a motion to intervene may be filed, the Court allowed exceptions in several cases, *viz*:

> This rule, however, is not inflexible. Interventions have been allowed even beyond the period prescribed in the Rule, when demanded by the higher interest of justice. Interventions have also been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court, when the petition for review of the judgment has already been submitted for decision before the Supreme Court, and even where the assailed order has already become final and executory. In ***Lim v. Pacquing***, the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties.
>
> In fine, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. We stress again that Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice. Its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.[34] (Citations omitted.)

The particular circumstances of this case similarly justify the relaxation of the rules of procedure on intervention. *First*, the interests of both PCCAI and Rodriguez in the subject property arose only after the CFI Decision dated November 16, 1965 in Land Reg. Case No. N-5098 became final and executory. PCCAI bought the subject property from WPFI on November 13, 1973 and was issued TCT No. 482970 for the same on July 15, 1975; while Rodriguez bought the subject property from Landicho on November 14, 1996. *Second*, as previously discussed herein, both PCCAI and Rodriguez trace their titles back to Landicho. Hence, the intervention of PCCAI could not unduly delay or prejudice the adjudication of the rights of Landicho, the original party in Land Reg. Case No. N-5098. *Third*, the latest

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[34] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385, 401-402.

proceedings in Land Reg. Case No. N-5098 involved Rodriguez's Omnibus Motion, filed before the RTC on May 18, 2005, in which he prayed for the execution of the November 16, 1965 Decision of the CFI. PCCAI moved to intervene in the case only to oppose Rodriguez's Omnibus Motion on the ground that the subject property is already registered in its name under TCT No. 482970, which originated from Landicho's TCT No. 167681. *And fourth*, after learning of Rodriguez's Omnibus Motion in Land Reg. Case No. N-5098 via the November 3, 2006 subpoena issued by the RTC, PCCAI was reasonably expected to oppose the same. Such action was the most opportune and expedient remedy available to PCCAI to prevent the RTC from ordering the issuance of a decree of registration and OCT in Rodriguez's name. For this reason, the RTC should have allowed the intervention of PCCAI.

ACCORDINGLY, the instant Petition is **DISMISSED.** The Decision dated May 26, 2008 of the Court of Appeals in CA-G.R. SP No. 101789, reversing and setting aside the Orders dated April 10, 2007 and November 22, 2007 of the Regional Trial Court, Branch 75 of San Mateo, Rizal in Land Reg. Case No. N-5098, is **AFFIRMED with the MODIFICATION** deleting the second sentence of the dispositive portion for being a superfluity.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185604. June 13, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDWARD M. CAMACHO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); RECONSTITUTION OF LOST OR DESTROYED TORRENS TITLE; MAY BE JUDICIAL OR ADMINISTRATIVE.— Section 110 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended by R.A. No. 6732, allows the reconstitution of lost or destroyed original Torrens title either judicially, in accordance with the special procedure laid down in R.A. No. 26, or administratively, in accordance with the provisions of R.A. No. 6732.

2. ID.; ID.; REPUBLIC ACT NO. 26; JUDICIAL RECONSTITUTION OF TITLE; DENOTES A RESTORATION OF THE INSTRUMENT IN THE SAME FORM IT WAS IN WHEN ITS LOSS OR DESTRUCTION OCCURRED, AFTER PROPER PROCEEDINGS AND COMPLIANCE WITH JURISDICTIONAL REQUIREMENTS.— The nature of the proceeding for reconstitution of a certificate of title under R.A. No. 26 denotes a restoration of the instrument, which is supposed to have been lost or destroyed, in its original form and condition. The purpose of such a proceeding is merely to have the certificate of title reproduced, after proper proceedings, in the same form it was in when its loss or destruction occurred. The same R.A. No. 26 specifies the requisites to be met for the trial court to acquire jurisdiction over a petition for reconstitution of a certificate of title. Failure to comply with any of these jurisdictional requirements for a petition for reconstitution renders the proceedings null and void. Thus, in obtaining a new title in lieu of the lost or destroyed one, R.A. No. 26 laid down procedures which must be strictly followed in view of the danger that reconstitution could be the source of anomalous

titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.

3. ID.; ID.; ID.; ID.; WHERE THE SOURCE FOR RECONSTITUTION OF TITLE IS THE OWNER'S DUPLICATE COPY, THE PUBLICATION, POSTING AND NOTICE REQUIREMENTS ARE GOVERNED BY SECTION 10 IN RELATION TO SECTION 9 OF THE LAW.— [R]espondent's quest for judicial reconstitution in this case is anchored on the owner's duplicate copy of said OCT – a source for reconstitution of title provided under Section 2 (a) of R.A. No. 26 x x x. In this aspect, the CA was correct in invoking our ruling in *Puzon v. Sta. Lucia Realty and Development, Inc.*, that notices to owners of adjoining lots and actual occupants of the subject property are not mandatory and jurisdictional in a petition for judicial reconstitution of destroyed certificate of title when the source for such reconstitution is the owner's duplicate copy thereof since the publication, posting and notice requirements for such a petition are governed by Section 10 in relation to Section 9 of R.A. No. 26. x x x In sum, Section 10, in relation to Section 9, requires that 30 days before the date of hearing, (1) a notice be published in two successive issues of the Official Gazette at the expense of the petitioner, and that (2) such notice be posted at the main entrances of the provincial building and of the municipal hall where the property is located. The notice shall state the following: (1) the number of the certificate of title, (2) the name of the registered owner, (3) the names of the interested parties appearing in the reconstituted certificate of title, (4) the location of the property, and (5) the date on which all persons having an interest in the property, must appear and file such claims as they may have.

4. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE COURT HAS SUFFICIENT AUTHORITY TO PASS UPON AND RESOLVE ISSUES AFFECTING JURISDICTION DESPITE THE FAILURE OF A PARTY TO INCORPORATE IN HIS PETITION THE JURISDICTIONAL INFIRMITIES; CASE AT BAR.— Well-entrenched in this jurisdiction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Verba legis non est recedendum. From the words of a statute there should be no departure. In view of these lapses, the RTC did not acquire jurisdiction to proceed with the case since the mandatory manner or mode of obtaining jurisdiction as prescribed by R.A. No. 26 had not been strictly followed, thereby rendering the proceedings utterly null and void. As such, while petitioner overlooked these jurisdictional infirmities and failed to incorporate them as additional issues in its own petition, this Court has sufficient authority to pass upon and resolve the same since they affect jurisdiction.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dante R. Galapate for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 87390, which affirmed the Decision[3] of the Regional Trial Court (RTC) of Villasis, Pangasinan, Branch 50 in Land Registration Case No. V-0016.

The facts follow.

On March 6, 2003, respondent Edward M. Camacho filed a petition[4] denominated as "*Re: Petition for Reconstitution of*

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[1] *Rollo*, pp. 26-51.

[2] *Id.* at 54-65. Penned by Associate Justice Portia Aliño-Hormachuelos (retired) with Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores concurring. The assailed decision was promulgated on July 31, 2008.

[3] Records, pp. 169-171. The RTC decision was rendered on March 9, 2006 and penned by Judge Manuel F. Pastor, Jr.

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

the Original Title of O.C.T. No. (not legible) and Issuance of Owner's Duplicate Copy" before the RTC.

In support thereof, respondent alleged that the Original Certificate of Title[5] (OCT) sought to be reconstituted and whose number is no longer legible due to wear and tear, is covered by Decree No. 444263, Case No. 3732, Record No. 22141[6] issued in the name of Spouses Nicasio Lapitan and Ana Doliente (Spouses Lapitan) of Alcala, Pangasinan. Respondent also alleged that the owner's duplicate copy of the OCT is in his possession and that he is the owner of the two parcels of land covered by the aforementioned OCT by virtue of a Deed of Extra-Judicial Partition with Absolute Sale[7] (the Deed) executed on December 26, 2002 by the heirs of Spouses Lapitan in his favor. Said OCT covers two parcels of land located in San Juan, Alcala, Pangasinan, (Lot No. 1) and Namulatan,[8] Bautista, Pangasinan (Lot No. 2) with the following technical descriptions:

A parcel of land (Lot No. 1, plan Psu- 53673), situated in the Barrio of San Juan, Municipality of Alcala. Bounded on the NE. by property of Benito Ferrer; on the S. by an irrigation ditch and property of Marcelo Monegas; and on the W. by Lot No. 2. Beginning at a point marked "1" on plan, being S. 0 deg. 53' W., 3830.91 m. from B. L. L. M. No. 1, Alcala; thence S. 87 deg. 22' W., 44.91 m. to point "2"; thence N. 5 deg. 25' W., 214.83 m. to point "3"; thence S. 17 deg. 06' E., 221.61 m. to the point of beginning; containing an area of four thousand eight hundred and eighteen square meters (4,818), more or less. All points referred to are indicated on the plan and on the ground are marked by old P. L. S. concrete monuments; bearings true; declination 0 deg. 40' E.; date of survey, April 19-21, 1926[; and]

A parcel of land (Lot No. 2, plan Psu-53673), situated in the Barrio of [Namulatan], Municipality of Bautista. Bounded on the N. by

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[5] *Id.* at 149.

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

[7] Records, pp. 145-146.

[8] Also referred to as Namalutan, Namabutan, and Namalatan in other pleadings and documents.

properties of Hipolito Sarmiento and Ciriaco Dauz; on the E. by Lot No.1; and on the SW. by property of Nicasio Lapitan vs. Felix Bacolor. Beginning at a point marked "1" on plan, being S. 2 deg. 40' W., 3625.25 m. from B. L. L. M. No. 1, Alcala; thence N. 80 deg. 47' E., 3.50 m. to point "2"; thence N. 86 deg. 53' E., 40.64 m. to point "3"; thence S. 5 deg. 25' E., 214.83 m. to point "4"; thence N. 16 deg. 57' W., 220.69 m. to the point of beginning; containing an area of four thousand seven hundred and forty-four square meters (4,744), more or less. All points referred to are indicated on the plan and on the ground are marked by old P. L. S. concrete monuments; bearings true; declination 0 deg. 40' E.; date of survey April 19-21, 1926.[9]

Respondent attached to his petition photocopies of the Deed; the OCT; Tax Declaration No. 4858[10]; a Certification[11] dated January 13, 2003 issued by the Office of the Register of Deeds of Lingayen, Pangasinan stating that the file copy of the OCT could not be found and is considered lost and beyond recovery; and Decree No. 444263.[12]

Upon a Show-Cause Order[13] of the RTC, respondent filed an Amended Petition[14] dated May 21, 2003, alleging that the subject properties bear no encumbrance; that there are no improvements therein; that there are no other occupants thereof aside from respondent; and that there are no deeds or instruments affecting the same that had been presented for registration. He further alleged that "*the land in issue is bounded on the North by the land covered by Plan Psu-53673; on the North by the properties of Hipolito Sarmiento and Cipriano Dauz,*[15] *residents*

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

[10] *Id.* at 9.

[11] *Id.* at 10.

[12] *Supra* note 6.

[13] *Id.* at 13.

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

[15] Also referred to as Ciriaco Dauz and Ciriaco Cauz in other pleadings and documents.

of Anulid, Alcala, Pangasinan; on the West by Lot No. 3; and on the Southwest by the properties of Nicasio Lapitan vs. Felix Bacolor [who are also] residents of Anulid, Alcala, Pangasinan."[16] Respondent intimated that he desires to have the office/file copy of the OCT reconstituted based on the Technical Description provided by the Chief of the General Land Registration Office and thereafter, to be issued a second owner's duplicate copy in lieu of the old one.

On May 30, 2003, the RTC issued an Order[17] finding the respondent's petition sufficient in form and substance and setting the same for hearing on September 29, 2003. The said Order is herein faithfully reproduced as follows:

O R D E R

In a verified petition, petitioner Edward Camacho, as vendee of the parcels of land located in San Juan, Alcala, Pangasinan, and [Namulatan], Bautista, Pangasinan, covered by Decree No. 444263, Case No. 3732, G.L.R.O. No. 22141, formerly issued in the names of spouses Nicasio Lapitan and Ana Doliente, of Alcala, Pangasinan, under an Original Certificate of Title the number of which is not legible due to wear and tear, seeks an order directing the proper authorities and the Registrar of Deeds, Lingayen, Pangasinan, to reconstitute the office file copy of said Original Certificate of Title based on the technical description thereof and to issue a second owner's duplicate copy of the same in lieu of the old one.

Being sufficient in form and substance, the petition is set for hearing on September 29, 2003, at 8:30 in the morning, before this Court, on which date, time and place, all interested persons are enjoined to appear and show cause why the same should not be granted.

Let this order be published twice in successive issues of the Official Gazette at the expense of the petitioner.

Likewise, let copies of this Order and of the Amended Petition be posted in conspicuous places in the Provincial Capitol and the

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[16] Records, p. 19.

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

Registry of Deeds, both in Lingayen, Pangasinan, the Municipal Halls of Alcala and Bautista, Pangasinan, and the Barangay Halls of San Juan, Alcala, Pangasinan and Namulatan, Bautista, Pangasinan, and the Office of the Solicitor General, Manila.

Finally, furnish copies of this Order, by registered mail, at the expense of the petitioner, to the following:

1. Hipolito Sarmiento;
2. Cipriano Dauz;
3. Nicasio Lapitan; and
4. Felix Bacolor.

all of Brgy. Anulid, Alcala, Pangasinan.

SO ORDERED.[18]

Thereafter, copies of the said order were posted on seven bulletin boards: at the Pangasinan Provincial Capitol Building, at the Alcala and Bautista Municipal Buildings, at the San Juan and Namulatan Barangay Halls, at the office of the Register of Deeds in Lingayen, Pangasinan and at the RTC.[19] The order was also published twice in the Official Gazette: on August 18, 2003 (Volume 99, Number 33, Page 5206), and on August 25, 2003 (Volume 99, Number 34, Page 5376).[20]

However, on January 22, 2004, respondent filed his second Amended Petition[21] averring that "*the land in issue is bounded on the North by the land of Ricardo Acosta, a resident of Laoac, Alcala, Pangasinan; on the South by the property of Greg Viray,*[22] *a resident of Laoac, Alcala, Pangasinan; on the West by the land of Roque Lanuza,*[23] *a resident of Laoac, Alcala, Pangasinan;*

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[18] *Id.*

[19] *Id.* at 35-42.

[20] *Id.* at 48. Copies of the said Official Gazette are also made part of the records.

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

[22] Also referred to as Gregorio Viray in other pleadings and documents.

[23] Also referred to as Roger Lanuza in other pleadings and documents.

and on the East by the lot of Juan Cabuan,[24] *a resident of Laoac, Alcala, Pangasinan.*"[25] On March 4, 2004, respondent filed a Motion[26] with Leave of Court to admit his second Amended Petition, which the RTC granted in its Order[27] dated March 4, 2004, directing therein that the persons mentioned in the second Amended Petition be notified by registered mail.

During the hearing, the following witnesses were presented: (1) respondent[28] who, among others, presented the original owner's duplicate copy of the OCT before the RTC;[29] (2) the tenant of the adjoining lot (Western portion) Roque Lanuza who testified that he tilled the adjoining lots, that he has personal knowledge that respondent bought said lots from the heirs of the Spouses Lapitan, and that he was present when the lots were surveyed;[30] (3) adjoining owners Gregorio Viray[31] and Ricardo Acosta[32] who testified that they were notified of the proceedings and interposed no objection to the petition; and (4) Arthur David (Mr. David), Records Custodian of the Register of Deeds of Lingayen, Pangasinan who testified that Atty. Rufino Moreno, Jr., Registrar of Deeds had issued the Certification that the OCT subject of the petition can no longer be found in the Office of the Register of Deeds.[33] In his subsequent testimony, Mr. David reported to the RTC that the name of Nicasio Lapitan cannot be located in the Index Cards of titles as some are missing and destroyed. Upon questioning, Mr. David testified that the

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[24] Also referred to as Jaime Cabuan in other pleadings and documents.

[25] Records, p. 58.

[26] *Id.* at 71-72.

[27] *Id.* at 73.

[28] TSN, September 20, 2004, records, pp. 89-98.

[29] *Id.* at 94.

[30] TSN, July 11, 2005, *id.* at 127-132.

[31] TSN, September 19, 2005, *id.* at 135-139.

[32] TSN, November 23, 2005, *id.* at 163-168.

[33] TSN, November 22, 2004, *id.* at 101-107.

number of the OCT sought to be reconstituted may be referred to in the decree issued in the name of Nicasio Lapitan which allegedly could be found in the Land Registration Authority (LRA).[34]

On May 23, 2005, the LRA rendered a Report[35] addressed to the RTC which pertinently stated, to wit:

(1) The present amended petition seeks the reconstitution of Original Certificate of Title No. (not legible), allegedly lost or destroyed and supposedly covering Lot Nos. 1 and 2 of plan Psu-53673, situated in the Barrio of San Juan, Municipality of Alcala and Barrio of [Namulatan], Municipality of Bautista, respectively, Province of Pangasinan, on the basis of the owner's duplicate thereof, a reproduction of which, duly certified by Atty. Stela Marie Q. Gandia-Asuncion, Clerk of Court VI, was submitted to this Authority;

(2) Our records show that Decree No. 444263 was issued on July 18, 1931 covering Lot Nos. 1 and 2 of plan Psu-53673, in Cadastral Case No. 3732, GLRO Record No. 22141 in favor of the Spouses Nicasio Lapitan and Ana Doliente;

(3) The technical descriptions of Lot Nos. 1 and 2 of plan Psu-53673, appearing on the reproduction of Original Certificate of Title No. (not legible) were found correct after examination and due computation and when plotted in the Municipal Index Sheet No. 451/1027, do not appear to overlap previously plotted/decreed properties in the area.

The government prosecutor deputized by the Office of the Solicitor General (OSG)[36] participated in the trial of the case but did not present controverting evidence.[37]

On March 9, 2006, the RTC rendered the assailed Decision,[38] the dispositive portion of which reads:

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[34] TSN, April 27, 2005, *id.* at 116-119.

[35] Records, pp. 122-123.

[36] *Id.* at 45.

[37] *Id.* at 159.

[38] *Supra* note 3.

WHEREFORE, the Court, finding the documentary as well as the parole (sic) evidence adduced to be adequate and sufficiently persuasive to warrant the reconstitution of the Original Certificate of Title covered by Decree No. 444263, Cadastral Case No. 3732, GLRO Record No. 22141, and pursuant to Section 110, PD No. 1529 and Sections 2 (d) and 15 of RA No. 26, hereby directs the Register of Deeds at Lingayen, Pangasinan, to reconstitute said original certificate of title on the basis of the decree of registration thereof, without prejudice to the annotation of any subsisting rights or interests not duly noted in these proceedings, if any, and the right of the Administrator, Land Registration Authority, as provided for in Sec. 16, Land Registration Commission (now NALTDRA) Circular No. 35, dated June 13, 1983, and to issue a new owner's duplicate copy thereof.

SO ORDERED.[39]

On April 4, 2006, petitioner Republic of the Philippines, through the OSG, filed a Motion for Reconsideration[40] which was denied by the RTC in its Resolution[41] dated May 24, 2006 for lack of merit. The RTC opined that while the number of the OCT is not legible, a close examination of the entries therein reveals that it is an authentic OCT per the LRA's findings. Moreover, the RTC held that respondent complied with Section 2 of Republic Act (R.A.) No. 26[42] considering that the reconstitution in this case is based on the owner's duplicate copy of the OCT.

Petitioner appealed to the CA.[43] By Decision[44] dated July 31, 2008, the CA affirmed the RTC's findings and ruling, holding that respondent's petition is governed by Section 10 of R.A. No. 26 since the reconstitution proceedings is based on the owner's

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[39] *Id.* at 171.

[40] *Id.* at 172-178.

[41] *Id.* at 186-187.

[42] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED," approved on September 25, 1946.

[43] Records, pp. 188-190.

[44] *Supra* note 2.

duplicate copy of the OCT itself. The CA, invoking this Court's ruling in *Puzon v. Sta. Lucia Realty and Development, Inc.*,[45] concluded that notice to the owners of the adjoining lots is not required. Moreover, the CA opined that Decree No. 444263 issued on July 18, 1931 covering Lot Nos. 1 and 2 in the name of Spouses Lapitan exists in the Record Book of the LRA as stated in the LRA's Report. The CA ratiocinated that the LRA's Report on said Decree tallies with the subject OCT leading to no other conclusion than that these documents cover the same subject lots. Petitioner filed its Motion for Reconsideration[46] which the CA, however, denied in its Resolution[47] dated November 20, 2008.

Hence, this petition based on the following grounds, to wit:

1. THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE TRIAL COURT CORRECTLY GRANTED THE PETITION FOR RECONSTITUTION EVEN IF THE ORIGINAL CERTIFICATE OF TITLE NUMBER IS NOT LEGIBLE[; and]

2. THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE TRIAL COURT CORRECTLY GRANTED THE PRAYER FOR THE ISSUANCE OF A SECOND OWNER'S DUPLICATE.[48]

Petitioner through the OSG avers that respondent does not have any basis for reconstitution because the OCT *per se* is of doubtful existence, as respondent himself does not know its number. According to the OSG, this fact alone negates the merits of the petition for reconstitution as held by this Court in *Tahanan Development Corporation v. Court of Appeals, et al.*[49] Moreover, the OSG highlights that the Deed, the tax declaration for the year 2003, and the Register of Deeds Certification all

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[45] 406 Phil. 263 (2001).

[46] CA *rollo*, pp. 86-104.

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

[48] *Rollo*, p. 37.

[49] 203 Phil. 652 (1982).

indicated that the number of the OCT is not legible. The OSG also stresses that nowhere in the records did the LRA acknowledge that it has on file the original copy of Decree No. 444263 from which the alleged OCT was issued and that said Decree did not at all establish the existence and previous issuance of the OCT sought to be reconstituted. The OSG notes that the RTC erred, as found in the dispositive portion of its decision, in basing the reconstitution of the OCT under Section 2(d) of R.A. No. 26. Finally, the OSG submits that respondent cannot seek the issuance of the second owner's duplicate of the OCT because he himself alleged in his own petition that he is in possession of the same owner's duplicate certificate.[50]

On the other hand, respondent counters that the OSG's reliance in *Tahanan* and *Republic of the Phils. v. Intermediate Appellate Court*,[51] is unavailing. He argues that in *Tahanan*, the petitioner therein merely relied on documents other than the owner's duplicate copy of the certificate of title, while in *Republic*, this Court ruled that reconstitution cannot be based on statutes which do not confer title over the property. Respondent claims that in these aforementioned cases, petitioners therein do not have other sources to support their respective petitions for reconstitution while in this case the owner's duplicate copy of the OCT sought to be reconstituted truly exists albeit its number is not legible. Respondent submits that the documentary as well as the parol evidence he adduced are adequate to warrant the reconstitution of the OCT as it is covered by Decree No. 444263. Respondent also submits that since there is a valid title in this case, there is legal basis for the issuance of the owner's duplicate copy of the reconstituted title.[52]

Notwithstanding the numerous contentions raised by both parties, this Court finds that the fundamental issue to be resolved in this case is whether the RTC properly acquired and was invested

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[50] Petitioner's Memorandum dated November 20, 2009, *rollo*, pp. 146-167.

[51] 241 Phil. 75 (1988).

[52] Respondent's Memorandum dated January 8, 2010, *rollo*, pp. 173-179.

with jurisdiction in the first place to hear and decide Land Registration Case No. V-0016 in the light of the strict and mandatory provisions of R.A. No. 26.

We resolve the sole issue in the negative.

Section 110[53] of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended by R.A. No. 6732,[54] allows the reconstitution of lost or destroyed original Torrens title either judicially, in accordance with the special procedure laid down in R.A. No. 26, or administratively, in accordance with the provisions of R.A. No. 6732.[55]

As the case set before this Court is one for judicial reconstitution, we limit the discussion to the pertinent law, which is R.A. No. 26, and the applicable jurisprudence.

The nature of the proceeding for reconstitution of a certificate of title under R.A. No. 26 denotes a restoration of the instrument,

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[53] SEC. 110. *Reconstitution of Lost or Destroyed Original of Torrens Title*.—Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority: *Provided*, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further*, That in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

xxx xxx xxx

[54] Entitled, "AN ACT ALLOWING ADMINISTRATIVE RECONSTITUTION OF ORIGINAL COPIES OF CERTIFICATES OF TITLES LOST OR DESTROYED DUE TO FIRE, FLOOD AND OTHER *FORCE MAJEURE*, AMENDING FOR THE PURPOSE SECTION ONE HUNDRED TEN OF PRESIDENTIAL DECREE NUMBERED FIFTEEN TWENTY-NINE AND SECTION FIVE OF REPUBLIC ACT NUMBERED TWENTY-SIX," approved on July 17, 1989.

[55] *Republic v. Verzosa*, G.R. No. 173525, March 28, 2008, 550 SCRA 382, 388.

which is supposed to have been lost or destroyed, in its original form and condition. The purpose of such a proceeding is merely to have the certificate of title reproduced, after proper proceedings, in the same form it was in when its loss or destruction occurred. The same R.A. No. 26 specifies the requisites to be met for the trial court to acquire jurisdiction over a petition for reconstitution of a certificate of title. Failure to comply with any of these jurisdictional requirements for a petition for reconstitution renders the proceedings null and void. Thus, in obtaining a new title in lieu of the lost or destroyed one, R.A. No. 26 laid down procedures which must be strictly followed in view of the danger that reconstitution could be the source of anomalous titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.[56]

It bears reiterating that respondent's quest for judicial reconstitution in this case is anchored on the owner's duplicate copy of said OCT – a source for reconstitution of title provided under Section 2 (a) of R.A. No. 26, which provides in full as follows:

SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

a. **The owner's duplicate of the certificate of title**;

b. The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

c. A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

d. An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

e. A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated

[56] *Angat v. Republic*, G.R. No. 175788, June 30, 2009, 591 SCRA 364, 384 (citations omitted).

copy of said document showing that its original had been registered; and

f. Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. (Emphasis supplied.)

In this aspect, the CA was correct in invoking our ruling in *Puzon v. Sta. Lucia Realty and Development, Inc.*,[57] that notices to owners of adjoining lots and actual occupants of the subject property are not mandatory and jurisdictional in a petition for judicial reconstitution of destroyed certificate of title when the source for such reconstitution is the owner's duplicate copy thereof since the publication, posting and notice requirements for such a petition are governed by Section 10 in relation to Section 9 of R.A. No. 26. Section 10 provides:

SEC. 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, **based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: *Provided, however,* That the court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof**: *And, provided, further,* That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act. (Emphasis supplied.)

Correlatively, the pertinent provisions of Section 9 on the publication, posting and the contents of the notice of the Petition for Reconstitution clearly mandate:

SEC. 9. x x x Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. **The notice shall specify, among other things, the number**

[57] *Supra* note 45, at 276.

of the certificate of title, the name of the registered owner, **the names of the interested parties appearing in the reconstituted certificate of title**, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. x x x (Emphasis supplied.)

In sum, Section 10, in relation to Section 9, requires that 30 days before the date of hearing, (1) a notice be published in two successive issues of the Official Gazette at the expense of the petitioner, and that (2) such notice be posted at the main entrances of the provincial building and of the municipal hall where the property is located. The notice shall state the following: (1) the number of the certificate of title, (2) the name of the registered owner, (3) the names of the interested parties appearing in the reconstituted certificate of title, (4) the location of the property, and (5) the date on which all persons having an interest in the property, must appear and file such claims as they may have.[58]

Verily, while the CA invoked the appropriate provisions of R.A. No. 26, it failed, however, to take note that Section 9 thereof mandatorily requires that the notice shall specify, among other things, the number of the certificate of title and the names of the interested parties appearing in the reconstituted certificate of title. In this case, the RTC failed to indicate these jurisdictional facts in the notice.

First. The Notice of Hearing issued and published does not align with the *in rem* character of the reconstitution proceedings and the mandatory nature of the requirements under R.A. No. 26.[59] There is a mortal insufficiency in the publication when the missing title was merely identified as "*OCT No. (not legible)*" which is non-compliant with Section 9 of R.A. No. 26.

Moreover, while the LRA confirmed the issuance of Decree No. 444263 in its Report, it perplexes this Court that the LRA

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[58] *Republic of the Phils. v. Planes*, 430 Phil. 848, 868-869 (2002).

[59] *Republic v. Castro*, G.R. No. 172848, December 10, 2008, 573 SCRA 465, 474.

failed to state that an OCT was actually issued and mention the number of the OCT sought to be reconstituted. In *Republic of the Phils. v. El Gobierno De Las Islas Filipinas*,[60] this Court denied the petition for reconstitution of title despite the existence of a decree:

> We also find insufficient the index of decree showing that Decree No. 365835 was issued for Lot No. 1499, as a basis for reconstitution. We noticed that the name of the applicant as well as the date of the issuance of such decree was illegible. **While Decree No. 365835 existed in the Record Book of Cadastral Lots in the Land Registration Authority as stated in the Report submitted by it, however, the same report did not state the number of the original certificate of title, which is not sufficient evidence in support of the petition for reconstitution.** The deed of extrajudicial declaration of heirs with sale executed by Aguinaldo and Restituto Tumulak Perez and respondent on February 12, 1979 did not also mention the number of the original certificate of title but only Tax Declaration No. 00393. As we held in *Tahanan Development Corp. vs. Court of Appeals*, the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of such petition. (Emphasis supplied.)

Second. Respondent and the RTC overlooked that there are two parcels of land in this case. It is glaring that respondent had to amend his petition for reconstitution twice in order to state therein the names of the adjoining owners. Most importantly, the Notice of Hearing issued by the RTC failed to state the names of interested parties appearing in the OCT sought to be reconstituted, particularly the adjoining owners to Lot No. 1, namely, Benito Ferrer and Marcelo Monegas. While it is true that notices need not be sent to the adjoining owners in this case since this is not required under Sections 9 and 10 of R.A. No. 26 as enunciated in our ruling in *Puzon*, it is imperative, however, that the notice should specify the names of said interested

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[60] 498 Phil. 570, 582 (2005). Please also see *Pascua v. Republic*, G.R. No. 162097, February 13, 2008, 545 SCRA 186, 193-194 and *Republic v. Heirs of Julio Ramos*, G.R. No. 169481, February 22, 2010, 613 SCRA 314.

parties so named in the title sought to be reconstituted. No less than Section 9 of R.A. No. 26 mandates it.

Well-entrenched in this jurisdiction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum.* From the words of a statute there should be no departure.[61] In view of these lapses, the RTC did not acquire jurisdiction to proceed with the case since the mandatory manner or mode of obtaining jurisdiction as prescribed by R.A. No. 26 had not been strictly followed, thereby rendering the proceedings utterly null and void.[62] As such, while petitioner overlooked these jurisdictional infirmities and failed to incorporate them as additional issues in its own petition, this Court has sufficient authority to pass upon and resolve the same since they affect jurisdiction.[63]

Apropos is our ruling in *Castillo v. Republic*[64] where we held that:

> We cannot simply dismiss these defects as "technical." Liberal construction of the Rules of Court does not apply to land registration cases. Indeed, to further underscore the mandatory character of these jurisdictional requirements, the Rules of Court do not apply to land registration cases. In all cases where the authority of the courts to proceed is conferred by a statute, and when the manner of obtaining jurisdiction is prescribed by a statute, the mode of proceeding is mandatory, and must be strictly complied with, or the proceeding will be utterly void. When the trial court lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects. All the proceedings before the trial court, including its order granting the petition for reconstitution, are void for lack of jurisdiction.[65]

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[61] *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 250-251 (2005); *PNB v. Garcia, Jr.*, 437 Phil. 289, 291 & 295 (2002).

[62] See *Alabang Dev. Corp., et al. v. Hon. Valenzuela, etc., et al.*, 201 Phil. 727, 744 (1982).

[63] *Republic v. Heirs of Julio Ramos*, *supra* note 60, at 327.

[64] G.R. No. 182980, June 22, 2011, 652 SCRA 600.

[65] *Id.* at 614 (citations omitted).

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision dated July 31, 2008 of the Court of Appeals in CA-G.R. CV No. 87390 is **REVERSED** and **SET ASIDE**. The petition for reconstitution docketed as LRC No. V-0016, RTC, Villasis, Pangasinan, Branch 50, is **DISMISSED**.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185821. June 13, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ATTY. RICARDO D. GONZALEZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657; JUST COMPENSATION; SPECIAL AGRARIAN COURTS CANNOT DISREGARD THE FORMULA PROVIDED BY THE DEPARTMENT OF AGRARIAN REFORM FOR THE DETERMINATION THEREOF.— Without doubt, Section 17 of R.A. No. 6657 is the principal basis of the computation for just compensation in this case. The factors enumerated in Section 17 have been translated into a basic formula outlined in DAR A.O. No. 5, series of 1998, Item II x x x. While the determination of just compensation is essentially a judicial function vested in the RTC acting as a SAC, the judge cannot abuse his discretion

by not taking into full consideration the factors specifically identified by law and implementing rules. SACs are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. Simply put, courts cannot ignore, without violating the agrarian reform law, the formula provided by the DAR for the determination of just compensation.

2. ID.; ID.; ID.; ID.; ANNUAL GROSS PRODUCTION; REFERS TO THE ANNUAL GROSS PRODUCTION CORRESPONDING TO THE LATEST AVAILABLE TWELVE-MONTH'S GROSS PRODUCTION IMMEDIATELY PRECEDING THE DATE OF FIELD INVESTIGATION.— The SAC in this case actually used the formula as provided under DAR A.O. No. 5, series of 1998. However, as propounded by the LBP and as observed by this Court, the main difference lies with the AGP used in the valuation. Save for the AGP and the Market Value (MV) per Tax Declaration, the LBP and SAC's respective data coincide with one another. x x x DAR A.O. No. 5, series of 1998 clearly provides that the AGP for purposes of computing the CNI, is the annual gross production corresponding to the latest available 12-months' gross production immediately preceding the date of Field Investigation (FI). While the LBP relied on the Field Investigation Report for the 1,125 AGP, the SAC, on the other hand, failed to substantiate where the 3,375 AGP was based. Other than its bare statement regarding the devaluation of the Philippine Peso, the SAC failed to fully expound on how it determined the AGP. x x x [W]e sustain LBP's position that, considering the number of months per crop cycle of three, which is equivalent to four production periods per year, the average production per crop cycle per hectare would result only in 281.25 kilograms of copra. Thus, for one year, the AGP per hectare would only be 1,125 kilograms, or 281.25 kilograms multiplied by four production periods. Thus, we find the valuation of LBP of the subject property at ₱150,795.51 or at ₱50,265.17 per hectare just and proper under the circumstances. Clearly, the valuation of the subject property was based on reliable data gathered by the DAR and the LBP pursuant to the provisions of DAR A.O. No. 5, series of 1998, and contained in the Field Investigation Report.

3. ID.; ID.; ID.; ID.; DEVALUATION OF THE PHILIPPINE CURRENCY IS NOT AMONG THE FACTORS IN DETERMINING THE AMOUNT OF JUST COMPENSATION.— [W]hile the SAC actually used the formula provided in DAR AO No. 5, series of 1998, no reliable and verified production data was cited as basis of AGP. Instead, the SAC simply declared that it "took judicial notice of the fact that the value of the Philippine peso had nose dived ever since - from a low of ₱2.00 to a dollar to ₱55 to a dollar today." However, the devaluation of the Philippine currency is not among those factors enumerated in Section 17 of R.A. No. 6657, which the trial court is required to consider in determining the amount of just compensation. "(1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any."

4. POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; IN EXPROPRIATION CASES, INTEREST IS IMPOSED IN THE NATURE OF DAMAGES FOR THE DELAY IN PAYMENT.— It is established that in expropriation cases, interest is due the landowner if there was delay in payment. The imposition of interest is in the nature of damages for the delay in payment, which in effect makes the obligation on the part of the government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation. Records show that LBP fully paid respondent in the amount of ₱150,795.51 with dispatch, and he himself acknowledged the receipt thereof. Moreover, in *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated*, we held that the mere fact that LBP appealed the decisions of the SAC and the CA does not mean that LBP deliberately delayed the payment of just compensation to the landowner. Having only exercised its right to appeal, LBP cannot be penalized by making it pay for interest.

5. REMEDIAL LAW; RULES OF COURT; COSTS OF SUIT; THE LAND BANK OF THE PHILIPPINES IS EXEMPT FROM THE PAYMENT THEREOF AS IT PERFORMS A GOVERNMENTAL FUNCTION IN AGRARIAN REFORM PROCEEDING.— [W]e find that the CA committed a reversible error in not x x x deleting the imposition of costs of the suit against LBP. We hereby remind the SAC and the CA of our ruling in *Land Bank of the Philippines v. Rivera*, where we clearly held: "x x x the role of LBP in the CARP is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the Court of Appeals or to this Court, if appropriate. It is clear from the above discussions that **since LBP is performing a governmental function in agrarian reform proceeding, it is exempt from the payment of costs of suit** as provided under Rule 142, Section 1 of the Rules of Court."

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657; APPOINTMENT OF COMMISSIONERS; THE AWARD OF COMMISSIONERS' FEES IS WARRANTED IN CASE AT BAR SINCE BOTH PARTIES DID NOT OBJECT TO THE APPOINTMENT OF COMMISSIONERS; CASE AT BAR.— We held in *Lee v. Land Bank of the Philippines* that while the provisions of the Rules of Court apply to SAC proceedings, it is clear that, unlike in expropriation proceedings under the Rules of Court, the appointment of a commissioner or commissioners is discretionary on the part of the court or upon the instance of one of the parties. x x x Here, both parties did not object to the appointment of commissioners. x x x Accordingly, remand of the case for the determination of the proper amount of commissioners' fees is in order, pursuant to the x x x provision of the Rules of Court and jurisprudence. The SAC shall particularly determine the number of days which the Board

actually devoted to the performance of its duties. Since the Board in this case was constituted on March 3, 2000, and it rendered its Report on July 28, 2000, or prior to the increase in the rate of commissioner's fees, the old rate of ₱100.00 per day shall be applied.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

D E C I S I O N

VILLARAMA, JR., *J.*:

This Rule 45 Petition[1] seeks the reversal of the Court of Appeals (CA) July 30, 2008 Decision[2] in CA-G.R. SP No. 00502-MIN which affirmed with modification the February 3, 2005 Decision[3] of the Regional Trial Court (RTC) of Butuan City, Branch 5 sitting as a Special Agrarian Court (SAC). Also assailed is the appellate court's Resolution[4] dated December 12, 2008 denying petitioner's motion for reconsideration.

The Facts

Respondent Atty. Ricardo D. Gonzalez is the registered owner of two contiguous parcels of land devoted to coconut production, covered by Transfer Certificate of Title (TCT) No. T-3927[5] with an area of 9,790 square meters and TCT No. T-3928[6] with an area of 20,210 square meters, or a total of 3 hectares, located at Barangay Abilan, Buenavista, Agusan del Norte

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[1] *Rollo*, pp. 32-69.

[2] *Id.* at 73-84. Penned by Associate Justice Mario V. Lopez with Associate Justices Romulo V. Borja and Elihu A. Ybañez concurring.

[3] *Id.* at 176-185. Penned by Judge Augustus L. Calo.

[4] *Id.* at 87-91.

[5] *Id.* at 220.

[6] *Id.* at 221.

(subject property). The subject property was tenanted by spouses Virgilio and Espera Tagupa, spouses Valeriano and Erlinda Inoc, spouses Isidro and Eden Soria and spouses Rudy and Rosario Peligro (the tenants). It is situated only about 1 ½ kilometers from the national highway and 2-3 kilometers from the local beaches.

Pursuant to the Comprehensive Agrarian Reform Program (CARP), respondent voluntarily offered to sell the subject property to the Department of Agrarian Reform (DAR) for ₱250,000.00 per hectare on December 9, 1996.[7] By way of reply to the Municipal Agrarian Reform Officer's (MARO) letter dated January 24, 1997, respondent, in his Letter[8] dated February 5, 1997, informed the MARO, among others, that the average coconut production of the subject property from 1994 to 1996 is at 75,000 kilograms with a price average of ₱2.00, and that its average annual net income is ₱100,000.00. Representatives of petitioner Land Bank of the Philippines (LBP), the DAR and the Barangay Agrarian Reform Committee (BARC) conducted an ocular inspection of the subject property, and issued a Field Investigation Report[9] on February 5, 1997. Pursuant to DAR Administrative Order (A.O.) No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, the DAR and the LBP valued the subject property at ₱150,795.51 or at ₱50,265.17 per hectare. Respondent rejected the valuation but the LBP deposited ₱60,318.20 of the said sum in cash and ₱90,477.31 thereof in bonds[10] in the name of respondent.[11] Respondent acknowledged the receipt thereof.[12]

The case was then referred to the Regional Agrarian Reform Adjudicator (RARAD) for the Caraga Region XIII for summary

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[7] Records, p. 200.

[8] *Id.* at 71.

[9] *Id.* at 172-178.

[10] *Id.* at 179-184.

[11] *Rollo*, p. 209.

[12] Records, p. 201.

administrative hearing. In an Order[13] dated October 27, 1998, the RARAD affirmed the valuation made by the DAR and the LBP since DAR A.O. No. 5, series of 1998[14] was applied in coming up with the valuation.

Disappointed with the low valuation, respondent filed before the SAC a petition for just compensation against the LBP, the DAR and the tenants of the subject property on November 12, 1998.[15]

In his Amended Petition[16] dated January 5, 1999, respondent alleged that, in his desire to make his tenants the owners of the subject property, he voluntarily offered to sell the subject property for ₱250,000.00 per hectare taking into consideration the subject property's productivity, advantageous location, peaceful surroundings and the mode of installment payments. Respondent also alleged that his TCTs were already cancelled in favor of the Government, and that Certificates of Land Ownership Awards (CLOAs) were already generated in favor of the tenants.

With the conformity of the parties, the SAC appointed on March 3, 2000 Engr. Gil A. Guigayoma, Mr. Simeon E. Avila, Jr. and Atty. Fernando R. Fudalan, Jr. as members of the Board of Commissioners (the Board) to determine the amount of just compensation due to respondent.[17] In its Report[18] dated July 28, 2000, the Board recommended that the portion of the subject property devoted to coconut production be valued at ₱100,000.00 excluding the value of the trees planted thereon, valued at ₱400.00 per tree, and that the portion devoted to rice production be valued at ₱150,000.00. Both parties objected to the said report.

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[13] CA *rollo*, p. 88.

[14] Entitled "REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657."

[15] Records, pp. 1-3.

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

[17] *Id.* at 78.

[18] *Id.* at 83-85.

The SAC's Ruling

On February 3, 2005, the SAC held that respondent's asking price of ₱250,000.00 per hectare was quite high while LBP's valuation of ₱50,265.17 per hectare was considerably low. Thus, the SAC came up with the following computation:

xxx xxx xxx

Below is the formula used by LBP in the valuation of lands covered by VOS or CA regardless of the date of offer or coverage:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

Where:

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

More often the CS factor is not available, hence, the formula shall be:

$$LV = (CNI \times 0.9) + (MV \times 0.1)$$
$$CNI = \frac{(AGP \times SP)\ 70\%}{.12}$$

Where:

AGP = Average Gross Production (latest available 12 months)

SP = Selling Price (average of the latest available 12 months [)]

CO = Cost of Operations

$$CNI = \frac{(3{,}375 \times 7.96)\ 70\%}{.12}$$

$$= \frac{(26[,]865)\ 70\%}{.12}$$

= 18[,]805.50
= 156,712.50

LV = (156,712.50 x 0.9) + (28[,]630 x 0.1)
= 141[,]041.25 + 2[,8]63
= 143,904.25 (x3)
= ₱431,712.75
= = = = = =

xxx xxx xxx[19]

The SAC opined that 143,904.25 per hectare was the fair valuation of the subject property. The SAC took judicial notice of the fact that "*the value of the Philippine peso had nose[-]dived ever since – from a low of ₱2.00 to a dollar to ₱55[.00] to a dollar*."[20] Thus, the SAC disposed of the case in this wise:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering public respondents to pay to the plaintiff the following:

1) ₱143,904.25/hectare or a total of ₱431,712.75 for the 3 hectares land of the plaintiff;

2) ₱25,000.00 as Commissioners' fees;

3) Ten percent (10%) of the total amount due as attorney's fees; and

4) Cost of the suit.

SO ORDERED.[21]

Both the DAR and LBP sought reconsideration of the decision but the SAC denied their respective motion in a Resolution[22] dated June 23, 2005. Aggrieved, LBP appealed the decision to the CA.

The CA's Ruling

On July 30, 2008, the CA affirmed the findings and the ruling of the SAC. Invoking our ruling in *Apo Fruits Corporation v.*

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[19] *Supra* note 3, at 184-185.

[20] *Id.* at 184.

[21] *Id.* at 185.

[22] Records, p. 254.

Court of Appeals,[23] the CA held that DAR A.O. No. 5, series of 1998 cannot strictly bind the courts which, in the exercise of their judicial discretion, can make their own computation pursuant to Section 17[24] of Republic Act (R.A.) No. 6657. The CA found that the SAC actually took into consideration factors enumerated in said Section 17 in the valuation of the subject property, and said that the valuation was supported by evidence on record. On the matter of the imposed commissioners' fees, the CA decreed that LBP, being the defeated party, must bear the same. However, the CA opined that the SAC failed to substantiate and justify the award of attorney's fees. Thus, the CA deleted the same. The *fallo* of the said CA Decision reads:

> **WHEREFORE**, the petition for review is **PARTLY GRANTED**. The Decision dated 3 February 2005 of the Regional Trial Court, Branch 5 of Butuan City sitting as a Special Agrarian Court in Civil Case No. 4797 for Just Compensation is hereby **AFFIRMED** with **MODIFICATION** that the award of attorney's fees is **DELETED**.
>
> **SO ORDERED**.[25]

LBP filed a motion for reconsideration, but the CA denied the same in its Resolution[26] dated December 12, 2008.

Hence this petition, raising the following questions:

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[23] G.R. No. 164195, December 19, 2007, 541 SCRA 117.

[24] Section 17 of R.A. No. 6657 states:

SEC. 17. *Determination of Just Compensation.*— In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[25] *Supra* note 2, at 83.

[26] *Id.* at 87-91.

1) CAN THE COURT OF APPEALS DISREGARD THE VALUATION FACTORS UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 05, SERIES OF 1998, AS AMENDED, IN FIXING THE JUST COMPENSATION OF THE SUBJECT PROPERTY OF THE RESPONDENT?

2) IS PETITIONER LBP LIABLE FOR COMMISSIONERS' FEE CONSIDERING THAT IT IS PERFORMING A GOVERNMENTAL FUNCTION? IF SO, HOW MUCH?[27]

LBP avers that the compensation fixed by the SAC in the amount of ₱143,904.25 per hectare violated Section 17 of R.A. No. 6657 as translated into a basic formula in DAR A.O. No. 5, series of 1998; that the SAC's valuation as affirmed by the CA and the LBP's valuation differ as to the proper Average Gross Production (AGP) because the LBP used an AGP of 1,125 kilograms of copra per hectare while the SAC used an exorbitant AGP of 3,375 kilograms of copra per hectare, or three (3) times the figure of LBP's determined AGP which was based on the Field Investigation Report; that the SAC failed to explain how it arrived at a high AGP of 3,375 kilograms of copra per hectare; and that the AGP which LBP used can be easily deduced from the Field Investigation Report, duly signed by the representatives of the DAR, the LBP and the BARC. The LBP submits that the SAC overstated the value of the subject property by three times since the SAC merely multiplied the AGP per hectare as jointly determined by the LBP, the DAR and the BARC by 3 hectares. The LBP explains that the AGP of 3,375 kilograms of copra per hectare used by the SAC is highly improbable since per ocular inspection, only 100 trees per hectare were found, and the number of nuts per kilogram was reported to be 4. The LBP further explains that per Philippine Coconut Authority (PCA) Data mentioned in the Field Investigation Report, the number of nuts per tree per year is 45. Thus, considering that the average production per crop cycle per hectare would result only in 281.25 kilograms, for one year, the average gross

[27] *Supra* note 1, at 43-44.

production per hectare would only be 1,125 kilograms, *i.e.*, 281.25 kilograms multiplied by 4 production periods. The LBP claims that subscribing to respondent's position of 3,375 kilograms of copra per hectare would mean that there are 300 trees per hectare which is not anymore realistic. Hence, the LBP posits that the compensation fixed by the SAC and affirmed by the CA was not computed in accordance with DAR A.O. No. 5, series of 1998. Moreover, LBP opines that it cannot be held liable for commissioners' fees and costs of the suit. Relying on our ruling in *Republic v. Garcia*,[28] the LBP claims that there is no law which requires the Government to pay costs in eminent domain proceedings. Since the commissioners' fees in expropriation cases are taxed as part of the costs and the government is not liable for costs, the LBP, serving as the financial intermediary of the government in the implementation of the CARP is not liable for costs.[29]

On the other hand, respondent contends that the SAC and the CA even erred in computing the just compensation because, as established by the evidence on record, the tenants produced a total of 18,603 kilograms of coconut per year; that said total production should be used as the AGP in this case, and thus, the correct valuation of the subject property should be in the amount of ₱591,559.50; that with respect to the determination of just compensation, courts are not bound by the findings of administrative agencies such as the LBP because the courts are the final authority in this matter; and that, while the valuation made by the courts in the amount of ₱143,904.25 per hectare is below his asking price of ₱250,000.00 per hectare, said amount may be considered as reasonable under the circumstances. Respondent insists that his proposed valuation is supported by actual data as compared to the PCA's data which is based merely on a national average. Respondent likewise submits that the law did not intend to impoverish the landowners. Moreover, respondent claims that 12% interest and attorney's fees may be imposed in this case due to the long delay of payment incurred

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[28] G.R. No. L-24441, March 10, 1977, 76 SCRA 47, 49.

[29] *Rollo*, pp. 424-450.

by LBP. Finally, respondent argues that LBP should shoulder the costs of the suit since it was exercising proprietary and not governmental functions in making the valuation over the subject property.[30]

Our Ruling

The petition is impressed with merit.

Without doubt, Section 17 of R.A. No. 6657 is the principal basis of the computation for just compensation in this case. The factors enumerated in Section 17 have been translated into a basic formula outlined in DAR A.O. No. 5, series of 1998,[31] Item II of which pertinently provides:

> II. The following rules and regulations are hereby promulgated to govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).
>
> A. There shall be one basic formula for the valuation of lands covered by VOS or CA:
>
> LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
>
> Where: LV = Land Value
> CNI = Capitalized Net Income
> CS = Comparable Sales
> MV = Market Value per Tax Declaration
>
> The above formula shall be used if all the three factors are present, relevant, and applicable.
>
> A.1 **When the CS factor is not present and CNI and MV are applicable, the formula shall be:**
>
> **LV = (CNI x 0.9) + (MV x 0.1)**
>
> xxx xxx xxx

[30] *Id.* at 464-471.

[31] *Land Bank of the Philippines v. Barrido*, G.R. No. 183688, August 18, 2010, 628 SCRA 454, 458.

A.7 In all of the above, the computed value using the applicable formula shall in no case exceed the LO's offer in case of VOS.

The LO's offer shall be grossed up from the date of the offer up to the date of receipt of CF [Claim Folder] by LBP from DAR for processing.

A.8 For purposes of this Administrative Order, the date of receipt of CF by LBP from DAR shall mean the date when the CF is determined by the LBP-LVLCO to be complete with all the required documents and valuation inputs duly verified and validated, and ready for final computation/processing.

xxx xxx xxx

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{0.12}$$

Where: CNI = Capitalized Net Income

AGP = Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceding the date of [Field Investigation (FI)].

SP = The average of the latest available 12-months' selling prices prior to the date of receipt of the CF by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. **Landholdings planted to coconut which are productive at the time of the FI shall continue to use the assumed NIR of 70%.** DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

0.12 = Capitalization Rate

B.1 **Industry data on production, cost of operations and selling price shall be obtained from government/ private entities**. Such entities shall include, **but not be limited** to, the **Department of Agriculture (DA)**, the Sugar Regulatory Authority (SRA), **the Philippine Coconut Authority (PCA) and other private persons/ entities knowledgeable in the concerned industry**.

B.2 The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include, among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. **These data shall be validated/verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel. The actual tenants/ farmworkers of the subject property will be the primary source of information for purposes of verification or, if not available, the tenants/ farmworkers of adjoining property.**

In case of failure by the landowner to submit the statement within fifteen (15) days from the date of receipt of letter-request as certified by the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated, DAR and LBP may adopt any applicable industry data or, in the absence ther[e]of, conduct an industry study on the specific crop which will be used in determining the

production, cost and net income of the subject landholding.

xxx xxx xxx

D. In the Computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SUMV) issued prior to receipt of CF by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of CF by LBP from DAR for processing, in accordance with Item II.A.9.

xxx xxx xxx (Emphasis supplied.)

While the determination of just compensation is essentially a judicial function vested in the RTC acting as a SAC, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. SACs are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. Simply put, courts cannot ignore, without violating the agrarian reform law, the formula provided by the DAR for the determination of just compensation.[32]

There being no available information on Comparable Sales (CS), the applicable formula is LV = (CNI x 0.90) + (MV x 0.10). To determine the CNI in this case, the LBP gathered the necessary data on annual gross production (AGP), selling price (SP) of copra and net income rate (NIR).

The SAC in this case actually used the formula as provided under DAR A.O. No. 5, series of 1998. However, as propounded by the LBP and as observed by this Court, the main difference lies with the AGP used in the valuation. Save for the AGP and the Market Value (MV) per Tax Declaration, the LBP and SAC's respective data coincide with one another. Thus, we take note

[32] *Allied Banking Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 311 & 313-314, citing *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 506-507.

of the comparative valuations as outlined by LBP and as found on record, to wit:

LBP	SAC
CNI = $\frac{(\textbf{1,125} \text{ x } 7.96)\ 70\%}{.12}$ = $\frac{(8{,}955)\ 70\%}{.12}$ = 52,237.50 LV = (52,237.50 x 0.9) + (**32,514.15** x 0.1) = 47,013.75 + 3,251.42 = 50,265.17 = **₱150,795.51**	CNI = $\frac{(\textbf{3,375} \text{ x } 7.96)\ 70\%}{.12}$ = $\frac{(26[,]865)\ 70\%}{.12}$ = 156,712.50 LV = (156,712.50 x 0.9) + (**28[,]630** x 0.1) = 141[,]041.25 + 2[,]863 = 143,904.25 [(x3)] = **₱431,712.75**[33] (Emphasis supplied.)

DAR A.O. No. 5, series of 1998 clearly provides that the AGP for purposes of computing the CNI, is the annual gross production corresponding to the latest available 12-months' gross production immediately preceding the date of Field Investigation (FI). While the LBP relied on the Field Investigation Report for the 1,125 AGP, the SAC, on the other hand, failed to substantiate where the 3,375 AGP was based. Other than its bare statement regarding the devaluation of the Philippine Peso, the SAC failed to fully expound on how it determined the AGP.

When the Field Investigation was conducted by the DAR, the LBP and the BARC, DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994 was in full force and effect. Item II, particularly B.1 and B. 2 of said DAR A.O.s can be essentially found in DAR A.O. No. 5, series of 1998. Thus:

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[33] *Rollo*, p. 430. LBP came up with an AGP of 1,125 while the SAC came up with an AGP of 3,375. Moreover, LBP accorded the subject property a higher Market Value per Tax Declaration in the amount of ₱32,514.15 as compared to that of the SAC in the amount of ₱28,630.00.

B.1 **Industry data on production, cost of operations and selling price shall be obtained from government/private entities**. Such entities shall include, **but not be limited** to, the **Department of Agriculture (DA)**, the Sugar Regulatory Authority (SRA), **the Philippine Coconut Authority (PCA)** and other private persons/entities knowledgeable in the concerned industry.

B.2 The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include, among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. **These data shall be validated/ verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel.** The **actual tenants/ farmworkers** of the subject property will be the **primary source of information** for purposes of verification or, if not available, the tenants/farmworkers of adjoining property**.**

In case of failure by the landowner to submit the statement within fifteen (15) days from the date of receipt of letter-request as certified by the Municipal Agrarian Reform Office (MARO) **or the data stated therein cannot be verified/ validated, DAR and LBP may adopt any applicable industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding**.

xxx xxx xxx (Emphasis supplied.)

In this case, respondent's February 5, 1997 letter to the MARO stated:

> The average coco production from 1994 to 1996 is 75,000 kilos with a price average of ₱2.00. Our average annual net income is ₱100,000.[34]

As mentioned, other than the above statement, no other data or supporting document was submitted by respondent to the MARO. During trial before the SAC, respondent presented as witnesses his tenants who identified some photographs taken

[34] *Supra* note 8.

of the coconut trees planted on the landholding, as well as photocopies of certain handwritten lists signed only by them but which are supposedly the "delivery receipts" to the coco buyer, J.R. Marketing. These were offered to prove the tenants' receipt of share in the harvest and to further show "that the subject land is productive and planted to high yielding coco trees which are in their most productive age."[35] While he was testifying in court, respondent was asked why is he asking for ₱250,000.00 when his yearly production is only 2,000 kilos. He replied that such price is what he thought to be a fair return considering the mode of payment by the government. He also explained that he was unable to provide the required data for the field investigation and instead submitted receipts or "*pesadas*" signed by his tenants, which were prepared/reconstructed by his secretary shortly after the case was filed in court.[36]

Failing to secure such record of net income and actual production of the subject landholding from the landowner and tenants, the MARO team proceeded with the field investigation conducted jointly by DAR, petitioner LBP and BARC. The Field Investigation Report readily discloses that only 300 coconut trees were found in the subject property. Pertinent data were anchored from the PCA data, particularly data for the Municipality of Buenavista, Agusan del Norte where the subject property is located,[37] and from the data provided by the Bureau of Agricultural Statistics of the Department of Agriculture, specifically for the Province of Agusan del Norte.[38] According to the PCA, the number of nuts per tree per year in the locality is 45. This PCA data finds support in the Tax Declaration[39] on record which classified the subject property as a third class coconut land. As such, the same produces less than 33 nuts

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[35] *Id.* at 63.

[36] TSN, December 22, 1999, pp. 13, 18-19.

[37] Records, p. 186.

[38] *Id.* at 188-195.

[39] *Id.* at 196.

annually per tree according to the Provincial Assessor of Agusan del Norte.[40]

In the light of the foregoing, we sustain LBP's position that, considering the number of months per crop cycle of three, which is equivalent to four production periods per year, the average production per crop cycle per hectare would result only in 281.25 kilograms of copra. Thus, for one year, the AGP per hectare would only be 1,125 kilograms, or 281.25 kilograms multiplied by four production periods. Thus, we find the valuation of LBP of the subject property at ₱150,795.51 or at ₱50,265.17 per hectare just and proper under the circumstances. Clearly, the valuation of the subject property was based on reliable data gathered by the DAR and the LBP pursuant to the provisions of DAR A.O. No. 5, series of 1998, and contained in the Field Investigation Report.[41]

We emphasize anew that while the SAC actually used the formula provided in DAR AO No. 5, series of 1998, no reliable and verified production data was cited as basis of AGP. Instead, the SAC simply declared that it "took judicial notice of the fact that the value of the Philippine peso had nose dived ever since - from a low of ₱2.00 to a dollar to ₱55 to a dollar today." However, the devaluation of the Philippine currency is not among those factors enumerated in Section 17 of R.A. No. 6657, which the trial court is required to consider in determining the amount of just compensation.

(1) the acquisition cost of the land;

(2) the current value of the properties;

(3) its nature, actual use, and income;

(4) the sworn valuation by the owner;

(5) the tax declarations;

(6) the assessment made by government assessors;

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[40] *Id.* at 197.

[41] See *Land Bank of the Philippines v. Colarina*, G.R. No. 176410, September 1, 2010, 629 SCRA 614, 640.

(7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and

(8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.

In sum, we find LBP's valuation sufficiently substantiated and in accordance with Section 17 of R.A. No. 6657 and DAR A.O. No. 5, series of 1998.[42]

We also cannot subscribe to respondent's postulation that interest should be imposed in this case.

It is established that in expropriation cases, interest is due the landowner if there was delay in payment. The imposition of interest is in the nature of damages for the delay in payment, which in effect makes the obligation on the part of the government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation.[43] Records show that LBP fully paid respondent in the amount of ₱150,795.51 with dispatch, and he himself acknowledged the receipt thereof. Moreover, in *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated*,[44] we held that the mere fact that LBP appealed the decisions of the SAC and the CA does not mean that LBP deliberately delayed the payment of just compensation to the landowner. Having only exercised its right to appeal, LBP cannot be penalized by making it pay for interest.

While we affirm the CA in deleting the award of attorney's fees, we find that the CA committed a reversible error in not likewise deleting the imposition of costs of the suit against LBP.

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[42] *Land Bank of the Philippines v. Department of Agrarian Reform*, G.R. No. 171840, April 4, 2011, 647 SCRA 152, 169.

[43] *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83, 100 (2004), citing *Reyes v. National Housing Authority*, 443 Phil. 603, 616 (2003) and *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611, 623. Please also see *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 2010, 632 SCRA 504, 516.

[44] G.R. Nos. 177404 and 178097, June 25, 2009, 591 SCRA 1, 23.

We hereby remind the SAC and the CA of our ruling in *Land Bank of the Philippines v. Rivera*,[45] where we clearly held:

> x x x the role of LBP in the CARP is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the Court of Appeals or to this Court, if appropriate.
>
> It is clear from the above discussions that **since LBP is performing a governmental function in agrarian reform proceeding, it is exempt from the payment of costs of suit** as provided under Rule 142, Section 1 of the Rules of Court.[46] (Emphasis supplied.)

Finally, on the issue on commissioners' fees. We held in *Lee v. Land Bank of the Philippines*[47] that while the provisions of the Rules of Court apply to SAC proceedings, it is clear that, unlike in expropriation proceedings under the Rules of Court, the appointment of a commissioner or commissioners is discretionary on the part of the court or upon the instance of one of the parties. Section 58 of R.A. No. 6657 provides:

> SEC. 58. *Appointment of Commissioners.* — The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute, including the valuation of properties, and to file a written report thereof with the court.

Here, both parties did not object to the appointment of commissioners. Our ruling in *Apo Fruits*[48] is instructive:

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[45] G.R. No. 182431, November 17, 2010, 635 SCRA 285.

[46] *Id.* at 299.

[47] G.R. No. 170422, March 7, 2008, 548 SCRA 52, 62-63.

[48] *Supra* note 23.

The relevant law is found in Rule 67, Section 12 of the Rules of Court:

> "SEC. 12. *Costs, by whom paid*. — The fees of the commissioners shall be taxed as a part of the costs of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner."

Rule 141, Section 16 of the Rules of Court, provides that:

> "SEC. 16. *Fees of commissioners in eminent domain proceedings*. — The commissioners appointed to appraise land sought to be condemned for public uses in accordance with these rules shall each receive a compensation to be fixed by the court of NOT LESS THAN THREE HUNDRED (₱300.00) PESOS per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings."

From the afore-quoted provision, the award made by the RTC is way beyond that allowed under Rule 141, Section 16; thus, the award is excessive and without justification. Records show that the commissioners were constituted on 26 May 2000 and they submitted their appraisal report on 21 May 2001, when the old schedule of legal fees was in effect. The amendment in Rule 141 introduced by A.M. No. 04-2-04-SC, which took effect on 16 August 2004, increased the commissioner's fees from ₱100.00 to ₱300.00 per day. Assuming they devoted all the 360 days from the time they were constituted until the time they submitted the appraisal report in the performance of their duties, and applying the old rate for commissioner's fees, they would only receive ₱38,000.00. Moreover, even if the new rate is applied, each commissioner would receive only ₱108,000.00. The rule above-quoted is very clear on the amount of commissioner's fees. The award made by the RTC in the amount of 2½% of the total amount of just compensation, *i.e.*, 2½% of ₱1,383, ₱179,000.00, which translates to ₱34,579,475.00, is certainly unjustified and excessive. x x x[49]

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[49] *Id.* at 143-144.

Accordingly, remand of the case for the determination of the proper amount of commissioners' fees is in order, pursuant to the aforecited provision of the Rules of Court and jurisprudence. The SAC shall particularly determine the number of days which the Board actually devoted to the performance of its duties. Since the Board in this case was constituted on March 3, 2000, and it rendered its Report on July 28, 2000, or prior to the increase in the rate of commissioner's fees, the old rate of ₱100.00 per day shall be applied.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 30, 2008 and Resolution dated December 12, 2008 of the Court of Appeals in CA-G.R. SP No. 00502-MIN are hereby **REVERSED** and **SET ASIDE.** The Court **DECLARES** the valuation made by Land Bank of the Philippines in the total amount of ₱150,795.51 as just compensation for the properties of respondent Atty. Ricardo D. Gonzalez covered by Transfer Certificates of Title Nos. T-3927 and T-3928.

The Regional Trial Court of Butuan City, Branch 5, is hereby **DIRECTED** to determine the commissioners' fee in Civil Case No. 4797 strictly in accordance with Section 12, Rule 67 and Section 16, Rule 141 of the Rules of Court.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186732. June 13, 2013]

ALPS TRANSPORTATION and/or ALFREDO E. PEREZ, *petitioners, vs.* **ELPIDIO M. RODRIGUEZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE EMPLOYER MUST COMPLY WITH BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIREMENTS FOR A DISMISSAL TO BE VALID.— For a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 of the Labor Code. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.

2. ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TERMINATION OF AN EMPLOYEE WAS FOR A JUST OR AUTHORIZED CAUSE.— The Labor Code provides that the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.

3. ID.; ID.; ID.; NOTICE AND HEARING REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR.— Turning to the issue of procedural due process, both parties are in agreement that Rodriguez was not given a written notice specifying the grounds for his termination and giving him a reasonable opportunity to explain his side; a hearing which would have given him the opportunity to respond to the charge and present evidence in his favor; and a written notice of termination indicating that after considering all the circumstances,

management has concluded that his dismissal is warranted. Clearly, therefore, the inescapable conclusion is that procedural due process is wanting in the case at bar.

4. ID.; ID.; ID.; REINSTATEMENT AND PAYMENT OF BACKWAGES; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED THERETO.— An illegally dismissed employee is entitled to the twin remedies of reinstatement and payment of full backwages. x x x [T]he CA committed no reversible error in upholding the NLRC's order to reinstate Rodriguez and in directing the payment of his full backwages, from the time he was illegally dismissed until his actual reinstatement.

5. ID.; ID.; LABOR STANDARDS; LABOR-ONLY CONTRACTING; A LABOR-ONLY CONTRACTOR IS DEEMED TO BE AN AGENT OF THE EMPLOYER WHO IS RESPONSIBLE TO THE EMPLOYEES IN THE SAME MANNER AND EXTENT AS IF THEY WERE DIRECTLY EMPLOYED BY HIM.— "The presumption is that a contractor is a labor-only contractor unless he overcomes the burden of proving that it has substantial capital, investment, tools, and the like." While ALPS Transportation is not the contractor itself, since it is invoking Contact Tours' status as a legitimate job contractor in order to avoid liability, it bears the burden of proving that Contact Tours is an independent contractor. It is thus incumbent upon ALPS Transportation to present sufficient proof that Contact Tours has substantial capital, investment and tools in order to successfully impute liability to the latter. However, aside from making bare assertions and offering the *Kasunduan* between Rodriguez and Contact Tours in evidence, ALPS Transportation has failed to present any proof to substantiate the former's status as a legitimate job contractor. Hence, the legal presumption that Contact Tours is a labor-only contractor has not been overcome. As a labor-only contractor, therefore, Contact Tours is deemed to be an agent of ALPS Transportation. Thus, the latter is responsible to Contact Tours' employees in the same manner and to the same extent as if they were directly employed by the bus company.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; IN A SOLE PROPRIETORSHIP, A DECISION OF ILLEGAL DISMISSAL IS TO BE ENFORCED AGAINST THE OWNER.— [T]he CA correctly

ruled that since ALPS Transportation is a sole proprietorship owned by petitioner Alfredo Perez, it is he who must be held liable for the payment of backwages to Rodriguez. A sole proprietorship does not possess a juridical personality separate and distinct from that of the owner of the enterprise. Thus, the owner has unlimited personal liability for all the debts and obligations of the business, and it is against him that a decision for illegal dismissal is to be enforced.

APPEARANCES OF COUNSEL

Aris J. Talens for petitioners.

Florencio Lameyra for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 100163.

THE FACTS

Respondent Elpidio Rodriguez (Rodriguez) was previously employed as a bus conductor.[4] He entered into an employment contract with Contact Tours Manpower[5] (Contact Tours) and

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[1] *Rollo*, pp. 3-18; Petition dated 18 March 2009.

[2] *Id.* at 22-39; CA Decision dated 30 September 2008, penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] *Id.* at 41-43; CA Resolution dated 18 February 2009, penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[4] *Id.* at 48; *Sinumpaang Salaysay* dated 10 October 2005.

[5] *Id.* at 56; *Kasunduan* dated 5 October 2004.

was assigned to work with petitioner bus company, ALPS Transportation.[6]

During the course of his employment, Rodriguez was found to have committed irregularities on 26 April 2003,[7] 12 October 2003,[8] and 26 January 2005.[9] The latest irregularity report dated 26 January 2005 stated that he had collected bus fares without issuing corresponding tickets to passengers. The report was annotated with the word "Terminate."[10]

Rodriguez alleged that he was dismissed from his employment on 27 January 2005, or the day after the issuance of the last irregularity report. However, he did not receive any written notice of termination.[11] He went back to the bus company a number of times, but it refused to readmit him.[12]

On 11 August 2005, Rodriguez filed before the labor arbiter a complaint for illegal dismissal, nonpayment of 13th month pay, and damages against ALPS Transportation and Alfredo Perez, the proprietor of petitioner bus company.[13]

In response to the complaint, petitioners stated that they did not have any prerogative to dismiss Rodriguez, as he was not their employee, but that of Contact Tours.[14] In fact, based on

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[6] *Id.* at 50; Position Paper of ALPS Transportation dated 20 September 2005.

[7] *Id.* at 58; Irregularity Report dated 26 April 2003, citing the nature of the violation as "Transfer no items."

[8] *Id.* at 59; Irregularity Report dated 12 October 2003, citing the nature of the violation as "Short ticket [no] fare collected."

[9] *Id.* at 57; Irregularity Report dated 26 January 2005, citing the nature of the violation as "…[Non] issuance of ticket but fare collected from one of the passenger[s]."

[10] *Id.*

[11] *Id.* at 48; *Sinumpaang Salaysay* dated 10 October 2005.

[12] *Id.*

[13] *Id.* at 23; CA Decision dated 30 September 2008.

[14] *Id.* at 52-53; Position Paper of ALPS Transportation dated 20 September 2005.

their agreement with Contact Tours, it was supposedly the latter that had the obligation to inform respondent of the contents of the reports and to decide on the appropriate sanctions.[15] Petitioners further explained that due to the issuance of the three irregularity reports against Rodriguez, they wrote to Contact Tours and recommended the termination of respondent's assignment to them.[16]

During the pendency of the illegal dismissal case before the labor arbiter, ALPS Transportation charged Rodriguez with theft before the Office of the Provincial Prosecutor of Tanauan, Batangas.[17] However, petitioners eventually filed an Affidavit of Desistance and withdrew the criminal charges against respondent.[18]

On 12 January 2006, the labor arbiter dismissed the illegal dismissal complaint for lack of merit.[19] He explained that no evidence had been adduced to support the contention of Rodriguez that the latter had been terminated on 27 January 2005.[20] Moreover, during the mandatory conference, the representative of Contact Tours manifested that the company had not dismissed Rodriguez, and that it was in fact willing to reinstate him to his former position.[21] Thus, the labor arbiter concluded that Rodriguez had not been illegally dismissed, and was actually an employee of Contact Tours, and not of ALPS Transportation.[22]

Rodriguez appealed the dismissal to the National Labor Relations Commission (NLRC). On 28 February 2007, the NLRC

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[15] *Id*.

[16] *Id.* at 50.

[17] *Id.* at 24-25; CA Decision dated 30 September 2008.

[18] *Id*.

[19] *Id.* at 68; Labor Arbiter's Decision dated 12 January 2006.

[20] *Id*.

[21] *Id*.

[22] *Id*.

set aside the decision of the labor arbiter and entered a new one, the dispositive portion of which reads:

> WHEREFORE, the assailed Decision dated January 12, 2006 is hereby SET ASIDE and a new one is being entered, directing the respondents to reinstate the complainant to his former position without loss of seniority rights and privileges but without backwages.
>
> SO ORDERED.[23]

In so concluding, the NLRC ruled that Contact Tours was a labor-only contractor. [24] Thus, Rodriguez should be considered as a regular employee of ALPS Transportation.[25]

As regards the claim of illegal dismissal, the NLRC found that Rodriguez failed to prove that his services were illegally terminated by petitioners, and that he was prevented from returning to work.[26] However, the bus company likewise failed to prove that he had abandoned his work.[27] Thus, citing previous rulings of this Court, the NLRC held that in case the parties fail to prove either abandonment or termination, the employer should order the employee to report back for work, accept the latter, and reinstate the employee to the latter's former position. However, an award for backwages is not warranted, as the parties must bear the burden of their own loss.[28]

Dissatisfied with the ruling of the NLRC, Rodriguez filed a Rule 65 Petition for *Certiorari* with the CA.

After a review of the records, the CA concluded that the NLRC acted with grave abuse of discretion in rendering the assailed decision. The appellate court ruled that, in termination cases, it is the employer who bears the burden of proving that

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[23] *Id.* at 91.

[24] *Id.* at 87; NLRC Decision dated 28 February 2007.

[25] *Id.* at 88.

[26] *Id.*

[27] *Id.* at 88-89.

[28] *Id.* at 89-90.

the employee was not illegally dismissed.[29] Here, the CA found that ALPS Transportation failed to present convincing evidence that Rodriguez had indeed collected bus fares without issuing corresponding tickets to passengers. The appellate court held that the irregularity reports were mere allegations, the truth of which had not been established by evidence.[30]

Moreover, the CA gave no credence to ALPS Transportation's argument that Rodriguez had not yet been terminated when he filed the illegal dismissal complaint, as he had not yet received any notice of termination.[31] The appellate court explained that, before the illegal dismissal complaint was filed, more than six months had lapsed since respondent was last given a bus assignment by ALPS Transportation.[32] Thus, the CA concluded that the argument of the bus company was only an excuse to cover up the latter's mistake in terminating him without due process of law.[33]

The CA then ordered ALPS Transportation to reinstate Rodriguez and to pay him full backwages, *viz*:

> **WHEREFORE**, the petition is **GRANTED**. Alfredo Perez is declared guilty of having committed illegal dismissal. Accordingly, only the portions of the assailed dispositions ordering the reinstatement of Elpidio Rodriguez to his former position without loss of seniority rights is **AFFIRMED** and the phrase, "but without backwages" is **ANNULLED and SET ASIDE**. In lieu thereof, Alfredo Perez is **ORDERED** to pay Elpidio Rodriguez backwages computed from the time he was illegally dismissed until his actual reinstatement. No costs.
>
> **SO ORDERED**.[34]

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[29] *Id.* at 31. CA Decision dated 30 September 2008.

[30] *Id.* at 32.

[31] *Id.* at 33.

[32] *Id.* at 34.

[33] *Id.* at 35.

[34] *Id.* at 38.

Aggrieved by the appellate court's decision, petitioners filed the instant Rule 45 Petition before this Court.

THE ISSUES

As culled from the records and the submissions of the parties, the issues in this case are as follows:

1. Whether respondent Rodriguez was validly dismissed; and
2. Assuming that respondent was illegally dismissed, whether ALPS Transportation and/or Alfredo E. Perez is liable for the dismissal.

THE COURT'S RULING

We uphold the assailed Decision and Resolution and rule that respondent Rodriguez has been illegally dismissed.

For a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements.[35] Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 of the Labor Code.[36] Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[37]

Thus, to determine the validity of Rodriguez's dismissal, we first discuss whether his employment was terminated for a just cause.

Petitioners argue that the dismissal of Rodriguez was brought about by his act of collecting fare from a passenger without issuing the corresponding ticket.[38] This was not the first irregularity report issued against respondent, as similar reports

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[35] *Loadstar Shipping Co., Inc. v. Mesano*, 455 Phil. 936, 942 (2003).

[36] *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 62 (1998).

[37] *Pono v. National Labor Relations Commission*, 341 Phil. 615, 620-621 (1997).

[38] *Rollo*, p. 57; Irregularity Report dated 26 January 2005.

had been issued against him on 26 April 2003[39] and 12 October 2003.[40] Thus, the company had lost trust and confidence in him, as he had committed serious misconduct by stealing company revenue.[41] Petitioners therefore submit that the dismissal was valid under Article 282 of the Labor Code.[42]

For his part, Rodriguez denies the contents of the irregularity report.[43] He states that the report consists of a mere charge, but is bereft of the necessary proof.[44] Moreover, he submits that while the bus company filed a criminal complaint against him for the same act, the complaint was dismissed pursuant to an Affidavit of Desistance, in which the bus company stated that "the incident arose out of [a] misunderstanding between them."[45] Finally, he contends that the company's invocation of the 2003 irregularity reports to support his dismissal effected in 2005 was a mere afterthought.[46] In any event, he maintains

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[39] *Id.* at 58; Irregularity Report dated 26 April 2003.

[40] *Id.* at 59; Irregularity Report dated 12 October 2003.

[41] *Id.* at 12; Petition dated 18 March 2009.

[42] 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.

[43] *Rollo*, p. 48; *Sinumpaang Salaysay* dated 10 October 2005.

[44] *Id.* at 151; Comment dated 10 June 2009.

[45] *Id.* at 154; Report and Recommendation in the Preliminary Investigation in I.S. No. 05-267 entitled *Amado Marasigan vs. Elpidio Rodriguez* for Theft dated 13 December 2005.

[46] *Id.* at 151; Comment dated 10 June 2009.

that even those alleged infractions were not duly supported by evidence.[47]

We find for respondent and rule that the employer failed to prove that the dismissal was due to a just cause.

The Labor Code provides that the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer.[48] If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.[49]

Here, we agree with Rodriguez's position that the 26 January 2005 irregularity report, which served as the basis of his dismissal, may only be considered as an uncorroborated allegation if unsupported by substantial evidence. On this matter, we quote with favor the ruling of the appellate court:

> [T]he nature of work of a bus conductor involves inherent or normal occupational risks of incurring money shortages and uncollected fares. A conductor's job is to collect exact fares from the passengers and remit his collections to the company. Evidence must, therefore, be substantial and not based on mere surmises or conjectures for to allow an employer to terminate the employment of a worker based on mere allegations places the latter in an uncertain situation and at the sole mercy of the employer. An accusation that is not substantiated will not ripen into a holding that there is just cause for dismissal. A mere accusation of wrongdoing or a mere pronouncement of lack of confidence is not sufficient cause for a valid dismissal of an employee. Thus, the failure of the [petitioners] to convincingly show that the [respondent] misappropriated the bus fares renders the dismissal to be without a valid cause. To add, jurisprudence dictates that [if] doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[50] (Citations omitted)

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[47] *Id.*

[48] Labor Code, Art. 277.

[49] *Nissan Motors Phils. Inc. v. Angelo*, G.R. No. 164181, 14 September 2011, 657 SCRA 520, 532.

[50] *Rollo*, pp. 32-33; CA Decision dated 30 September 2008.

Thus, we rule that petitioners have failed to prove that the termination of Rodriguez's employment was due to a just cause.

Turning to the issue of procedural due process, both parties are in agreement that Rodriguez was not given a written notice specifying the grounds for his termination and giving him a reasonable opportunity to explain his side; a hearing which would have given him the opportunity to respond to the charge and present evidence in his favor; and a written notice of termination indicating that after considering all the circumstances, management has concluded that his dismissal is warranted. Clearly, therefore, the inescapable conclusion is that procedural due process is wanting in the case at bar.

Having found that Rodriguez was illegally dismissed, we now rule on petitioners' liabilities and respondent's entitlements under the law.

An illegally dismissed employee is entitled to the twin remedies of reinstatement and payment of full backwages. In *Santos v. National Labor Relations Commission*,[51] we explained:

> The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. (Citations omitted)

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[51] 238 Phil. 161, 166-167 (1987).

Thus, the CA committed no reversible error in upholding the NLRC's order to reinstate Rodriguez and in directing the payment of his full backwages, from the time he was illegally dismissed until his actual reinstatement.

As to who should bear the burden of satisfying respondent's lawful claims, petitioners submit that since Rodriguez was an employee of Contact Tours, the latter is liable for the settlement of his claims.

We do not agree.

"The presumption is that a contractor is a labor-only contractor unless he overcomes the burden of proving that it has substantial capital, investment, tools, and the like."[52] While ALPS Transportation is not the contractor itself, since it is invoking Contact Tours' status as a legitimate job contractor in order to avoid liability, it bears the burden of proving that Contact Tours is an independent contractor.[53]

It is thus incumbent upon ALPS Transportation to present sufficient proof that Contact Tours has substantial capital, investment and tools in order to successfully impute liability to the latter. However, aside from making bare assertions and offering the *Kasunduan* between Rodriguez and Contact Tours in evidence,[54] ALPS Transportation has failed to present any proof to substantiate the former's status as a legitimate job contractor. Hence, the legal presumption that Contact Tours is a labor-only contractor has not been overcome.

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[52] *Polyfoam-RGC International Corp. v. Concepcion*, G.R. No. 172349, 13 June 2012, 672 SCRA 148, 161.

[53] *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, 13 February 2009, 579 SCRA 445; *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, G.R. No. 160278, 8 February 2012, 665 SCRA 293.

[54] *Rollo*, p. 56; *Kasunduan* dated 5 October 2004.

As a labor-only contractor, therefore, Contact Tours is deemed to be an agent of ALPS Transportation.[55] Thus, the latter is responsible to Contact Tours' employees in the same manner and to the same extent as if they were directly employed by the bus company.[56]

Finally, the CA correctly ruled that since ALPS Transportation is a sole proprietorship owned by petitioner Alfredo Perez, it is he who must be held liable for the payment of backwages to Rodriguez.[57] A sole proprietorship does not possess a juridical personality separate and distinct from that of the owner of the enterprise.[58] Thus, the owner has unlimited personal liability for all the debts and obligations of the business, and it is against him that a decision for illegal dismissal is to be enforced.[59]

WHEREFORE, the instant Rule 45 Petition for Review is **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 100163 are hereby **AFFIRMED**.

SO ORDERED.

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

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[55] *7K Corporation v. National Labor Relations Commission*, 537 Phil. 664, 679 (2006).

[56] Art. 106, Labor Code.

[57] *Rollo*, pp. 37-38; CA Decision dated 30 September 2008.

[58] *Excellent Quality Apparel, Inc. v. Win Multi Rich Builders, Inc.*, G.R. No. 175048, 10 February 2009, 578 SCRA 272, 279.

[59] *Fernandez v. Aniñon*, G.R. No. 138967, 24 April 2007, 522 SCRA 1, 8.

FIRST DIVISION

[G.R. No. 188310. June 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MERCIDITA T. RESURRECCION,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.— In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— With respect to illegal possession of dangerous drugs, its elements are the following: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE WEIGHT AND CREDENCE ACCORDED BY THE TRIAL COURT TO WITNESSES' TESTIMONIES ARE GENERALLY NOT DISTURBED, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— Generally, the Court will not disturb the weight and credence accorded by the trial court to witnesses' testimonies, especially when affirmed by the Court of Appeals. x x x In this case, the vivid and detailed testimonies of prosecution witnesses PO2 Lique and MADAC operative

Abellana were not only credible by themselves, but were corroborated by numerous documentary and object evidence. The sum of the evidence for the prosecution shows that following the conduct of a surveillance, the Makati City SAID-SOTF planned and executed a buy-bust operation against accused-appellant on May 16, 2006. During the operation, accused-appellant was caught *in flagrante delicto* selling 0.02 grams of *shabu* for Three Hundred Pesos (₱300.00) and possessing a total of 0.24 grams of *shabu*, without any legal authority to do so.

4. ID.; ID.; ID.; NOT DIMINISHED BY INCONSISTENCIES IN THE TESTIMONY REFERRING TO MINOR DETAILS OF THE CRIME.— Accused-appellant is trying to make an issue of the alleged inconsistency between PO2 Lique's sworn affidavit and his testimony before the RTC. In his sworn affidavit, PO2 Lique averred that accused-appellant voluntarily emptied her pockets and handed over to the police the canister containing the 12 heat-sealed plastic sachets of *shabu*. When he testified before the trial court, PO2 Lique narrated that accused-appellant had refused to obey the order for her to empty her pockets so that PO2 Lique himself checked accused-appellant's pockets wherein he found the said canister, which he immediately confiscated. The inconsistency is trifling and does not affect any of the elements of the crime charged. Regardless of who emptied accused-appellant's pockets, the important fact was that the canister was actually found inside accused-appellant's pockets and in her possession. Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.

5. ID.; ID.; ID.; THE TESTIMONIES OF POLICE OFFICERS WHO CONDUCTED THE BUY-BUST ARE GIVEN MORE WEIGHT AND USUALLY PREVAIL OVER AN UNSUBSTANTIATED DENIAL OR CLAIM OF FRAME-UP.— The Court similarly views accused-appellant's defenses of denial and frame-up very doubtful. The testimonies of police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity

in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill motive, none of which exists in this case.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY; FAILURE TO SUBMIT IN EVIDENCE THE PHOTOGRAPH OF THE SEIZED ITEMS DOES NOT RENDER VOID THE CONFISCATION AND CUSTODY OF THE SEIZED ITEMS AS LONG AS THEIR INTEGRITY AND EVIDENTIARY VALUE HAD BEEN PRESERVED.— [T]he prosecution had duly established the chain of custody of the sachets of *shabu* from the time they were seized from accused-appellant, kept in police custody, transferred to the laboratory for examination, and presented in court, in substantial compliance with Section 21(1) of Republic Act No. 9165. Contrary to the assertions of accused-appellant, PO2 Lique categorically testified that all the items seized from the possession of accused-appellant were photographed, inventoried, and marked at the place where she was apprehended x x x. Although no photograph of the seized items was submitted in evidence, the same does not render void and invalid the confiscation and custody of the seized items as long as their integrity and evidentiary value had been properly preserved by the apprehending officers, as in this case.

7. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; PENALTY.— Article II, Section 11 of Republic Act No. 9165 provides that the penalty for illegal possession of *shabu*, with a total weight of 0.24 grams, is twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Applying the Indeterminate Sentence Law, the accused shall be sentenced to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the

minimum prescribed by the same. Thus, in Criminal Case No. 06-994, the penalties imposed upon accused-appellant of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00), are in order.

8. ID.; ID.; ILLEGAL SALE OF *SHABU*; PENALTY.— The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, in Criminal Case No. 06-993, the sentence imposed upon accused-appellant of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00), are also correct.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated January 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02530, which affirmed the Decision[2] dated August 28, 2006 of the Regional Trial Court (RTC), Branch 135, of the City of Makati in Criminal Case Nos. 06-993 and 06-994, finding accused-appellant Mercidita T. Resurreccion guilty beyond reasonable doubt of the illegal sale and possession of dangerous drugs, thus, violating Article II, Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-7; penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza, concurring.

[2] CA *rollo*, pp. 13-18; penned by Judge Francisco B. Ibay.

The Informations against accused-appellant read:

Criminal Case No. 06-993

That on or about the 16th day of May, 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport Methylamphetamine Hydrochloride, weighing zero point zero two (0.02) gram, which is a dangerous drug, in consideration of five hundred (Php500.00) pesos, in violation of the above-cited law.[3]

Criminal Case No. 06-994

That on or about the 16th day of May, 2006 in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control [of] Methylamphetamine Hydrochloride (Shabu) weighing zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, zero point zero two (0.02) gram, totaling zero point twenty-four (0.24) gram[s] which is a dangerous drug, in violation of the above-cited law.[4]

When arraigned, accused-appellant pleaded not guilty to both charges.[5]

The prosecution presented as witnesses Police Officer (PO) 2 Julius B. Lique[6] (Lique), a member of the Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), Makati

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[3] Records, p. 2.

[4] *Id.* at 4.

[5] *Id.* at 29.

[6] TSN, June 21, 2006.

Police Station; and Jefrey Esperat Abellana[7] (Abellana), an operative from the Makati Anti-Drug Abuse Council (MADAC). In addition, the prosecution offered the following object and documentary evidence: (a) Affidavit of Arrest[8] dated May 17, 2006 of PO2 Lique; (b) *Sinumpaang Salaysay*[9] dated May 17, 2006 of Abellana; (c) Request for Laboratory Examination[10] dated May 16, 2006 of suspected *shabu* contained in 13 heat-sealed plastic sachets marked "JBL" and "MERCY-1" to "MERCY-12[,]" prepared by Police Senior Inspector (PSINSP) Joefel F. Siason (Siason), Team Leader of the Makati City SAID-SOTF; (d) Physical Science Report No. D-375-06S[11] dated May 16, 2006 of the Southern Police District, Philippine National Police (PNP) Crime Laboratory Office, stating that the aforesaid specimens submitted for chemical analysis tested positive for Methylamphetamine Hydrochloride; (e) Pre-Operational Report/ Coordination Sheet[12] dated May 16, 2006 of PSINSP Siason, revealing that accused-appellant was the subject of a surveillance and buy-bust operation conducted by a team composed of PSINSP Siason, PO2 Lique, PO1 Voltaire Esguerra (Esguerra), Abellana, and Norman Bilason (Bilason); (f) Certificate of Coordination[13] dated May 16, 2006 issued by the Philippine Drug Enforcement Agency (PDEA) certifying that the Makati City SAID-SOTF coordinated with PDEA as regards the buy-bust operation against accused-appellant; (g) Spot Report[14] dated May 16, 2006 of the Makati City SAID-SOTF detailing the results of the buy-bust operation; (h) Acknowledgement Receipt[15] dated May 16,

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[7] TSN, June 26, 2006.

[8] Records, pp. 49-51.

[9] *Id.* at 52-53.

[10] *Id.* at 55.

[11] *Id.* at 54.

[12] *Id.* at 57.

[13] *Id.* at 58.

[14] *Id.* at 59.

[15] *Id.* at 60.

2006 of the Makati City SAID-SOTF certifying the turn-over of possession of the specimens confiscated from accused-appellant from PO2 Lique to PO2 Rafael Castillo (Castillo); (i) MADAC Certification[16] dated May 17, 2006 affirming that accused-appellant was included in the watch list of personalities suspected of selling prohibited drugs in Barangay Bangkal, Makati City; (j) Photocopies of three One Hundred Peso (₱100.00) bills[17] used in the buy-bust operation; and (k) thirteen heat-sealed plastic sachets of suspected *shabu* and a plastic film canister confiscated from accused-appellant.[18]

The prosecution's evidence supported the following version of events:

After receiving information that accused-appellant was illegally peddling *shabu* near a small bridge along P. Binay St. in Barangay Bangkal, Makati City, the Makati City SAID-SOTF constituted a team to conduct a buy-bust operation. PSINSP Siason headed the team composed of PO2 Lique, PO1 Esguerra, Abellana, Bilason, plus a police informant. PO2 Lique acted as the poseur-buyer. He used the marked bills as the buy-bust money which were pre-marked "JBL." After all the preparations, the team executed the said operation.

At around six o'clock in the evening of May 16, 2006, the team proceeded to the area where accused-appellant was reportedly often seen. The team then spotted accused-appellant approaching a store. The informant introduced PO2 Lique to accused-appellant as his friend who wanted to buy *shabu*. PO2 Lique then handed the marked bills to accused-appellant who handed to PO2 Lique in exchange a heat-sealed plastic sachet of suspected *shabu*. PO2 Lique held accused-appellant's right shoulder to signal the consummation of the transaction. Abellana immediately came to PO2 Lique's aid in apprehending accused-appellant. PO2 Lique introduced himself as a police officer,

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[16] *Id.* at 61.

[17] *Id.* at 62.

[18] *Id.* at 36; Exhibits K to K-14.

apprised accused-appellant of her constitutional rights, and thereafter ordered accused-appellant to empty her pockets. When accused-appellant refused, PO2 Lique himself frisked accused-appellant's pockets and found and confiscated a small film canister containing 12 more heat-sealed plastic sachets of suspected *shabu*.

PO2 Lique marked all the seized items from accused-appellant at the place of her arrest. The sachet of suspected *shabu* sold to PO2 Lique was marked with "JBL," the canister with "MERCY[,]" and the other 12 confiscated sachets of suspected *shabu* with "MERCY 1" to "MERCY 12[.]" Accused-appellant was then brought to the Makati City Police Station. PO2 Lique turned over all the items seized from accused-appellant to the duty investigator, PO2 Castillo. PSINSP Siason requested in writing that the 13 sachets of suspected *shabu* be chemically examined by the PNP Crime Laboratory Office. The contents of all the sachets tested positive for Methylamphetamine Hydrochloride.

Accused-appellant[19] and her 17-year old daughter, Cristine Joyce Resurreccion (Cristine),[20] testified for the defense.

According to the defense, accused-appellant was a stay-at-home mother while her husband worked as a jeepney driver. At around 6:45 in the evening of May 16, 2006, accused-appellant and five of her eight children were at home. Accused-appellant was about to change her clothes after washing the laundry, when several men with guns, who later turned out to be police officers, arrived looking for *shabu*. Accused-appellant told the police officers that there was no such thing in their house. However, a police officer forcibly handcuffed accused-appellant. The police officers turned the pockets of accused-appellant's shorts inside-out but did not find anything illegal. The police officers were only able to find Forty Pesos (₱40.00) and a bracelet in accused-appellant's possession. Accused-appellant's children, frightened when the police officers barged into their house, were crying and embracing their mother.

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[19] TSN, July 19, 2006.

[20] TSN, August 9, 2006.

The police officers brought accused-appellant outside and boarded her into a blue Revo. While accused-appellant was inside the vehicle, another man approached the police officers and handed them a wrapped item. The police officers were forcing accused-appellant to admit ownership of the wrapped item, but accused-appellant resisted. The police officers made accused-appellant alight from the vehicle. One of them brought out something from the wrapped item and put it on top of the vehicle. The police officers wanted accused-appellant to admit she owned these things but accused-appellant maintained that she did not.

The men tightened accused-appellant's handcuffs, hurting her. They again boarded accused-appellant on the Revo and brought her to police headquarters. At the headquarters, the police officers asked for accused-appellant's personal information (such as her name and address). The police officers next asked accused-appellant if the evidence on hand were really taken from her; and accused-appellant answered that the items were not hers. Lastly, accused-appellant was asked to take off her earrings, ring, and bracelet, and together with her Forty Pesos (₱40.00), put them in one plastic bag.

Accused-appellant was detained for one night. The following day, she was brought for inquest.

Meanwhile, with her father out of the house and her mother arrested on the night of May 16, 2006, Cristine called her uncle (her father's brother) for help. Her uncle came over to the house to help look for accused-appellant. Cristine and her uncle asked around at Makati City Hall where accused-appellant could be and a janitor told them that those arrested for selling illegal drugs are brought to the MADAC office at J.P. Rizal. When Cristine and her uncle arrived at Precinct 1, J.P. Rizal, accused-appellant was not there. Cristine and her uncle waited until Cristine was finally able to see accused-appellant.

In its Decision promulgated on August 28, 2006, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes charged. The trial court gave full weight and credence

to the evidence presented by the prosecution and disregarded accused-appellant's defenses of denial and frame-up. The verdict reads:

> **WHEREFORE**, it appearing that the guilt of accused MERCIDITA RESURRECCION *y* TORRES for violation of Sections 5 and 11 of RA 9165, was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, she is hereby sentenced:
>
> 1. In Criminal Case No. 06-993, to suffer life imprisonment and pay a fine ₱500,000.00; and
> 2. In Criminal Case No. 06-994, to suffer imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine ₱300,000.00.
> 3. To pay the costs.[21]

Consequently, accused-appellant was committed to the custody of the Correctional Institution for Women in Mandaluyong City.[22]

Accused-appellant appealed her conviction before the Court of Appeals. In its Decision dated January 27, 2009, the Court of Appeals affirmed *in toto* the RTC judgment.

Hence, the instant appeal.

No supplemental briefs were filed by the parties before the Court. Hence, the Court will consider the very same arguments raised in the parties' briefs before the Court of Appeals.

Accused-appellant assigned the following errors on the part of the RTC:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.

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[21] CA *rollo*, pp. 17-18.

[22] *Rollo*, p. 15.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[23]

The Court sustains accused-appellant's conviction.

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[24]

With respect to illegal possession of dangerous drugs, its elements are the following: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession.[25]

Both the RTC and the Court of Appeals found that the prosecution was able to prove beyond reasonable doubt all the foregoing elements of the crimes charged against accused-appellant.

Generally, the Court will not disturb the weight and credence accorded by the trial court to witnesses' testimonies, especially when affirmed by the Court of Appeals. As the Court explained in *People v. Naelga*:[26]

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[23] CA *rollo*, p. 42.

[24] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

[25] *Id.* at 411.

[26] G.R. No. 171018, September 11, 2009, 599 SCRA 477, 489-490.

At the outset, it should be pointed out that prosecutions involving illegal drugs largely depend on the credibility of the police officers who conducted the buy-bust operation. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court. This Court will not interfere with the trial court's assessment of the credibility of witnesses except when there appears on record some fact or circumstance of weight and influence which the trial court has overlooked, misapprehended, or misinterpreted. This rule is consistent with the reality that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Thus, factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case. (Citations omitted.)

In this case, the vivid and detailed testimonies of prosecution witnesses PO2 Lique and MADAC operative Abellana were not only credible by themselves, but were corroborated by numerous documentary and object evidence. The sum of the evidence for the prosecution shows that following the conduct of a surveillance, the Makati City SAID-SOTF planned and executed a buy-bust operation against accused-appellant on May 16, 2006. During the operation, accused-appellant was caught *in flagrante delicto* selling 0.02 grams of *shabu* for Three Hundred Pesos (₱300.00) and possessing a total of 0.24 grams of *shabu*, without any legal authority to do so.

Accused-appellant is trying to make an issue of the alleged inconsistency between PO2 Lique's sworn affidavit and his testimony before the RTC. In his sworn affidavit, PO2 Lique averred that accused-appellant voluntarily emptied her pockets and handed over to the police the canister containing the 12 heat-sealed plastic sachets of *shabu*. When he testified before the trial court, PO2 Lique narrated that accused-appellant had refused to obey the order for her to empty her pockets so that PO2 Lique himself checked accused-appellant's pockets wherein he found the said canister, which he immediately confiscated.

The inconsistency is trifling and does not affect any of the elements of the crime charged. Regardless of who emptied accused-appellant's pockets, the important fact was that the canister was actually found inside accused-appellant's pockets and in her possession. Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[27]

The Court similarly views accused-appellant's defenses of denial and frame-up very doubtful. The testimonies of police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill motive,[28] none of which exists in this case.

Moreover, the prosecution had duly established the chain of custody of the sachets of *shabu* from the time they were seized from accused-appellant, kept in police custody, transferred to the laboratory for examination, and presented in court, in substantial compliance with Section 21(1) of Republic Act No. 9165.

Contrary to the assertions of accused-appellant, PO2 Lique categorically testified that all the items seized from the possession of accused-appellant were photographed, inventoried, and marked at the place where she was apprehended, thus:

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[27] *People v. Villahermosa*, G.R. No. 186465, June 1, 2011, 650 SCRA 256, 275-276.

[28] *Ampatuan v. People*, G.R. No. 183676, June 22, 2011, 652 SCRA 615, 633.

Q What happened after you discovered that aside from the one sold to you she [accused-appellant] has several plastic sachets, what did you do with all those items that you recovered and given to you?
A I marked them at the scene, sir.

Q The one sold to you what markings did you put on it?
A JBL, sir.

xxx xxx xxx

Q What about the other plastic sachets that you said were inside the plastic film container at the time, what markings did you put on them?
A I marked them Mercy-1, Mercy-2, Mercy-3, Mercy-4 to Mercy-12, sir.

Q Did you also mark the plastic container?
A Yes, sir.

Q What markings did you put?
A Mercy, sir.

xxx xxx xxx

Q After you marked and recovered the money and arrested the accused what did you do with the accused?
A After that we brought the suspect and the evidence confiscated to our office, sir.

xxx xxx xxx

Q When you recovered those items allegedly taken from the accused did you take any photographs of those items?
A Yes, sir.

xxx xxx xxx

Q What is your proof that you took photographs of those items?
A None yet, they are not yet developed, sir.[29]

Although no photograph of the seized items was submitted in evidence, the same does not render void and invalid the confiscation and custody of the seized items as long as their

[29] TSN, June 21, 2006, pp. 10-12; 19-20.

integrity and evidentiary value had been properly preserved by the apprehending officers,[30] as in this case.

Lastly, the Court sustains the penalties imposed by the RTC, as affirmed by the Court of Appeals.

Article II, Section 11 of Republic Act No. 9165 provides that the penalty for illegal possession of *shabu*, with a total weight of 0.24 grams, is twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Applying the Indeterminate Sentence Law, the accused shall be sentenced to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the minimum prescribed by the same. Thus, in Criminal Case No. 06-994, the penalties imposed upon accused-appellant of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00), are in order.

The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, in Criminal Case No. 06-993, the sentence imposed upon accused-appellant of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00), are also correct.

WHEREFORE, in view of all the foregoing, the appeal of accused-appellant Mercidita T. Resurreccion is **DENIED** and the Decision dated January 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02530 is **AFFIRMED**.

SO ORDERED.

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

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[30] Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165.

FIRST DIVISION

[G.R. No. 192913. June 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL REBOTAZO *Y* ALEJANDRIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ENTRAPMENT; BUY-BUST OPERATIONS; EMPLOYED BY PEACE OFFICERS AS AN EFFECTIVE WAY OF APPREHENDING A CRIMINAL IN THE ACT OF COMMITTING AN OFFENSE, AND MUST BE UNDERTAKEN WITH DUE REGARD FOR CONSTITUTIONAL AND LEGAL SAFEGUARDS.— [B]uy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense, and must be undertaken with due regard for constitutional and legal safeguards. However, as we have observed in *People v. Garcia*, while this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. Thus, in *People v. Tan*, courts have been exhorted to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

2. ID.; ILLEGAL SALE OF DANGEROUS DRUGS; THE MARKED MONEY USED IN THE BUY-BUST OPERATION IS NOT REQUIRED TO BE PRESENTED IN COURT.— The Court has been categorical in declaring that neither law nor jurisprudence requires the presentation of any money used in a buy-bust operation. Failure to mark

the money or to present it in evidence is not material, since failure to do so will not necessarily disprove the sale. If at all, the marked money merely serves as corroborative evidence in proving appellant's guilt. Stated differently, in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.

3. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; COVERS THE TESTIMONY ABOUT EVERY LINK IN THE CHAIN, FROM THE SEIZURE OF THE PROHIBITED DRUG UP TO THE TIME IT IS OFFERED IN EVIDENCE.— [A]s a mode of authenticating evidence, the chain-of-custody rule requires that the presentation of the seized prohibited drugs as an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. 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. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN PROSECUTION OF ILLEGAL DRUGS, CREDENCE IS USUALLY GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS.— The prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation. Credence is usually 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. Failure to impute ill motive on the part of the police officers who conducted the buy-bust operation will only sustain the conviction of the accused.

5. ID.; ID.; ID.; NOT DESTROYED BY MINOR INCONSISTENCIES IN THE DECLARATIONS OF

WITNESSES.— The rule on material inconsistencies has been enunciated by this Court several times. In *People v. Arcega*, we have held that "[b]y and large, the 'material inconsistencies' asserted by the accused-appellant which allegedly create grave doubts are, on the contrary, too minor, trivial and inconsequential to affect the credibility of the prosecution witnesses, the inconsistencies having been fully and sufficiently explained during trial by the witnesses themselves, and their explanations having been accepted by the Trial Court. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony."

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NON-COMPLIANCE WITH SECTION 21 THEREOF IS NOT FATAL PROVIDED THAT THERE IS JUSTIFIABLE GROUND THEREFOR AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— [O]n the lack of signature of an elected official and the failure to indicate the name of the person who affixed his signature as DOJ representative in the inventory report, jurisprudence has maintained that "[n]on-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." It appears from the records that the NBI tried to contact *barangay* officials to attend the inventory-taking, but none arrived. Such effort on the part of the NBI agents and the consequent failure of said elected officials to appear should be considered sufficient justifiable ground so as to excuse the prosecution from complying with this particular requirement. x x x Considering that the integrity of the seized drugs has been maintained, and that the drugs were immediately marked for proper identification, the absence

of an elected official during the inventory-taking should not be deemed fatal to the prosecution's case.

7. ID.; ID.; A BUY-BUST OPERATION REMAINS LEGAL DESPITE THE LACK OF COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY AS LONG AS THE REQUIREMENTS OF THE LAW HAVE BEEN COMPLIED WITH.— The NBI's lack of coordination with the PDEA cannot be given weight or credence. x x x [T]he lack of coordination with the PDEA cannot in and of itself exculpate appellant. For as long as the mandatory requirements of R.A. 9165 have been complied with, the buy-bust operation remains legal, and appellant's conviction shall be upheld.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEIZURE MADE DURING A LEGITIMATE BUY-BUST OPERATION FALLS UNDER A SEARCH INCIDENTAL TO A LAWFUL ARREST WHICH DOES NOT REQUIRE A WARRANT TO CONDUCT IT.— Time and again, we have ruled that the arrest of the accused *in flagrante* during a buy-bust operation is justified under Rule 113, Section 5(a) of the Rules of Court. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal. As we held in *People v. Marcelino,* the illegal drug seized was not the "fruit of the poisonous tree," as the defense would have this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Section 13 of the Rules of Court. Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was not needed to conduct it.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *C.J.:*

Before us is a Notice of Appeal[1] dated 9 September 2009 from the Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 00443. The CA affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 30, Dumaguete City in Criminal Case Nos. 16394 and 16395, convicting appellant Joel Rebotazo *y* Alejandria of violating Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165) or the Comprehensive Dangerous Drugs Act of 2002.

As culled from the records, the prosecution's version is herein quoted:

> On February 27, 2003, at around 3:00 in the afternoon, informant Orly Torremocha went to the National Bureau of Investigation (NBI) office in Dumaguete City to report that appellant was selling several sachets of *shabu* in his possession. The informant also told the NBI that he was going to meet with appellant later, as the latter was looking for a motorcycle to be used in looking for his missing wife.
>
> Based on this information, the NBI planned a buy-bust operation and formed a buy-bust team, which was composed of: (1) NBI Agent Miguel Dungog; (2) Atty. Dominador Cimafranca; (3) Louie Diaz; and (4) Torremocha. For lack of personnel, Diaz, son of the NBI Dumaguete chief, volunteered to be the poseur-buyer. It was planned that appellant and Torremocha would pass by Shakey's Pizza Plaza in Rizal Boulevard on board a motorcycle. Diaz would then flag them down and discreetly ask where he could buy *shabu*.
>
> After a briefing, at around 4:30 in the afternoon of the same day, the buy-bust team, with the exception of Torremocha, proceeded to

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[1] CA *rollo,* pp. 119-121.

[2] *Rollo,* pp. 3-28; CA Decision dated 31 July 2009 penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Edgardo L. Delos Santos and Rodil V. Zalameda.

[3] CA *rollo,* pp. 10-18; RTC Decision dated 16 May 2006, penned by Judge Rafael Cresencio C. Tan, Jr.

Shakey's and positioned themselves in strategic locations to ensure that they can witness the entrapment. With the team was media representative Ivan Bandal.

As planned, appellant and Torremocha passed by Shakey's on board a motorcycle. Diaz flagged them down, and Torremocha introduced him to appellant. After a brief conversation, Diaz told appellant that he was interested in buying *shabu* and handed to him the ₱300 marked money. In exchange, appellant handed to Diaz a plastic sachet containing white crystalline substance.

Upon completing the transaction, Diaz executed the pre-arranged signal by removing his cap. Dungog and Cimafranca then rushed to Diaz and appellant's location and effected the latter's arrest. Appellant was subjected to a body search, and, in the process, voluntarily informed the NBI agents that he had another sachet of *shabu* inside one of his socks. Dungog recovered the said sachet, as well as some money from appellant's wallet, including the marked money given by Diaz. Dungong (sic) also marked the two (2) plastic sachets with the following initials: (1) NBI-DUMDO-02/20/03/ REBOTASO/BB/01; and (2) NBI-DUMDO-02/20/03/REBOTASO/ Pos/02. Photographs were also taken of appellant with the seized items. After being informed of his constitutional rights, appellant was brought to the NBI office.

At the NBI office, Dungog conducted an inventory of the seized items in the presence of appellant, media representative Maricar Aranas, and a representative from the Department of Justice. The NBI Dumaguete Chief likewise prepared a letter request for laboratory examination of the seized substance, which Dungog brought to the Philippine National Police Crime Laboratory, Negros Oriental Provincial Office.

Police Inspector Josephine L. Llena received the request and examined the specimen, which tested positive for Methamphetamine Hydrochloride. The results of the laboratory examination were embodied in Chemistry Report No. D-026-37.

Appellant also underwent a drug test, and tested positive for the presence of Methamphetamine Hydrochloride.[4] (Citations omitted)

On the other hand, appellant's version is as follows:

[4] *Id.* at 95-96; CA Decision, pp. 6-7.

The accused claimed that on February 27, 2003, one Orly Torremocha let him ride on his motorcycle and they went around the city. He knew this Orly Torremocha as he was his schoolmate at NOHS and has been his long time friend. After a while, they went to Shakey's at Rizal Boulevard as Torremocha invited the accused for snacks. They seated themselves outside of the main store, as there were also tables there for customers. They first ordered siopao but since there was none, they instead ordered pizza. While they waited for their order, this Torremocha was busy texting on his cell phone. After a while, a certain Louie Diaz came and handed money to Torremocha. The money was placed on the table. Torremocha then got a lighter and something that was lengthy which contained *shabu*. After cutting the lengthy something, Torremocha gave half of it to Diaz who then left. After about three [sic] minutes, NBI Agents Dungog and Cimafranca rushed and pointed something to him. The accused raised his hands, but remained seated. The NBI agents searched him but found nothing on him. The accused was arrested, but was not informed of his constitutional rights. The accused was brought to the NBI Office and was searched again. The agents did not recover anything from him as in the earlier search made on him. At the time of his arrest, the accused was wearing pants, a T-shirt and slippers only. The accused had no socks at that time. The accused was forced to sign a document known as Inventory of Dangerous Drugs dated February 20, 2003. The accused had no lawyer at that time. The accused complained to the inquest prosecutor that he was forced to sign a document without being explained [sic] as to what it was all about.[5]

Consequently, on 30 June 2003, two amended informations were filed against the appellant for violation of Sections 5 and 11, Article II of R.A. 9165. The two amended informations are quoted herein below:

In Criminal Case No. 16394:

That on or about the 27th day of February 2003, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there, wilfully, unlawfully and feloniously sell and deliver to one NBI poseur-buyer approximately 0.12 gram of Methamphetamine Hydrochloride, commonly called "*shabu*," a dangerous drug.

[5] *Id.* at 97; CA Decision, p. 8.

That the accused is positive for use of Methamphetamine as reflected in Chemistry Report No. CDT-018-07. [sic]

Contrary to Section 5, Article 2 of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002)."

In Criminal Case No. 16395:

That on or about the 27th day of February 2003, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there, wilfully, unlawfully and feloniously possess and keep approximately 0.07 gram of Methamphetamine Hydrochloride, commonly called "*shabu*," a dangerous drug.

That the accused is positive for use of Methamphetamine as reflected in Chemistry Report No. CDT-018-03.

Contrary to Section 11, Article 2 of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002)."

After the case was raffled to the Regional Trial Court, Branch 30, Dumaguete City, appellant was arraigned, and he pleaded not guilty. The two cases were then consolidated and jointly tried.[6]

On 16 May 2006, the RTC rendered a Joint Judgment,[7] the dispositive portion of which is herein quoted:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 16394, the accused Joel Rebotazo *y* Alejandria is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.12 gram of Methamphetamine or *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The 0.12 gram of Methamphetamine or *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

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[6] *Id.* at 10; RTC Decision, p. 1.

[7] *Id.* at 10-18.

2. In Criminal Case No. 16395, the accused Joel Rebotazo *y* Alejandria is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.07 gram of Methamphetamine or *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

The 0.07 gram of Methamphetamine or *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.

In its ruling, the RTC gave more weight to the evidence presented by the prosecution. It relied on the testimony of Louie Diaz, the poseur-buyer who narrated how the illegal sale took place, presented in court the evidence of the *corpus delicti*, and positively identified appellant as the seller of the *shabu*.[8] It also gave credence to the testimony of the two police officers, Police Inspector Josephine S. Llena and National Bureau of Investigation (NBI) Agent Miguel Dungog, who were both "presumed to have acted regularly in the performance of their official functions, in the absence of clear and convincing proof to the contrary or that they are motivated by ill will."[9]

Upon intermediate appellate review, the CA rendered a Decision[10] on 31 July 2009, to wit:

WHEREFORE, in the light of the foregoing, the joint judgment rendered by the Regional Trial Court of Negros Oriental, Branch 30 of Dumaguete City dated May 16, 2006 is hereby **AFFIRMED** *in toto*.

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[8] *Id.* at 14; RTC Decision, p. 5.

[9] *Id.* at 17; RTC Decision, p. 8.

[10] *Id.* at 90-115; CA Decision, p. 25.

SO ORDERED.

In convicting appellant of the crimes charged, the CA affirmed the factual findings of the RTC[11] on the premise that witnesses Diaz and Dungog had clearly and convincingly established his guilt beyond reasonable doubt. The fact that the CA did not find any ill motive on the part of these witnesses to falsely implicate appellant[12] only bolstered his conviction.

Moreover, the factual discrepancies pointed out by appellant referred only to minor and insignificant details, which, "when viewed with the prosecution witnesses' clear and straightforward testimonies, do not destroy the prosecution of the case."[13] These discrepancies have in fact been clearly explained by the witnesses in their testimonies.

ISSUE

From the foregoing, the sole issue before us is whether or not the RTC and CA erred in finding the testimonial evidence of the prosecution witnesses sufficient to warrant appellant's conviction for the crimes charged.

THE COURT'S RULING

Appellant argues[14] that the RTC and CA erred in appreciating the factual evidence on record. In particular, he notes that the prosecution failed to establish the existence of the marked money supposedly recovered. When Prosecutor Escorial asked witness Diaz why the serial numbers the former read from a bunch of peso bills presented in evidence were not marked, Diaz was unable to answer.[15] Later in the proceedings, the prosecution

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[11] *Id.* at 99; CA Decision, p. 10.

[12] *Id.* at 112; CA Decision, p. 23.

[13] *Id.* at 100-101; CA Decision, pp. 11-12.

[14] *Id.* at 40-54; Brief for the Accused-Appellant, pp. 9-12. In our 6 December 2010 Resolution, this Court noted the Manifestation of accused-appellant that he is adopting his 13 December 2007 Brief for the Accused-Appellant filed with the CA, and his Supplemental Brief.

[15] *Id.* at 49; Appellant's Brief, p. 7.

managed to offer only two supposedly marked bills, but no explanation was offered as to why the third bill was missing.[16]

Appellant also harps on some factual discrepancies, to wit:

1. The Prosecution admitted that the inventory report does not contain the signature of any elected official *(Pls. see Pre-Trial Order).*

2. The prosecution admitted that in his affidavit, the arresting officer NBI Agent Miguel Dungog named **Ivan Bandal** as the media representative, while in the inventory report, the named media representative is **Maricar Aranas** *(Kindly see Pre-Trial Order).*

3. Prosecution admitted that the inventory report is dated **February 20, 2003,** seven (7) days before the date of the alleged incident, which is **February 27, 2003.**

4. The marking on Specimen "A" (evidence-*shabu*, prosecution's Exh. "D") bears the date "02/20/03" which is **February 20, 2003**, seven (7) days before the date of the alleged incident in question, **February 27, 2003** *(pls. see TSN November 7, 2005, p. 3).* The marking on Specimen "B" (evidence-*shabu*, prosecution's Exh. "E") bears the date "02/20/03" which is **February 20, 2003,** seven (7) days before the date of the alleged incident in question, which is **February 27, 2003** *(pls. see TSN November 7, 2005, p. 4)*.[17]

In addition, he questions the failure of the prosecution to indicate the name of the person who affixed his signature to the inventory as a Department of Justice (DOJ) representative.[18]

Appellant further argues that no one from the prosecution testified on the manner in which the seized drugs were handled and the measures undertaken to preserve their integrity and evidentiary value.[19] Specifically, the prosecution "failed to account

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[16] *Id.* at 50. Appellant's Brief, p. 8.

[17] *Id.* at 51; Appellant's Brief, p. 9.

[18] *Rollo,* p. 47; Supplemental Brief, p. 3.

[19] *Id.* at 46; Supplemental Brief, p. 2.

for the whereabouts of the seized drugs from the time the forensic chemist was done with examining the same, up to the time they were identified by her in court, as the said pieces of evidence appear to have been already in the court's custody when she testified."[20]

Lastly, appellant questions the NBI's lack of coordination with the Philippine Drug Enforcement Agency (PDEA). Allegedly, the NBI failed to send a filled-out pre-coordination form by facsimile message, as required by R.A. 9165 and its implementing rules and regulations.[21] Because of this omission, appellant argues that the buy-bust operation should be considered unauthorized, and his subsequent arrest illegal. The evidence supposedly obtained thereby must be declared inadmissible.[22] Hence, the cases of drug-pushing and possession of prohibited drugs must fall together.[23]

On the part of the prosecution, the Office of the Solicitor General (OSG) insists that there is nothing in the law that requires the prosecution to present the marked money. The non-presentation does not create any hiatus in the evidence, provided that the prosecution adequately proves the sale.[24] Moreover, as against the straightforward and consistent testimonies of its witnesses, the supposed inconsistencies cited by appellant refer only to minor and insignificant details that do not destroy the prosecution's case.[25] On the lack of coordination with the Philippine Drug Enforcement Agency (PDEA), the OSG asserts that it does not violate appellant's constitutional right against illegal arrests, because there is nothing in R.A. 9165 that mandatorily requires coordination with the PDEA.[26]

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[20] *Id.*

[21] CA *rollo*, p. 52; Appellant's Brief, p. 10.

[22] *Id.* at 53; Appellant's Brief, p. 11.

[23] *Id.*

[24] *Id.* at 76; Plaintiff-Appellee's Brief, p. 7.

[25] *Id.* at 80; Plaintiff-Appellee's Brief, p. 11.

[26] *Id.* at 81; Plaintiff-Appellee's Brief, p. 12.

I

Buy-bust operations are legally sanctioned procedures, provided they are undertaken with due regard for constitutional and legal safeguards.

At the outset, buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.[27] A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense,[28] and must be undertaken with due regard for constitutional and legal safeguards.[29]

However, as we have observed in *People v. Garcia*,[30] while this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. Thus, in *People v. Tan*,[31] courts have been exhorted to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Jurisprudence has consistently held that the procedural safeguards enunciated in Section 21 of R.A. 9165 must be strictly observed, among which are provided as follows:

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[27] *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[28] *People v. Jocson*, G.R. No. 169875, 18 December 2007, 540 SCRA 585, 592.

[29] *Id.*, citing *People v. Doria*, 361 Phil. 595 (1999). See also *People v. Abbu*, 317 Phil. 518 (1995); *People v. Tadepa*, 314 Phil. 231 (1995); *People v. Basilgo*, G.R. No. 107327, August 5, 1994, 235 SCRA 191.

[30] G.R. No. 173480, 25 February 2009, 580 SCRA 259.

[31] 401 Phil. 259, 273 (2000), citing *People vs. Pagaura*, 334 Phil. 683 (1997).

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

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

xxx xxx xxx

Guided by the above-quoted provision, we find no cogent reason to overturn appellant's conviction.

We affirm the appellant's conviction for the following reasons, in response to the claimed errors of the CA, as raised by the appellant.

1. The marked money does not need to be presented in Court.

We are not impressed by the alleged failure of the prosecution to present the marked money in Court.

The Court has been categorical in declaring that neither law nor jurisprudence requires the presentation of any money used

in a buy-bust operation.[32] Failure to mark the money or to present it in evidence is not material, since failure to do so will not necessarily disprove the sale.[33] If at all, the marked money merely serves as corroborative evidence in proving appellant's guilt.[34] Stated differently, in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.[35]

As stated in the records, the testimony of prosecution witness Louie Diaz sufficiently established the sale and identified the dangerous drug in court:[36]

DIRECT EXAMINATION BY PROS. E. ESCORIAL

xxx xxx xxx

Q: Now can you remember any unusual incident that happened in the afternoon of February 27, 2003?

A: At 3:30 in the afternoon there was an informant who arrived.

xxx xxx xxx

Q: And when this informant arrived in the Office of the NBI, Dumaguete City, what transpired next?

A: He had reported something regarding the drug pushing activity of Mr. Joel Rebotazo.

Q: To whom it was reported?

A: To my father who was a chief.

Q: And where were you when it was reported to your father?

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[32] *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 442, citing *People v. Astudillo*, 440 Phil. 203, 224 (2002).

[33] *People v. Cueno*, 359 Phil. 151, 162 (1998), citing *People vs. Cuachon*, G.R. Nos. 106286-87, 1 December 1994, 238 SCRA 540. See also *People v. Pascual*, G.R. No. 88282, 6 May 1992, 208 SCRA 393; *People vs. Sanchez*, 255 Phil. 293 (1989).

[34] *People v. Gonzaga*, G.R. No. 184952, 11 October 2010, 632 SCRA 551, 572.

[35] *Supra* note 32, at 441-442.

[36] TSN, 25 October 2005, pp. 3-12.

A: I was at the office, sir, because that was my vacant.
Q: Vacant time?
A: Yes, sir.
Q: So what happened next when that informant informed your father about the transaction?
A: He forwarded it to his operative who was Miguel Dungog.
Q: And what happened next?
A: So we designed something for operation and we had our briefing. Since there was a lack of personnel at that time so I volunteered to be a poseur-buyer.
Q: Then after you volunteered as poseur buyer?
A: So we had a briefing.
Q: What was that briefing all about?
A: We are going to conduct a buy bust on Joel Rebotazo.
Q: What happened next during the briefing, there was a plan to conduct buy bust on Joel Rebotazo?
A: We proceeded to the Shakey's at the boulevard.
Q: Here in Dumaguete City?
A: Yes, sir.
Q: What boulevard is that?
A: Boulevard, sir.
Q: Rizal boulevard near?
A: Near Bethel.
Q: And did you arrive thereat?
A: 4:30, sir, after the briefing, sir, we arrived there at 4:30 already.
Q: And what happened at the Rizal boulevard near the Shakey's or at the Shakey's?
A: At the Shakeys. So the plan was for the informant and Joel Rebotazo to accompany him. And then they were having a conversation at the Shakey's and I pretended to be a buyer.
Q: And since you pretended to be the buyer, was there any conversation made between you as the buyer with the accused Joel Rebotazo?
A: Yes, sir.
Q: Can you tell the Honorable Court what was that conversation?
A: I bought drug from him worth ₱300. Our bridge was the informant because the informant and him know each other and me, I was just a buyer.

Q: What happened when you informed the accused Joel Rebotazo of your desire to buy *shabu*?

A: As I bought from him in the amount of Three hundred, he also gave me an exchange of the amount that I gave.

xxx xxx xxx

Q: So after you informed the accused Joel Rebotazo of your desire to buy *shabu*, this Joel Rebotazo acceded to your proposal?

A: Yes.

Q: And since he acceded to your proposal to buy *shabu*, what transpired next?

A: That's it. I gave him three hundred and the *shabu* that is also worth [₱]300 he also gave it to me.

Q: What particular hand?

A: Right hand, Your Honor.

Q: That you tendered that money?

A: Yes, Your Honor.

Q: What about Joel Rebotazo, what particular hand of Joel Rebotazo?

A: The same, Your Honor.

Q: The same what?

A: Right hand.

Q: So after there was an exchange of money made by you and the receiving of the *shabu* from Joel Rebotazo, what happened next?

A: When I gave the money, he also gave me the stuff, the *shabu*. I gave a go signal to the operatives.

Q: What signal were you talking about?

A: Since I was wearing a hat at that time, sir, our agreed signal with the operatives is for me to take off.

Q: And were you able to take off your hat?

A: Yes, sir.

Q: What happened after you took off your hat?

A: They already assaulted. They apprehended Joel Rebotazo.

Q: Who approached both of you?

A: Miguel Dungog and Doming Cimafranca, the operatives.

Q: By the way, if this Joel Rebotazo is inside this courtroom, will you be able to identify him?

A: Yes, sir.

Q: Kindly point to us?
A: There (witness is pointing to the person wearing orange t-shirt who when asked as to his name answered Joel Rebotazo).
Q: Now if that *shabu* will be shown to you, will you be able to identify that *shabu*?
A: Yes, sir.
Q: There are two (2) of this *shabu* in front of you, kindly go over these two (2) sachets of *shabu*, identify the same and tell the Honorable Court what particular sachet of *shabu* was the one that was the subject of the buy bust transaction?
A: This is the one (witness is handling over the plastic which contained the sachet).

xxx xxx xxx

Q: There is another sachet of *shabu* aside from the one that you have just identified, what is this *shabu* all about?
A: Actually this was placed in a bigger sachet and it was being divided into two (2), this one (witness is touching the other plastic container). It was left on the accused.
Q: Where was it? Do you know where was it recovered?
A: He inserted it in his socks.

This testimony was sufficiently corroborated by witness Miguel Dungog:[37]

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

xxx xxx xxx

Q: Can you remember where you were in the afternoon of February 27, 2003?
A: We were at the Rizal Boulevard conducting buy bust operation.
Q: When you say "we," who were your companions in conducting a buy bust operation?
A: Dominador Cimafranca and other assets of the NBI.
Q: Such as?
A: Louie Diaz and also a media representative, Ivan Bandal.

[37] TSN, 8 November 2004, pp. 3-7.

Q: And considering that you were there at the Rizal Boulevard particularly at the Shakey's Pizza Plaza, what transpired thereat at the time?

A: We conducted the buy bust operation, using Louie Diaz as the poseur-buyer. We successfully conducted the buy bust operation against Joel Rebotazo.

Q: Who is this Louie Diaz?

A: He is the son of our former chief in Dumaguete City.

Q: Where were you when this Louie Diaz conducted the buy bust?

A: I was in the vicinity, I was at a seeing distance.

Q: When you say you were in the vicinity, how far were you?

A: About four or five meters away, Sir.

Q: When you say you are at a seeing distance, was it clear at that time?

A: Yes, and we arranged signals.

xxx xxx xxx

Q: But what have you observed between the two?

A: We observed that there was an exchange and then the signal was given that the sale was completed.

Q: What was the exchange which you mentioned? Can you describe to us what particular hand of Louie Diaz was extended to accused Joel Rebotazo?

A: His right hand but another thing was given also in exchange from Joel Rebotazo.

Q: Did you see what was given by Louie Diaz to Joel Rebotazo?

A: No, Sir.

Q: What about the thing that you saw in the extended hand of Joel Rebotazo given to Louie Diaz?

A: I have not seen the thing given by Joel Rebotazo to Louie Diaz. It was Louie Diaz who personally received the item, Sir.

Q: After the transaction you said there was a signal?

A: Yes, Sir, there was a signal.

Q: What was the signal?

A: Taking off the cap of Louie Diaz, Sir.

Q: Are you telling this Honorable Court that Louie Diaz was wearing a cap?

A: Yes, Sir, he was wearing a cap.

Q: What kind of cap?
A: A baseball cap.
Q: Then after the signal what happened next?
A: I immediately went to them and told Joel Rebotazo to freeze and stay calm, that we are NBI and this is a buy bust operation.
Q: Who told Joel Rebotazo?
A: Me, Sir.
Q: In other words you effected the arrest?
A: Yes, Sir, I effected the arrest and after I told him that, a frisked [sic] was made on his body and then he voluntarily told me that another pocket [sic] was in his sock.

Evidently, there is no need to present the marked money in court, because the prosecution has satisfactorily shown how the illegal sale took place and positively identified the packets of *shabu*, subjects of this case.

2. The prosecution has sufficiently established the chain of custody.

Appellant also argues that no one from the prosecution testified on the manner in which the seized drugs were handled and the measures undertaken to preserve their integrity and evidentiary value.[38] Specifically, the prosecution "failed to account for the whereabouts of the seized drugs from the time the forensic chemist was done with examining the same, up to the time they were identified by her in court, as the said pieces of evidence appear to have been already in the court's custody when she testified."[39]

We have held that as a mode of authenticating evidence, the chain-of-custody rule requires that the presentation of the seized prohibited drugs as an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[40] This would ideally cover the testimony

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[38] *Rollo*, p. 46; Supplemental Brief, p. 2.

[39] *Id.*

[40] *Cacao v. People*, G.R. No. 180870, 22 January 2010, 610 SCRA 636, 650, citing *People v. Gutierrez*, G.R. No. 177777, 4 December 2009, 607 SCRA 377, 392.

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.[41]

An examination of the records would reveal that the prosecution has sufficiently established the chain of custody in this case. The testimonies of Miguel Dungog and Josephine S. Llena, forensic chemist of the PNP Crime Laboratory, reveal that although the chain was not narrated step-by-step, the accountability for each transfer of the seized drugs was proven. Witness Dungog testified on this matter, to wit:[42]

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

xxx xxx xxx

Q: In other words you effected the arrest?
A: Yes, Sir, I effected the arrest and after I told him that, a frisked [sic] was made on his body and the he voluntarily told me that another pocket was in his sock.

xxx xxx xxx

Q: When you effected the arrest what happened next?
A: The two (2) sachets of *shabu* were marked as 1 and 2 and the subject Joel Rebotazo was taken to the NBI office for proper inventory taking and other standard procedures done in the NBI office.
Q: You made these markings on the sachets at the crime scene?
A: Yes, Sir.

xxx xxx xxx

Q: In the sachet are markings. Can you identify what are these markings and who made those writings?
A: NBI-DUMDO-02/20/03/REBOTAZO/BB/01

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[41] *Id.*

[42] TSN, 8 November 2004, pp. 7-20.

Q: Who made those markings?
A: Myself, Sir.
Q: And what is the meaning of that marking?
A: BB/01 is the product of the buy bust.

xxx xxx xxx

Q: Kindly proceed to the other sachet.
A: NBI-DUMDO-02/20/03/REBOTAZO/POS/02
Q: Who made that marking.
A: Me, Sir, [sic]
Q: And what is the meaning of that?
A: POS/02 is the one recovered in his possession, Sir.

xxx xxx xxx

Q: You also mentioned that you have issued a receipt at the NBI office?
A: Yes, Sir.
Q: Attached to the records of the case, found on page 19 is an inventory of dangerous drugs which is already marked as Exhibit "E" for the prosecution. Kindly go over this and identify the same.
A: This is the same inventory of dangerous drugs we made at the NBI office.

xxx xxx xxx

Q: You also said awhile ago that you were the officer who submitted the letter request to the PNP crime laboratory together with the confiscated drugs, for examination?
A: Yes, Sir.

xxx xxx xxx

Q: There is a signature at the bottom portion along with the word, "Delivered by" and followed by a handwritten name Miguel L. Dungog. Whose signature is this?
A: This is my signature, Sir.

On the other hand, witness Llena testified as follows: [43]

[43] TSN, 10 December 2003, pp. 2-4.

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

xxx xxx xxx

Q: Police Inspector Josephine S. Llena, since [sic] when did you receive this letter request together with the specimen submitted in relation to this case together with the seized items?

A: The letter request which came from the Chief of the NBI stationed here in Dumaguete City together with the specimen subject in this case were received in our office on February 28, 2003 at 9:20 in the morning.

xxx xxx xxx

Q: Now, after you received this letter request for laboratory examination together with the 2 sachets of *shabu* in relation to these cases, what did you do with them?

A: The specimen were subjected into [sic] physical and chemical examination.

The prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation.[44] Credence is usually 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.[45] Failure to impute ill motive on the part of the police officers who conducted the buy-bust operation[46] will only sustain the conviction of the accused.

3. Minor inconsistencies, when referring only to minor details and which are fully explained, do not destroy the prosecution's case.

The supposed factual discrepancies in the prosecution's evidence do not hold water. The rule on material inconsistencies has been enunciated by this Court several times. In *People v.*

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[44] *People v. Lapasaran*, G.R. No. 198820, 10 December 2012.

[45] *Id.*

[46] *Id.*

Arcega,[47] we have held that "[b]y and large, the 'material inconsistencies' asserted by the accused-appellant which allegedly create grave doubts are, on the contrary, too minor, trivial and inconsequential to affect the credibility of the prosecution witnesses, the inconsistencies having been fully and sufficiently explained during trial by the witnesses themselves, and their explanations having been accepted by the Trial Court. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony."

On this score, we agree with the findings of the CA that the prosecution has sufficiently explained the factual discrepancies.

First, on the lack of signature of an elected official and the failure to indicate the name of the person who affixed his signature as DOJ representative in the inventory report, jurisprudence has maintained that "[n]on-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[48]

It appears from the records that the NBI tried to contact *barangay* officials to attend the inventory-taking, but none arrived.[49] Such effort on the part of the NBI agents and the consequent failure of said elected officials to appear should be considered sufficient justifiable ground so as to excuse the

[47] G.R. No. 96319, 31 March 1992, 207 SCRA 681, 687.

[48] *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 842-846.

[49] TSN, 27 June 2005, p. 5.

prosecution from complying with this particular requirement. As to the question of the identity of the DOJ representative, witness Dungog clarified the same in his cross-examination, thus:[50]

Q: That at the time of the signing of the Inventory of Drugs, you were not able to identify the DOJ Representative?
A: Yes.
Q: And you cannot remember his face or his name?
A: I think it was Michael Fabe.
Q: Are you sure of that?
A: I am sure that it is Michael Fabe.
Q: But during the time of the cross-examination, do you admit that you did not remember him at that time?
A: I had a hard time to recall [sic].

Considering that the integrity of the seized drugs has been maintained, and that the drugs were immediately marked for proper identification, the absence of an elected official during the inventory-taking should not be deemed fatal to the prosecution's case.[51]

Second, the alleged confusion in the identity of the media representatives was thoroughly explained by witness Dungog in the following manner:[52]

Q: You mentioned a while ago that Ivan Bandal was present during the buy-bust?
A: Yes, Sir.
Q: Was he able to sign in the inventory?
A: No, Sir.
Q: Why?
A: During the conduct of the buy bust operation, he was called by his office at Silliman University, so he was not around in the actual buy bust. He was around in the initial plan and going to the [s]ite.

[50] *Id.* at 3-4.

[51] See *People v. Musa*, G.R. No. 199735, 24 October 2012; *Imson v. People*, G.R. No. 193003, 13 July 2011, 653 SCRA 826.

[52] TSN, 8 November 2004, p. 16.

During the cross-examination, he further stated:[53]

Q: But specifically you mentioned a media practicioner?
A: Yes, Sir.
Q: Ivan Bandal?
A: Yes, Sir.
Q: But as you stated he was no longer present during the actual buy bust?
A: Yes, Sir.
Q: And when you conducted therefore, the actual buy bust operation there was no representative from the media?
A: None, Sir.
Q: And thereafter, after the buy bust operation you effected the arrest, you seized the objects and you went to the NBI office, correct?
A: Yes, Sir.
Q: And it was the time you conducted the inventory, right?
A: The formal inventory, right?
Q: And it was at this time that a media [sic] was present, and was represented by another personality Aranas?
A: Yes, Sir.
Q: The name?
A: Maricar Aranas.
Q: Present as representative of the media who was not present during the actual buy bust operation?
A: Yes, Sir.

Third, on the discrepancy between the inventory report and the actual incident, including the markings on Specimen "A" and Specimen "B," the discrepancy was also explained by Dungog, as follows:[54]

Q: Now on the second page of your affidavit, particularly on paragraph 5 it reads... "Hereunder is an inventory of dangerous drugs confiscated from the possession of Joel Rebotazo, to wit: one heat sealed transparent plastic pack if white crystalline granules believed to be *shabu* marked

[53] *Id.* at pp. 25-26.

[54] *Id.* at 10-11.

as NBI-DUMDO-02/20/03/REBOTAZO/BB/01; No. 2, one heat sealed transparent plastic pack of white crystalline granules believed to be *shabu* marked as NBI-DUMDO-02/20/03/REBOTAZO/POS/02. What is the meaning of this NBI-DUMDO-02/20/03?

A: That corresponds to the date but in that case, there was an inadvertence because we were thinking that it was February 20 at that time. Nobody noticed. We noticed the inadvertence on February 28, the following day.

Q: You did not correct that?

A: I have corrected that in my affidavit, Sir.

II

The NBI's lack of coordination with the PDEA cannot exculpate the appellant.

The NBI's lack of coordination with the PDEA cannot be given weight or credence. Section 86 of R.A. 9165 reads:

SEC. 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

In *People v. Sta. Maria*,[55] we have held thus:

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities

[55] 545 Phil. 520, 531-532 (2007).

be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. (Emphasis and underscoring supplied)

In other words, the lack of coordination with the PDEA cannot in and of itself exculpate appellant. For as long as the mandatory requirements of R.A. 9165 have been complied with, the buy-bust operation remains legal, and appellant's conviction shall be upheld.

III

The "fruit of the poisonous tree" doctrine cannot apply in the face of a valid buy-bust operation.

Given the circumstances above, appellant's arrest cannot be considered illegal. Time and again, we have ruled that the arrest of the accused *in flagrante* during a buy-bust operation is justified under Rule 113, Section 5(a) of the Rules of Court.[56] From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.[57]

As we held in *People v. Marcelino*,[58] the illegal drug seized was not the "fruit of the poisonous tree," as the defense would have this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Section 13 of the Rules of Court.[59] Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was not needed to conduct it.[60]

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[56] *People v. Villamin*, G.R. No. 175590, 9 February 2010, 612 SCRA 91, 108.

[57] *Id.*

[58] G.R. No. 189278, 26 July 2010, 625 SCRA 632.

[59] *Id.* at 640.

[60] *Id.*

WHEREFORE, the appeal is hereby **DISMISSED.** The assailed Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 00443 dated 31 July 2009 is hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 193493. June 13, 2013]

JAIME N. GAPAYAO, *petitioner, vs.* **ROSARIO FULO, SOCIAL SECURITY SYSTEM and SOCIAL SECURITY COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES ARE GENERALLY ACCORDED FINALITY WHEN AFFIRMED BY THE COURT OF APPEALS.— [I]t is settled that the Court is not a trier of facts and will not weigh evidence all over again. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA. For as long as these findings are supported by substantial evidence, they must be upheld.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TYPES OF EMPLOYEES.— Jurisprudence has identified the three types of employees mentioned in xxx

[Article 280 of the Labor Code]: (1) regular employees or those who have been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement, or those whose work or service is seasonal in nature and is performed for the duration of the season; and (3) casual employees or those who are neither regular nor project employees.

3. ID.; ID.; ID.; REGULAR SEASONAL EMPLOYEES; FARM WORKERS ARE CONSIDERED REGULAR SEASONAL EMPLOYEES; EXCEPTIONS.— Farm workers generally fall under the definition of seasonal employees. We have consistently held that seasonal employees may be considered as regular employees. Regular seasonal employees are those called to work from time to time. The nature of their relationship with the employer is such that during the off season, they are temporarily laid off; but reemployed during the summer season or when their services may be needed. They are in regular employment because of the nature of their job, and not because of the length of time they have worked. The rule, however, is not absolute. In *Hacienda Fatima v. National Federation of Sugarcane Workers-Food & General Trade*, the Court held that seasonal workers who have worked for one season only may not be considered regular employees. Similarly, in *Mercado, Sr. v. NLRC*, it was held that when seasonal employees are free to contract their services with other farm owners, then the former are not regular employees.

4. ID.; ID.; REGULAR EMPLOYMENT; TO BE CONSIDERED REGULAR EMPLOYEES, THE PRIMARY STANDARD USED IS THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY THEY PERFORM AND THE USUAL TRADE OR BUSINESS OF THE EMPLOYER.— For regular employees to be considered as such, the primary standard used is the reasonable connection between the particular activity they perform and the usual trade or business of the employer. x x x A reading of the records reveals that the deceased was indeed a farm worker who was in the regular employ of petitioner. From year to year, starting

January 1983 up until his death, the deceased had been working on petitioner's land by harvesting abaca and coconut, processing copra, and clearing weeds. His employment was continuous in the sense that it was done for more than one harvesting season. Moreover, no amount of reasoning could detract from the fact that these tasks were necessary or desirable in the usual business of petitioner.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES; COMPROMISE AGREEMENT; DEEMED VALID AND BINDING AMONG THE PARTIES ONCE EXECUTED BY THE WORKERS AND THEIR EMPLOYERS IN GOOD FAITH TO SETTLE THEIR DIFFERENCES.— [A Compromise Agreement] is a valid agreement as long as the consideration is reasonable and the employee signed the waiver voluntarily, with a full understanding of what he or she was entering into. All that is required for the compromise to be deemed voluntarily entered into is personal and specific individual consent. Once executed by the workers or employees and their employers to settle their differences, and done in good faith, a Compromise Agreement is deemed valid and binding among the parties.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; *PAKYAW* WORKERS ARE CONSIDERED REGULAR EMPLOYEES WHEN THEIR EMPLOYERS EXERCISE CONTROL OVER THEM.— *Pakyaw* workers are considered employees for as long as their employers exercise control over them. In *Legend Hotel Manila v. Realuyo,* the Court held that "the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end." It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.

7. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; THE RIGHT OF AN EMPLOYEE TO BE COVERED BY THE SOCIAL SECURITY ACT IS PREMISED ON THE EXISTENCE THEREOF.— In this case, we agree with the CA that petitioner wielded control over the deceased in the discharge of his functions. Being the owner of the farm on which the latter worked, petitioner – on his own or through his overseer – necessarily had the right to review the quality of work produced by his laborers. It matters not whether the deceased conducted his work inside petitioner's farm or not because petitioner retained the right to control him in his work, and in fact exercised it through his farm manager Amado Gacelo. The latter himself testified that petitioner had hired the deceased as one of the *pakyaw* workers whose salaries were derived from the gross proceeds of the harvest. x x x The right of an employee to be covered by the Social Security Act is premised on the existence of an employer-employee relationship. That having been established, the Court hereby rules in favor of private respondent.

APPEARANCES OF COUNSEL

William Erlano for petitioner.
Public Attorney's Office for Rosario Fulo.
Mary Lyn S. Yrastorza-David for Social Security Commission.
Danilo R. Tancioco for Social Security System.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 Petition[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP. No. 101688, affirming the Resolution[4] of the Social Security Commission

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

[2] *Id.* at 54-65; CA Decision dated 17 March 2010, penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Presiding Justice Andres R. Reyes, Jr., and Associate Justice Isaias P. Dicdican.

[3] *Id.* at 87-88; CA Resolution dated 13 August 2010.

[4] CA *rollo,* pp. 79-87.

(SSC). The SSC held petitioner Jaime N. Gapayao liable to pay the unpaid social security contributions due to the deceased Jaime Fulo, and the Social Security System (SSS) to pay private respondent Rosario L. Fulo, the widow of the deceased, the appropriate death benefits pursuant to the Social Security Law.

The antecedent facts are as follows:

On 4 November 1997, Jaime Fulo (deceased) died of "acute renal failure secondary to 1st degree burn 70% secondary electrocution"[5] while doing repairs at the residence and business establishment of petitioner located at San Julian, Irosin, Sorsogon.

Allegedly moved by his Christian faith, petitioner extended some financial assistance to private respondent. On 16 November 1997, the latter executed an Affidavit of Desistance[6] stating that she was not holding them liable for the death of her late husband, Jaime Fulo, and was thereby waiving her right and desisting from filing any criminal or civil action against petitioner.

On 14 January 1998, both parties executed a Compromise Agreement,[7] the relevant portion of which is quoted below:

> We, the undersigned unto this Honorable Regional Office/District Office/Provincial Agency Office respectfully state:
>
> 1. The undersigned employer, hereby agrees to pay the sum of FORTY THOUSAND PESOS (₱40,000.00) to the surviving spouse of JAIME POLO, an employee who died of an accident, as a complete and full payment for all claims due the victim.
>
> 2. On the other hand, the undersigned surviving spouse of the victim having received the said amount do [sic] hereby release and discharge the employer from any and all claims that maybe due the victim in connection with the victim's employment thereat.

Thereafter, private respondent filed a claim for social security benefits with the Social Security System (SSS)–Sorosogon

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[5] *Rollo,* p. 55; CA Decision, p. 2.

[6] *Id.* at 101.

[7] *Id.* at 102.

Branch.[8] However, upon verification and evaluation, it was discovered that the deceased was not a registered member of the SSS.[9]

Upon the insistence of private respondent that her late husband had been employed by petitioner from January 1983 up to his untimely death on 4 November 1997, the SSS conducted a field investigation to clarify his status of employment. In its field investigation report,[10] it enumerated its findings as follows:

> In connection with the complaint filed by Mrs. Rosario Fulo, hereunder are the findings per interview with **Mr. Leonor Delgra, Santiago Bolanos and Amado Gacelo:**
>
> 1. That Mr. Jaime Fulo was an employee of Jaime Gapayao as farm laborer from 1983 to 1997.
> 2. Mr. Leonor Delgra and Santiago Bolanos are co-employees of Jaime Fulo.
> 3. Mr. Jaime Fulo receives compensation on a daily basis ranging from ₱5.00 to ₱60.00 from 1983 to 1997.
>
> **Per interview from Mrs. Estela Gapayao, please be informed that:**
>
> 1. Jaime Fulo is an employee of Mr. & Mrs. Jaime Gapayao on an extra basis.
> 2. Sometimes Jaime Fulo is allowed to work in the farm as abaca harvester and earn 1/3 share of its harvest as his income.
> 3. Mr. & Mrs. Gapayao hired the services of Jaime Fulo not only in the farm as well as in doing house repairs whenever it is available. Mr. Fulo receives his remuneration usually in the afternoon after doing his job.
> 4. Mr. & Mrs. Gapayao hires 50-100 persons when necessary to work in their farm as laborer and Jaime Fulo is one of them. Jaime Fulo receives more or less ₱50.00 a day. (Emphases in the original)

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[8] *Id.* at 103; cited in Petition for Intervention of the SSS dated 30 June 2003.

[9] *Id.*

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

Consequently, the SSS demanded that petitioner remit the social security contributions of the deceased. When petitioner denied that the deceased was his employee, the SSS required private respondent to present documentary and testimonial evidence to refute petitioner's allegations.[11]

Instead of presenting evidence, private respondent filed a Petition[12] before the SSC on 17 February 2003. In her Petition, she sought social security coverage and payment of contributions in order to avail herself of the benefits accruing from the death of her husband.

On 6 May 2003, petitioner filed an Answer[13] disclaiming any liability on the premise that the deceased was not the former's employee, but was rather an independent contractor whose tasks were not subject to petitioner's control and supervision.[14] Assuming *arguendo* that the deceased was petitioner's employee, he was still not entitled to be paid his SSS premiums for the intervening period when he was not at work, as he was an "intermittent worker who [was] only summoned every now and then as the need [arose]."[15] Hence, petitioner insisted that he was under no obligation to report the former's demise to the SSS for social security coverage.

Subsequently, on 30 June 2003, the SSS filed a Petition-in-Intervention[16] before the SSC, outlining the factual circumstances of the case and praying that judgment be rendered based on the evidence adduced by the parties.

On 14 March 2007, the SSC rendered a Resolution,[17] the dispositive portion of which provides:

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[11] *Rollo*, p. 55; CA Decision, p. 2.

[12] *Id.* at 90-91.

[13] *Id.* at 92-94.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 103-104.

[17] CA *rollo*, pp. 79-87.

WHEREFORE, PREMISES CONSIDERED, this Commission finds, and so holds, that Jaime Fulo, the late husband of petitioner, was employed by respondent Jaime N. Gapayao from January 1983 to November 4, 1997, working for nine (9) months a year receiving the minimum wage then prevailing.

Accordingly, the respondent is hereby ordered to pay ₱45,315.95 representing the unpaid SS contributions due on behalf of deceased Jaime Fulo, the amount of ₱217,710.33 as 3% per month penalty for late remittance thereof, computed as of March 30, 2006, without prejudice to the collection of additional penalty accruing thereafter, and the sum of ₱230,542.20 (SSS) and ₱166,000.00 (EC) as damages for the failure of the respondent to report the deceased Jaime Fulo for SS coverage prior to his death pursuant to Section 24(a) of the SS Law, as amended.

The SSS is hereby directed to pay petitioner Rosario Fulo the appropriate death benefit, pursuant to Section 13 of the SS Law, as amended, as well as its prevailing rules and regulations, and to inform this Commission of its compliance herewith.

SO ORDERED.

On 18 May 2007, petitioner filed a Motion for Reconsideration,[18] which was denied in an Order[19] dated 16 August 2007.

Aggrieved, petitioner appealed to the CA on 19 December 2007.[20] On 17 March 2010, the CA rendered a Decision[21] in favor of private respondent, as follows:

In fine, public respondent SSC had sufficient basis in concluding that private respondent's husband was an employee of petitioner and should, therefore, be entitled to compulsory coverage under the Social Security Law.

Having ruled in favor of the existence of employer-employee relationship between petitioner and the late Jaime Fulo, it is no longer necessary to dwell on the other issues raised.

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[18] *Rollo*, pp. 108-110.

[19] *Id.* at 107.

[20] *Id.* at 37-52.

[21] *Id.* at 54-65.

Resultantly, for his failure to report Jaime Fulo for compulsory social security coverage, petitioner should bear the consequences thereof. Under the law, an employer who fails to report his employee for social security coverage is liable to [1] pay the benefits of those who die, become disabled, get sick or reach retirement age; [2] pay all unpaid contributions plus a penalty of three percent per month; and [3] be held liable for a criminal offense punishable by fine and/or imprisonment. But an employee is still entitled to social security benefits even is (sic) his employer fails or refuses to remit his contribution to the SSS.

WHEREFORE, premises considered, the Resolution appealed from is **AFFIRMED *in toto***.

SO ORDERED.

In holding thus, the CA gave credence to the findings of the SSC. The appellate court held that it "does not follow that a person who does not observe normal hours of work cannot be deemed an employee."[22] For one, it is not essential for the employer to actually supervise the performance of duties of the employee; it is sufficient that the former has a right to wield the power. In this case, petitioner exercised his control through an overseer in the person of Amado Gacelo, the tenant on petitioner's land.[23] Most important, petitioner entered into a Compromise Agreement with private respondent and expressly admitted therein that he was the employer of the deceased.[24] The CA interpreted this admission as a declaration against interest, pursuant to Section 26, Rule 130 of the Rules of Court.[25]

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[22] *Id.* at 60; CA Decision, p. 7.

[23] *Id.* at 61; CA Decision, p. 8.

[24] *Id.* at 62; CA Decision, p. 9. The relevant portion of the Compromise Agreement states – "We, the undersigned unto this Honorable Regional Office/District Office/Provincial Agency Office respectively state: 1. The **undersigned employer**, hereby agrees to pay the sum of FORTY THOUSAND PESOS (₱40,000) to the surviving spouse of JAIME POLO, an employee who died of an accident, as a complete full payment for all claims due the victim. x x x (Emphasis and underscoring supplied)

[25] *Id.* at 63; CA Decision, p. 10.

Hence, this petition.

Public respondents SSS[26] and SSC[27] filed their Comments on 31 January 2011 and 28 February 2011, respectively, while private respondent filed her Comment on 14 March 2011.[28] On 6 March 2012, petitioner filed a "Consolidated Reply to the Comments of the Public Respondents SSS and SSC and Private Respondent Rosario Fulo."[29]

ISSUE

The sole issue presented before us is whether or not there exists between the deceased Jaime Fulo and petitioner an employer-employee relationship that would merit an award of benefits in favor of private respondent under social security laws.

THE COURT'S RULING

In asserting the existence of an employer-employee relationship, private respondent alleges that her late husband had been in the employ of petitioner for 14 years, from 1983 to 1997.[30] During that period, he was made to work as a laborer in the agricultural landholdings, a harvester in the abaca plantation, and a repairman/utility worker in several business establishments owned by petitioner.[31] To private respondent, the "considerable length of time during which [the deceased] was given diverse tasks by petitioner was a clear indication of the necessity and indispensability of her late husband's services to petitioner's business."[32] This view is bolstered by the admission of petitioner himself in the Compromise Agreement that he was the deceased's employer.[33]

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[26] *Id.* at 125-130.

[27] *Id.* at 139-147.

[28] *Id.* at 149-161.

[29] *Id.* at 179-191.

[30] *Id.* at 155; Comment, p. 7.

[31] *Id.*

[32] *Id.* at 156; Comment, p. 8.

[33] *Id.* at 157; Comment, p. 9.

Private respondent's position is similarly espoused by the SSC, which contends that its findings are duly supported by evidence on record.[34] It insists that *pakyaw* workers are considered employees, as long as the employer exercises control over them. In this case, the exercise of control by the employer was delegated to the caretaker of his farm, Amado Gacelo. The SSC further asserts that the deceased rendered services essential for the petitioner's harvest. While these services were not rendered continuously (in the sense that they were not rendered every day throughout the year), still, the deceased had never stopped working for petitioner from year to year until the day the former died.[35] In fact, the deceased was required to work in the other business ventures of petitioner, such as the latter's bakery and grocery store.[36] The Compromise Agreement entered into by petitioner with private respondent should not be a bar to an employee demanding what is legally due the latter.[37]

The SSS, while clarifying that it is "neither adversarial nor favoring any of the private parties x x x as it is only tasked to carry out the purposes of the Social Security Law,"[38] agrees with both private respondent and SSC. It stresses that factual findings of the lower courts, when affirmed by the appellate court, are generally conclusive and binding upon the Court.[39]

Petitioner, on the other hand, insists that the deceased was not his employee. Supposedly, the latter, during the performance of his function, was not under petitioner's control. Control is not necessarily present even if the worker works inside the premises of the person who has engaged his services.[40] Granting without admitting that petitioner gave rules or guidelines to the

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[34] *Id.* at 143; Comment, p. 5.

[35] *Id.* at 144; Comment, p. 6.

[36] *Id.* at 144-145; Comment, pp. 6-7.

[37] *Id.*

[38] *Id.* at 128; Comment, p. 4.

[39] *Id.* at 126-127; Comment, pp. 2-3.

[40] *Id.* at 21; Petition, p. 18.

deceased in the process of the latter's performing his work, the situation cannot be interpreted as control, because it was only intended to promote mutually desired results.[41]

Alternatively, petitioner insists that the deceased was hired by Adolfo Gamba, the contractor whom he had hired to construct their building;[42] and by Amado Gacelo, the tenant whom petitioner instructed to manage the latter's farm.[43] For this reason, petitioner believes that a tenant is not beholden to the landlord and is not under the latter's control and supervision. So if a worker is hired to work on the land of a tenant – such as petitioner – the former cannot be the worker of the landlord, but of the tenant's.[44]

Anent the Compromise Agreement, petitioner clarifies that it was executed to buy peace, because "respondent kept on pestering them by asking for money."[45] Petitioner allegedly received threats that if the matter was not settled, private respondent would refer the matter to the New Peoples' Army.[46] Allegedly, the Compromise Agreement was "extortion camouflaged as an agreement."[47] Likewise, petitioner maintains that he shouldered the hospitalization and burial expenses of the deceased to express his "compassion and sympathy to a distressed person and his family," and not to admit liability.[48]

Lastly, petitioner alleges that the deceased is a freelance worker. Since he was engaged on a *pakyaw* basis and worked for a short period of time, in the nature of a farm worker every season, he was not precluded from working with other persons and in fact worked for them. Under Article 280 of

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[41] *Id.* at 22; Petition, p. 19.

[42] *Id.* at 23; Petition, p. 20.

[43] *Id.* at 26; Petition, p. 23.

[44] *Id.*

[45] *Id.* at 24; Petition, p. 21.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 25; Petition, p. 22.

the Labor Code,[49] seasonal employees are not covered by the definitions of regular and casual employees.[50] Petitioner cites *Mercado, Sr. v. NLRC,*[51] in which the Court held that seasonal workers do not become regular employees by the mere fact that they have rendered at least one year of service, whether continuous or broken.[52]

We see no cogent reason to reverse the CA.

I
Findings of fact of the SSC are given weight and credence.

At the outset, it is settled that the Court is not a trier of facts and will not weigh evidence all over again. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA.[53] For as long as these findings are supported by substantial evidence, they must be upheld.[54]

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[49] Article 280. *Regular and Casual Employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

xxx xxx xxx

[50] *Id.* at 29-30; Petition, p. 26.

[51] 278 Phil. 345 (1991).

[52] *Rollo,* p. 30; Petition, p. 27.

[53] *Ortega v. SSC,* G.R. No. 176150, 25 June 2008, 555 SCRA 353, 363-364, citing *Lazaro v. Social Security Commission*, 479 Phil. 384 (2004); *Reyes v. National Labor Relations Commission*, G.R. No. 160233, 8 August 2007, 529 SCRA 487.

[54] *Signey v. SSS,* G.R. No. 173582, 28 January 2008, 542 SCRA 629, 635-636.

II

Farm workers may be considered regular seasonal employees.

Article 280 of the Labor Code states:

> Article 280. *Regular and Casual Employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.

Jurisprudence has identified the three types of employees mentioned in the provision: (1) regular employees or those who have been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement, or those whose work or service is seasonal in nature and is performed for the duration of the season; and (3) casual employees or those who are neither regular nor project employees.[55]

Farm workers generally fall under the definition of seasonal employees. We have consistently held that seasonal employees

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[55] *Benares v. Pancho*, 497 Phil. 181, 189-190 (2005), citing *Perpetual Help Credit Cooperative, Inc. v. Faburada*, 419 Phil. 147, 155 (2001).

may be considered as regular employees.[56] Regular seasonal employees are those called to work from time to time. The nature of their relationship with the employer is such that during the off season, they are temporarily laid off; but reemployed during the summer season or when their services may be needed.[57] They are in regular employment because of the nature of their job, and not because of the length of time they have worked.[58]

The rule, however, is not absolute. In *Hacienda Fatima v. National Federation of Sugarcane Workers-Food & General Trade*,[59] the Court held that seasonal workers who have worked for one season only may not be considered regular employees. Similarly, in *Mercado, Sr. v. NLRC*,[60] it was held that when seasonal employees are free to contract their services with other farm owners, then the former are not regular employees.

For regular employees to be considered as such, the primary standard used is the reasonable connection between the particular activity they perform and the usual trade or business of the employer.[61] This test has been explained thoroughly in *De Leon v. NLRC*,[62] *viz*:

> The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The

[56] *AAG Trucking and/or Alex Ang Gaeid v. Yuag*, G.R. No. 195033, 12 October 2011, 659 SCRA 91, 102.

[57] Azucena, *Everyone's Labor Code*, 325 (2012).

[58] *Id.* at 326.

[59] 444 Phil. 587 (2003).

[60] *Supra* note 51. See also *Abasolo v. NLRC*, 400 Phil. 86 (2000); *Philippine Tobacco Flue-Curing & Redrying Corporation v. NLRC*, 360 Phil. 218 (1998).

[61] *Hacienda Bino v. Cuenca*, 496 Phil. 198, 209 (2005), citing *Tan v. Lagrama*, 436 Phil. 190 (2002).

[62] *De Leon v. NLRC*, 257 Phil. 626, 632-633.

connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

A reading of the records reveals that the deceased was indeed a farm worker who was in the regular employ of petitioner. From year to year, starting January 1983 up until his death, the deceased had been working on petitioner's land by harvesting abaca and coconut, processing copra, and clearing weeds. His employment was continuous in the sense that it was done for more than one harvesting season. Moreover, no amount of reasoning could detract from the fact that these tasks were necessary or desirable in the usual business of petitioner.

The other tasks allegedly done by the deceased outside his usual farm work only bolster the existence of an employer-employee relationship. As found by the SSC, the deceased was a construction worker in the building and a helper in the bakery, grocery, hardware, and piggery – all owned by petitioner.[63] This fact only proves that even during the off season, the deceased was still in the employ of petitioner.

The most telling indicia of this relationship is the Compromise Agreement executed by petitioner and private respondent. It is a valid agreement as long as the consideration is reasonable and the employee signed the waiver voluntarily, with a full understanding of what he or she was entering into.[64] All that is required for the compromise to be deemed voluntarily entered into is personal and specific individual consent.[65] Once executed by the workers or employees and their employers to settle their

[63] CA *rollo*, pp. 82-84; SSC Resolution, pp. 4-6.

[64] *Eurotech Hair Systems, Inc. v. Go*, 532 Phil. 317, 325 (2006).

[65] *Id.* at 325-326.

differences, and done in good faith, a Compromise Agreement is deemed valid and binding among the parties.[66]

Petitioner entered into the agreement with full knowledge that he was described as the employer of the deceased.[67] This knowledge cannot simply be denied by a statement that petitioner was merely forced or threatened into such an agreement. His belated attempt to circumvent the agreement should not be given any consideration or weight by this Court.

III

Pakyaw workers are regular employees, provided they are subject to the control of petitioner.

Pakyaw workers are considered employees for as long as their employers exercise control over them. In *Legend Hotel Manila v. Realuyo*,[68] the Court held that "the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end." It should be remembered that the

[66] *University of the East v. Secretary of Labor and Employment*, G.R. Nos. 93310-12, 21 November 1991, 204 SCRA 254, 260, citing *Dioncla v. Court of Industrial Relations*, 118 Phil. 826 (l963); *Pampanga Sugar Development Co. Inc. v. Court of Industrial Relations*, 200 Phil. 204 (1982); *Chua v. National Labor Relations Commission*, 268 Phil. 590 (1990).

[67] The relevant portion of the Compromise Agreement states: 1. The **undersigned employer**, hereby agrees to pay the sum of FORTY THOUSAND PESOS (₱40,000.00) to the surviving spouse of JAIME POLO, an employee who died of an accident, as a complete and full payment for all claims due the victim.

2. On the other hand, the undersigned surviving spouse of the victim having received the said amount do hereby release and discharge the **employer** from any and all claims that maybe due with victim in connection with the victim's employment thereat. (Emphasis ours)

[68] G.R. No. 153511, 18 July 2012, 677 SCRA 10, 22, citing *Coca Cola Bottlers Phils., Inc. v. NLRC*, 366 Phil. 581, 591 (1999); *Leonardo v. Court of Appeals*, 524 Phil. 221 (2006).

control test merely calls for the existence of the right to control, and not necessarily the exercise thereof.[69] It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[70]

In this case, we agree with the CA that petitioner wielded control over the deceased in the discharge of his functions. Being the owner of the farm on which the latter worked, petitioner – on his own or through his overseer – necessarily had the right to review the quality of work produced by his laborers. It matters not whether the deceased conducted his work inside petitioner's farm or not because petitioner retained the right to control him in his work, and in fact exercised it through his farm manager Amado Gacelo. The latter himself testified that petitioner had hired the deceased as one of the *pakyaw* workers whose salaries were derived from the gross proceeds of the harvest.[71]

We do not give credence to the allegation that the deceased was an independent contractor hired by a certain Adolfo Gamba, the contractor whom petitioner himself had hired to build a building. The allegation was based on the self-serving testimony of Joyce Gapay Demate,[72] the daughter of petitioner. The latter has not offered any other proof apart from her testimony to prove the contention.

The right of an employee to be covered by the Social Security Act is premised on the existence of an employer-employee relationship.[73] That having been established, the Court hereby rules in favor of private respondent.

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[69] *Manila Water Company, Inc. v. Dalumpines,* G.R. No. 175501, 4 October 2010, 632 SCRA 76, 94, citing *Lopez v. Metropolitan Waterworks and Sewerage System,* 501 Phil. 119 (2005).

[70] *Id.*

[71] *Rollo,* pp. 112-113.

[72] CA *rollo,* p. 84; SSC Resolution, p. 6.

[73] *Social Security Commission v. Rizal Poultry And Livestock Association, Inc.*, G.R. No. 167050, 1 June 2011, 650 SCRA 50, 60, citing *Chua v. Court of Appeals,* 483 Phil. 126, 136 (2004).

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP. No. 101688 dated 17 March 2010 and 13 August 2010, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 194384. June 13, 2013]

JOSELITO RAMOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY NOT DISTURBED ON APPEAL.— Findings of fact of the RTC, particularly when affirmed by the CA, are accorded great weight and respect. Thus, these findings are not to be disturbed in the absence of clear proof that the trial and the appellate courts overlooked, misunderstood or misapplied some facts or circumstances of weight and substance. In this case, petitioner failed to adduce sufficient proof that the trial and the appellate courts so erred.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE ENTITLED TO FULL FAITH AND CREDIT IN THE

ABSENCE OF EVIDENCE OF IMPROPER MOTIVE IN TESTIFYING AGAINST THE ACCUSED.— The rule is that "where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that he was not so actuated and that he would not prevaricate and cause damnation to one who brought him no harm or injury." In this case, while petitioner's brothers did in fact file a criminal complaint for frustrated murder against John Tagulao, Gerardo Gloria, and some other individuals, the complaint was eventually dismissed. Nothing on record shows any other circumstance that could have impelled the prosecution witnesses to testify falsely against petitioner. In fact, John Tagulao was a son-in-law of the victim. Thus, the reasonable presumption is that, as a family member, he was interested in the prosecution of the real perpetrator of the crime. We therefore rule that, in the absence of evidence that the prosecution witnesses were moved by an improper motive in testifying against petitioner, the presumption that they were not so moved prevails, and their testimonies are entitled to full faith and credit.

APPEARANCES OF COUNSEL

Suero Basilio Resultay Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.:*

Before this Court is a Rule 45 Petition for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in

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[1] *Rollo*, pp. 41-57; Petition for Review dated 29 December 2010.

[2] *Id.* at 9-21; CA Decision dated 30 March 2010, penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Ramon M. Bato, Jr. and Priscilla J. Baltazar-Padilla.

[3] *Id.* at 24-28; CA Resolution dated 18 October 2010, penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Ramon M. Bato, Jr. and Priscilla J. Baltazar-Padilla.

CA-G.R. CR No. 31823 which affirmed petitioner's conviction for the crime of homicide.

THE FACTS

Petitioner Joselito Ramos (Ramos) was charged with the crime of homicide in an Information dated 25 February 2002, as follows:

> That on or about the 3rd day of October, 2001 in the evening at Barangay Nibaliw Sur, Municipality of Bautista, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with lead pipe and woods, with intent to kill, did then and there willfully, unlawfully and feloniously attack and maul Pedro Prestoza, inflicting upon him, "Acute Subdural Hematoma Brain Contusion," which caused the death of said Pedro Prestoza, as a consequence, to the damage and prejudice of his heirs.
>
> Contrary to Art. 249 of the Revised Penal Code.[4] x x x.

The evidence for the prosecution showed that, at about 10:30 in the evening on 3 October 2001, the victim, Pedro Prestoza (Prestoza), was riding a tricycle with six other people,[5] when another tricycle, this one driven by Ramos, cut in on their path. Petitioner and a certain Danny Alvarez (Alvarez) alighted from their tricycle and pulled down Nelson Tagulao from the other tricyle. Alvarez then struck Nelson Tagulao with a lead pipe.[6]

Prestoza alighted from his tricycle in order to stop the attack. The two assailants then turned on the victim,[7] who was hit by Alvarez with the lead pipe and by Ramos with a piece of wood.[8] While they were ganging up on Prestoza, Jimmy Tagulao arrived

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[4] Records, pp. 35-36.

[5] *Rollo*, p. 10; CA Decision dated 30 March 2010.

[6] *Id.* at 11.

[7] CA *rollo*, p. 13; RTC Decision dated 4 August 2008.

[8] *Rollo*, p. 11; CA Decision dated 30 March 2010.

and engaged Alvarez in a fist fight. The latter and petitioner then ran away.[9]

Prestoza was brought to a hospital for treatment, but he died of his wounds after eight days.[10]

The defense recounted a different version of the facts.

Ramos stated that, at about 10:00 in the evening on 3 October 2001, the tricycle he was driving was trailing two other tricycles with men on board who were cursing at him.[11] He was about to overtake the two other tricycles when they blocked his way. The passengers of the two other tricycles alighted, and one of them thrust a knife at him, but missed. Ramos immediately alighted from his tricycle and ran away, with four other persons giving chase.[12] When they reached a well-lit place, his pursuers recognized him and concluded that he was not an enemy, so they went back to their tricycles. He was about to return to his tricycle when he saw his younger brother Edwin arrive on board another tricycle. He approached Edwin, but the latter was suddenly stabbed by Nelson Tagulao. Ramos took his brother away from the place, as seven other persons attacked them with pieces of wood. He then saw his elder brother Orlando being struck on the head with a stone by Hipolito Cervas. Ramos flagged down a tricycle and brought his brothers to a hospital, then reported the incident to the police.

Edwin and Orlando filed a complaint for frustrated murder against prosecution witnesses John Tagulao, Gerardo Gloria, Ernesto Ydia and eight others, but the complaint was dismissed.[13]

After trial, the Regional Trial Court (RTC), Branch 50, Villasis, Pangasinan, found Ramos guilty beyond reasonable

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[9] *Id.*

[10] Records, p. 18; Certificate of Death dated 13 October 2001.

[11] *Rollo*, p. 11; CA Decision dated 30 March 2010.

[12] *Id.* at 12.

[13] *Id.*

doubt of the crime of homicide. In arriving at this conclusion, the lower court relied on the physical evidence that Prestoza's death was due to a "brain contusion,"[14] and on the testimonies of prosecution witnesses John Tagulao and Gerardo Gloria. These two witnesses positively identified Ramos as the perpetrator of the assault and categorically stated that he had hit the victim on the head and back with a piece of wood.[15] The trial court then disposed of the case as follows:

> WHEREFORE, judgment is hereby rendered finding accused Joselito Ramos GUILTY beyond reasonable doubt of the crime of Homicide and, there being no modifying circumstance, is hereby sentenced to an indeterminate prison term of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal*, as maximum, and ordered to pay the heirs of Pedro Prestoza ₱50,000.00 as death indemnity, ₱50,000.00 as moral damages and ₱55,019.14 as actual damages.
>
> On ground of insufficiency of evidence, accused Edwin Ramos, Orlando Ramos and Jordan Baladad are ACQUITTED of the crime charged.
>
> SO ORDERED.[16]

On appeal, the CA reviewed the records and affirmed the decision of the trial court. In reaching its conclusion, the appellate court found that the identity of Ramos as one of the assailants had been indubitably established by credible eyewitness testimony.[17] Thus, petitioner's denial could not prevail over this positive identification.[18] The CA then ruled as follows:

> **FOR THESE REASONS**, We **AFFIRM** the August 4, 2008 Decision of the Regional Trial Court convicting Joselito Ramos of

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[14] CA *rollo*, pp. 20-21; RTC Decision dated 4 August 2008.

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

[16] *Id.* at 27.

[17] *Rollo*, pp. 14-15; CA Decision dated 30 March 2010.

[18] *Id.* at 18.

Homicide under Article 249 of the Revised Penal Code.

SO ORDERED.[19]

Petitioner moved for a reconsideration,[20] but his motion was denied by the CA.[21] He then filed the instant Petition for Review[22] before this Court.

THE ISSUES

In seeking a reversal of the decisions of the appellate and the lower courts, petitioner Ramos mainly argues the following:

1. The testimonies of the prosecution witnesses should not have been given credence, because the testimony of Ernesto Ydia contradicts the testimonies of the other witnesses,[23] and because they were impelled by an improper motive, as petitioner's brothers had filed a complaint for frustrated murder against them.[24]
2. Alvarez, who remains at large, is the culprit in Prestoza's death.[25]
3. Assuming Ramos physically assaulted the victim, petitioner did not deliver the lethal blow, and hence, did not commit the crime of homicide.[26]

THE COURT'S RULING

We deny the instant petition and affirm the RTC's finding of guilt.

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

[20] CA *rollo*, pp. 130-137; Motion for Reconsideration dated 6 May 2010.

[21] *Rollo*, p. 28; Resolution dated 18 October 2010.

[22] *Id.* at 41-57; Petition for Review dated 29 December 2010.

[23] *Id.* at 49.

[24] *Id.* at 47-48.

[25] *Id.* at 47.

[26] *Id.* at 52-53.

At the outset, we note that based on the records, we are faced with two different versions of the facts leading to Prestoza's death. The trial court opted to give credence to the prosecution's version. On appeal, the CA affirmed the findings of fact of the trial court.

The record supports the choice of the trial and appellate courts to give decisive weight to the prosecution's version of the facts. The testimonies of John Tagulao and Gerardo Gloria clearly pointed to petitioner as the perpetrator of the offense. In contrast, Ramos was inconsistent in his statements, and his testimony on the witness stand contradicted his counter-affidavit, as found by the trial court:

> x x x. Joselito testified that he did not see Pedro Prestoza in the evening of October 3, 2001.
>
> xxx xxx xxx
>
> Q How about Pedro Prestoza, do you know him personally?
> A Yes, we see him that he is from Nandacan, that he is a coconut climber, Your Honor.
>
> Q Did you see him on that evening of October 3, 2001?
> A No, sir.
>
> Q You did not see him with the group of the persons who were then on board of the 2 tricycles you were then following?
> A No, Your Honor.
>
> xxx xxx xxx.

In his counter-affidavit (Exh. "G" and Exh. "6"), however, Joselito categorically declared:

> 2. We saw Jaime Tagulao holding a piece of wood which he used in striking Pedro Prestoza who fell down to the ground; there was a fight among the group of Jaime Tagulao; Pedro Prestoza was just a passenger in their tricycle;

The foregoing contradictions and inconsistencies render the narration of Joselito Ramos of doubtful veracity.[27]

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[27] CA *rollo*, pp. 22-23; RTC Decision dated 4 August 2008.

Findings of fact of the RTC, particularly when affirmed by the CA, are accorded great weight and respect.[28] Thus, these findings are not to be disturbed in the absence of clear proof that the trial and the appellate courts overlooked, misunderstood or misapplied some facts or circumstances of weight and substance.[29] In this case, petitioner failed to adduce sufficient proof that the trial and the appellate courts so erred.

During trial, the prosecution presented three witnesses – namely, John Tagulao, Gerardo Gloria and Ernesto Ydia – to testify on the events that led to Prestoza's death.

Petitioner Ramos ascribes reversible error on the part of the CA when it affirmed his conviction, because parts of Ernesto Ydia's testimony were allegedly inconsistent with the testimonies of John Tagulao and Gerardo Gloria.[30] As petitioner pointed out, John Tagulao testified that petitioner, Alvarez and a certain Jordan Baladad mauled the victim. On the other hand, Ernesto Ydia stated that petitioner, his brothers Edwin and Orlando, and Jordan Baladad were the ones who had beat up Prestoza.[31]

The CA and the RTC correctly refused to give credence to the testimony of Ernesto Ydia.[32] As explained by the appellate court:

Significantly, the points of recall and circumstances of the witnesses were different. Ydia was a passive eyewitness, being a passenger from another tricycle. Tagulao and Gloria, on the other hand, directly witnessed the incident as they were riding the same tricycle ridden

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[28] *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 336.

[29] *People v. Basao*, G.R. No. 189820, 10 October 2012, 683 SCRA 529, 543.

[30] CA *rollo*, pp. 12-14; RTC Decision dated 4 August 2008.

[31] *Rollo*, p. 49; Petition for Review dated 29 December 2010.

[32] *Id.* at 15; CA Decision dated 30 March 2010, *citing* the records, pp. 535-537; RTC Decision dated 4 August 2008.

by Prestoza. As such, Tagulao and Gloria were able to observe events that Ydia might have overlooked or failed to see.[33]

Thus, the CA and the RTC relied on the testimonies of John Tagulao and Gerardo Gloria to establish the facts that led to Prestoza's death. A review of the records shows that their testimonies clearly identified petitioner as one of the perpetrators of the mauling incident and were consistent on material points.

On direct examination, John Tagulao testified as follows:

Q Where was Joselito Ramos then while Danilo Alvarez was hitting [Prestoza] with a lead pipe?
A He was with him, sir.

Q What did [he] do?
A He also struck him, sir.

Q With what?
A A piece of wood, sir.[34]

Geraldo Gloria likewise testified:

Q Where was Joselito Ramos when Danilo Alvarez hit Pedro Prestoza with a lead pipe?
A He also came closer to Pedro Prestoza sir.

Q And what happened next after Joselito Ramos went near Pedro Prestoza while Danilo Alvarez was hitting him with a lead pipe?
A He also hit him using a piece of wood sir.

Q Who was hit with a piece of wood by Joselito Ramos?
A Pedro Prestoza sir.[35]

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[33] *Id.*

[34] TSN, 31 March 2003, p. 9.

[35] TSN, 18 February 2004, p. 13.

The mauling incident led to the victim's death, as evidenced by the Certificate of Death[36] and by Dr. Ferdinand Florendo's testimony, as follows:

Q What was the injury sustained by the patient, Doctor?
A The patient has sustained brain injury, sir, which is called contusion and followed by the bleeding of the brain.

xxx xxx xxx

Q What could have caused the injury, Doctor?
A The sudden acceleration and sudden [deceleration]. Meaning to say that you either have a head that is moving and all of a sudden it hits something that is stationary, or not moving. That is acceleration. The skull stops but the skull and the brain do not move at the same time. As in the same way if the jeepney stops and the passengers [bump] a wall [,] the passengers will continuously [move]. That is [deceleration].

Q What would be the effect?
A The effect is the same, sir, and the third cause is the rotation of the head that added injuries to the brain. There was displacement in the compartment within the skull, sir. There was brain swelling. There was bleeding and [it] formed [a] clot that [pierced] the brain and skull.

Q In this particular case, what was the cause of death of the victim?
A As has been stated, the cause of death was the displacement in the compartment within the skull. There was brain swelling and brain bleeding, sir.[37]

Based on these testimonies, we rule that the prosecution has successfully established the causal link between Prestoza's death and the mauling incident perpetrated by petitioner Ramos.

Petitioner submits that assuming he physically assaulted the victim, it was not he but Alvarez who inflicted the mortal blow.

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[36] Records, p. 18; Certificate of Death dated 13 October 2001. The Certificate of Death states that the cause of death is "Brain Herniation, Acute Subdural Hematoma, Mauling Victim."

[37] TSN, 14 November 2002, pp. 6-8.

Thus, petitioner argues that he should not be held liable for committing the crime of homicide.

We do not agree.

First, we refrain from making a finding of guilt against Alvarez, since he has remained at large and has not been arrested. Thus, this Court does not have jurisdiction over his person.

Second, neither the records nor the medical findings indicate whether it was Alvarez's lead pipe or Ramos' piece of wood that inflicted the fatal blow. However, evidence shows that petitioner repeatedly hit the victim with a piece of wood on the latter's head[38] and back.[39] Even when Prestoza was already lying on the street, petitioner did not cease the attack.[40] We therefore rule that petitioner's contention that he did not inflict the mortal blow is of no moment.

Petitioner finally argues that the testimonies of John Tagulao and Gerardo Gloria should not be given credence because the witnesses bear a grudge against him. He attributes the supposed grudge to a complaint for frustrated murder filed against them by petitioner's brothers Edwin and Orlando.

Again, we disagree.

The rule is that "where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that he was not so actuated and that he would not prevaricate and cause damnation to one who brought him no harm or injury."[41]

In this case, while petitioner's brothers did in fact file a criminal complaint for frustrated murder against John Tagulao, Gerardo Gloria, and some other individuals, the complaint was eventually

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[38] TSN, 31 March 2003, p. 9.

[39] TSN, 18 February 2004, p. 13.

[40] TSN, 31 March 2003, p. 17.

[41] *Juliano v. Sandiganbayan*, 336 Phil. 49, 56 (1997).

dismissed.[42] Nothing on record shows any other circumstance that could have impelled the prosecution witnesses to testify falsely against petitioner. In fact, John Tagulao was a son-in-law of the victim.[43] Thus, the reasonable presumption is that, as a family member, he was interested in the prosecution of the real perpetrator of the crime.

We therefore rule that, in the absence of evidence that the prosecution witnesses were moved by an improper motive in testifying against petitioner, the presumption that they were not so moved prevails, and their testimonies are entitled to full faith and credit.[44]

All told, we conclude that the CA and the RTC did not commit any reversible error in ruling that Ramos is guilty beyond reasonable doubt of homicide for killing Pedro Prestoza.

WHEREFORE, the instant Rule 45 Petition is hereby **DENIED**. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 31823 dated 30 March 2010 and 18 October 2010, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

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[42] *Rollo*, pp. 11-12; CA Decision dated 30 March 2010.

[43] TSN, 31 March 2003, p. 6.

[44] *People v. Belibet*, 276 Phil. 641, 647 (1991).

FIRST DIVISION

[G.R. No. 200402. June 13, 2013]

PRIVATIZATION and MANAGEMENT OFFICE, *petitioner, vs.* **STRATEGIC ALLIANCE DEVELOPMENT CORPORATION and/or PHILIPPINE ESTATE CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; DOES NOT EXTEND TO CAUSING THE AWARD OF THE SALE OF GOVERNMENT ASSETS IN FAILED PUBLIC BIDDINGS.— We rule that whether or not the people's right to information has been violated by APT's failure to disclose the basis of the indicative price, that right **cannot** be used as a ground to direct the issuance of the Notice of Award to Dong-A Consortium. Under the ASBR, respondent must at least match the indicative price in order to win. Under the circumstances, the right to information, at most, affords to the claimant access to records, documents, and papers – which *only* means the opportunity to inspect and copy them at his expense. x x x The right to information allows the public to hold public officials accountable to the people and aids them in engaging in public discussions leading to the formulation of government policies and their effective implementation. By itself, it does not extend to causing the award of the sale of government assets in failed public biddings. Thus, assuming that Dong-A Consortium may access the records for the purpose of validating the indicative price under the right to information, it does not follow that respondent is entitled to the award.

2. ID.; ID.; ID.; CANNOT BE USED TO MERIT BOTH AN EXPLANATION OF THE INDICATIVE PRICE AND AN AUTOMATIC AWARD OF THE BID.— This Court cannot condone the incongruous interpretation of the courts *a quo* that the public's right to information merits both an explanation of the indicative price and an *automatic award* of the bid to

Dong-A Consortium. This interpretation is illogical considering that, in order to win a bid, bidders could simply demand explanations *ad infinitum*. Government agencies would then be required to discuss each and every method of computation used in arriving at a valuation. As a result, the bidders would unduly exhaust the time, efforts, and resources of all participants in the process. Worse, this stance could open the courts to a multitude of suits assailing the iterations of the bidding evaluations. We cannot allow such distorted interpretation of the transparency requirement of public bidding, as an interpretation that causes inconvenience and absurdity is not favored.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OFFER AND ACCEPTANCE OF BIDS; AN ADVERTISER IS NOT BOUND TO ACCEPT THE HIGHEST BIDDER UNLESS THE CONTRARY APPEARS.— Obligations arising from agreements have the force of law between the contracting parties and should be complied with in good faith. Here, the ASBR sets forth the terms and conditions under which an award will be given. During the pretrial, both parties agreed that a bidder wins only after satisfying and complying with all the terms and conditions of the ASBR, including matching the indicative price. Since Dong-A Consortium failed to match the indicative price, it could not have been considered a winner, and, is not entitled to a Notice of Award. Article 1326 of the Civil Code, which specifically tackles offer and acceptance of bids, provides that advertisements for bidders are simply invitations to make proposals, and that an advertiser is not bound to accept the highest bidder unless the contrary appears. In the present case, Section 4.3 of the ASBR explicitly states that APT reserves the right to reject any or all bids, including the highest bid. Undoubtedly, APT has a legal right to reject the offer of Dong-A Consortium, notwithstanding that it submitted the highest bid. In *Leoquinco v. The Postal Savings Bank* and *C & C Commercial Corporation v. Menor*, we explained that this right to reject bids signifies that the participants of the bidding process cannot compel the party who called for bids to accept the bid or execute a deed of sale in the former's favor. Thus, we similarly rule that PMO cannot be forced to award the sale of the PNCC shares in favor of Dong-A Consortium.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; A GOVERNMENT AGENCY TASKED TO LIQUIDATE THE NONPERFORMING ASSETS OF THE GOVERNMENT HAS THE DISCRETION TO DETERMINE THE MOST ADVANTAGEOUS PRICES THAT WILL IMPROVE THE FINANCIAL SITUATION OF THE GOVERNMENT.— Even in the spirit of open market competition in public biddings, there is no imposition on the government to sell at prices that are equal, higher, or lower compared with those commanded by the market. We cannot fault APT for deciding to sell the PNCC assets for ₱7,000,000,000, even if we put into the equation the fact that the acquired corporation has been operating at a loss as testified to by the financial auditor of Dong-A Consortium. To substitute the valuation of Dong-A Consortium for that of APT is to unduly interfere with the judgment of a government agency tasked to liquidate nonperforming assets of the government. APT and PMO are mandated to determine the most advantageous prices that will improve the financial situation of the government. Given that discretion, they cannot be directed by the courts to do a particular act or be enjoined from doing an act within their prerogatives.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WILL NOT ISSUE TO REVIEW AN EXERCISE OF DISCRETION OR IN A CASE WHERE THE RIGHT IS DOUBTFUL.— [T]o compel the issuance of a Notice of Award is tantamount to a prayer for the issuance of a writ of *mandamus.* *Mandamus*, however, will not issue to control or review the exercise of discretion by a public officer on whom the law imposes the right or duty to exercise judgment in reference to any matter in which the officer is required to act. Respondent has no cause of action to compel APT to award the bid to Dong-A Consortium. Neither can *mandamus* be issued unless a clear right of the bidder is shown. *Mandamus* does not lie if the right is doubtful. Here, x x x Dong-A Consortium has no right to receive the award, since it failed to match the indicative price.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC BIDDINGS; THE GOVERNMENT, WHICH IS THE OWNER OF THE PROPERTY TO BE AUCTIONED,

ENJOYS A WIDE LATITUDE OF DISCRETION AND AUTONOMY IN CHOOSING THE TERMS OF THE AGREEMENT.— Petitioner cannot be compelled to accept the bid of Dong-A Consortium since this forced consent treads on the government's freedom to contract. The freedom of persons to enter into contracts is a policy of the law, and courts should move with all necessary caution and prudence when interfering with it. It must be remembered that in the field of competitive public bidding, the owner of the property to be auctioned – the government – enjoys a wide latitude of discretion and autonomy in choosing the terms of the agreement. This principle is especially true in this case, since the policy decision then was for APT to liquidate nonperforming assets of the government in order to recover losses. Therefore, absent any abuse of discretion, injustice, unfairness or fraudulent acts, this Court refrains from discrediting the judgment call of APT to prefatorily refuse any offer that fell below the indicative price.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Mutia Trinidad & Pantanosas Law Offices for Strategic Alliance Development Corp.

Office of the Government Corporate Counsel for Phil. Estate Corp.

D E C I S I O N

SERENO, *C.J.:*

Before this Court is a Rule 45 Petition, seeking a review of the Court of Appeals (CA) Decision[1] dated 27 January 2012 in CA-G.R. CV No. 96368, which affirmed the Decision[2] dated 1 July 2010 of the Regional Trial Court (RTC) in Civil Case

[1] *Rollo*, pp. 118-148. The CA Decision was penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring.

[2] *Id.* at 149-170. The RTC Decision was penned by Presiding Judge Zenaida T. Galapate-Laguilles.

No. 05-882. The RTC directed petitioner Privatization and Management Office (PMO) to award the auctioned Philippine National Construction Corporation (PNCC) shares, receivables, and securities owned by the Philippine government to respondent Strategic Alliance Development Corporation (STRADEC).

The facts are as follows:

As established by Administrative Order No. 397,[3] the indebtedness of PNCC to various government financial institutions was transferred to the National Government (NG) through the Committee on Privatization (COP)/Asset Privatization Trust (APT) and the Bureau of Treasury pursuant to Proclamation No. 50[4] and Administrative Order No. 64.[5]

Consequently, APT slated the privatization of PNCC in order to generate maximum cash recovery for the government. Thus, sometime in July of 2000, it announced the holding of a public bidding on 30 October 2000 involving the "as is, where is basis" package sale of stocks, receivables, and securities owned by the National Government in the PNCC.

Dong-A Consortium, which was formed by respondent STRADEC and Dong-A Pharmaceuticals, signified its intention to bid. As a prospective bidder, it received the accompanying bid documents given by APT. It also acknowledged[6] and signed the Asset Specific Bidding Rules (ASBR),[7] which reads:

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[3] Administrative Order No. 397 (1998).

[4] Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

[5] Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Philippine Export and Foreign Loan Guarantee Corporation and the National Development Company (1988).

[6] *Rollo*, p. 207. Bidder's Acknowledgment signed by Byoung Hyun Suh.

[7] *Id.* at 196-207. Asset Specific Bidding Rules for the Sale of the National Government's Share in the Receivables and Securities of the National Government from the Philippine National Construction Corporation.

2. Due Diligence

xxx xxx xxx

2.2 The conduct of due diligence is at the **option of the prospective bidders**. Failure of the bidder to conduct due diligence shall be at his sole risk and no relief for error or omission will be given.

xxx xxx xxx

3. Bid Price

3.1 The Indicative Price for the Shares, Receivables and the Securities shall be **announced on the day of the bidding**.

xxx xxx xxx

4. Evaluation of Bid

4.1 The winning bidder shall be the bidder who submits the **highest total bid offer** for both the shares and receivables, who complies with all terms and conditions contained in this ASBR, x x x.

xxx xxx xxx

4.3. APT **reserves the right to reject any or all bids**, **including the highest bid**, or to waive any defect or required formality therein.

4.4. The evaluation of the bids and **award of the sale** shall be subject to applicable laws, rules and regulations as well as all existing governmental approval requirements.

xxx xxx xxx

5. Bidder's Responsibility

xxx xxx xxx

5.2 x x x. The consequences of failure to examine and carefully interpret the bid documents shall be borne by the bidder and such bidder shall not be entitled to relief for its error or omission. The delivery or release by APT, NG, or PNCC to the bidders of any financial or operating data or any information regarding the shares and receivables **shall not give rise to warranty** with respect to such data or information.

xxx xxx xxx

6. Preparation of Bids

xxx xxx xxx

6.4. By submitting its Bid Offer and Bid Deposit on the date of the bidding, the Bidder shall be deemed to have **signified its acceptance** of the terms and conditions of the bidding, including the terms and conditions of this ASBR and Sale Purchase Agreement.

10. Award of Sale

xxx xxx xxx

10.1. APT Marketing Department shall determine the highest bidder in accordance with Section 4 hereof and submit a report and the appropriate **recommendation** to the APT Board of Trustees **for consideration**. Thereafter, the APT Board of Trustees shall **endorse** its recommendation to the Committee on Privatization (COP) for approval.

10.2. **After** the necessary approvals and clearances are obtained from the APT Board and the COP, APT shall issue a Notice of Award of Sale to the winning bidder.[8] (Emphases supplied)

On 30 October 2000, APT conducted the bid. It first declared that Dong-A Consortium, Pacific Infrastructure Development International,[9] and Philippine Exporters Confederation[10] qualified as bidders. Thereafter, it announced that the indicative price of the PNCC properties was seven billion pesos (₱7,000,000,000).

The bidders were shocked with the valuation. Relying on their own due diligence examinations, they protested that the indicative

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[8] *Id.* at 199-220.

[9] *Id.* at 223-224. The Asset Specific Bidding Form indicated that the bidding entity was properly named Consortium of Ernest Fritz D. Server and Pacific Infrastructure Development Ltd.

[10] *Id.* at 240-241. The Asset Specific Bidding Form indicated that the bidding entity was properly named Sergio Ortiz Luis, Jr./Korea Asia Assets Ltd. (Consortium).

price was too high, considering the financial statements and bid documents given by APT. Notwithstanding their protests, APT continued with the bidding and opened the bid envelopes. As illustrated below, none of the bid offers met the indicative price:

Bidder	**Bid Price**
Dong-A Consortium	₱1,228,888,800
Pacific Infrastructure Development International	₱536,888,888
Philippine Exporters Confederation	₱420,000,000[11]

The next day, APT faxed a letter to Dong-A Consortium informing the latter that its offer had been rejected. The letter reads in part:

> We regret to inform you that the APT Board of Trustees, in a special meeting held after the bidding, resolved to reject your bid as it was way below the Indicative Price of Seven Billion Pesos (₱7,000,000,000.00) set by the Committee on Privatization.[12]

Dong-A Consortium responded and stressed to APT that the former's offer was not only the highest, but was also competitive and most advantageous to the government.[13] Dong-A Consortium then asked for reconsideration and requested the award of the PNCC properties.[14]

On 31 December 2000, the term of APT expired. By virtue of Executive Order No. 323,[15] petitioner PMO was organized to implement the disposition of the government-acquired assets, including the PNCC shares. PMO thus took over the correspondences involving the bid. It communicated to Dong-A

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[11] *Id.* at 120-121.

[12] *Id.* at 245.

[13] *Id.* at 246.

[14] *Id.* at 248.

[15] Constituting an Inter-Agency Privatization Council and Creating a Privatization and Management Office under the Department of Finance for the Continuing Privatization of Government Assets and Corporations (2001).

Consortium that the decision of the Board of Trustees of the APT had already been confirmed by the COP; hence, the decision to reject the bid stood.[16]

On 3 October 2005, STRADEC filed a Complaint for Declaration of Right to a Notice of Award and/or Damages on behalf of Dong-A Consortium against PMO and PNCC.[17] It contested the high indicative price that caused it to lose the bid. STRADEC also pushed for the reduction of the indicative price and demanded that a Notice of Award of the PNCC properties be issued in its favor.

PMO answered by asserting the provisions of the ASBR.[18] According to PMO, the rules give the government the right to reject bid offers, including the highest bid. Hence, PMO argued that STRADEC had no legal right to demand the issuance of a Notice of Award even after having submitted the highest bid. PNCC claimed that STRADEC was merely "sour graping" over its loss. Furthermore, STRADEC had allegedly failed to establish any act of PNCC with respect to the manner of the bidding that would create a cause of action against the latter.[19]

During pretrial, the parties entered into several stipulations.[20] Significantly, they agreed that to be issued the Notice of Award, the winning bidder must satisfy and comply with all of the ASBR's terms and conditions, including the indicative price. They also stipulated that Dong-A Consortium had extensively conducted due diligence prior to the bid. Subsequently, its auditor informed the court that PNCC had been operating at a loss and that it puzzled them why APT never gave the basis of the indicative price, especially in the light of the finances of PNCC.

Siding with the bidder, the RTC ruled that PMO had committed grave abuse of discretion in refusing to explain the basis of the

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[16] *Rollo*, pp. 255-256. Letter dated 15 March 2001.

[17] *Id.* at 263-275.

[18] *Id.* at 276-291.

[19] *Id.* at 353-363.

[20] *Id.* at 418-419. RTC Order dated 6 November 2008.

indicative price. The trial court explained that since competitive public bidding is vested with public interest, it then follows that the government has an affirmative duty to disclose its reasons for rejecting a bid. The court concluded that the refusal to explain the indicative price constituted a violation of the public's right to information and the State's policy of full transparency in transactions involving public interest.

Pushing its directives further, the trial court directed the issuance of the Notice of Award in favor of Dong-A Consortium. In so adjudging, it had appreciated the fact that (1) the latter submitted the highest bid; (2) the offer was threefold higher than the next bid, and hence appeared most advantageous to the government; and (3) Dong-A Consortium conducted an extensive due diligence examination based on the bid documents furnished by APT.

Hence, the dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered as follows:
>
> 1) Defendant PMO is **directed to issue a Notice of Award of Sale** to the Dong-A Consortium, herein represented by plaintiff STRADEC, the National Government's shares of stock in the Philippine National Construction Corporation (PNCC), and the receivables of the National Government in the form of advances to PNCC, all future receivables of the National Government from PNCC and the securities related thereto, under the procedure stated in the Asset Specific Bidding Rules (ASBR) for the public auction held on October 30, 2000;
>
> 2) Defendants PMO and PNCC are **directed to pay plaintiff**, jointly and severally, the sum of PHP 500,000.00 as and by way of exemplary damages; and the further sum of PHP 500,000.00 as and by way of attorney's fees and costs of suit.
>
> SO ORDERED.[21] (Emphases in the original)

Aggrieved, PMO and PNCC appealed before the CA. PNCC argued that the factors mentioned by the RTC were immaterial

[21] *Id.* at 169-170.

and that none of them could justify the latter's directive to issue a Notice of Award in favor of Dong-A Consortium. PNCC also denied having any legal obligation to disclose the basis of the indicative price. For its part, PMO contended that the bidding held on 30 October 2000 was transparent, regular, and conducted in accordance with the ASBR; and that the RTC therefore had no reason to alter the outcome of the bid.

In its assailed Decision, the CA emphasized that competitive public bidding must be fair, legitimate and honest. From this standard, it went on to state that PMO must not only reveal the basis of the indicative price, but must also award the sale of the PNCC assets to Dong-A Consortium.

Heavily quoting the RTC, the CA states:[22]

x x x. **A reading of the decisional rules on reservation of the right to reject cautions, however, against injustice, unfairness, arbitrariness, fraudulent acts or grave abuse of discretion.** A contrary conclusion would be anathema to the purposes for which public biddings are founded to give the public the best possible advantages through open competition – as it would give the unscrupulous a plain escape to rig the bidding process.

Applying now the foregoing precedents, this Court is persuaded to rule that then APT (now PMO) had the duty to disclose the basis for its rejection of the highest bid submitted by the Dong-A Consortium. For as the *evidence* shows, the plaintiff's bid was *threefold than the next highest bid,* and appeared, at that point, to be the most advantageous to the government. As to how the gargantuan amount of PHP7.0 Billion pesos as the Indicative Price was arrived at, and which was invoked as the sole basis for the rejection of the plaintiff's bid, should have been at least clarified or explained in conformity with the expected *degree of transparency in any public bidding. The sending out of demand letters* to then APT demanding disclosure of the basis for the stated Indicative Price is not disputed by the defendants as they opted not to present any countervailing evidence. Verily, the evaluation and calibration of evidence necessarily involves consideration of factual issues. Plaintiff's evidence shows that it carefully weighed its bases in coming up with the bid that it

[22] *Id.* at 146-147.

offered. It did not participate in the *bidding exercise blindly or unarmed with the relevant informations.* Defendants provided plaintiff herein varied documents prior to the bidding or specifically during the due diligence examination. Needless to state, these documents were pivotal in the plaintiff's estimate of the proper bid to submit. As has been disclosed by the evidence, plaintiff conducted a due diligence examination with the guidance of its own financial expert. x x x (Emphasis in the original)

PNCC moved for reconsideration, but the motion is still pending in the CA. On the other hand, PMO proceeded directly to this Court via a Rule 45 Petition.

In its pleading, PMO raises several issues, including the *locus standi* of STRADEC and the prescription of action. But principally, PMO contests the directives of the courts *a quo* to issue the Notice of Award to Dong-A Consortium.

RULING OF THE COURT

At the heart of this case is whether PMO can be compelled to award Dong-A Consortium the PNCC assets that it values at seven billion pesos (₱7,000,000,000) for only ₱1,228,888,800. For a fraction of the valuation, respondent claims entitlement on the grounds that (1) the people's right to information has been violated; (2) it submitted the highest bid; and (3) it conducted due diligence.

The people's right to information does not warrant the award of the bid to Dong-A Consortium.

The courts *a quo* held that because of the people's constitutional right to information on matters of public concern,[23] petitioner has a duty to disclose the derivation of the indicative price to respondent. The failure to disclose the information allegedly entitles respondent to the issuance of the Notice of Award.

We rule that whether or not the people's right to information has been violated by APT's failure to disclose the basis of the indicative price, that right **cannot** be used as a ground to direct

[23] CONSTITUTION, Art. III, Sec. 7.

the issuance of the Notice of Award to Dong-A Consortium. Under the ASBR, respondent must at least match the indicative price in order to win.

Under the circumstances, the right to information, at most, affords to the claimant access to records, documents, and papers – which *only* means the opportunity to inspect and copy them at his expense.[24] This interpretation resonates in the deliberations of the 1987 Constitutional Commission:[25]

> FR. BERNAS. Just one observation, Mr. Presiding Officer. I want to comment that Section 6 (referring to Section 7, Article III on the right to information) talks about the right of the people to information, and **corresponding to every right is a duty**. In this particular case, corresponding to this right of the people is precisely the duty of the State **to make available** whatever information there may be needed that is of public concern. Section 6 is very broadly stated so that it covers anything that is of public concern. It would seem also that the advantage of Section 6 is that it challenges citizens to be active in seeking information rather than being dependent on whatever the State may release to them. (Emphasis supplied)

The right to information allows the public to hold public officials accountable to the people and aids them in engaging in public discussions leading to the formulation of government policies and their effective implementation.[26] By itself, it does not extend to causing the award of the sale of government assets in failed public biddings. Thus, assuming that Dong-A Consortium may access the records for the purpose of validating the indicative price under the right to information, it does not follow that respondent is entitled to the award.

This Court cannot condone the incongruous interpretation of the courts *a quo* that the public's right to information merits both an explanation of the indicative price and an *automatic award* of the bid to Dong-A Consortium.

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[24] *Chavez v. Public Estates Authority and Amari Coastal Bay Development Corporation*, G.R. No. 133250, 9 July 2002.

[25] V RECORD, CONSTITUTIONAL COMMISSION 26 (24 September 1986).

[26] *Supra* note 24.

This interpretation is illogical considering that, in order to win a bid, bidders could simply demand explanations *ad infinitum.* Government agencies would then be required to discuss each and every method of computation used in arriving at a valuation. As a result, the bidders would unduly exhaust the time, efforts, and resources of all participants in the process. Worse, this stance could open the courts to a multitude of suits assailing the iterations of the bidding evaluations. We cannot allow such distorted interpretation of the transparency requirement of public bidding, as an interpretation that causes inconvenience and absurdity is not favored.[27]

Notably, even if the computations for arriving at the ₱7,000,000,000 valuation were explained, none of the participants would have won, since all of their offers were way below the indicative price.

Likewise, the submission of the highest bid and the conduct of due diligence do not justify an award to Dong-A Consortium.

The courts *a quo* also directed the issuance of the Notice of Award in favor of Dong-A Consortium, because it submitted the highest bid, which appeared to be the most advantageous to the government, and because it conducted due diligence. Like the previous ground alleged as discussed above, these matters are irrelevant.

Obligations arising from agreements have the force of law between the contracting parties and should be complied with in good faith.[28] Here, the ASBR sets forth the terms and conditions under which an award will be given. During the pretrial, both parties agreed that a bidder wins only after satisfying and

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[27] *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485, 524 (2005).

[28] CIVIL CODE, Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

complying with all the terms and conditions of the ASBR, including matching the indicative price. Since Dong-A Consortium failed to match the indicative price, it could not have been considered a winner, and, is not entitled to a Notice of Award.

Article 1326 of the Civil Code, which specifically tackles offer and acceptance of bids, provides that advertisements for bidders are simply invitations to make proposals, and that an advertiser is not bound to accept the highest bidder unless the contrary appears. In the present case, Section 4.3 of the ASBR explicitly states that APT reserves the right to reject any or all bids, including the highest bid. Undoubtedly, APT has a legal right to reject the offer of Dong-A Consortium, notwithstanding that it submitted the highest bid.

In *Leoquinco v. The Postal Savings Bank*[29] and *C & C Commercial Corporation v. Menor*,[30] we explained that this right to reject bids signifies that the participants of the bidding process cannot compel the party who called for bids to accept the bid or execute a deed of sale in the former's favor. Thus, we similarly rule that PMO cannot be forced to award the sale of the PNCC shares in favor of Dong-A Consortium.

Both the RTC and the CA unfortunately ignored the failure of Dong-A Consortium to match the indicative price. They highlighted instead that the bidder conducted an extensive due diligence examination based on the documents that the APT had given to it.

Whether or not the bidder conducts due diligence is its business decision. It does not bind the government to give Dong-A Consortium the award. Furthermore, the ASBR insulates the government from suits based on inaccurate data in the bidder's due diligence examinations. Section 5.2 reads:

5.2 x x x. The consequences of failure to examine and carefully interpret the bid documents shall be borne by the bidder and such

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[29] 47 Phil. 772 (1925), cited in ARTURO M. TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, VOLUME IV 441 (1973).

[30] G.R. No. L-28360, 27 January 1983, 120 SCRA 112.

bidder shall not be entitled to relief for its error or omission. The delivery or release by APT, NG, or PNCC to the bidders of any financial or operating data or any information regarding the shares and receivables **shall not give rise to warranty** with respect to such data or information. (Emphasis supplied)

Worse, by putting emphasis on Dong-A Consortium's own due diligence examination, respondent and the courts *a quo* gave a premium to the bidder's valuation over that of APT.

Even in the spirit of open market competition in public biddings,[31] there is no imposition on the government to sell at prices that are equal, higher, or lower compared with those commanded by the market. We cannot fault APT for deciding to sell the PNCC assets for ₱7,000,000,000, even if we put into the equation the fact that the acquired corporation has been operating at a loss as testified to by the financial auditor of Dong-A Consortium.

To substitute the valuation of Dong-A Consortium for that of APT is to unduly interfere with the judgment of a government agency tasked to liquidate nonperforming assets of the government. APT and PMO are mandated to determine the most advantageous prices that will improve the financial situation of the government. Given that discretion, they cannot be directed by the courts to do a particular act or be enjoined from doing an act within their prerogatives.[32]

Therefore, we rule against the instant issuance of the Notice of Award to a bidder who claims that its valuation is more correct. As in *Republic v. Nolasco*,[33] we remind the public:

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[31] *J.G. Summit Holdings, Inc. v. Court of Appeals*, *supra* note 4, citing *National Food Authority v. Court of Appeals*, 323 Phil. 558, 574 (1996); further citing *Danville Maritime, Inc. v. Commission on Audit*, G.R. No. 85285, 256 Phil. 1092 (1989) and *Malaga v. Penachos, Jr.*, G.R. No. 86695, 33 September 1992, 213 SCRA 516 (1992).

[32] *First United Constructors Corporation v. Poro Point Management Corporation*, G.R. No. 178799, 19 January 2009, 576 SCRA 311, 321.

[33] 496 Phil. 853, 883-884 (2005).

More importantly, the Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty and cannot be **summarily**, prematurely and capriciously set aside. x x x There is perhaps a more cynical attitude fostered within the popular culture, or even through anecdotal traditions. Yet, such default pessimism is not embodied in our system of laws, which presumes that the State and its elements act correctly unless otherwise proven. To infuse within our legal philosophy a contrary, gloomy pessimism would assure that the State would bog down, wither and die. (Emphasis supplied)

A Writ of Mandamus will not issue to compel the issuance of the Notice of Award to Dong-A Consortium.

As accurately depicted by the OSG, to compel the issuance of a Notice of Award is tantamount to a prayer for the issuance of a writ of *mandamus*. *Mandamus*, however, will not issue to control or review the exercise of discretion by a public officer on whom the law imposes the right or duty to exercise judgment in reference to any matter in which the officer is required to act.[34] Respondent has no cause of action to compel APT to award the bid to Dong-A Consortium.

Neither can *mandamus* be issued unless a clear right of the bidder is shown. *Mandamus* does not lie if the right is doubtful.[35] Here, as discussed, Dong-A Consortium has no right to receive the award, since it failed to match the indicative price.

Petitioner cannot be compelled to accept the bid of Dong-A Consortium since this forced consent treads on the government's freedom to contract. The freedom of persons to enter into contracts is a policy of the law,[36] and courts

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[34] *Mata v. San Diego,* 159 Phil. 771, 779 (1975).

[35] *COMELEC v. Quijano-Padilla,* 438 Phil. 72, 91 (2002).

[36] *Ferrazzini v. Gsell,* 34 Phil. 697, 709 (1916).

should move with all necessary caution and prudence when interfering with it.[37]

It must be remembered that in the field of competitive public bidding, the owner of the property to be auctioned – the government – enjoys a wide latitude of discretion and autonomy in choosing the terms of the agreement.[38] This principle is especially true in this case, since the policy decision then[39] was for APT to liquidate nonperforming assets of the government in order to recover losses. Therefore, absent any abuse of discretion, injustice, unfairness or fraudulent acts,[40] this Court refrains[41] from discrediting the judgment call of APT to prefatorily refuse any offer that fell below the indicative price.

The APT was fair to all the bidders when it informed all of them of the indicative price.

This Court concludes by emphasizing that indeed, APT **informed the bidders** of its reason for declining the bids. It rejected the bids on the simple ground that none of the bidders' offer prices matched the indicative price. In fact, Dong-A Consortium's offer of ₱1,228,888,800 drastically fell 82.44% short of ₱7,000,000,000.

By straightforwardly applying the criteria for denying bids under the ASBR, APT was fair to the bidders consistent with the standards extricated from *Agan, Jr. v. PIATCO,*[42] *PEA v.*

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[37] *Gabriel v. Monte de Piedad*, 71 Phil. 497, 500 (1941).

[38] *Bureau Veritas v. Office of the President*, G.R. No. 101678, 3 February 1992, 205 SCRA 705, 717.

[39] *J.G. Summit Holdings, Inc. v. Court of Appeals*, *supra* note 4, at 594.

[40] *PEA v. Bolinao Security and Investigation Service, Inc.*, *supra* note 3, at 176.

[41] *J.G. Summit Holdings, Inc. v. Court of Appeals*, *supra* note 4, at 594.

[42] 450 Phil. 744 (2003).

Bolinao Security and Investigation Service, Inc.,[43] and *J.G. Summit Holdings, Inc. v. Court of Appeals*.[44] In these cases, we held that, ultimately, the essence of competitive public bidding is the placement of bidders on equal footing.

In fine, this Court maintains that it is unjust to force the government to award the PNCC shares to a bidder at a drastically lower value. Corollary to this finding, this Court deletes the grant of exemplary damages and attorney's fees grounded on the supposed arbitrariness and bad faith of petitioner. With these definitive conclusions addressing the main issue, there is no longer any need for us to discuss the other matters involved.[45]

IN VIEW THEREOF, the 16 March 2012 Petition for Review on *Certiorari* filed by petitioner is **GRANTED**. Consequently, the 27 January 2012 Decision of the Court of Appeals in CA-G.R. CV No. 96368 is **REVERSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 200882. June 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABEL DIAZ,** *accused-appellant.*

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[43] 509 Phil. 157, 177 (2005).

[44] 490 Phil. 579 (2005).

[45] *Frauendorff v. Castro*, 193 Phil. 629 (1981).

SYLLABUS

1. CRIMINAL LAW; RAPE; DULY ESTABLISHED IN CASE AT BAR.— Under Article 266-A(1)(a) of the Revised Penal Code, rape is committed "by a man who shall have carnal knowledge of a woman" "through force, threat, or intimidation." The trial and the appellate courts were unanimous in finding that, beyond reasonable doubt, the accused-appellant forcibly held Mara's hand while straddling her, punched her in the stomach when she cried for help, continuously threatened to stab her as she resisted his advances, punched her thighs to weaken her, and had sexual intercourse with her.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY NOT DISTURBED ON APPEAL.— In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal. On the one hand, this judicial deference is a recognition of the role of trial judges in fact-finding – trial judges have the unique opportunity of having the privilege of a front-row seat to observe first-hand the details of a testimony, the demeanor and deportment of witnesses, and the drama during the trial. On the other hand, this is an acknowledgment by this Court of the limitations of its review in appealed cases – this Court stands outside the trial court, is far-removed from the witness stand, and relies solely on the records of the case.

3. CRIMINAL LAW; RAPE; FORCE OR INTIMIDATION; SUFFICIENTLY PROVED BY THE PROSECUTION IN CASE AT BAR.— We also agree with the Court of Appeals that the prosecution sufficiently proved the element of force or intimidation which attended the sexual assault against Mara. It cannot be denied that the accused-appellant forcibly held, repeatedly punched and violently ravished Mara. The injuries which she sustained in the neck, thigh and genital areas, documented in the medico legal-report of the examination conducted on the very same day her person was violated, trump accused-appellant's contrary claim. Weak and in pain, the

repeated threats of being stabbed coupled with the blows already inflicted on her, certainly intimidated Mara and created a numbing fear in her mind that her assailant was capable of hurting her more and carrying out his threats.

4. ID.; ID.; THE PRECISE DURATION OF THE RAPE IS NOT MATERIAL TO AND DOES NOT NEGATE THE COMMISSION OF THE FELONY.— We also affirm the finding of the Court of Appeals that Mara's credibility was not eroded by her testimony that the accused-appellant tarried for two hours in her room. The Court of Appeals said it well: when one is being raped, forcibly held, weak and in great pain, and in shock, she cannot be reasonably expected to keep a precise track of the passage of time down to the last minute. Indeed, for a woman undergoing the ordeal that Mara underwent in the hands of the accused-appellant, every moment is like an eternity of hell and the transit of time is a painfully slow crawl that she would rather forget. In addition, the precise duration of the rape is not material to and does not negate the commission of the felony. Rape has no regard for time and place. It has been committed in all manner of situations and in circumstances thought to be inconceivable.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE ACCUSED'S POSITIVE IDENTIFICATION BY THE VICTIM.— [T]he accused-appellant's denial and alibi crumble in the face of his positive identification by Mara. In particular, his alibi is worthless as his presence at a mere 30 meters away from the scene of the crime at the time of its commission definitely does not constitute a physical impossibility for him to be at Mara's room at the time of the rape. On the contrary, it is in fact an implied admission that there is facility of access for the accused-appellant to be at the place where the crime happened when it happened.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— As to the award of damages, the award of ₱50,000.00 as civil indemnity, instead of "actual damages" referred to in the RTC Decision, is proper but the award of ₱75,000.00 moral damages should be reduced to ₱50,000.00 to conform to current case law. Moreover, ₱30,000 exemplary damages should be awarded to Mara, who was still a minor

when she was raped by the accused-appellant, to set a public example and serve as deterrent against elders who abuse and corrupt the youth and to protect the latter from sexual assault.

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.*:

This an appeal from the Decision[1] dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03691 denying the appeal of the accused-appellant Abel Diaz and affirming the Decision[2] dated November 12, 2008 of the Regional Trial Court (RTC) of Tarlac City, Branch 65 in Criminal Case No. 12650, which found the accused-appellant guilty of the crime of rape.

The Information filed against the accused-appellant in the trial court reads:

That on March 30, 2003 at around 3:00 o'clock [sic] in the morning at Tarlac City, and within the jurisdiction of this Honorable Court, the accused did then and there willfully, unlawfully and feloniously, have carnal knowledge of [Mara],[3] 17 years old, against her will and consent, and through force and intimidation.[4]

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring.

[2] CA *rollo*, pp. 10-20.

[3] Pursuant to Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), its implementing rules and relevant jurisprudence beginning with *People v. Cabalquinto* (533 Phil. 703 [2006]), the real names of the victim and the members of her immediate family have been withheld and fictitious names have been used instead to protect the victim's privacy.

[4] Records, p. 1.

The accused-appellant pleaded not guilty to the charge when arraigned.[5] Pre-trial was conducted and, thereafter, trial ensued.

The prosecution established that the offended party, 17-year old Mara, and the accused-appellant were neighbors as they both resided at X Compound, Y Subdivision, Barangay Z, Tarlac City. Mara was living alone in a studio-type unit beside the house of her elder sister, *Ditse*, while the accused-appellant lived five houses or some 30 meters away. He was familiar to her as he used to bring her to school in the tricycle he was driving at that time. He also had previously made cable TV installation in her unit.[6]

At early dawn of March 30, 2003, Mara was suddenly awakened when she felt somebody on top of her. While the lights in her room were switched off, light coming from outside illuminated her room and allowed her to recognize the then shirtless accused-appellant as the intruder. Startled, she pushed the accused-appellant away and shouted "*Umalis ka sa harap ko*! Go away!" but she was not able to free herself as he held her hands and he was straddling her. She called *Ditse* but the accused-appellant boxed her stomach and told her not to make any noise or else he would stab her. Because of the pain caused by the punch, Mara almost lost consciousness but she continued to struggle. Despite her resistance, however, the accused-appellant was able to raise her loose shirt and removed her panty. She continued to resist the accused-appellant's advances but the latter boxed her thighs, numbing her legs. Weakened by her struggle, the accused-appellant was able to penetrate her. The dastardly deed done, the accused-appellant stood up, wore his pants and left. [7]

Her ordeal left Mara very weak and she could only cry in her bed feeling sorry for herself. After a few minutes, she regained

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[5] *Id.* at 25; Order dated May 13, 2004.

[6] *Id.* at 3-9.

[7] TSN, November 16, 2004, pp. 4-6 and TSN, February 15, 2005, pp. 7-13.

some strength and immediately went to the house of *Ditse* to inform the latter about what happened to her.[8]

Ditse called their eldest sister, *Ate*, at her residence in V Village, Tarlac City. When *Ate* arrived, she accompanied Mara and *Ditse* to the police station to report the incident. Thereafter, they went to the Tarlac Provincial Hospital where Mara was examined. The medical examination of Mara showed that she had multiple "hematoma" or bruises in the neck and lower jaw. She also had a bruise in the front portion of her thigh. She also suffered abrasions in her genitalia which, according to the examining doctor, meant that there was sexual intercourse within the past 24 hours. Another proof of recent intercourse was the presence of sperm cells in her vagina.[9]

In his defense, the accused-appellant denied the accusation against him. He claimed that, in the evening of March 29, 2003, he attended the birthday party of a neighbor in the same X Compound where he and Mara were both residing at that time. He drank liquor with three other men at the party. They were drinking until around 1:00 in the morning of the following day when, after consuming their fourth bottle of Emperador brandy, he went home as he was already groggy and had vomited. Upon reaching his house and after being let in by the daughter of his live-in partner, he had coffee and threw up again.[10] He then washed his face and went to bed to rest.[11] He woke up at around 6:00 in the morning, had breakfast, took a bath, drove his tricycle, and plied his ordinary route until around 5:00 in the afternoon. When he returned home from driving, he was told that *Ditse* wanted to see him. When he went to *Ditse*'s place, *Ditse* told him that Mara was raped and that he was the culprit. The police soon arrived and brought the accused-appellant to the police station where a sample of his pubic hair was taken and he was made to face Mara. He was then allowed to go

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[8] *Id.* at 6-7 and 13-15.

[9] *Rollo*, pp. 4-6.

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

[11] TSN, August 29, 2006, p. 4.

home. On the following day, he again plied his route. The next day, he went to his mother's house at Luisita Homesite in San Miguel, Tarlac City and stayed there until his arrest in December 2003.[12]

After weighing the respective evidence of the parties, the trial court found Mara's testimony categorical, spontaneous and consistent. It was supported by the physical evidence, particularly the result of her medical examination on the same day of the incident complained of. No ill motive on her part was shown and she courageously and willingly recounted her harrowing experience in public during the trial of the case. In contrast, the trial court found the testimony of the accused-appellant "deceptive, evasive, hollow and deep in half-truths." His alibi – his claim that he was in his room sleeping at the time Mara was raped – did not preclude the possibility of his presence at the place of the crime at the time of its commission.[13] Thus, in a Decision dated November 12, 2008, the trial court found the accused-appellant guilty beyond reasonable doubt of the crime of rape committed against Mara. The dispositive portion of the decision reads:

> WHEREFORE, this court finds accused Abel Diaz GUILTY beyond reasonable doubt of the crime of rape as defined and penalized in Article 335 of the Revised Penal Code and to suffer [the] penalty of *reclusion perpetua*.
>
> He is further ordered to pay complainant the amount of ₱75,000.00 as moral damages and ₱50,000.00 actual damages and to pay the costs.
>
> Let the records of this case be forwarded to the Court of Appeals upon filing of the notice of appeal in accordance with Administrative Circular No. 20-2005 issued on April 19, 2005.[14]

The accused-appellant appealed his case to the Court of Appeals. For him, the trial court gave undue credence to the

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[12] *Rollo*, pp. 8-9.

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

[14] CA *rollo*, pp. 19-20.

testimony of Mara. In particular, her identification of him was contrary to human experience as she admitted that her room was dark and she was not wearing her eyeglasses at the time of the alleged assault.[15]

The accused-appellant also claimed that his guilt was not proven beyond reasonable doubt. For him, the prosecution failed to prove the element of force or intimidation as there was an absence of any "real apprehension of dangerous consequences or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance." While claiming that she was verbally threatened of being stabbed, Mara admitted that she did not see any knife in his possession. Mara also failed to make an outcry during the two hours that the accused-appellant allegedly stayed in her room.[16]

The Court of Appeals rejected the contentions of the accused-appellant. Mara positively identified the accused-appellant as her assailant. While the lights in her room were switched off, light coming from outside illuminated her room sufficiently and enabled her to see her assailant's face. She also demonstrated that the fact that she was not wearing her grade 1.25 eyeglasses could not have materially affected her ability to identify the accused-appellant.[17]

The Court of Appeals also pointed out that the prosecution clearly established the element of force or intimidation. Mara testified that the accused-appellant repeatedly hit and forcibly held her. The punches to her stomach and thighs caused her pain, weakened her and almost made her lose consciousness. Her injuries in the neck, thigh and genital areas, visible hours after the incident, proved that violent force was used on her. Rather than negating the element of force or intimidation, the "invisible knife" — the threat of infliction of further bodily

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[15] *Rollo*, p. 11.

[16] *Id.* at 14.

[17] *Id.* at 11-14.

harm, added to Mara's helpless state and facilitated the accused-appellant's evil design.[18]

According to the Court of Appeals, Mara's testimony that the accused-appellant stayed for two hours in her room did not make her credibility doubtful. It was a mere estimate and could not be expected to be accurate with rigorous exactitude. Besides, the precise duration or the exact time or date of the commission of the rape is not an essential element of the felony. Rape is no respecter of time and place.[19]

Thus, in a Decision dated March 31, 2011, the Court of Appeals denied the appeal of the accused-appellant and affirmed the Decision dated November 12, 2008 of the trial court which found the accused-appellant guilty of the crime of rape and sentenced him to suffer *reclusion perpetua*. The decretal portion of the Decision dated March 31, 2011 reads:

> **WHEREFORE**, the appeal is **DENIED**. The Decision of the RTC of Tarlac City dated November 12, 2008 in Criminal Case No. 12650 is hereby **AFFIRMED *in toto***.[20]

This appeal is the accused-appellant's last-ditch attempt to secure an acquittal. Unfortunately, both the law and the evidence are against him.

Under Article 266-A(1)(a) of the Revised Penal Code, rape is committed "by a man who shall have carnal knowledge of a woman" "through force, threat, or intimidation." The trial and the appellate courts were unanimous in finding that, beyond reasonable doubt, the accused-appellant forcibly held Mara's hand while straddling her, punched her in the stomach when she cried for help, continuously threatened to stab her as she resisted his advances, punched her thighs to weaken her, and had sexual intercourse with her. Justice therefore demands the denial of his appeal.

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[18] *Id.* at 14-15.

[19] *Id.* at 15.

[20] *Id.* at 18.

Moreover, even if we consider the grounds raised by the accused-appellant, his appeal still fails.

The appeal of the accused-appellant boils down to a question of credibility of the prosecution's primary witness, the private complainant Mara. As a rule, however, credibility is the sole province of the trial court.[21] It is well-settled that:

> [W]hen the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. x x x.[22] (Citation omitted.)

In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.[23] On the one hand, this judicial deference is a recognition of the role of trial judges in fact-finding — trial judges have the unique opportunity of having the privilege of a front-row seat to observe first-hand the details of a testimony, the demeanor and deportment of witnesses, and the drama during the trial. On the other hand, this is an acknowledgment by this Court of the limitations of its review in appealed cases – this Court stands outside the trial court, is far-removed from the witness stand, and relies solely on the records of the case.

Acutely aware of the Court's position as the last resort of litigants, we have nevertheless carefully sifted through the records of this case but found nothing that indicates to us that the trial and the appellate courts overlooked or failed to appreciate facts

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[21] *People v. Nelmida*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 413.

[22] *Id.*

[23] *Id.*

that, if considered, would change the outcome of the case. Thus, we uphold the Court of Appeals ruling that Mara made a clear and positive identification of the accused-appellant as her sexual assaulter. The records bear this out.[24]

We also agree with the Court of Appeals that the prosecution sufficiently proved the element of force or intimidation which attended the sexual assault against Mara. It cannot be denied that the accused-appellant forcibly held, repeatedly punched and violently ravished Mara. The injuries which she sustained in the neck, thigh and genital areas, documented in the medico legal-report of the examination conducted on the very same day her person was violated, trump accused-appellant's contrary claim. Weak and in pain, the repeated threats of being stabbed coupled with the blows already inflicted on her, certainly intimidated Mara and created a numbing fear in her mind that her assailant was capable of hurting her more and carrying out his threats.

We also affirm the finding of the Court of Appeals that Mara's credibility was not eroded by her testimony that the accused-appellant tarried for two hours in her room. The Court of Appeals said it well: when one is being raped, forcibly held, weak and in great pain, and in shock, she cannot be reasonably expected to keep a precise track of the passage of time down to the last minute.[25] Indeed, for a woman undergoing the ordeal that Mara underwent in the hands of the accused-appellant, every moment is like an eternity of hell and the transit of time is a painfully slow crawl that she would rather forget. In addition, the precise duration of the rape is not material to and does not negate the commission of the felony. Rape has no regard for time and place.[26] It has been committed in all manner of situations and in circumstances thought to be inconceivable.

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[24] TSN, November 16, 2004, p. 3.

[25] *Rollo*, p. 15.

[26] It is well-established that rape is no respecter of time and place. *See People v. Alimon*, 327 Phil. 447, 469 (1996) and *People v. Fucio*, 467 Phil. 327, 339 (2004).

As regards his defenses, the accused-appellant's denial and alibi crumble in the face of his positive identification by Mara. In particular, his alibi is worthless as his presence at a mere 30 meters away from the scene of the crime at the time of its commission definitely does not constitute a physical impossibility for him to be at Mara's room at the time of the rape. On the contrary, it is in fact an implied admission that there is facility of access for the accused-appellant to be at the place where the crime happened when it happened.

As to the award of damages, the award of ₱50,000.00 as civil indemnity, instead of "actual damages" referred to in the RTC Decision, is proper but the award of ₱75,000.00 moral damages should be reduced to ₱50,000.00 to conform to current case law.[27] Moreover, ₱30,000 exemplary damages should be awarded to Mara, who was still a minor when she was raped by the accused-appellant, to set a public example and serve as deterrent against elders who abuse and corrupt the youth and to protect the latter from sexual assault.[28]

In addition, 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, pursuant to prevailing jurisprudence.[29]

WHEREFORE, the appeal is hereby **DENIED** and the Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03691 affirming the Decision dated November 12, 2008 of the Regional Trial Court of Tarlac City, Branch 65 in Criminal Case No. 12650 which found the accused-appellant Abel Diaz **GUILTY** beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATION**. The

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[27] *See People v. Penilla*, G.R. No. 189324, March 20, 2013; *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 397.

[28] *People v. Deligero*, G.R. No. 189280, April 17, 2013; *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 398.

[29] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

dispositive portion of the trial court's Decision dated November 12, 2008 is hereby modified to read as follows:

WHEREFORE, this court finds accused Abel Diaz **GUILTY** beyond reasonable doubt of the crime of rape as defined and penalized in Article 266-A (1)(a) of the Revised Penal Code and to suffer the penalty of *reclusion perpetua*.

He is further **ORDERED** to pay complainant the amounts of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, and ₱30,000.00 exemplary damages.

He is further **ORDERED** to pay legal interest on the civil indemnity, moral damages and exemplary damages awarded at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 201723. June 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PERCIVAL DELA ROSA *Y* BAYER,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL OF A CRIMINAL CASE THROWS THE WHOLE CASE OPEN FOR REVIEW.— The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed

out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. An appeal, however, throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.

2. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, INCLUDING THE ASSESSMENT OF THE CREDIBILITY OF WITNESSES, ARE GENERALLY CONCLUSIVE TO THE SUPREME COURT.— It has been consistently held that factual findings of the trial court are, except for compelling or exceptional reasons, conclusive to the Court especially when fully supported by evidence and affirmed by the CA. The Court finds no cogent reason in this case to disturb the findings and conclusions of the RTC, as affirmed by the CA, including their assessment of the credibility of the witnesses.

3. CRIMINAL LAW; CONSPIRACY; SUFFICIENTLY PROVED BY THE FACT THAT THE MALEFACTORS ACTED IN UNISON PURSUANT TO THE SAME OBJECTIVE.— 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.

4. REMEDIAL LAW; EVIDENCE; DENIAL; MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY.— [D]enial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and

the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight.

5. CRIMINAL LAW; TREACHERY; DULY ESTABLISHED IN CASE AT BAR.— Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In this case, Magdua was clearly pre-occupied in his conversation then on going with Samson when Dela Rosa and Tabasa suddenly attacked him. Magdua was obviously helpless to defend himself or even retaliate. There is no doubt that Dela Rosa and Tabasa consciously took advantage of Magdua's pre-occupation and their joint force and effort in employing such form of attack ensured Magdua's death. That, is treachery.

6. CIVIL LAW; DAMAGES; DAMAGES TO BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— "When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."

7. ID.; ID.; MORAL DAMAGES; MANDATORY IN CASES OF MURDER AND HOMICIDE, WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN THE DEATH OF THE VICTIM.— [M]oral damages in the amount of **₱75,000.00** must be awarded as it is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.

8. ID.; ID.; TEMPERATE DAMAGES; GRANTED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— Temperate or moderate damages avail when the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case, be proved with certainty. In this case, it cannot be denied that the heirs of Magdua suffered pecuniary loss, although the exact amount was not proved with certainty.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated November 3, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03742, which affirmed the Decision[2] dated November 19, 2008 of the Regional Trial Court (RTC) of Caloocan City, Branch 129, in Criminal Case No. C-64944 finding Percival Dela Rosa *y* Bayer (Dela Rosa) guilty of the crime of Murder.

Accused-appellant Dela Rosa and his co-accused Jaylanie Tabasa (Tabasa) were charged in an Information[3] for Murder, which reads:

> That on or about the 18th day of November, 2001 in Caloocan City[,] Metro Manila and within the jurisdiction of this Honorable Court, the above named accused, conspiring together and mutually aiding with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, hit on the face with fistic blow and stab with a bladed weapon one JOJIE MAGDUA hitting the latter on the chest, thereby inflicting upon him serious physical injuries, which caused his death (DOA) at Nodado Gen. Hospital this City.
>
> Contrary to law.[4]

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[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring; *rollo*, pp. 2-20.

[2] CA *rollo*, pp. 9-19.

[3] *Rollo*, p. 3.

[4] *Id.*

During arraignment, Dela Rosa, assisted by counsel *de oficio*, pleaded not guilty to the charge. Tabasa remains at large.

During trial, the prosecution presented witnesses Marcelino Samson, Jr. (Samson), Dr. Jose Arnel Marquez (Dr. Marquez) and Zoilo Magdua (Zoilo). Samson testified on the surrounding circumstances of the incident; Dr. Marquez, on the autopsy he conducted and his *post-mortem* report; and Zoilo, the victim's father, on the events immediately after the incident and the damages suffered by the bereaved family of the victim.

The defense, on the other hand, presented Dela Rosa as its lone witness.

Based on the parties' respective evidence, it was established that on the night of November 18, 2001, prosecution witness Samson was talking to the victim Jojie "Jake" Magdua (Magdua) along Phase 9, Package 7, Block 31, Lot 30 in *Barangay* Bagong Silang, Caloocan City. They were then approached by Dela Rosa and Tabasa and without warning, the latter boxed Magdua while the former pulled out a knife and stabbed Magdua on the chest. Magdua ran towards the upper portion of the path where they were talking while Samson shouted for help. Dela Rosa and Tabasa, however, chased Magdua and were able to overtake him. Tabasa, again, boxed Magdua and Dela Rosa stabbed Magdua on the nape.[5]

Magdua was later brought by friends to Nodado General Hospital. Unfortunately, he was already dead upon arrival at the hospital. Samson, meanwhile, informed Magdua's uncle of the incident. He also went to the police station to report the incident.[6]

Dr. Marquez, Medico Legal Officer of the Philippine National Police Crime Laboratory of Caloocan City, conducted the autopsy and reported that Magdua's cause of death is hemorrhagic shock as a result of a stab wound on the neck.[7]

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[5] *Id.* at 5.

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

[7] *Id.* at 6-7.

The RTC convicted Dela Rosa for Murder, as follows:

> WHEREFORE, in view of the foregoing, the Court finds accused **PERCIVAL DELA ROSA**, guilty of Murder, qualified by treachery, and he is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***, to indemnify the heirs of the victim in the amount of Php50,000.00, as indemnity *ex-delicto*, to pay exemplary damages in the amount of Php100,000.00.
>
> The period of his preventive imprisonment shall be credited in the service of his sentence.
>
> Costs *de oficio*.
>
> Let an *alias* Warrant of arrest be issued against **JAYLANIE TABASA *Y* MABUEL**.
>
> In the interim, this case with respect to said accused is ordered **Archived**.
>
> SO ORDERED.[8]

In convicting Dela Rosa, the RTC found that Dela Rosa and Tabasa conspired with each other in treacherously assaulting Magdua with the common criminal intent of killing him. Evidence showed that Magdua was unarmed when Tabasa boxed him and Dela Rosa stabbed him on the chest and thereafter, at the back of his neck. The RTC also found that treachery attended the commission of the crime as Magdua was merely conversing with his friend Samson at the time he was attacked by Dela Rosa and Tabasa, catching him unarmed and off-guard. The RTC gave weight and credence to the positive identification made by Samson, pointing at Dela Rosa as one of the assailants. According to the RTC, Samson's testimony was categorical and consistent and there was no badge of any evil motive that would prevail over Dela Rosa's defense of alibi. The RTC, however, found lack of evident premeditation as the prosecution failed to establish that Dela Rosa and Tabasa planned the crime before it was committed.[9]

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[8] CA *rollo*, p. 18.

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

On appellate review, Dela Rosa assailed the credibility of the eyewitness Samson. He argued that the lighting condition of the *locus crimini* made it impossible for Samson to positively identify Magdua's assailants and that Samson could not even recall how many times the victim was stabbed. He also contended that the material inconsistencies in Samson's testimony place his guilt in serious doubt. His argument was that while Samson testified that it was him who stabbed Magdua, Dr. Marquez testified that it was possible that two (2) different persons inflicted the stabbed wounds on Magdua's chest and back. Finally, he questioned the RTC's appreciation of the qualifying circumstance of treachery.[10]

Despite these protestations, the CA gave full weight and credit to Samson's testimony. The CA ruled that Dela Rosa failed to show that the lighting conditions made it impossible for Samson to identify him and, in fact, Samson stated that the light coming from the Meralco post enabled him to see the face of Dela Rosa.[11] The CA further ruled that the totality of the evidence adduced by the prosecution, both testimonial and documentary, clearly established the elements of murder[12] — the autopsy and *post-mortem* report established the fatal injuries sustained by Magdua; the positive identification made by Samson pointed to Dela Rosa as one of the perpetrators of the crime and the one who inflicted the fatal injury on Magdua; and that treachery attended the commission of the crime.[13] The CA agreed with the RTC that Magdua was defenseless when Dela Rosa and Tabasa ganged up on him. Thus, the CA affirmed Dela Rosa's conviction as follows:

WHEREFORE, premises considered, the Decision dated November 19, 2008 of the Regional Trial Court of Caloocan City, Branch 129 in Criminal Case No. C-64944 is hereby **AFFIRMED *IN TOTO***.

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

[11] *Rollo*, p. 8.

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

[13] *Id.* at 12-17.

No costs.

SO ORDERED.[14]

Dissatisfied, Dela Rosa brought his conviction for review to this Court, anchored on the sole issue of whether the CA erred in affirming the RTC's judgment convicting Dela Rosa for Murder.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. An appeal, however, throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.[15]

In this case, the CA did not commit any error in affirming the RTC's conclusion that the prosecution was able to establish Dela Rosa's guilt beyond reasonable doubt.

It has been consistently held that factual findings of the trial court are, except for compelling or exceptional reasons, conclusive to the Court especially when fully supported by evidence and affirmed by the CA.[16] The Court finds no cogent reason in this case to disturb the findings and conclusions of the RTC, as affirmed by the CA, including their assessment of the credibility of the witnesses.

Records show that Samson, a friend of the victim who was with him at the time of the incident, straightforwardly testified

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[14] *Id.* at 19.

[15] *People v. Ulat*, G.R. No. 180504, October 5, 2011, 658 SCRA 695, 701-702.

[16] *People v. Nazareno*, G.R. No. 196434, October 24, 2012, 684 SCRA 604.

that it was Dela Rosa who pulled out the bladed weapon during the assault and who stabbed the victim on his chest and at the back of his neck.[17] As aptly stated by the CA, the positive, categorical and unequivocal declaration of Samson identifying Dela Rosa as one of the assailants deserves more consideration than the defense's speculation on the state of darkness of the *locus crimini* or the number of times the victim was stabbed. During the trial, Samson also vividly described the manner by which Dela Rosa committed the crime, giving the RTC a clear picture of how Dela Rosa and Tabasa ganged up on the victim. Indeed, it is evident that the totality of the evidence for the prosecution, coupled with the defense's failure to discredit Samson's testimony, established Dela Rosa's guilt beyond reasonable doubt. As held in *People of the Philippines v. Welvin Diu y Kotsesa and Dennis Dayaon y Tupit*:[18]

> [T]he issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.[19] (Citation omitted)

Moreover, Dela Rosa's denial of conspiracy and participation in the crime lacks merit.

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from

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[17] *Rollo*, p. 14.

[18] G.R. No. 201449, April 3, 2013.

[19] *Id.*, citing *People v. Maxion*, 413 Phil. 740, 747-748 (2001).

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.[20]

In this case, the evidence on record established that Dela Rosa and Tabasa shared a community of criminal design. Together, they approached Magdua while the latter was busy talking to Samson; Tabasa then boxed Magdua while Dela Rosa pulled out a knife and stabbed the latter on the chest. When Magdua managed to run away, the two perpetrators ran after him and were able to overtake him. Tabasa, again, threw fist blows to Magdua who still tried to retreat. From behind, Dela Rosa then pulled his knife and stabbed Magdua at the nape. Such acts, taken altogether, show how Dela Rosa and Tabasa jointly accomplished killing Magdua. Consequently, Dela Rosa's denial is not supported by convincing evidence and deserves scant consideration. Such self-serving denial, therefore, cannot overthrow the positive identification made by Samson that he was one of the perpetrators of the crime.[21]

In addition, denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight.[22]

The Court also finds that the treachery was correctly appreciated by the RTC and affirmed by the CA.

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[20] *People of the Philippines v. John Alvin Pondivida*, G.R. No. 188969, February 27, 2013.

[21] *People v. Dela Cruz*, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 720.

[22] *Id.* at 720-721, citing *Ferrer v. People*, 518 Phil. 196, 218 (2006).

Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[23] In this case, Magdua was clearly pre-occupied in his conversation then on going with Samson when Dela Rosa and Tabasa suddenly attacked him. Magdua was obviously helpless to defend himself or even retaliate. There is no doubt that Dela Rosa and Tabasa consciously took advantage of Magdua's pre-occupation and their joint force and effort in employing such form of attack ensured Magdua's death. That, is treachery.

As to the penalty, the Court also agrees with the CA that having been found guilty of Murder, Dela Rosa must suffer the penalty of *reclusion perpetua* without eligibility for parole.[24]

As to the award of damages, the Court finds that modifications are in order to conform to prevailing jurisprudence. "When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."[25]

Thus, the amount of ₱50,000.00 as civil indemnity is increased to **₱75,000.00**. Also, moral damages in the amount of **₱75,000.00** must be awarded as it is mandatory in cases of murder and

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[23] *People of the Philippines v. Ramil Rarugal alias "Amay Bisaya"*, G.R. No. 188603, January 16, 2013.

[24] Article 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death. With treachery having been proven and correctly appreciated to have attended the commission of the crime, the maximum imposable penalty, therefore, should be death. Republic Act No. 9346 or An Act Prohibiting the Imposition of Death Penalty in the Philippines, however, prohibits the imposition of the death penalty. Thus, the penalty for crime was correctly reduced to *reclusion perpetua*.

[25] *People v. Yanson*, G.R. No. 179195, October 3, 2011, 658 SCRA 385, 398, citing *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 636.

homicide, without need of allegation and proof other than the death of the victim.[26]

The award of **₱25,000.00** as temperate damages is likewise in order. Temperate or moderate damages avail when the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case, be proved with certainty.[27] In this case, it cannot be denied that the heirs of Magdua suffered pecuniary loss, although the exact amount was not proved with certainty.

The Court, however, deems it proper to reduce the amount of exemplary damages from ₱100,000.00 to **₱30,000.00**.[28]

WHEREFORE, the Decision dated November 3, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03742 is **MODIFIED** as follows:

(1) The amount of civil indemnity is increased to ₱75,000.00;

(2) Moral damages in the amount of ₱75,000.00 and temperate damages in the amount ₱25,000.00 are hereby awarded; and

(3) The award of exemplary damages is reduced to ₱30,000.00.

In all other respects, the assailed decision is **AFFIRMED**.

SO ORDERED.

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

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[26] *People v. De Jesus*, G.R. No. 186528, January 26, 2011, 640 SCRA 660, 677-678.

[27] *Republic of the Philippines v. Tuvera*, 545 Phil. 21, 58-59 (2007).

[28] *Supra* note 20.

FIRST DIVISION

[G.R. No. 160786. June 17, 2013]

SIMPLICIA O. ABRIGO and DEMETRIO ABRIGO, *petitioners, vs.* **JIMMY F. FLORES, EDNA F. FLORES, DANILO FLORES, BELINDA FLORES, HECTOR FLORES, MARITES FLORES, HEIRS OF MARIA F. FLORES, JACINTO FAYLONA, ELISA FAYLONA MAGPANTAY, MARIETTA FAYLONA CARTACIANO, and HEIRS of TOMASA BANZUELA *VDA. DE* FAYLONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT; A JUDGMENT WHICH HAS BECOME FINAL AND IMMUTABLE CAN NO LONGER BE ALTERED, AMENDED OR MODIFIED; EXCEPTIONS.— The contention of petitioners that the sale by Jimmy Flores to them of his 1/4 share in the western portion of the 402-square meter lot under the deed of sale dated March 4, 1998 was a supervening event that rendered the execution inequitable is devoid of merit. Although it is true that there are recognized exceptions to the execution as a matter of right of a final and immutable judgment, one of which is a supervening event, such circumstance did not obtain herein. To accept their contention would be to reopen the final and immutable judgment in order to further partition the western portion thereby adjudicated to the heirs and successors-in-interest of Francisco Faylona for the purpose of segregating the ¼ portion supposedly subject of the sale by Jimmy Flores. The reopening would be legally impermissible, considering that the November 20, 1989 decision, as modified by the CA, could no longer be altered, amended or modified, even if the alteration, amendment or modification was meant to correct what was perceived to be an erroneous conclusion of fact or of law and regardless of what court, be it the highest Court of the land, rendered it. This is pursuant to the doctrine of immutability of a final judgment, which may be relaxed

only to serve the ends of substantial justice in order to consider certain circumstances like: (*a*) matters of life, liberty, honor or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) the cause not being entirely attributable to the fault or negligence of the party favored by the suspension of the doctrine; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; or (*f*) the other party will not be unjustly prejudiced by the suspension.

2. ID.; ID.; EXECUTION OF JUDGMENTS; SUPERVENING EVENT; AN EXCEPTION TO THE EXECUTION AS A MATTER OF RIGHT OF A FINAL AND IMMUTABLE JUDGMENT.— We deem it highly relevant to point out that a supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable. A supervening event consists of facts that transpire *after* the judgment became final and executory, or of new circumstances that develop *after* the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

3. ID.; ID.; ID.; SPECIAL ORDER OF DEMOLITION; THE ISSUANCE THEREOF WOULD BE THE NECESSARY AND LOGICAL CONSEQUENCE OF THE EXECUTION OF THE FINAL AND IMMUTABLE DECISION IN CASE AT BAR.— The issuance of the special order of demolition would also not constitute an abuse of discretion, least of all grave. Such issuance would certainly be the necessary and logical consequence of the execution of the final and immutable decision. According to Section 10(d) of Rule 39, *Rules of Court*,

when the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court issued upon motion of the judgment obligee after due hearing and after the judgment obligor or his agent has failed to remove the improvements within a reasonable time fixed by the court. With the special order being designed to carry out the final judgment of the RTC for the delivery of the western portion of the property *in litis* to their respective owners, the CA's dismissal of the petition for *certiorari* could only be upheld.

APPEARANCES OF COUNSEL

Reynato A. Estrellado for petitioners.

Candido G. Havaluyas, Jr. for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Once a judgment becomes immutable and unalterable by virtue of its finality, its execution should follow as a matter of course. A supervening event, to be sufficient to stay or stop the execution, must alter or modify the situation of the parties under the decision as to render the execution inequitable, impossible, or unfair. The supervening event cannot rest on unproved or uncertain facts.

In this appeal, petitioners seek to reverse the decision in CA-G.R. SP No. 48033 promulgated on September 25, 2002,[1] whereby the Court of Appeals (CA) directed the Regional Trial Court, Branch 30, in San Pablo City (RTC) to issue a special order of demolition to implement the immutable and unalterable judgment of the RTC rendered on November 20, 1989.

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[1] *Rollo*, pp. 16-27; penned by Associate Justice Cancio C. Garcia (later Presiding Justice and Member of the Court, now retired), with the concurrence of Associate Justice Bernardo P. Abesamis (retired) and Associate Justice Rebecca De Guia-Salvador.

This case emanated from the judicial partition involving a parcel of residential land with an area of 402 square meters situated in the Municipality of Alaminos, Laguna (property *in litis*) that siblings Francisco Faylona and Gaudencia Faylona had inherited from their parents. Under the immutable and unalterable judgment rendered on November 20, 1989, the heirs and successors-in-interest of Francisco Faylona, respondents herein, would have the western portion of the property *in litis*, while the heirs and successors-in-interest of Gaudencia Faylona its eastern half.

For an understanding of the case, we adopt the following rendition by the CA in its assailed decision of the factual and procedural antecedents, *viz*:

> Involved in the suit is a lot with an area of 402 square meters situated in the Municipality of Alaminos, Laguna and inherited by both Francisco (Faylona) and Gaudencia (Faylona) from their deceased parents. The lot is declared for taxation purposes under Tax Declaration No. 7378 which Gaudencia managed to secure in her name alone to the exclusion of Francisco and the latter's widow and children. It appears that after Francisco's death, his widow and Gaudencia entered into an extrajudicial partition whereby the **western half** of the same lot was assigned to Francisco's heirs while the **eastern half** thereof to Gaudencia. There was, however, no actual ground partition of the lot up to and after Gaudencia's death. It thus result that both the heirs of Francisco and Gaudencia owned in common the land in dispute, which co-ownership was recognized by Gaudencia herself during her lifetime, whose heirs, being in actual possession of the entire area, encroached and built improvements on portions of the **western half**. In the case of the petitioners, a small portion of their residence, their garage and poultry pens extended to the western half.
>
> Such was the state of things when, on July 22, 1988, in the Regional Trial Court at San Pablo City, the heirs and successors-in-interest of Francisco Faylona, among whom are the private respondents, desiring to terminate their co-ownership with the heirs of Gaudencia, filed their complaint for judicial partition in this case, which complaint was docketed *a quo* as Civil Case No. SP-3048.
>
> In a **decision dated November 20, 1989,** the trial court rendered judgment for the private respondents by ordering the partition of

the land in dispute in such a way that the western half thereof shall pertain to the heirs of Francisco while the eastern half, to the heirs of Gaudencia whose heirs were further required to pay rentals to the plaintiffs for their use and occupancy of portions on the western half. More specifically, the decision dispositively reads:

> *"WHEREFORE, premises considered, the Court hereby renders judgment in favor of plaintiffs and against defendants ordering:*
>
> *1. The partition of the parcel of land described in paragraph 5 of the complaint the western half portion belonging to the plaintiffs and the other half eastern portion thereof to the defendants, the expenses for such partition, subdivision and in securing the approval of the Bureau of Lands shall be equally shouldered by them;*
>
> *2. To pay plaintiffs the sum of ₱500.00 per month as rental from July 22, 1988 until the entire Western half portion of the land is in the complete possession of plaintiffs;*
>
> *3. Defendants to pay the costs of these proceedings.*
>
> *SO ORDERED."*

From the aforementioned decision, the heirs of Gaudencia, petitioners included, went on appeal to this Court in **CA-G.R. CV No. 25347**. And, in a **decision promulgated on December 28, 1995**, this Court, thru its former Third Division, affirmed the appealed judgment of the respondent court, minus the award for rentals, thus:

> *"WHEREFORE, appealed decision is hereby AFFIRMED, except the amount of rental awarded which is hereby DELETED.*
>
> *SO ORDERED."*

With no further appellate proceedings having been taken by the petitioners and their other co-heirs, an **Entry of Judgment** was issued by this Court on **June 3, 1996.**

Thereafter, the heirs of Francisco filed with the court *a quo* a motion for execution to enforce and implement its decision of November 20, 1989, as modified by this Court in its decision in CA-G.R. CV No. 25347, *supra.* Pending action thereon and pursuant to the parties' agreement to engage the services of a geodetic engineer to survey and subdivide the land in question, the respondent court issued an order appointing Engr. Domingo Donato *"to cause the*

survey and subdivision of the land in question and to make his report thereon within thirty (30) days from receipt hereof."

In an order dated November 19, 1997, the respondent court took note of the report submitted by Engr. Donato. In the same order, however, the court likewise directed the defendants, more specifically the herein petitioners, to remove, within the period specified therein, all their improvements which encroached on the **western half**, *viz*

> *"As prayed for by the defendants, they are given 2 months from today or up to January 19, 1998 within which to remove their garage, a small portion of their residence which was extended to a portion of the property of the plaintiffs as well as the chicken pens thereon and to show proof of compliance herewith."*

To forestall compliance with the above, petitioners, as defendants below, again prayed the respondent court for a final extension of sixty (60) days from January 19, 1998 within which to comply with the order. To make their motion palatable, petitioners alleged that they *"are about to conclude an arrangement with the plaintiffs and just need ample time to finalize the same."* To the motion, private respondents interposed an opposition, therein stating that the alleged arrangement alluded to by the petitioners did not yield any positive result.

Eventually, in an order dated January 28, 1998, the respondent court denied petitioners' motion for extension of time to remove their improvements. Thereafter, or on **February 6, 1998**, the same court issued a **writ of execution**.

On February 12, 1998, Sheriff Baliwag served the writ on the petitioners, giving the latter a period twenty (20) days from notice or until **March 4, 1998** within which to remove their structures which occupied portions of private respondents' property. On March 6, 1998, the implementing sheriff returned the writ *"PARTIALLY SATISFIED,"* with the information that petitioners failed to remove that portion of their residence as well as their garage and poultry fence on the western half of the property.

On account of the sheriff's return, private respondents then filed with the court *a quo* on March 11, 1998 a **Motion for Issuance of Special Order of Demolition**.

On March 19, 1998, or even before the respondent court could act on private respondents' aforementioned motion for demolition, petitioners filed a **Motion to Defer Resolution on Motion for Demolition**, this time alleging that they have become one of the co-owners of the western half to the extent of 53.75 square meters thereof, purportedly because one of the successors-in-interest of Francisco Faylona – Jimmy Flores – who was co-plaintiff of the private respondents in the case, sold to them his share in the western half. We quote the pertinent portions of petitioners' motion to defer:

> *"That after the finality of the decision and on this stage of execution thereof, there was an event and circumstance which took place between the defendants and one of the groups of plaintiffs (Floreses)[which] would render the enforcement of the execution unjust.*
>
> *On March 4, 1998, the Floreses, one of the plaintiffs as co-owners of the property-in-question in the Western portion, sold their one-fourth (1/4) undivided portion in the co-ownership of the plaintiffs to defendant Simplicia O. Abrigo, as can be seen in a xerox copy of the deed x x x.*
>
> *xxx xxx xxx*
>
> *Defendant Simplicia O. Abrigo is now one of the four co-owners of a ¼ portion, pro-indiviso of the property of the plaintiffs. Thus, until and unless a partition of this property is made, the enforcement of the execution and/or demolition of the improvement would be unjust x x x. This sale took place after the finality."*

In the herein **first assailed order dated May 13, 1998**, the respondent court **denied** petitioners' motion to defer resolution of private respondents' motion for a special order of demolition and directed the issuance of an *alias* writ of execution, thus:

> *"WHEREFORE, let an alias writ of execution issue for the satisfaction of the Court's judgment. Defendants' Motion to Defer Resolution of the Motion for a Writ of Demolition is hereby DENIED.*
>
> *SO ORDERED."*
>
> xxx xxx xxx

On May 20, 1998, petitioners filed a **Motion for Reconsideration**, thereunder insisting that being now one of the co-owners of the

western half, there is need to defer action of the motion for demolition until the parties in the co-ownership of said half shall have decided in a formal partition which portion thereof belongs to each of them.

A timely **opposition** to the motion for reconsideration was filed by the private respondents, thereunder arguing that the alleged Deed of Sale dated March 4, 1998 and supposedly executed by Jimmy Flores was merely falsified by the latter because one of the Floreses, Marites Flores, did not actually participate in the execution thereof, adding that the same document which seeks to bind them (private respondents) as non-participating third parties, cannot be used as evidence against them for the reason that the deed is not registered.

Pursuant to the aforequoted order of May 13, 1998, an *alias* writ of execution was again issued. As before, Sheriff Baliwag served the *alias* writ to the petitioners on June 16, 1998, giving them until June 23, 1998 within which to remove their structures which encroached on the **western half**. Again, petitioners failed and refused to comply, as borne by the sheriff's amended return.[2] (citations omitted)

In order to stave off the impending demolition of their improvements encroaching the western half of the property *in litis* pursuant to the special order to demolish being sought by respondents, petitioners instituted a special civil action for *certiorari* in the CA against respondents and the RTC (C.A.-G.R. SP No. 48033), alleging that the RTC had gravely abused its discretion amounting to lack or in excess of jurisdiction in issuing the order of May 13, 1998 (denying their motion to defer resolution on the motion for demolition), and the order dated June 10, 1998 (denying their motion for reconsideration).

In support of their petition, petitioners contended that the sale to them by respondent Jimmy Flores, one of the successors-in-interest of Francisco Faylona, of his ¼ share in the western portion of the 402-square meter lot (under the deed of sale dated March 4, 1998) had meanwhile made them co-owners of the western portion, and constituted a supervening event occurring after the finality of the November 20, 1989 decision that rendered the execution inequitable as to them.[3]

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

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

On September 25, 2002, however, the CA dismissed the petition for *certiorari* upon finding that the RTC did not gravely abuse its discretion, disposing thusly:

> WHEREFORE, the instant petition is hereby DENIED and is accordingly DISMISSED. The respondent court is directed to issue a special order of demolition to implement its final and executory decision of November 20, 1989, as modified by this Court in CA-G.R. CV No. 25347.
>
> SO ORDERED.[4]

Petitioners moved for the reconsideration of the dismissal of their petition, but the CA denied their motion on October 6, 2003.[5]

Issues

In this appeal, petitioners submit in their petition for review that:

> I
>
> THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT AFFIRMED THE DENIAL OF THE RTC OF ITS ENFORCEMENT OF THE DECISION DESPITE THE OBVIOUS SUPERVENING EVENT THAT WOULD JUSTIFY MATERIAL CHANGE IN THE SITUATION OF THE PARTIES AND WHICH MAKES EXECUTION INEQUITABLE OR UNJUST.
>
> II
>
> THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THERE WAS NO ABUSE OF DISCRETION IN THE QUESTIONED ORDERS OF THE RTC.[6]

The legal issue is whether or not the sale by respondent Jimmy Flores of his ¼ share in the western portion of the 402-square

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[4] *Id.* at 26.

[5] *Id.* at. 29.

[6] *Id.* at 10.

meter lot constituted a supervening event that rendered the execution of the final judgment against petitioners inequitable.

Ruling

We deny the petition for review, and rule that the CA correctly dismissed the petition for *certiorari*. Indeed, the RTC did not abuse its discretion, least of all gravely, in issuing its order of May 13, 1998 denying petitioners' motion to defer resolution on the motion for demolition, and its order dated June 10, 1998 denying petitioners' motion for reconsideration.

The dispositive portion of the November 20, 1989 decision directed the partition of the 402-square meter parcel of land between the heirs and successors-in-interest of Francisco Faylona and Gaudencia Faylona, with the former getting the western half and the latter the eastern half; and ordered the latter to remove their improvements encroaching the western portion adjudicated to the former. The decision became final after its affirmance by the CA through its decision promulgated on December 28, 1995 in C.A.-G.R. CV No. 25347 modifying the decision only by deleting the award of rentals. There being no further appellate proceedings after the affirmance with modification, the CA issued its entry of judgment on June 3, 1996.

Thereafter, the RTC issued several writs of execution to enforce the judgment. The execution of the November 20, 1989 decision, as modified by the CA, followed as a matter of course, because the prevailing parties were entitled to its execution as a matter of right, and a writ of execution should issue to enforce the dispositions therein.[7]

The contention of petitioners that the sale by Jimmy Flores to them of his ¼ share in the western portion of the 402-square meter lot under the deed of sale dated March 4, 1998 was a supervening event that rendered the execution inequitable is devoid of merit.

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[7] Section 1, Rule 39, *Rules of Court*; *Buenaventura v. Garcia and Garcia*, 78 Phil. 759, 762 (1947).

Although it is true that there are recognized exceptions to the execution as a matter of right of a final and immutable judgment, one of which is a supervening event, such circumstance did not obtain herein. To accept their contention would be to reopen the final and immutable judgment in order to further partition the western portion thereby adjudicated to the heirs and successors-in-interest of Francisco Faylona for the purpose of segregating the ¼ portion supposedly subject of the sale by Jimmy Flores. The reopening would be legally impermissible, considering that the November 20, 1989 decision, as modified by the CA, could no longer be altered, amended or modified, even if the alteration, amendment or modification was meant to correct what was perceived to be an erroneous conclusion of fact or of law and regardless of what court, be it the highest Court of the land, rendered it.[8] This is pursuant to the doctrine of immutability of a final judgment, which may be relaxed only to serve the ends of substantial justice in order to consider certain circumstances like: (*a*) matters of life, liberty, honor or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) the cause not being entirely attributable to the fault or negligence of the party favored by the suspension of the doctrine; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; or (*f*) the other party will not be unjustly prejudiced by the suspension.[9]

Verily, petitioners could not import into the action for partition of the property *in litis* their demand for the segregration of the ¼ share of Jimmy Flores. Instead, their correct course of action was to initiate in the proper court a proceeding for partition of the western portion based on the supposed sale to them by Jimmy Flores.

We deem it highly relevant to point out that a supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects

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[8] *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division),* G.R. No. 172149, February 8, 2010, 612 SCRA 10, 19-20.

[9] *Meneses v. Secretary of Agrarian Reform*, G.R. No. 156304, October 23, 2006, 505 SCRA 90, 97; *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687.

the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable.[10] A supervening event consists of facts that transpire *after* the judgment became final and executory, or of new circumstances that develop *after* the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time.[11] In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution,[12] or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event.[13] The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

Here, however, the sale by Jimmy Flores of his supposed ¼ share in the western portion of the property *in litis*, assuming it to be true, did not modify or alter the judgment regarding the partition of the property *in litis*. It was also regarded with suspicion by the CA because petitioners had not adduced evidence of the transaction in the face of respondents, including Jimmy Flores, having denied the genuineness and due execution of the deed of sale itself.

The issuance of the special order of demolition would also not constitute an abuse of discretion, least of all grave. Such issuance would certainly be the necessary and logical consequence

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[10] *Javier v. Court of Appeals*, G.R. No. 96086, July 21, 1993, 224 SCRA 704, 712.

[11] *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387.

[12] *Dee Ping Wee v. Lee Hiong Wee*, G.R. No. 169345, August 25, 2010, 629 SCRA 145, 168; *Ramirez v. Court of Appeals*, G.R. No. 85469, March 18, 1992, 207 SCRA 287, 292; *Chua Lee A.H. v. Mapa*, 51 Phil. 624, 628 (1928); *Li Kim Tho v. Go Siu Kao*, 82 Phil. 776, 778 (1949).

[13] *Serrano v. Court of Appeals*, G.R. No. 133883, December 10, 2003, 417 SCRA 415, 424-425; *Limpin, Jr. v. Intermediate Appellate Court*, G.R. No. 70987, January 30, 1987, 147 SCRA 516, 522-523.

of the execution of the final and immutable decision. According to Section 10(d) of Rule 39, *Rules of Court*, when the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court issued upon motion of the judgment obligee after due hearing and after the judgment obligor or his agent has failed to remove the improvements within a reasonable time fixed by the court. With the special order being designed to carry out the final judgment of the RTC for the delivery of the western portion of the property *in litis* to their respective owners, the CA's dismissal of the petition for *certiorari* could only be upheld.

It irritates the Court to know that petitioners have delayed for nearly 17 years now the full implementation of the final and immutable decision of November 20, 1989, as modified by the CA. It is high time, then, that the Court puts a firm stop to the long delay in order to finally enable the heirs and successors-in-interest of Francisco Faylona as the winning parties to deservedly enjoy the fruits of the judgment in their favor.[14]

WHEREFORE, the Court **DENIES** the petition for review; **AFFIRMS** the decision promulgated on September 25, 2002 in C.A.-G.R. SP No. 48033; **DIRECTS** the Regional Trial Court, Branch 30, in San Pablo City to issue forthwith the special order of demolition to implement its final and executory decision of November 20, 1989, as modified by the Court of Appeals in C.A.-G.R. CV No. 25347; **DECLARES** this decision to be immediately executory; and **ORDERS** petitioners to pay the costs of suit.

SO ORDERED.

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

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[14] *Anama v. Court of Appeals*, G.R. No. 187021, January 25, 2012, 664 SCRA 293, 308; *De Leon v. Public Estates Authority,* G.R. No. 181970, August 3, 2010, 626 SCRA 547, 565-566; *Lee v. Regional Trial Court of Quezon City, Br. 85,* G.R. No. 146006, April 22, 2005, 456 SCRA 538, 554; *Beautifont, Inc. v. Court of Appeals,* G.R. No. 50141, January 29, 1988, 157 SCRA 481, 494.

THIRD DIVISION

[G.R. No. 173330. June 17, 2013]

LUCILLE DOMINGO, *petitioner, vs.* **MERLINDA COLINA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; WHERE A CRIMINAL CASE IS DISMISSED ON THE GROUND THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, THE CIVIL ASPECT OF THE CASE IS NOT EXTINGUISHED AS THE FACT FROM WHICH THE CIVIL LIABILITY OF THE ACCUSED MIGHT ARISE EXISTS.— [T]he tenor of the Orders of the MTCC is that the dismissal of the criminal case against petitioner was based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal case on the ground that the prosecution failed to prove the second and third elements of BP 22, *i.e.*, (2) the check is applied on account or for value and (3) the person issuing the check knows at the time of its issuance that he does not have sufficient funds in or credit with the bank for the full payment of the check upon its presentment. This only means, therefore, that the trial court did not convict petitioner of the offense charged, since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of evidence to prove the aforesaid elements of the offense charged does not mean that petitioner has no existing debt with respondent, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence. Moreover, from the above pronouncement of the MTCC as to the prosecution's failure to prove the second and third elements of the offense charged, it can be deduced that the prosecution was able to establish the presence of the first and fourth elements, *i.e.*, (1) a person draws and issues a check and (4) the check is dishonored by the bank for insufficiency of funds or credit. Hence, the fact that petitioner was proven to have drawn and issued a check and that the same was subsequently dishonored

for inadequate funds leads to the logical conclusion that the fact from which her civil liability might arise, indeed, exists. On the basis of the foregoing, the RTC correctly entertained respondent's appeal of the civil aspect of the case.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; WHERE OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENTS OR PLEADINGS, IS ACCORDED, THERE IS NO DENIAL OF DUE PROCESS.— [T]he Court finds no cogent reason to depart from the ruling of the CA in its Resolution dated May 26, 2006 that for petitioner's failure to invoke her right to present evidence, despite the clear ruling by the RTC that she is civilly liable, she is deemed to have waived such right. Petitioner may not argue that her right to due process was violated, because she was given the opportunity to raise this issue a number of times both in the RTC and the CA. Petitioner does not dispute that neither in her Motion for Reconsideration of the Decision of the RTC nor in her Petition for Review, as well as in her Memorandum filed with the CA, did she raise the issue of her right to present evidence on the civil aspect of the present case. As correctly observed by the CA, it was only in her Motion for Reconsideration of the CA Decision that she brought up such matter. Where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process. The question is not whether petitioner succeeded in defending her rights and interests, but simply, whether she had the opportunity to present her side of the controversy. In the instant case, petitioner was able to participate in all the proceedings before the lower courts, and, in fact, obtained a favorable judgment from the MTCC. She also had a similar opportunity to ventilate her cause in the CA. Simply because she failed to avail herself of all the remedies open to her did not give her the justification to complain of a denial of due process. She cannot complain because she was given the chance to defend her interest in due course, for as stated above, it was such opportunity to be heard that was the essence of due process.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT BEFORE THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Equally settled is the rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. For her failure to timely invoke her right to present evidence, petitioner is already estopped.

APPEARANCES OF COUNSEL

L & J Tan Law Firm for petitioner.

Garcia Inigo & Partners Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] dated August 12, 2005 and May 26, 2006, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 27090.

The facts are as follows:

In an Information dated March 8, 1999, herein petitioner was charged before the Municipal Trial Court in Cities (MTCC), Davao City, with violation of *Batas Pambansa Bilang* 22 (BP 22), to wit:

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[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Edgardo A. Camello and Myrna Dimaranan-Vidal concurring; Annex "A" to Petition, *rollo*, pp. 25-42.

[2] Annex "B" to Petition, *rollo*, pp. 44-46.

That on or about February 28, 1998 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, knowing fully well that he/she have (sic) no funds and /or credit with the drawee bank, wilfully, unlawfully and feloniously issued UCPB Check No. 0014924 dated February 28, 1998 in the amount of ₱175,000.00 in payment of an obligation in favor of Merlinda Dy Colina; but when the said check was presented to the drawee bank for encashment, the same was dishonored for the reason "ACCOUNT CLOSED" and despite notice of dishonor and repeated demands upon him/her to make good the check, he/she failed and refused to make payment or to deposit the face amount of the check, to the damage and prejudice of herein complainant in the aforesaid amount.[3]

The case proceeded to trial.

After the prosecution rested its case, the defense filed a Demurrer to Evidence.

On October 25, 2001, the MTCC issued an Order granting the demurrer to evidence holding that:

Taking into consideration the observations of this court that the evidence adduced in court by the prosecution in the records of this case failed to prove element[s] nos. 2 and 3 of the crime of violation of Batas Pambansa Bilang 22 charged against the accused Lucille Domingo per information in this case, this court finds and so holds that the demurrer to the evidence adduced in court by the prosecution in the records of this case filed by accused Lucille Domingo through her counsel with this court is well taken. Accordingly, it is granted. Correspondingly, this case is hereby ordered dismissed. Correlatively, the cash bond of accused Lucille Domingo in the amount of ₱20,000.00 under Official Receipt No. 11552806, dated December 2, 1999, deposited with the Office of the Clerk of Court of this court, is ordered canceled and the herein mentioned office is hereby directed to release the herein stated cash bond upon its receipt to accused Lucille Domingo.

SO ORDERED.[4]

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[3] See MTCC Order, Annex "C" to Petition, *rollo*, p. 47; see Petition for Review on *Certiorari*, *rollo*, p. 8.

[4] *Rollo*, pp. 53-54.

The prosecution, through the private prosecutor, then filed a Motion for Reconsideration to the Order of Dismissal and In The Alternative To Reopen the Civil Aspect of the Case.[5] The prosecution contended that even assuming that petitioner did not receive valuable consideration for her bounced check, she is nonetheless liable to respondent for the face value of the check as an accommodation party and, that petitioner's knowledge of the insufficiency of her funds in or credit with the bank is presumed from the dishonor of her check.

On November 23, 2001, the MTCC issued another Order denying the prosecution's Motion. The MTCC held, thus:

> After a thorough reevaluation of the evidence adduced in court by the prosecution in the records of this case in the light of the arguments proffered by the accused in support of her demurrer to the evidence adduced in court by the prosecution in the records of this case and of the factual and legal basis of this court in arriving at its conclusion in ordering the dismissal of this case *vis-a-vis* the arguments interposed by the prosecution in its motion for reconsideration of the order issued by this court, dated October 25, 2001, as diluted by the comments of accused Lucille Domingo, through her counsel, of the herein stated motion for reconsideration of the prosecution, this court finds no cogent reason to justify the reconsideration of the herein stated order. Correspondingly, the motion for reconsideration of the order of this court dated October 25, 2001 is denied. Correlatively, the alternate prayer of the private complainant, through her counsel, to reopen the civil aspect of this case is likewise denied. At any rate, although the herein mentioned order did not categorically state that the accused's act from which his civil liability in favor of the private complainant may arise does not exist in this case, in effect, the observations and ratiocinations stated by this court in support of its finding that the evidence adduced in court by the prosecution in the records of this case failed to prove all the elements of the crime of violation of Batas Pambansa Bilang 22, speaks for itself.
>
> In deference to the desire of the prosecution, let it be stated herein that the act from which the civil liability of the accused in favor of the private complainant may arise, does not exist in this case.

[5] Annex "1" to respondent's Memorandum, *id.* at 160-168.

SO ORDERED.[6]

Respondent appealed the civil aspect of the case to the Regional Trial Court (RTC) of Davao City.

On September 30, 2002, the RTC rendered its Decision, the dispositive portion of which reads, thus:

> **WHEREFORE**, the judgment appealed from is hereby MODIFIED, ordering the accused-appellee [Lucille] Domingo to pay complainant Melinda Colina the civil liability arising [out] of the offense charged in the amount of ₱175,000.00, plus interest of 12% per annum counted from the filing of the [complaint] and cost of suit.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration, but the RTC denied it.

Aggrieved, petitioner filed a petition for review with the CA.

On August 12, 2005, the CA rendered its assailed Decision dismissing petitioner's petition for review and affirming the RTC Decision *in toto*.

Petitioner's motion for reconsideration was denied via the questioned CA Resolution dated May 26, 2006.

Hence, the instant petition for review on *certiorari* based on the following Reasons/Arguments:

(a)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THAT THE RTC-BRANCH 16 OF DAVAO CITY HAS JURISDICTION TO ENTERTAIN AN APPEAL INTERPOSED WHICH WAS VIOLATIVE OF SECTION 2, RULE 111 OF THE RULES ON CRIMINAL PROCEDURE WHEN THE TRIAL COURT (MTCC-BRANCH 6 OF DAVAO CITY) HAD

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[6] Annex "D" to Petition, *id.* at 55.

[7] Annex "E" to Petition, *id.* at 58.

ALREADY RULED THAT THE ACT FROM WHICH THE CIVIL LIABILITY MAY ARISE DID NOT EXIST.

(b)

THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S REQUEST TO ADDUCE EVIDENCE ON THE CIVIL ASPECT AND RULED THAT THE PETITIONER HAS WAIVED THAT RIGHT DESPITE THE FACT THAT THE DEMURRER TO EVIDENCE FILED WAS WITH PRIOR LEAVE OF COURT.[8]

The petition lacks merit.

The last paragraph of Section 2, Rule 111 of the Revised Rules on Criminal Procedure provides:

> The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished **if there is a finding** in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.[9]

Moreover, the second paragraph of Section 2, Rule 120 of the same Rules states that:

> In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. **In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.**[10]

In the instant case, the Orders of the MTCC, dated October 25, 2001 and November 23, 2001, did not contain any such finding or determination. The Court agrees with the CA that in acquitting petitioner in its Order dated October 25, 2001, the MTCC did not rule on the civil aspect of the case. While it subsequently held in its November 23, 2001 Order that "the act from which the civil liability of the accused in favor of the private complainant

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[8] *Rollo*, p. 13.

[9] Emphasis supplied.

[10] Emphasis supplied.

may arise does not exist in this case," the MTCC, nonetheless, failed to cite evidence, factual circumstances or any discussion in its October 25, 2001 Decision which would warrant such ruling. Instead, it simply concluded that since the prosecution failed to prove all the elements of the offense charged, then the act from which the civil liability might arise did not exist. The MTCC held that its observations and ratiocinations in its October 25, 2001 Order justified its conclusion. However, after a careful review of the abovementioned Orders, the Court finds nothing therein which the MTCC could have used as a reasonable ground to arrive at its conclusion that the act or omission from which petitioner's civil liability might arise did not exist.

On the contrary, the tenor of the Orders of the MTCC is that the dismissal of the criminal case against petitioner was based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal case on the ground that the prosecution failed to prove the second and third elements of BP 22, *i.e.*, (2) the check is applied on account or for value and (3) the person issuing the check knows at the time of its issuance that he does not have sufficient funds in or credit with the bank for the full payment of the check upon its presentment. This only means, therefore, that the trial court did not convict petitioner of the offense charged, since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of evidence to prove the aforesaid elements of the offense charged does not mean that petitioner has no existing debt with respondent, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence. Moreover, from the above pronouncement of the MTCC as to the prosecution's failure to prove the second and third elements of the offense charged, it can be deduced that the prosecution was able to establish the presence of the first and fourth elements, *i.e.*, (1) a person draws and issues a check and (4) the check is dishonored by the bank for insufficiency of funds or credit. Hence, the fact that petitioner was proven to have drawn and issued a check and that the same was subsequently dishonored for inadequate funds leads to the logical conclusion

that the fact from which her civil liability might arise, indeed, exists. On the basis of the foregoing, the RTC correctly entertained respondent's appeal of the civil aspect of the case.

With respect to the second argument, the Court finds no cogent reason to depart from the ruling of the CA in its Resolution dated May 26, 2006 that for petitioner's failure to invoke her right to present evidence, despite the clear ruling by the RTC that she is civilly liable, she is deemed to have waived such right. Petitioner may not argue that her right to due process was violated, because she was given the opportunity to raise this issue a number of times both in the RTC and the CA. Petitioner does not dispute that neither in her Motion for Reconsideration of the Decision of the RTC nor in her Petition for Review, as well as in her Memorandum filed with the CA, did she raise the issue of her right to present evidence on the civil aspect of the present case. As correctly observed by the CA, it was only in her Motion for Reconsideration of the CA Decision that she brought up such matter. Where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law.[11] The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[12] Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[13] The question is not whether petitioner succeeded in defending her rights and interests, but simply, whether she had the opportunity to present her side of the controversy.[14]

In the instant case, petitioner was able to participate in all the proceedings before the lower courts, and, in fact, obtained

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[11] *Gomez v. Alcantara*, G.R. No. 179556, February 13, 2009, 579 SCRA 472, 488.

[12] *Id.*

[13] *Id.*

[14] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 149.

a favorable judgment from the MTCC. She also had a similar opportunity to ventilate her cause in the CA. Simply because she failed to avail herself of all the remedies open to her did not give her the justification to complain of a denial of due process. She cannot complain because she was given the chance to defend her interest in due course, for as stated above, it was such opportunity to be heard that was the essence of due process.

Equally settled is the rule that no question will be entertained on appeal unless it has been raised in the proceedings below.[15] Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.[16] For her failure to timely invoke her right to present evidence, petitioner is already estopped.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The assailed Decision and Resolution of the Court of Appeals, dated August 12, 2005 and May 26, 2006, respectively, in CA-G.R. CR No. 27090, are **AFFIRMED**.

SO ORDERED.

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

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[15] *Lim v. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012, 675 SCRA 628, 638, citing *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

[16] *Id.*

SECOND DIVISION

[G.R. No. 174908. June 17, 2013]

DARMA MASLAG, *petitioner, vs.* **ELIZABETH MONZON, WILLIAM GESTON, and REGISTRY OF DEEDS OF BENGUET,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ORIGINAL AND EXCLUSIVE JURISDICTION OF CASES INVOLVING TITLE TO REAL PROPERTY BELONGS TO EITHER THE REGIONAL TRIAL COURT OR MUNICIPAL TRIAL COURT, DEPENDING ON THE ASSESSED VALUE OF THE SUBJECT PROPERTY.— As a relief, petitioner prayed that Monzon be ordered to reconvey the portion of the property which she claimed was fraudulently included in Monzon's title. Her primary relief was to recover ownership of real property. Indubitably, petitioner's complaint involves title to real property. An action "involving title to real property," on the other hand, was defined as an action where "the plaintiff's cause of action is based on a claim that [she] owns such property or that [she] has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same." Under the present state of the law, in cases involving title to real property, original and exclusive jurisdiction belongs to either the RTC or the MTC, depending on the assessed value of the subject property. x x x In the case at bench, annexed to the Complaint is a Declaration of Real Property dated November 12, 1991, which was later marked as petitioner's Exhibit "A", showing that the disputed property has an assessed value of ₱12,400 only. Such assessed value of the property is well within the jurisdiction of the MTC.

2. ID.; ID.; APPEALS; MODES OF APPEALING A REGIONAL TRIAL COURT (RTC) DECISION OR RESOLUTION; THE DISTINCTION BETWEEN THE TWO MODES OF APPEAL LIES IN THE TYPE OF JURISDICTION EXERCISED BY THE RTC IN THE ORDER OR DECISION BEING APPEALED.— There are two modes of

appealing an RTC decision or resolution on issues of fact and law. The first mode is an ***ordinary appeal under Rule 41*** in cases where the RTC exercised its *original jurisdiction*. It is done by filing a Notice of Appeal with the RTC. The second mode is a ***petition for review under Rule 42*** in cases where the RTC exercised its *appellate jurisdiction* over MTC decisions. It is done by filing a Petition for Review with the CA. Simply put, the distinction between these two modes of appeal lies in the type of jurisdiction exercised by the RTC in the Order or Decision being appealed.

3. ID.; ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED ONLY BY LAW.— [J]urisdiction over the subject matter is conferred only by law and it is "not within the courts, let alone the parties, to themselves determine or coveniently set aside." Neither would the active participation of the parties nor *estoppel* operate to confer original and exclusive jurisdiction where the court or tribunal only wields appellate jurisdiction over the case.

4. ID.; ID.; ID.; AN ORDER ISSUED BY A COURT DECLARING THAT IT HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER THE SUBJECT MATTER OF THE CASE WHEN UNDER THE LAW IT HAS NONE CANNOT BE GIVEN EFFECT.— Court issuances cannot seize or appropriate jurisdiction. It has been repeatedly held that "any judgment, order or resolution issued without [jurisdiction] is void and cannot be given any effect." By parity of reasoning, an order issued by a court declaring that it has original and exclusive jurisdiction over the subject matter of the case when under the law it has none cannot likewise be given effect. It amounts to usurpation of jurisdiction which cannot be countenanced. Since BP 129 already apportioned the jurisdiction of the MTC and the RTC in cases involving title to property, neither the courts nor the petitioner could alter or disregard the same. Besides, in determining the proper mode of appeal from an RTC Decision or Resolution, the determinative factor is the type of jurisdiction actually exercised by the RTC in rendering its Decision or Resolution. Was it rendered by the RTC in the exercise of its original jurisdiction, or in the exercise of its appellate jurisdiction? In short, we look at what type of jurisdiction was *actually exercised* by the RTC. We do not

look into what type of jurisdiction the RTC *should have* exercised. This is but logical. Inquiring into what the RTC should have done in disposing of the case is a question which already involves the merits of the appeal, but we obviously cannot go into that where the mode of appeal was improper to begin with.

APPEARANCES OF COUNSEL

Law Firm of Avila Reyes Licnachan Maceda Lim Arevalo & Libiran for petitioner.

Francisco S. Reyes Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is incumbent upon x x x appellants to utilize the correct mode of appeal of the decisions of trial courts to the appellate courts. In the mistaken choice of their remedy, they can blame no one but themselves."[1]

This is a Petition for Review on *Certiorari*[2] of the May 31, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 83365, which dismissed petitioner Darma Maslag's (petitioner) ordinary appeal to it for being an improper remedy. The Resolution disposed of the case as follows:

WHEREFORE, the Motion to Dismiss is **GRANTED**, and the Appeal is hereby **DISMISSED**.

SO ORDERED.[4]

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[1] *Southern Negros Development Bank, Inc. v. Court of Appeals*, G.R. No. 112066, June 27, 1994, 233 SCRA 460, 464. Citations omitted.

[2] *Rollo*, pp. 11-26.

[3] *Id.* at 44-45; penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Rodrigo V. Cosico and Regalado E. Maambong.

[4] *Id.* at 45. Emphases in the original.

The Petition also assails the CA's September 22, 2006 Resolution[5] denying petitioner's Motion for Reconsideration.[6]

Factual Antecedents

In 1998, petitioner filed a Complaint[7] for reconveyance of real property with declaration of nullity of original certificate of title (OCT) against respondents Elizabeth Monzon (Monzon), William Geston and the Registry of Deeds of La Trinidad, Benguet. The Complaint was filed before the Municipal Trial Court (MTC) of La Trinidad, Benguet.

After trial, the MTC found respondent Monzon guilty of fraud in obtaining an OCT over petitioner's property.[8] It ordered her to reconvey the said property to petitioner, and to pay damages and costs of suit.[9]

Respondents appealed to the Regional Trial Court (RTC) of La Trinidad, Benguet.

After going over the MTC records and the parties' respective memoranda, the RTC of La Trinidad, Benguet, Branch 10, through Acting Presiding Judge Fernando P. Cabato (Judge Cabato), issued its October 22, 2003 Order,[10] declaring the MTC

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[5] *Id.* at 51-52.

[6] CA *rollo*, pp. 75-77.

[7] Records, pp. 1-5.

[8] *See* Judgment dated June 11, 2001 penned by Judge Agapito K. Laogan, Jr., *id.* at 166-172.

[9] The *fallo* of the MTC Judgment reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and hereby orders the defendant Elizabeth Monzon, as follows:

1. To reconvey that portion of the property now covered by OCT P-3034, belonging to the plaintiff with an area of 4415 square meters as shown in Exhibit "F-2", which was fraudulently included in her title;

2. To pay the plaintiff the amount of Five Thousand [₱5,000.00] Pesos as exemplary damages and Five Thousand [₱5,000.00] Pesos as attorney's fees;

3. Costs of this suit.

SO ORDERED. *Id.* at 172.

[10] *Id.* at 273-274.

without jurisdiction over petitioner's cause of action. It further held that it will take cognizance of the case pursuant to Section 8, Rule 40 of the Rules of Court, which reads:

> SECTION 8. *Appeal from orders dismissing case without trial; lack of jurisdiction.* – x x x
>
> If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

Both parties acknowledged receipt of the October 22, 2003 Order,[11] but neither presented additional evidence before the new judge, Edgardo B. Diaz De Rivera, Jr. (Judge Diaz De Rivera).[12]

On May 4, 2004, Judge Diaz De Rivera issued a Resolution[13] ***reversing*** the MTC Decision. The *fallo* reads as follows:

> WHEREFORE, the Judgment ***appealed*** from the Municipal Trial Court of La Trinidad, Benguet is ***set aside***. [Petitioner] is ordered to turn over the possession of the 4,415 square meter land she presently occupies to [Monzon]. This case is ***remanded*** to the court *a quo* for further proceedings to determine whether [Maslag] is entitled to the remedies afforded by law to a builder in good faith for the improvements she constructed thereon.
>
> No pronouncement as to damages and costs.
>
> SO ORDERED.[14]

Petitioner filed a Notice of Appeal[15] from the RTC's May 4, 2004 Resolution.

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[11] *Id.*, dorsal portion of p. 273.

[12] *Id.* at 282.

[13] *Id.* at 283-288.

[14] *Id.* at 288.

[15] *Id.* at 290.

Petitioner assailed the RTC's May 4, 2004 Resolution for ***reversing*** the MTC's factual findings[16] and prayed that the MTC Decision be adopted. Her prayer before the CA reads:

> WHEREFORE, premises considered, it is most respectfully prayed that the decision of the Regional Trial Court, Branch 10 of La Trinidad, Benguet, appealed from be reversed *in toto* and that the Honorable Court adopt the decision of the Municipal Trial Court. Further reliefs just and equitable under the premises are prayed for.[17]

Respondents moved to dismiss petitioner's ordinary appeal for being the improper remedy. They asserted that the proper mode of appeal is a Petition for Review under Rule 42 because the RTC rendered its May 4, 2004 Resolution in its appellate jurisdiction.[18]

Ruling of the Court of Appeals

The CA dismissed petitioner's appeal. It observed that the RTC's May 4, 2004 Resolution (the subject matter of the appeal before the CA) ***set aside*** an MTC Judgment; hence, the proper remedy is a Petition for Review under Rule 42, and not an ordinary appeal.[19]

Petitioner sought reconsideration.[20] She argued, for the first time, that the RTC rendered its May 4, 2004 Resolution in its original jurisdiction. She cited the earlier October 22, 2003 Order of the RTC declaring the MTC without jurisdiction over the case.

The CA denied petitioner's Motion for Reconsideration in its September 22, 2006 Resolution:[21]

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[16] CA *rollo*, pp. 38-50.

[17] *Id.* at 50.

[18] *Id.* at 58-64.

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

[20] *Id.* at 75-77.

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

A perusal of the May 4, 2004 Resolution of the RTC, which is the subject matter of the appeal, clearly reveals that it took cognizance of the MTC case in the exercise of its appellate jurisdiction. Consequently, as We have previously enunciated, the proper remedy, is a petition for review under Rule 42 and not an ordinary appeal under Rule 41.

WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED**. The May 31, 2006 Resolution of this Court is hereby **AFFIRMED *in toto.***

SO ORDERED.[22]

Hence this Petition wherein petitioner prays that the CA be ordered to take cognizance of her appeal.[23]

Issues

Petitioner set forth the following issues in her Petition:

WHETHER X X X THE COURT OF APPEALS WAS CORRECT IN DISMISSING THE APPEAL FILED BY THE PETITIONER, CONSIDERING THAT THE REGIONAL TRIAL COURT, BRANCH 10 OF LA TRINIDAD, BENGUET HELD THAT THE ORIGINAL COMPLAINT AS FILED BEFORE THE MUNICIPAL TRIAL COURT OF LA TRINIDAD, BENGUET WAS DECIDED BY THE LATTER WITHOUT ANY JURISDICTION AND, IN ORDERING THAT THE CASE SHALL BE DECIDED PURSUANT TO THE PROVISION OF SECTION 8 OF RULE 40 OF THE RULES OF COURT, IT DECIDED THE CASE NOT ON ITS APPELLATE JURISDICTION BUT ON ITS ORIGINAL JURISDICTION

WHAT WILL BE THE EFFECT OF THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 10 OF LA TRINIDAD, BENGUET, WHEN IT DECIDED A CASE APPEALED BEFORE IT UNDER THE PROVISION OF SECTION 8, RULE 40 OF THE RULES OF COURT OF THE PHILIPPINES, AS TO THE COURSE OF REMEDY THAT MAY BE AVAILED OF BY THE PETITIONER – A PETITION FOR REVIEW UNDER RULE 42 OR AN ORDINARY APPEAL UNDER RULE 41.[24]

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[22] *Id.* at 52.

[23] *Id.* at 23.

[24] *Id.* at 19.

Our Ruling

In its October 22, 2003 Order, the RTC declared that the MTC has no jurisdiction over the subject matter of the case based on the supposition that the same is incapable of pecuniary estimation. Thus, following Section 8, Rule 40 of the Rules of Court, it took cognizance of the case and directed the parties to adduce further evidence if they so desire. The parties bowed to this ruling of the RTC and, eventually, submitted the case for its decision after they had submitted their respective memoranda.

We cannot, however, gloss over this jurisdictional *faux pas* of the RTC. Since it involves a question of jurisdiction, we may *motu proprio* review and pass upon the same even at this late stage of the proceedings.[25]

In her Complaint[26] for reconveyance of real property with declaration of nullity of OCT, petitioner claimed that she and her father had been in open, continuous, notorious and exclusive possession of the disputed property since the 1940's. She averred:

> 7. Sometime in the year 1987, Elizabeth Monzon, the owner of the adjacent parcel of land being occupied by plaintiff [Maslag], informed the plaintiff that the respective parcels of land being claimed by them can now be titled. A suggestion was, thereafter made, that those who were interested to have their lands titled, will contribute to a common fund for the surveying and subsequent titling of the land;
>
> 8. Since plaintiff had, for so long, yearned for a title to the land she occupies, she contributed to the amount being requested by Elizabeth Monzon;
>
> 9. A subdivision survey was made and in the survey, the respective areas of the plaintiff and the defendants were defined and delimited – all for purposes of titling. x x x
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> 10. But alas, despite the assurance of subdivided titles, when the title was finally issued by the Registry of Deeds, the same was only

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[25] *Zarate v. Commission on Elections*, 376 Phil. 722, 726 (1999).

[26] Records, pp. 1-5.

in the name of Elizabeth Monzon and WILLIAM GESTON. The name of Darma Maslag was fraudulently, deliberately and in bad faith omitted. Thus, the title to the property, to the extent of 18,295 square meters, was titled solely in the name of ELIZABETH MONZON.

As a relief, petitioner prayed that Monzon be ordered to reconvey the portion of the property which she claimed was fraudulently included in Monzon's title. Her primary relief was to recover ownership of real property. Indubitably, petitioner's complaint involves title to real property. An action "involving title to real property," on the other hand, was defined as an action where "the plaintiff's cause of action is based on a claim that [she] owns such property or that [she] has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same."[27] Under the present state of the law, in cases involving title to real property, original and exclusive jurisdiction belongs to either the RTC or the MTC, depending on the assessed value of the subject property.[28] Pertinent provisions of *Batas Pambansa Blg.* (BP) 129,[29] as amended by Republic Act (RA) No. 7691,[30] provides:

Sec. 19. *Jurisdiction in civil cases. – R*egional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value

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[27] *Heirs of Generoso Sebe v. Heirs of Veronico Sevilla*, G.R. No. 174497, October 12, 2009, 603 SCRA 395, 404.

[28] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 598-599.

[29] THE JUDICIARY REORGANIZATION ACT OF 1980.

[30] 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."

of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where x x x the [assessed] value [of the property] exceeds Fifty thousand pesos ([₱]50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

xxx xxx xxx

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:

xxx xxx xxx

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) x x x.

In the case at bench, annexed to the Complaint is a Declaration of Real Property[31] dated November 12, 1991, which was later marked as petitioner's Exhibit "A",[32] showing that the disputed property has an assessed value of ₱12,400[33] only. Such assessed value of the property is well within the jurisdiction of the MTC. In fine, the RTC, thru Judge Cabato, erred in applying Section 19(1) of BP 129 in determining which court has jurisdiction over the case and in pronouncing that the MTC is divested of original and exclusive jurisdiction.

This brings to fore the next issue of whether the CA was correct in dismissing petitioner's appeal.

Section 2, Rule 50 of the Rules of Court provides for the dismissal of an improper appeal:

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[31] Records, p. 80.

[32] *Id.*

[33] *Id.* at dorsal portion.

SECTION 2. *Dismissal of improper appeal to the Court of Appeals.* – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, **an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.**

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (Emphasis supplied)

There are two modes of appealing an RTC decision or resolution on issues of fact and law.[34] The first mode is an ***ordinary appeal under Rule 41*** in cases where the RTC exercised its *original jurisdiction*. It is done by filing a Notice of Appeal with the RTC. The second mode is a ***petition for review under Rule 42*** in cases where the RTC exercised its *appellate jurisdiction* over MTC decisions. It is done by filing a Petition for Review with the CA. Simply put, the distinction between these two modes of appeal lies in the type of jurisdiction exercised by the RTC in the Order or Decision being appealed.

As discussed above, the MTC has original and exclusive jurisdiction over the subject matter of the case; hence, there is no other way the RTC could have taken cognizance of the case and review the court *a quo*'s Judgment except in the exercise of its appellate jurisdiction. Besides, the new RTC Judge who penned the May 4, 2004 Resolution, Judge Diaz de Rivera, actually treated the case as an appeal despite the October 22, 2003 Order. He started his Resolution by stating, "This is an appeal from the Judgment rendered by the Municipal Trial Court (MTC) of La Trinidad Benguet"[35] and then proceeded to discuss the merits of the "appeal." In the dispositive portion of said Resolution, he reversed the MTC's findings and conclusions and remanded residual issues for trial with the MTC.[36] Thus,

[34] *Heirs of Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 651.

[35] Records, p. 283.

[36] *Id.* at 288.

in fact and in law, the RTC Resolution was a continuation of the proceedings that originated from the MTC. It was a judgment issued by the RTC in the exercise of its appellate jurisdiction. With regard to the RTC's earlier October 22, 2003 Order, the same should be disregarded for it produces no effect (other than to confuse the parties whether the RTC was invested with original or appellate jurisdiction). It cannot be overemphasized that jurisdiction over the subject matter is conferred only by law and it is "not within the courts, let alone the parties, to themselves determine or coveniently set aside."[37] Neither would the active participation of the parties nor *estoppel* operate to confer original and exclusive jurisdiction where the court or tribunal only wields appellate jurisdiction over the case.[38] Thus, the CA is correct in holding that the proper mode of appeal should have been a Petition for Review under Rule 42 of the Rules of Court, and not an ordinary appeal under Rule 41.

Seeing the futility of arguing against what the RTC actually did, petitioner resorts to arguing for what the RTC should have done. She maintains that the RTC should have issued its May 4, 2004 Resolution in its original jurisdiction because it had earlier ruled that the MTC had no jurisdiction over the cause of action.

Petitioner's argument lacks merit. To reiterate, only statutes can confer jurisdiction. Court issuances cannot seize or appropriate jurisdiction. It has been repeatedly held that "any judgment, order or resolution issued without [jurisdiction] is void and cannot be given any effect."[39] By parity of reasoning, an order issued by a court declaring that it has original and exclusive jurisdiction over the subject matter of the case when under the law it has none cannot likewise be given effect. It amounts to usurpation of jurisdiction which cannot be countenanced. Since BP 129 already apportioned the jurisdiction

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[37] *Lozon v. National labor Relations Commission*, 310 Phil. 1, 13 (1995) cited in *Magno v. People*, G.R. No. 171542, April 6, 2011, 647 SCRA 362, 371.

[38] *Suarez v. Saul*, 510 Phil. 400, 410 (2005).

[39] *Magno v. People*, *supra*.

of the MTC and the RTC in cases involving title to property, neither the courts nor the petitioner could alter or disregard the same. Besides, in determining the proper mode of appeal from an RTC Decision or Resolution, the determinative factor is the type of jurisdiction actually exercised by the RTC in rendering its Decision or Resolution. Was it rendered by the RTC in the exercise of its original jurisdiction, or in the exercise of its appellate jurisdiction? In short, we look at what type of jurisdiction was *actually exercised* by the RTC. We do not look into what type of jurisdiction the RTC *should have* exercised. This is but logical. Inquiring into what the RTC should have done in disposing of the case is a question which already involves the merits of the appeal, but we obviously cannot go into that where the mode of appeal was improper to begin with.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed May 31, 2006 and September 22, 2006 Resolutions of the Court of Appeals in CA-G.R. CV No. 83365 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175773. June 17, 2013]

MITSUBISHI MOTORS PHILIPPINES SALARIED EMPLOYEES UNION (MMPSEU), *petitioner, vs.* **MITSUBISHI MOTORS PHILIPPINES CORPORATION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE LAW; COLLATERAL SOURCE RULE; DOES NOT APPLY TO CASES INVOLVING NO-FAULT INSURANCES.— As part of American personal injury law, the collateral source rule was originally applied to tort cases wherein the defendant is prevented from benefitting from the plaintiff's receipt of money from other sources. Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the tortfeasor, the payment should not be deducted from the damages which he would otherwise collect from the tortfeasor. In a recent Decision by the Illinois Supreme Court, the rule has been described as "an established exception to the general rule that damages in negligence actions must be compensatory." The Court went on to explain that although the rule appears to allow a double recovery, the collateral source will have a lien or subrogation right to prevent such a double recovery. x x x [T]he collateral source rule applies in order to place the responsibility for losses on the party causing them. Its application is justified so that "the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons." Thus, it finds no application to cases involving no-fault insurances under which the insured is indemnified for losses by insurance companies, regardless of who was at fault in the incident generating the losses.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; CONSTITUTES A CONTRACT BETWEEN THE PARTIES AND SHOULD BE STRICTLY CONSTRUED FOR THE PURPOSE OF LIMITING THE AMOUNT OF THE EMPLOYER'S LIABILITY.— The condition that *payment should be direct to the hospital and doctor* implies that MMPC is only liable to pay medical expenses actually shouldered by the employees' dependents. It follows that MMPC's liability is limited, that is, it does not include the amounts paid by other health insurance providers. This condition is obviously intended to thwart not only fraudulent claims but also double claims for the same

loss of the dependents of covered employees. It is well to note at this point that the CBA constitutes a contract between the parties and as such, it should be strictly construed for the purpose of limiting the amount of the employer's liability. The terms of the subject provision are clear and provide no room for any other interpretation. As there is no ambiguity, the terms must be taken in their plain, ordinary and popular sense.

3. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; A CLAIM FOR UNJUST ENRICHMENT FAILS WHEN THE PERSON WHO WILL BENEFIT HAS A VALID CLAIM TO SUCH BENEFIT.— To constitute unjust enrichment, it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. A claim for unjust enrichment fails when the person who will benefit has a valid claim to such benefit.

4. MERCANTILE LAW; INSURANCE LAW; NON-LIFE INSURANCE CONTRACTS; MUST BE CONSISTENT WITH THE PRINCIPLE OF INDEMNITY WHICH PROSCRIBES THE INSURED FROM RECOVERING GREATER THAN THE LOSS.— [S]ince the subject CBA provision is an insurance contract, the rights and obligations of the parties must be determined in accordance with the general principles of insurance law. Being in the nature of a non-life insurance contract and essentially a contract of indemnity, the CBA provision obligates MMPC to indemnify the covered employees' medical expenses incurred by their dependents but only up to the extent of the expenses actually incurred. This is consistent with the principle of indemnity which proscribes the insured from recovering greater than the loss. Indeed, to profit from a loss will lead to unjust enrichment and therefore should not be countenanced.

APPEARANCES OF COUNSEL

Baizas Magsino Recinto Law Offices for petitioner.
Imelda M. Abadilla-Brown for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The Collective Bargaining Agreement (CBA) of the parties in this case provides that the company shoulder the hospitalization expenses of the dependents of covered employees subject to certain limitations and restrictions. Accordingly, covered employees pay part of the hospitalization insurance premium through monthly salary deduction while the company, upon hospitalization of the covered employees' dependents, shall pay the hospitalization expenses incurred for the same. The conflict arose when a portion of the hospitalization expenses of the covered employees' dependents were paid/shouldered by the dependent's own health insurance. While the company refused to pay the portion of the hospital expenses already shouldered by the dependents' own health insurance, the union insists that the covered employees are entitled to the whole and undiminished amount of said hospital expenses.

By this Petition for Review on *Certiorari*,[1] petitioner Mitsubishi Motors Philippines Salaried Employees Union (MMPSEU) assails the March 31, 2006 Decision[2] and December 5, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 75630, which reversed and set aside the Voluntary Arbitrator's December 3, 2002 Decision[4] and declared respondent Mitsubishi Motors Philippines Corporation (MMPC) to be under no legal obligation to pay its covered employees' dependents' hospitalization expenses which were already shouldered by other health insurance companies.

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[1] *Rollo,* pp. 11-35.

[2] CA *rollo,* pp. 215-223; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[3] *Id.* at 274.

[4] *Id.* at 30-38; penned by Voluntary Arbitrator Atty. Rodolfo M. Capocyan.

Factual Antecedents

The parties' CBA[5] covering the period August 1, 1996 to July 31, 1999 provides for the hospitalization insurance benefits for the covered dependents, thus:

SECTION 4. DEPENDENTS' GROUP HOSPITALIZATION INSURANCE — The COMPANY shall obtain group hospitalization insurance coverage or assume under a self-insurance basis hospitalization for the dependents of regular employees up to a maximum amount of forty thousand pesos (₱40,000.00) per confinement subject to the following:

a. The room and board must not exceed three hundred pesos (₱300.00) per day up to a maximum of thirty-one (31) days. Similarly, Doctor's Call fees must not exceed three hundred pesos (₱300.00) per day for a maximum of thirty-one (31) days. Any excess of this amount shall be borne by the employee.

b. Confinement must be in a hospital designated by the COMPANY. For this purpose, the COMPANY shall designate hospitals in different convenient places to be availed of by the dependents of employees. In cases of emergency where the dependent is confined without the recommendation of the company doctor or in a hospital not designated by the COMPANY, the COMPANY shall look into the circumstances of such confinement and arrange for the payment of the amount to the extent of the hospitalization benefit.

c. The limitations and restrictions listed in Annex "B" must be observed.

d. Payment shall be direct to the hospital and doctor and must be covered by actual billings.

Each employee shall pay one hundred pesos (₱100.00) per month through salary deduction as his share in the payment of the insurance premium for the above coverage with the balance of the premium to be paid by the COMPANY. If the COMPANY is self-insured the

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[5] Annex "A" of MMPC's Position Paper before the Voluntary Arbitrator, *id.* at 85-87.

one hundred pesos (₱100.00) per employee monthly contribution shall be given to the COMPANY which shall shoulder the expenses subject to the above level of benefits and subject to the same limitations and restrictions provided for in Annex "B" hereof.

The hospitalization expenses must be covered by actual hospital and doctor's bills and any amount in excess of the above mentioned level of benefits will be for the account of the employee.

For purposes of this provision, eligible dependents are the covered employees' natural parents, legal spouse and legitimate or legally adopted or step children who are unmarried, unemployed who have not attained twenty-one (21) years of age and wholly dependent upon the employee for support.

This provision applies only in cases of actual confinement in the hospital for at least six (6) hours.

Maternity cases are not covered by this section but will be under the next succeeding section on maternity benefits.[6]

When the CBA expired on July 31, 1999, the parties executed another CBA[7] effective August 1, 1999 to July 31, 2002 incorporating the same provisions on dependents' hospitalization insurance benefits but in the increased amount of ₱50,000.00. The room and board expenses, as well as the doctor's call fees, were also increased to ₱375.00.

On separate occasions, three members of MMPSEU, namely, Ernesto Calida (Calida), Hermie Juan Oabel (Oabel) and Jocelyn Martin (Martin), filed claims for reimbursement of hospitalization expenses of their dependents.

MMPC paid only a portion of their hospitalization insurance claims, not the full amount. In the case of Calida, his wife, Lanie, was confined at Sto. Tomas University Hospital from September 4 to 9, 1998 due to Thyroidectomy. The medical expenses incurred totalled ₱29,967.10. Of this amount, ₱9,000.00 representing professional fees was paid by MEDICard Philippines,

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[6] *Id.* at 86-87.

[7] Annex "B", *id.* at 88-90.

Inc. (MEDICard) which provides health maintenance to Lanie.[8] MMPC only paid ₱12,148.63.[9] It did not pay the ₱9,000.00 already paid by MEDICard and the ₱6,278.47 not covered by official receipts. It refused to give to Calida the difference between the amount of medical expenses of ₱27,427.10[10] which he claimed to be entitled to under the CBA and the ₱12,148.63 which MMPC directly paid to the hospital.

As regards Oabel's claim, his wife Jovita Nemia (Jovita) was confined at The Medical City from March 8 to 11, 1999 due to Tonsillopharyngitis, incurring medical expenses totalling ₱8,489.35.[11] Of this amount, ₱7,811.00 was paid by Jovita's personal health insurance, Prosper Insurance Company (Prosper).[12] MMPC paid the hospital the amount of ₱630.87,[13] after deducting from the total medical expenses the amount paid by Prosper and the ₱47.48 discount given by the hospital.

In the case of Martin, his father, Jose, was admitted at The Medical City from March 26 to 27, 2000 due to Acid Peptic Disease and incurred medical expenses amounting to ₱9,101.30.[14] MEDICard paid ₱8,496.00.[15] Consequently, MMPC only paid ₱288.40,[16] after deducting from the total medical expenses the amount paid by MEDICard and the ₱316.90 discount given by the hospital.

Claiming that under the CBA, they are entitled to hospital benefits amounting to ₱27,427.10, ₱6,769.35 and ₱8,123.80, respectively, which should not be reduced by the amounts paid

[8] Annexes "C" and "D", *id.* at 91-94.

[9] Annex "E", *id.* at 95-96.

[10] ₱12,148.63 + ₱9,000.00 + ₱6,278.47.

[11] Annex "F", CA *rollo*, pp. 97-100.

[12] *Id.*

[13] Annex "G", *id.* at 101-102.

[14] Annex "H", *id.* at 103-107.

[15] Annex "I", *id.* at 108.

[16] Annex "J", *id.* at 109.

by MEDICard and by Prosper, Calida, Oabel and Martin asked for reimbursement from MMPC. However, MMPC denied the claims contending that double insurance would result if the said employees would receive from the company the full amount of hospitalization expenses despite having already received payment of portions thereof from other health insurance providers.

This prompted the MMPSEU President to write the MMPC President[17] demanding full payment of the hospitalization benefits. Alleging discrimination against MMPSEU union members, she pointed out that full reimbursement was given in a similar claim filed by Luisito Cruz (Cruz), a member of the Hourly Union. In a letter-reply,[18] MMPC, through its Vice-President for Industrial Relations Division, clarified that the claims of the said MMPSEU members have already been paid on the basis of official receipts submitted. It also denied the charge of discrimination and explained that the case of Cruz involved an entirely different matter since it concerned the admissibility of certified true copies of documents for reimbursement purposes, which case had been settled through voluntary arbitration.

On August 28, 2000, MMPSEU referred the dispute to the National Conciliation and Mediation Board and requested for preventive mediation.[19]

Proceedings before the Voluntary Arbitrator

On October 3, 2000, the case was referred to Voluntary Arbitrator Rolando Capocyan for resolution of the issue involving the interpretation of the subject CBA provision.[20]

MMPSEU alleged that there is nothing in the CBA which prohibits an employee from obtaining other insurance or declares that medical expenses can be reimbursed only upon presentation

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[17] Annex "A" of MMPSEU's Position Paper before the Voluntary Arbitrator, *id.* at 152.

[18] Annex "E", *id.* at 156.

[19] Annex "F", *id.* at 157.

[20] Annex "G", *id.* at 158.

of original official receipts. It stressed that the hospitalization benefits should be computed based on the formula indicated in the CBA without deducting the benefits derived from other insurance providers. Besides, if reduction is permitted, MMPC would be unjustly benefitted from the monthly premium contributed by the employees through salary deduction. MMPSEU added that its members had legitimate claims under the CBA and that any doubt as to any of its provisions should be resolved in favor of its members. Moreover, any ambiguity should be resolved in favor of labor.[21]

On the other hand, MMPC argued that the reimbursement of the entire amounts being claimed by the covered employees, including those already paid by other insurance companies, would constitute double indemnity or double insurance, which is circumscribed under the Insurance Code. Moreover, a contract of insurance is a contract of indemnity and the employees cannot be allowed to profit from their dependents' loss.[22]

Meanwhile, the parties separately sought for a legal opinion from the Insurance Commission relative to the issue at hand. In its letter[23] to the Insurance Commission, MMPC requested for confirmation of its position that the covered employees cannot claim insurance benefits for a loss that had already been covered or paid by another insurance company. However, the Office of the Insurance Commission opted not to render an opinion on the matter as the same may become the subject of a formal complaint before it.[24] On the other hand, when queried by MMPSEU,[25] the Insurance Commission, through Atty. Richard

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[21] See MMPSEU's Position Paper and Reply to MMPC's Position Paper before the Voluntary Arbitrator, *id.* at 144-151 and 139-142, respectively.

[22] See MMPC's Position Paper and Reply to MMPSEU's Position Paper before the Voluntary Arbitrator, *id.* at 74-84 and 110-121, respectively.

[23] Annex "L" of MMPC Petition for Review filed before the CA, *id.* at 64-65.

[24] See October 24, 2000 letter of the Insurance Commission, Annex "M", *id.* at 66.

[25] See November 14, 2001 letter of MMPSEU, *id.* at 182-185.

David C. Funk II (Atty. Funk) of the Claims Adjudication Division, rendered an opinion contained in a letter,[26] *viz*:

January 8, 2002

Ms. Cecilia L. Paras
President
Mitsubishi Motors Phils.
[Salaried] Employees Union
Ortigas Avenue Extension,
Cainta, Rizal

Madam:

We acknowledge receipt of your letter which, to our impression, basically poses the question of whether or not recovery of medical expenses from a Health Maintenance Organization bars recovery of the same reimbursable amount of medical expenses under a contract of health or medical insurance.

We wish to opine that in cases of claims for reimbursement of medical expenses where there are two contracts providing benefits to that effect, recovery may be had on both simultaneously. In the absence of an Other Insurance provision in these coverages, the courts have uniformly held that an insured is entitled to receive the insurance benefits without regard to the amount of total benefits provided by other insurance. (INSURANCE LAW, A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices; Robert E. Keeton, Alau I. Widiss, p. 261). The result is consistent with the public policy underlying the collateral source rule – that is, x x x the courts have usually concluded that the liability of a health or accident insurer is not reduced by other possible sources of indemnification or compensation. (*ibid.*).

Very truly yours,

(SGD.)
RICHARD DAVID C. FUNK II
Attorney IV
Officer-in-Charge
Claims Adjudication Division

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[26] Annex "A" of MMPSEU Reply to MMPC's Position Paper before the Voluntary Arbitrator, *id.* at 143.

On December 3, 2002, the Voluntary Arbitrator rendered a Decision[27] finding MMPC liable to pay or reimburse the amount of hospitalization expenses already paid by other health insurance companies. The Voluntary Arbitrator held that the employees may demand simultaneous payment from both the CBA and their dependents' separate health insurance without resulting to double insurance, since separate premiums were paid for each contract. He also noted that the CBA does not prohibit reimbursement in case there are other health insurers.

Proceedings before the Court of Appeals

MMPC filed a Petition for Review with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[28] before the CA. It claimed that the Voluntary Arbitrator committed grave abuse of discretion in not finding that recovery under both insurance policies constitutes double insurance as both had the same subject matter, interest insured and risk or peril insured against; in relying solely on the unauthorized legal opinion of Atty. Funk; and in not finding that the employees will be benefitted twice for the same loss. In its Comment,[29] MMPSEU countered that MMPC will unjustly enrich itself and profit from the monthly premiums paid if full reimbursement is not made.

On March 31, 2006, the CA found merit in MMPC's Petition. It ruled that despite the lack of a provision which bars recovery in case of payment by other insurers, the wordings of the subject provision of the CBA showed that the parties intended to make MMPC liable only for expenses actually incurred by an employee's qualified dependent. In particular, the provision stipulates that payment should be made directly to the hospital and that the claim should be supported by actual hospital and doctor's bills. These mean that the employees shall only be paid amounts not covered by other health insurance and is more in

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[27] *Id.* at 30-38.

[28] *Id.* at 2-29.

[29] *Id.* at 170-181.

keeping with the principle of indemnity in insurance contracts. Besides, a contrary interpretation would "allow unscrupulous employees to unduly profit from the x x x benefits" and shall "open the floodgates to questionable claims x x x."[30]

The dispositive portion of the CA Decision[31] reads:

> **WHEREFORE,** the instant petition is **GRANTED.** The decision of the voluntary arbitrator dated December 3, 2002 is **REVERSED** and **SET ASIDE** and judgment is rendered declaring that under Art. XI, Sec. 4 of the Collective Bargaining Agreement between petitioner and respondent effective August 1, 1999 to July 31, 2002, the former's obligation to reimburse the Union members for the hospitalization expenses incurred by their dependents is exclusive of those paid by the Union members to the hospital.
>
> **SO ORDERED**.[32]

In its Motion for Reconsideration,[33] MMPSEU pointed out that the alleged oppression that may be committed by abusive employees is a mere possibility whereas the resulting losses to the employees are real. MMPSEU cited *Samsel v. Allstate Insurance Co.*,[34] wherein the Arizona Supreme Court explicitly ruled that an insured may recover from separate health insurance providers, regardless of whether one of them has already paid the medical expenses incurred. On the other hand, MMPC argued in its Comment[35] that the cited foreign case involves a different set of facts.

The CA, in its Resolution[36] dated December 5, 2006, denied MMPSEU's motion.

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[30] *Id.* at 222.

[31] *Id.* at 215-223.

[32] *Id.* at 223.

[33] *Id.* at 229-244.

[34] 59 P.3d 281 (Ariz. 2002).

[35] CA *rollo*, pp. 264-272.

[36] *Id.* at 274.

Hence, this Petition.

Issues

MMPSEU presented the following grounds in support of its Petition:

A.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED THE DECISION DATED 03 [DECEMBER] 2002 OF THE VOLUNTARY ARBITRATOR BELOW WHEN THE SAME WAS SUPPORTED BY SUBSTANTIAL EVIDENCE, INCLUDING THE OPINION OF THE INSURANCE COMMISSION THAT RECOVERY FROM BOTH THE CBA AND SEPARATE HEALTH CARDS IS NOT PROHIBITED IN THE ABSENCE OF ANY SPECIFIC PROVISION IN THE CBA.

B.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN OVERTURNING THE DECISION OF THE VOLUNTARY ARBITRATOR WITHOUT EVEN GIVING ANY LEGAL OR JUSTIFIABLE BASIS FOR SUCH REVERSAL.

C.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN REFUSING TO CONSIDER OR EVEN MENTION ANYTHING ABOUT THE AMERICAN AUTHORITIES CITED IN THE RECORDS THAT DO NOT PROHIBIT, BUT IN FACT ALLOW, RECOVERY FROM TWO SEPARATE HEALTH PLANS.

D.

THE COURT OF APPEALS GRAVELY ERRED IN GIVING MORE IMPORTANCE TO A POSSIBLE, HENCE MERELY SPECULATIVE, ABUSE BY EMPLOYEES OF THE BENEFITS IF DOUBLE RECOVERY WERE ALLOWED INSTEAD OF THE REAL INJURY TO THE EMPLOYEES WHO ARE PAYING FOR THE CBA HOSPITALIZATION BENEFITS THROUGH MONTHLY SALARY DEDUCTIONS BUT WHO MAY NOT BE ABLE TO AVAIL OF THE SAME IF THEY OR THEIR DEPENDENTS HAVE OTHER HEALTH INSURANCE.[37]

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[37] *Rollo,* pp. 16-17.

MMPSEU avers that the Decision of the Voluntary Arbitrator deserves utmost respect and finality because it is supported by substantial evidence and is in accordance with the opinion rendered by the Insurance Commission, an agency equipped with vast knowledge concerning insurance contracts. It maintains that under the CBA, member-employees are entitled to full reimbursement of medical expenses incurred by their dependents regardless of any amounts paid by the latter's health insurance provider. Otherwise, non-recovery will constitute unjust enrichment on the part of MMPC. It avers that recovery from both the CBA and other insurance companies is allowed under their CBA and not prohibited by law nor by jurisprudence.

Our Ruling

The Petition has no merit.

Atty. Funk erred in applying the collateral source rule.

The Voluntary Arbitrator based his ruling on the opinion of Atty. Funk that the employees may recover benefits from different insurance providers without regard to the amount of benefits paid by each. According to him, this view is consistent with the theory of the collateral source rule.

As part of American personal injury law, the collateral source rule was originally applied to tort cases wherein the defendant is prevented from benefitting from the plaintiff's receipt of money from other sources.[38] Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the tortfeasor, the payment should not be deducted from the damages which he would otherwise collect from the tortfeasor.[39] In a recent Decision[40] by the Illinois Supreme Court, the rule

[38] YOUNG, MELISSA. *TORT REFORM AND THE COLLATERAL SOURCE RULE* <www.google.com; www.aaos.org/news/aaosnow/mar09/managing4.asp.>, (visited March 1, 2013).

[39] *Black's Law Dictionary with Pronunciations*, (Sixth ed. 1990/ Centennial Edition).

[40] *Wills v. Foster, Jr.*, 229 Ill. 2d 393, 399 (Ill. 2008).

has been described as "an established exception to the general rule that damages in negligence actions must be compensatory." The Court went on to explain that although the rule appears to allow a double recovery, the collateral source will have a lien or subrogation right to prevent such a double recovery.[41] In *Mitchell v. Haldar*,[42] the collateral source rule was rationalized by the Supreme Court of Delaware:

> The collateral source rule is 'predicated on the theory that a tortfeasor has no interest in, and therefore no right to benefit from monies received by the injured person from sources unconnected with the defendant'. According to the collateral source rule, 'a tortfeasor has no right to any mitigation of damages because of payments or compensation received by the injured person from an independent source.' The rationale for the collateral source rule is based upon the quasi-punitive nature of tort law liability. It has been explained as follows:
>
> > The collateral source rule is designed to strike a balance between two competing principles of tort law: (1) a plaintiff is entitled to compensation sufficient to make him whole, but no more; and (2) a defendant is liable for all damages that proximately result from his wrong. A plaintiff who receives a double recovery for a single tort enjoys a windfall; a defendant who escapes, in whole or in part, liability for his wrong enjoys a windfall. Because the law must sanction one windfall and deny the other, it favors the victim of the wrong rather than the wrongdoer.
>
> Thus, the tortfeasor is required to bear the cost for the full value of his or her negligent conduct even if it results in a windfall for the innocent plaintiff. (Citations omitted)

As seen, the collateral source rule applies in order to place the responsibility for losses on the party causing them.[43] Its application is justified so that "the wrongdoer should not benefit

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[41] *Id.*

[42] 883 A.2d 32, 37-38 (Del. 2005).

[43] PERILLO, JOSEPH M., *THE COLLATERAL SOURCE RULES IN CONTRACT CASES*, San Diego Law Review, 46 San Diego L. Rev. 705, 709-710 (Summer, 2009); <www.lexis.com.>

from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons."[44] Thus, it finds no application to cases involving no-fault insurances under which the insured is indemnified for losses by insurance companies, regardless of who was at fault in the incident generating the losses.[45] Here, it is clear that MMPC is a no-fault insurer. Hence, it cannot be obliged to pay the hospitalization expenses of the dependents of its employees which had already been paid by separate health insurance providers of said dependents.

The Voluntary Arbitrator therefore erred in adopting Atty. Funk's view that the covered employees are entitled to full payment of the hospital expenses incurred by their dependents, including the amounts already paid by other health insurance companies based on the theory of collateral source rule.

The conditions set forth in the CBA provision indicate an intention to limit MMPC's liability only to actual expenses incurred by the employees' dependents, that is, excluding the amounts paid by dependents' other health insurance providers.

The Voluntary Arbitrator ruled that the CBA has no express provision barring claims for hospitalization expenses already paid by other insurers. Hence, the covered employees can recover from both. The CA did not agree, saying that the conditions set forth in the CBA implied an intention of the parties to limit MMPC's liability only to the extent of the expenses actually incurred by their dependents which excludes the amounts shouldered by other health insurance companies.

We agree with the CA. The condition that *payment should be direct to the hospital and doctor* implies that MMPC is only liable to pay medical expenses actually shouldered by the

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[44] *Wills v. Foster, Jr.*, *supra* note 40 at 397.

[45] *BLACK'S LAW DICTIONARY,* (Fifth ed. 273, 1979).

employees' dependents. It follows that MMPC's liability is limited, that is, it does not include the amounts paid by other health insurance providers. This condition is obviously intended to thwart not only fraudulent claims but also double claims for the same loss of the dependents of covered employees.

It is well to note at this point that the CBA constitutes a contract between the parties and as such, it should be strictly construed for the purpose of limiting the amount of the employer's liability.[46] The terms of the subject provision are clear and provide no room for any other interpretation. As there is no ambiguity, the terms must be taken in their plain, ordinary and popular sense.[47] Consequently, MMPSEU cannot rely on the rule that a contract of insurance is to be liberally construed in favor of the insured. Neither can it rely on the theory that any doubt must be resolved in favor of labor.

Samsel v. Allstate Insurance Co. is not on all fours with the case at bar.

MMPSEU cannot rely on *Samsel v. Allstate Insurance Co.* where the Supreme Court of Arizona allowed the insured to enjoy medical benefits under an automobile policy insurance despite being able to also recover from a separate health insurer. In that case, the Allstate automobile policy does not contain any clause restricting medical payment coverage to expenses actually paid by the insured nor does it specifically provide for reduction of medical payments benefits by a coordination of benefits.[48] However, in the case before us, the dependents' group hospitalization insurance provision in the CBA specifically contains a condition which limits MMPC's liability only up to the extent of the expenses that should be paid by the covered employee's dependent to the hospital and doctor. This is evident from the portion which states that "payment [by MMPC] shall

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[46] *Asiatic Petroleum Co. v. De Pio*, 46 Phil. 167, 170 (1924).

[47] *New Life Enterprises v. Court of Appeals*, G.R. No. 94071, March 31, 1992, 207 SCRA 669, 676.

[48] *Supra* note 34 at 290.

be direct to the hospital and doctor."[49] In contrast, the Allstate automobile policy expressly gives Allstate the authority to pay directly to the insured person or on the latter's behalf all reasonable expenses actually incurred. Therefore, reliance on *Samsel* is unavailing because the facts therein are different and not decisive of the issues in the present case.

To allow reimbursement of amounts paid under other insurance policies shall constitute double recovery which is not sanctioned by law.

MMPSEU insists that MMPC is also liable for the amounts covered under other insurance policies; otherwise, MMPC will unjustly profit from the premiums the employees contribute through monthly salary deductions.

This contention is unmeritorious.

To constitute unjust enrichment, it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.[50] A claim for unjust enrichment fails when the person who will benefit has a valid claim to such benefit.[51]

The CBA has provided for MMPC's limited liability which extends only up to the amount to be paid to the hospital and doctor by the employees' dependents, excluding those paid by other insurers. Consequently, the covered employees will not receive more than what is due them; neither is MMPC under any obligation to give more than what is due under the CBA.

Moreover, since the subject CBA provision is an insurance contract, the rights and obligations of the parties must be determined in accordance with the general principles of

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[49] CA *rollo*, p. 87.

[50] *University of the Philippines v. Philab Industries, Inc.*, 482 Phil. 693, 709 (2004).

[51] *Car Cool Phils., Inc. v. Ushio Realty & Development Corporation*, 515 Phil. 376, 384 (2006).

insurance law.[52] Being in the nature of a non-life insurance contract and essentially a contract of indemnity, the CBA provision obligates MMPC to indemnify the covered employees' medical expenses incurred by their dependents but only up to the extent of the expenses actually incurred.[53] This is consistent with the principle of indemnity which proscribes the insured from recovering greater than the loss.[54] Indeed, to profit from a loss will lead to unjust enrichment and therefore should not be countenanced. As aptly ruled by the CA, to grant the claims of MMPSEU will permit possible abuse by employees.

WHEREFORE, the Petition is **DENIED**. The Decision dated March 31, 2006 and Resolution dated December 5, 2006 of the Court of Appeals in CA-G.R. SP No. 75630, are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[52] *Fortune Insurance and Surety, Inc. v. Court of Appeals*, 314 Phil. 184, 196 (1995).

[53] *Philamcare Health Systems, Inc. v. Court of Appeals*, 429 Phil. 82, 90 (2002).

[54] The principle of indemnity in property insurance is based on Section 18 of the Insurance Code which provides that no contract or policy of insurance on property shall be enforceable except for the benefit of some person having an insurable interest in the property insured.

FIRST DIVISION

[G.R. No. 185129. June 17, 2013]

ABELARDO JANDUSAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ARE BINDING ON THE SUPREME COURT.— The petitioner's allegations are nothing but feeble reiteration of the arguments unsuccessfully raised before the RTC and CA. It must be emphasized that the grounds raised by the petitioner involve factual issues already passed upon by the abovementioned courts, and are inappropriate in a petition for review on *certiorari* under Rule 45. The Court accords respect to the finding of the RTC that the bare denial of the petitioner cannot prevail over the evidence of the prosecution consisting not only of testimonies of witnesses but also documents establishing the guilt of the petitioner beyond reasonable doubt. It is a well-entrenched rule that the findings of facts of the CA affirming those of the trial court are binding on the Court.

2. CRIMINAL LAW; ESTAFA WITH ABUSE OF CONFIDENCE; ELEMENTS.— Under Article 315, paragraph 1(b) of the RPC, the elements of *estafa with abuse of confidence* are as follows: (1) that the money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.

3. ID.; ID.; MISAPPROPRIATION OR CONVERSION; FAILURE TO ACCOUNT, UPON DEMAND, THE FUNDS HELD IN

TRUST IS CIRCUMSTANTIAL EVIDENCE OF MISAPPROPRIATION.— [M]isappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. The "failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation." x x x [T]he petitioner failed to account for, upon demand, the funds of the association of the year 2000 which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioner's own personal use.

4. ID.; ID.; PENALTY.— The penalty imposed by the CA ought to be modified to conform to prevailing jurisprudence. The maximum indeterminate penalty when the amount defrauded exceeds ₱22,000.00 is pegged at *prision mayor* in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every ₱10,000.00 in excess of ₱22,000.00 of the amount defrauded but not to exceed twenty (20) years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for estafa, which in this case is anywhere within the range of *prision correccional* in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months. While the minimum indeterminate penalty meted out by the CA is within this range, recent jurisprudence of similar factual backdrop are uniform in imposing four (4) years and two (2) months as the minimum indeterminate penalty. Likewise, the maximum indeterminate penalty must be spelled out to mean twenty (20) years of *reclusion temporal*.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

RESOLUTION

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 4, 2008 and Resolution[3] dated October 23, 2008 of the Court of Appeals (CA) in CA G.R. CR No. 29850 which affirmed the Decision[4] dated August 12, 2005 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172 in Criminal Case No. 278-V-02 convicting Abelardo Jandusay (petitioner) for *estafa*.

The courts *a quo* arrived at similar factual findings, *viz*:

In the year 1999, petitioner was elected as the treasurer of Canumay, Lawang Bato, Punturin, Paso de Blas Tricycle Operators and Driver's Association, Inc. (CALAPUPATODA), herein referred as "association," a duly registered non-stock association of tricycle operators and drivers in Valenzuela City. He was re-elected to the same position in the year 2000.

According to the association's by-laws, the petitioner's position as treasurer entailed being "in charge of the funds, moneys, valuables, receipts and disbursements of the association, 'the books of accounts,' 'an account of financial condition,' and of all transactions made by him as treasurer."[5] Relative thereto, he maintained a "blue book" which reflected the association's income derived from membership dues, motor and driver's fees and the *butaw*, an amount collected from members on a daily basis. It also indicates the expenses of the association.

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[1] *Rollo*, pp. 19-54.

[2] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos (now retired) and Lucas P. Bersamin (now a member of this Court), concurring; *id.* at 60-66.

[3] *Id.* at 71-72.

[4] *Id.* at 80-85.

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

Consequent to the election of the new set of officers for the year 2001, a turnover meeting was held between the outgoing and incoming officers on April 3, 2001. During the meeting, the petitioner turned over to the incoming officers the so-called "blue book" which contained entries of the income and expenses of the association for the year 2000. Based thereon, the net remaining funds of the association for the year 2000 is ₱661,015.00 which, the petitioner, however failed to turn-over despite written and verbal demands.

On March 4, 2002, the petitioner was formally charged with *estafa* or violation of paragraph 1(b), Article 315 of the Revised Penal Code (RPC) before the RTC.

During trial, the prosecution presented a copy of the minutes of the April 3, 2001 meeting which contained an undertaking signed by the petitioner that he will return the ₱661,015.00 by the end of September 2001.

The petitioner denied signing the undertaking and claimed that the same was merely inserted on top of his signature when he was asked to sign the minutes. He averred that finances of the association were never subjected to audit. He also endeavoured to establish that it was the association's President, Dionisio Delina (Delina) and not him who handled the funds of the association for the year 2000 as shown by the Memorandum issued by Delina himself in January 2000. Apparently, Delina assumed such responsibility because the petitioner then had a pending criminal case for *estafa* in relation to the association's funds in 1999.

The RTC accorded merit to the minutes presented by the prosecution, and together with the other evidence proffered, found the petitioner guilty of misappropriating the association's funds. The RTC rejected the petitioner's contentions and held that an examination of the minutes show that there is no indication that the undertaking reflected therein was merely inserted after the petitioner signed the same. There is no logical explanation for the petitioner to sign at least ten (10) line spaces below the last entry. Anent the memorandum allegedly issued by Delina, the

RTC found the same to be of dubious origin and at best only self-serving. Thus, in its Decision[6] dated August 12, 2005, the RTC disposed as follows:

> WHEREFORE, judgment is hereby rendered finding accused ABELARDO JANDUSAY guilty beyond reasonable doubt and as principal of the crime of estafa as defined in and penalized under Article 315, par. 1(b), of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal* as maximum. Further, the accused is sentenced to pay the CALAPUPATODA the amount of [₱]661,015.00 without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.
>
> SO ORDERED.[7]

The CA affirmed the petitioner's conviction, but modified the penalty imposed by the lower court. In its Decision[8] dated March 4, 2008, the CA thus held:

> **WHEREFORE**, premises considered, the *Decision* of the RTC of Valenzuela City, Branch 172, dated August 12, 2005, in Criminal Case No. 278-V-02, is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant ABELARDO JANDUSAY is hereby sentenced to an indeterminate penalty of 2 years and 11 months of *prision correccional* as minimum, to 8 years of *prision mayor* as maximum, plus 1 year for every [₱]10,000.00 in excess of [₱]22,000.00 but not to exceed 20 years, or the maximum of 20 years. The rest of the *Decision* stands.
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> **SO ORDERED**.[9]

The appellate court agreed with the RTC that the elements of the crime of *estafa* were adequately established by the

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[6] *Id.* at 80-85.

[7] *See* CA Decision dated March 4, 2008; *id.* at 60-61.

[8] *Id.* at 60-66.

[9] *Id.* at 65-66.

prosecution. In an attempt to overturn the decision of the CA, petitioner filed a Motion for Reconsideration on April 14, 2008 and a Motion for New Trial on May 18, 2008. The CA denied both motions in a Resolution dated October 23, 2008.

The Issue

The petitioner raises the issue of whether the CA committed a reversible error in affirming the judgment of the RTC finding him guilty of *estafa* beyond reasonable doubt.

The Court's Ruling

The petition is devoid of merit.

The petitioner argues that the prosecution failed to sufficiently prove the first element of *estafa* – that he received the money or funds of the association for the year 2000.

We disagree. The petitioner's allegations are nothing but feeble reiteration of the arguments unsuccessfully raised before the RTC and CA. It must be emphasized that the grounds raised by the petitioner involve factual issues already passed upon by the abovementioned courts, and are inappropriate in a petition for review on *certiorari* under Rule 45. The Court accords respect to the finding of the RTC that the bare denial of the petitioner cannot prevail over the evidence of the prosecution consisting not only of testimonies of witnesses but also documents establishing the guilt of the petitioner beyond reasonable doubt. It is a well-entrenched rule that the findings of facts of the CA affirming those of the trial court are binding on the Court.[10]

At any rate, the Court concurs with the remark of the RTC that the memorandum whereby Delina admitted to have handled the association's funds for the year 2000 is highly specious as to its authenticity in reflecting the actual dynamics between the petitioner and Delina as officers of the association.

The courts *a quo* were correct in convicting the petitioner of *estafa*. Under Article 315, paragraph 1(b) of the RPC, the

[10] *Bank of Commerce v. Manalo,* 517 Phil. 328, 345 (2006).

elements of *estafa with abuse of confidence* are as follows: (1) that the money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.[11] As correctly found by the CA:

> In the case at bar, the aforementioned elements have been sufficiently established by the prosecution. It cannot be denied that accused-appellant, as Treasurer of CALAPUPATODA, received and held money for administration and in trust for the association. He was thus under an obligation to turnover the same upon conclusion of his term as Treasurer. Instead, however, he misappropriated the same to the prejudice of the association and, despite demand, failed to account for or return them. Such failure to account, upon demand, of funds or property held in trust is circumstantial evidence of misappropriation.[12] (Citation omitted)

In addition, misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. The "failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation."[13] As mentioned, the petitioner failed to account for, upon demand, the funds of the association of the year 2000 which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioner's own personal use.

The penalty imposed by the CA ought to be modified to conform to prevailing jurisprudence. The maximum indeterminate penalty when the amount defrauded exceeds ₱22,000.00 is pegged at

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[11] *Asejo v. People*, 555 Phil. 106, 112-113 (2007).

[12] *Rollo*, p. 64.

[13] *D'Aigle v. People*, G.R. No. 174181, June 26, 2012, 675 SCRA 206, 217, citing *Lee v. People*, 495 Phil. 239, 250 (2005).

prision mayor in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every ₱10,000.00 in excess of ₱22,000.00 of the amount defrauded but not to exceed twenty (20) years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for estafa, which in this case is anywhere within the range of *prision correccional* in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months.[14] While the minimum indeterminate penalty meted out by the CA is within this range, recent jurisprudence of similar factual backdrop are uniform in imposing four (4) years and two (2) months as the minimum indeterminate penalty.[15] Likewise, the maximum indeterminate penalty must be spelled out to mean twenty (20) years of *reclusion temporal*.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated March 4, 2008 and Resolution dated October 23, 2008 of the Court of Appeals in CA-G.R. CR No. 29850 are **AFFIRMED** except as to the indeterminate sentence imposed upon Abelardo Jandusay which is hereby **MODIFIED** to four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

SO ORDERED.

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

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[14] *Magtira v. People*, G.R. No. 170964, March 7, 2012, 667 SCRA 607, 620.

[15] *Id.* at 612-613, 621; *D'Aigle v. People*, *supra* note 13, at 219-220; *Brokmann v. People*, G.R. No. 199150, February 6, 2012, 665 SCRA 83, 88.

[*] Additional member per Raffle dated October 11, 2012 *vice* Associate Justice Lucas P. Bersamin.

SECOND DIVISION

[G.R. No. 185719. June 17, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO COLLADO *Y* CUNANAN, MYRA COLLADO *Y* SENICA, MARK CIPRIANO *Y* ROCERO, SAMUEL SHERWIN LATARIO *Y* ENRIQUE,[*] and REYNALDO RANADA *Y* ALAS,[**]** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST *IN FLAGRANTE DELICTO*; REQUISITES.— Section 5(a)[, Rule 113 of the Rules of Court] is what is known as arrest *in flagrante delicto.* For this type of warrantless arrest to be valid, two requisites must concur: "(1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and, (2) such overt act is done in the presence or within the view of the arresting officer." A common example of an arrest *in flagrante delicto* is one made after conducting a buy-bust operation.

2. ID.; ID.; ID.; OBJECTIONS ON THE LEGALITY THEREOF WHICH ARE NOT RAISED BEFORE ARRAIGNMENT ARE DEEMED WAIVED.— [A]ssuming that irregularities indeed attended the arrest of appellants, they can no longer question the validity thereof as there is no showing that they objected to the same before their arraignment. Neither did they take steps to quash the Informations on such ground. They only raised this issue upon their appeal to the appellate court. By this omission, any objections on the legality of their arrest are deemed to have been waived by them.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; A SEARCH AND CONSEQUENT

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[*] Also referred to as Samuel Sherwin Latorio *y* Enriquez in some parts of the records.

[**] Also referred to as Reynaldo Rañada *y* Alas in some parts of the records.

SEIZURE MUST BE CARRIED OUT WITH A JUDICIAL WARRANT; EXCEPTION.— [U]nder the Constitution, "a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding." This proscription, however, admits of exceptions, one of which is a warrantless search incidental to a lawful arrest. The arrest of the appellants was lawful. Under Section 13, Rule 126 of the Rules of Court, "[a] person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant." The factual milieu of this case clearly shows that the search was made after appellants were lawfully arrested. Pursuant to the above-mentioned rule, the subsequent search and seizure made by the police officers were likewise valid.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF EXTORTION AND/OR FRAME-UP; MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND A SHOWING THAT THE POLICE OFFICERS WERE INSPIRED BY IMPROPER MOTIVE.— The defense of extortion and/or frame-up is often put up in drugs cases in order to cast doubt on the credibility of police officers. This is a serious imputation of a crime hence clear and convincing evidence must be presented to support the same. There must also be a showing that the police officers were inspired by improper motive.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF CONFISCATED DRUGS; FAILURE OF THE POLICE OFFICERS TO INVENTORY AND PHOTOGRAPH THE CONFISCATED ITEMS IS NOT FATAL PROVIDED THE INTEGRITY AND EVIDENTIARY VALUE WERE PRESERVED.— Section 21, paragraph 1, Article II of RA 9165 provides for the custody and disposition of the confiscated drugs x x x. This rule is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 x x x. Pursuant to the above-cited provisions, this Court has consistently ruled that the failure of the police officers to inventory and photograph the confiscated items are not fatal to the prosecution's

cause, provided that the integrity and evidentiary value of the seized substance were preserved, as in this case.

6. ID.; ID.; ID.; NON-PRESENTATION AS WITNESSES OF OTHER PERSONS WHO HAD CUSTODY OF THE ILLEGAL DRUGS IS NOT REQUIRED.— The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution. There is no requirement for the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of the prohibited drugs from him. To stress, the implementing rules are clear that non-compliance with the 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.

7. ID.; ID.; POSSESSION OF DRUG PARAPHERNALIA; REGARDED AS A CRIME OF *MALA PROHIBITA* WHERE THE DEGREE OF PARTICIPATION OF THE OFFENDERS IS NOT CONSIDERED.— We find that the CA erred in convicting Cipriano, Latario, Apelo, Abache, Sumulong and Madarang as accessories. As pointed out by Justice Arturo D. Brion: x x x **"Since violation of Section 14 of R.A. No. 9165 is a crime of *mala prohibita,* the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal or accomplice or accessory to consider**." x x x In addition, Section 98 of RA 9165 specifically provides that "[n]otwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death." It is therefore clear that the provisions of the Revised Penal Code, particularly Article 19 on Accessories, cannot be applied in determining the degree of participation and criminal liability of Ranada's co-accused.

8. ID.; CONSPIRACY; CANNOT BE IMPLIED BY MERE PRESENCE AT THE SCENE OF THE CRIME.— [T]his

> Court is convinced that only Ranada should be held liable for violation of Section 14 of RA 9165. It is clear that it was only Ranada who was caught having in his possession an aluminum foil intended for using dangerous drugs. As to the other co-accused, namely Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong, not one drug paraphernalia was found in their possession. The police officers were only able to find the other drug paraphernalia scattered on top of a table. It is already established that there was no conspiracy between Ranada and the other co-accused. As the CA correctly held, mere presence at the scene of the crime does not imply conspiracy.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellants.

D E C I S I O N

DEL CASTILLO, *J.*:

Mere allegations and self-serving statements will not overcome the presumption of regularity in the performance of official duties accorded to police officers. There must be a showing of clear and convincing evidence to successfully rebut this presumption.

On appeal is the February 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02626 which affirmed with modification the December 7, 2005 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 154 in Criminal Case Nos. 13781-D, 13783-D and 13784-D. The RTC convicted the appellants and several other accused for violations of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and imposed upon them the penalty of imprisonment and payment of fine in each of their respective cases.

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[1] CA *rollo*, pp. 181-207; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario.

[2] Records, pp. 201-213; penned by Judge Abraham B. Borreta.

Factual Antecedents

On October 14, 2004, appellants Marcelino Collado (Marcelino) and Myra Collado (Myra) were charged with the crimes of sale of dangerous drugs and maintenance of a den, dive or resort in violation of Sections 5 and 6 of Article II, RA 9165 docketed as Criminal Case Nos. 13781-D and 13782-D, respectively, *viz*:

CRIMINAL CASE NO. 13781-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Richard N. Noble, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[3]

CRIMINAL CASE NO. 13782-D

On or about or immediately prior to October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously maintain a den, dive or resort located at No. 32 R. Hernandez St., Brgy. San Joaquin, Pasig City, where x x x dangerous drugs are used or sold in any form, in violation of the said law.

Contrary to law.[4]

Marcelino was also charged with illegal possession of dangerous drugs under Section 11, Article II of the same law docketed as Criminal Case No. 13783-D, *viz*:

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[3] *Id.* at 1.

[4] *Id.* at 21.

CRIMINAL CASE NO. 13783-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing six centigrams (0.06 gram) of white crystalline substance, which was found to be positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[5]

On the other hand, appellants Mark Cipriano (Cipriano), Samuel Sherwin Latario (Latario), Reynaldo Ranada (Ranada), together with co-accused Melody Apelo (Apelo), Marwin Abache (Abache), Michael Angelo Sumulong (Sumulong), and Jay Madarang (Madarang), were charged with possession of drug paraphernalia in violation of Section 14, Article II of RA 9165, docketed as Criminal Case No. 13784-D, *viz*:

CRIMINAL CASE NO. 13784-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, each being in the proximate company of two (2) persons and in conspiracy with one another, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control the following paraphernalias [sic], fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:

a. one (1) strip aluminum foil containing traces of white crystalline substance marked as Exh-D;

b. one (1) improvised glass tooter containing traces of white crystalline substance marked as Exh-D1;

c. one (1) pack transparent plastic sachet marked as Exh-D2;

d. two (2) plastic disposable lighters marked as Exhs. "G-H";

e. one (1) tape-sealed transparent plastic sachet containing three (3) rolled aluminum foil marked as Exh. D5;

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[5] *Id.* at 23.

f. five (5) unsealed transparent plastic sachets marked as Exh. D6;

g. one (1) stainless scissor marked as Exh. D7;

h. one (1) rectangular glass marked as Exh. D8; and

i. one (1) roll of aluminum foil marked as Exh. D9.

[Specimens] marked as Exh-D and Exh-D1 were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[6]

Upon arraignment on November 4, 2004, all the appellants and the other accused pleaded not guilty.[7] Pre-trial and joint trial on the merits subsequently ensued.

Version of the Prosecution

The prosecution presented as witnesses PO2 Richard Noble (PO2 Noble) and SPO2 Bernardo Cruz (SPO2 Cruz) who were involved in the buy-bust operation that led to the arrest of the appellants. Their testimonies are summarized as follows:

On October 9, 2004, PO2 Noble received information from a civilian asset that spouses Marcelino and Myra were engaged in selling *shabu* and that drug users, including out-of-school youth, were using their residence in 32 R. Hernandez St., San Joaquin, Pasig City, for their drug sessions.[8] After recording the report in the police blotter, PO2 Noble relayed the information to his superior, P/Insp. Earl B. Castillo (P/Insp. Castillo), who in turn ordered the conduct of a surveillance operation.[9] PO2 Noble, SPO2 Cruz and PO1 Anthony Bitbit, conducted a surveillance on the couple's residence. After confirming the reported activities, SPO2 Cruz looked for an asset who could introduce them to Marcelino and Myra in the ensuing buy-bust operation.[10]

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[6] *Id.* at 26-27.

[7] *Id.* at 31-41.

[8] TSN, January 6, 2005, p. 5.

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

[10] Records, p. 202.

A buy-bust operation team was thereafter formed. After coordinating with the Philippine Drug Enforcement Agency as evidenced by a Pre-Operation Report,[11] the team proceeded to Marcelino's and Myra's residence on board two private vehicles. Upon reaching the target area, the asset introduced PO2 Noble to Marcelino as a regular buyer of *shabu*.[12] When asked how much *shabu* he needed, PO2 Noble replied, "*dalawang piso,*" which means ₱200.00 worth of drugs. But when PO2 Noble was handing over the marked money to Marcelino, the latter motioned that the same be given to his wife, Myra, who accepted the money. Marcelino then took from his pocket a small metal container from which he brought out a small plastic sachet containing white crystalline substance and gave the same to PO2 Noble. While PO2 Noble was inspecting its contents, he noticed smoke coming from a table inside the house of the couple around which were seven persons.[13] When PO2 Noble gave the pre-arranged signal, the backup team rushed to the scene. Simultaneously, PO2 Noble introduced himself as a policeman and arrested Marcelino. He frisked him and was able to confiscate the metal container that contained another sachet of white crystalline substance. PO2 Noble wrote the markings "MCC-RNN October 9, 2004" on both the plastic sachets of white substance sold to him by Marcelino and the one found inside the metal container.

Meanwhile, SPO2 Cruz and another police officer went inside the house of Marcelino and Myra, where they found Apelo, Cipriano, Ranada, Abache, Sumulong, Madarang and Latario gathered around a table littered with various drug paraphernalia such as an improvised water pipe, strips of aluminum foil with traces of white substance, disposable lighters, and plastic sachets. A strip of aluminum foil used for smoking marijuana was recovered from Ranada. The buy-bust team arrested all these persons, advised them of their constitutional rights, and brought them to police headquarters for investigation and drug testing.

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[11] *Id.* at 150.

[12] TSN, January 6, 2005, p. 10.

[13] *Id.* at 12.

A chemistry report[14] on all the seized items yielded positive results for methylamphetamine hydrochloride. Another chemistry report[15] showed Marcelino, Apelo, Cipriano, and Ranada positive for drug use while Myra, Abache, Sumulong, Madarang, and Latario were found negative.

Version of the Defense

The defense presented the testimonies of Marcelino, Myra, and Ranada, who all essentially put up the defense of denial. The following is their version of the story.

Marcelino and Myra owned an electronics and appliance repair shop annexed to their house. In the evening of October 9, 2004, Marcelino was in the living room with his children and nieces fixing a VCD player. Apelo, their househelp, was in the kitchen preparing food while Ranada, their repairman, was outside the house fixing Sumulong's motorcycle. Cipriano and Madarang were also present at the shop, the former to redeem his car stereo and the latter to borrow a play station CD. Latario, a housemate of Marcelino and Myra, was also present at the time.

Marcelino suddenly heard someone say "*Walang tatakbo*!" Four armed men rushed inside the house and pointed their guns at him and said "*Wag ka nang pumalag*." He was thereafter dragged outside where he saw the other accused already in handcuffs. Marcelino was later informed that they were being arrested for selling *shabu*. Marcelino protested and disclaimed any knowledge about drugs. When the officers frisked all the accused, Marcelino claimed that nothing illegal nor incriminating was recovered from them.

When Myra arrived at the scene, she was shocked to see her husband being arrested. The police officers then brought all the accused to the police station for further questioning.

At the police station, PO2 Noble asked Marcelino for ₱50,000.00 as settlement of their case. Marcelino, Apelo,

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[14] Chemistry Report No. D-807-04, records, p. 147.

[15] Chemistry Report Nos. DT-692-04 to DT-700-04, *id*. at 151.

Cipriano, and Ranada were also made to drink water that according to Marcelino tasted bitter.[16] They were then brought to Camp Crame for medical examination and drug tests. Those who drank the bitter water tested positive for drugs use while the others, who did not drink, tested negative.

Marcelino surmised that their arrest was due to a misunderstanding he had with a former police officer named Rey who bought a VCD player from his shop. He specifically instructed Rey not to let anyone repair the VCD player should it malfunction. However, when the VCD player malfunctioned, Rey had it repaired by somebody else, hence Marcelino refused to accept the VCD player and return Rey's money. This earned the ire of Rey who threatened him with the words "*Humanda ka pagbalik ko.*"[17]

Ruling of the Regional Trial Court

In its Decision[18] dated December 7, 2005, the RTC disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Crim. Case No. 13781-D, finding the accused **MARCELINO COLLADO y Cunanan** and **MYRA COLLADO *y* Senica GUILTY** beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (sale of dangerous drug) and they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT.**

Additionally, the two accused are ordered to pay a fine of **ONE MILLION PESOS (₱1,000,000.00) EACH.**

In Crim. Case No. 13782-D, judgment is rendered finding the accused **MARCELINO COLLADO *y* Cunanan and MYRA COLLADO *y* Senica NOT GUILTY** of the crime of violation of Section 6.

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[16] TSN, August 10, 2005, pp. 19-20.

[17] TSN, July 13, 2005, pp. 14-15; TSN, August 10, 2005, p. 16.

[18] Records, pp. 201-213.

In Crim. Case No. 13783-D, finding the accused **MARCELINO COLLADO *y* Cunanan GUILTY** of the offense of violation of Section 11 of R.A. 9165 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY** to **FIFTEEN (15) YEARS.**

The accused Marcelino Collado is also ordered to pay a fine of **THREE HUNDRED THOUSAND PESOS (₱300,000.00).**

In Crim. Case No. 13784-D, judgment is hereby rendered finding the accused **MELODY APELO *y* Roman, MARK CIPRIANO *y* Rocero, MARWIN ABACHE *y* Aquilino, MICHAEL ANGELO SUMULONG *y* Belarmino, JAY MADARANG *y* Gomez, SAMUEL SHERWIN LATARIO *y* Enrique and REYNALDO RANADA *y* Alas GUILTY** of the offense of violation of Section 14 of R.A. 9165 and they are hereby sentenced to suffer the indeterminate penalty of **TWO (2) YEARS, EIGHT (8) MONTHS and ONE (1) DAY** to **FOUR (4) YEARS** imprisonment. Each of them is also ordered to pay a fine of **TEN THOUSAND PESOS (₱10,000.00).**

Let the shabu and paraphernalia alleged to be the subject[s] of the Information be turned over and delivered immediately to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[19]

Accused Apelo, Abache, Sumulong and Madarang applied for probation.[20] Hence, only Marcelino, Myra, Cirpriano, Latario and Ranada appealed to the CA.[21]

Ruling of the Court of Appeals

The appellate court found the warrantless arrest of the appellants to be lawful considering that they were caught in the act of committing a crime.[22] Thus, the CA affirmed the conviction of Marcelino and Myra for violation of Section 5 of RA 9165 (sale of dangerous drugs), as well as the conviction

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[19] Records, pp. 212-213.

[20] *Id.* at 217-218.

[21] *Id.* at 216.

[22] *Id.* at 193-194.

of Marcelino for violation of Section 11 of RA 9165 (illegal possession of dangerous drugs). Anent the violation of Section 14 of RA 9165 (possession of drug paraphernalia), the CA affirmed the conviction of Ranada as he was caught having custody and control of a drug paraphernalia intended for smoking and injecting illegal drugs into one's body.[23] As regards Cipriano and Latario, as well as the other accused Apelo, Abache, Sumulong and Madarang, the CA found them guilty not as principals but only as accessories.

Thus, the appellate court affirmed with modification the trial court's Decision through a Decision[24] dated February 28, 2008, the dispositive portion of which states:

WHEREFORE, the appealed *Decision* is **AFFIRMED** with respect to the conviction and imposition of the respective penalties against the following: (A) appellants Marcelino Collado and Myra Collado in Crim. Case No. 13781-D[25] for violation of Section 5, Article II, RA No. 9165; (B) appellant Marcelino Collado in Crim. Case No. 13783-D for violation of Section 11, Article II, RA No. 9165; (C) appellant Reynaldo Ranada in Crim. Case No. 13784-D for violation of Section 14, Article II, RA No. 9165.

In Crim. Case No. 13784-D, **MODIFICATION** is hereby ordered as to appellants Mark Cipriano and Samuel Sherwin Latario, including co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong and Jay Madarang – insofar as they were found **GUILTY**, not as principals, but as **ACCESSORIES** in the offense of violation of Section 14, Article II of RA No. 9165, in relation to the aforecited provision of the Revised Penal Code. Each of them shall suffer the straight penalty of Four (4) Months of *arresto mayor*. The fine of Ten Thousand Pesos already imposed by the trial court upon each of them is MAINTAINED.

SO ORDERED.[26]

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[23] *Id.* at 204.

[24] CA *rollo*, pp. 181-207.

[25] See Resolution dated June 11, 2008, *id.* at 216-217.

[26] *Id.* at 26.

Not satisfied, the appellants are now before this Court arguing that irregularities attended their arrest and detention as well as the procedure in handling the specimen allegedly seized from them. Because of these, they assert that their guilt was not proven beyond reasonable doubt.

Our Ruling

The appealed Decision should be affirmed, with modification.

The presumption of regularity in the performance of official duties must be upheld in the absence of clear and convincing evidence to overturn the same.

Appellants question the validity of the buy-bust operation and point out the following irregularities which they claim attended its conduct: (1) lack of warrant of arrest; (2) non-compliance with the procedures laid down under Section 21 of RA 9165; and, (3) the alleged extortion of money from them by PO2 Noble in exchange for dropping the charges against them. Due to these irregularities, appellants argue that the presumption of regularity in the performance of official duties accorded to police officers does not apply in this case.

Lack of a warrant of arrest

Appellants argue that the arrest, search, and seizure conducted by the police were illegal since it was not supported by a valid warrant. They thus posit that their right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures was violated.[27]

Section 5, Rule 113 of the Rules of Court provides for lawful warrantless arrests, *viz*:

Sec. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

[27] *Id.* at 95-98.

(b) When an offense has in fact just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5(a) is what is known as arrest *in flagrante delicto.* For this type of warrantless arrest to be valid, two requisites must concur: "(1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and, (2) such overt act is done in the presence or within the view of the arresting officer."[28] A common example of an arrest *in flagrante delicto* is one made after conducting a buy-bust operation.

This is precisely what happened in the present case. The arrest of the appellants was an arrest *in flagrante delicto* made in pursuance of Sec. 5(a), Rule 113 of the Rules of Court. The arrest was effected after Marcelino and Myra performed the overt act of selling to PO2 Noble the sachet of *shabu* and Ranada of having in his control and custody illegal drug paraphernalia. Thus, there is no other logical conclusion than that the arrest made by the police officers was a valid warrantless arrest since the same was made while the appellants were actually committing the said crimes.

Moreover, assuming that irregularities indeed attended the arrest of appellants, they can no longer question the validity thereof as there is no showing that they objected to the same before their arraignment. Neither did they take steps to quash the Informations on such ground.[29] They only raised this issue upon their appeal to the appellate court. By this omission, any

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[28] *People v. Judge Laguio, Jr.*, 547 Phil. 296, 329 (2007).

[29] *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 382.

objections on the legality of their arrest are deemed to have been waived by them.[30]

Anent their claim of unreasonable search and seizure, it is true that under the Constitution, "a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding."[31] This proscription, however, admits of exceptions, one of which is a warrantless search incidental to a lawful arrest.[32]

The arrest of the appellants was lawful. Under Section 13, Rule 126 of the Rules of Court, "[a] person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant." The factual milieu of this case clearly shows that the search was made after appellants were lawfully arrested. Pursuant to the above-mentioned rule, the subsequent search and seizure made by the police officers were likewise valid. Hence, appellants' claim of unreasonable search and seizure must fail.

Extortion

Appellants aver that PO2 Noble tried to extort money from them in exchange for dropping the drug charges against them.

The defense of extortion and/or frame-up is often put up in drugs cases in order to cast doubt on the credibility of police officers. This is a serious imputation of a crime hence clear and convincing evidence must be presented to support the same. There must also be a showing that the police officers were inspired by improper motive. In this case, we find such imputation unfounded.

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[30] *Id.*

[31] *People v. Racho*, G.R. No. 186529, August 3, 2010, 626 SCRA 633, 641.

[32] *Id.*

In *People v. Capalad*,[33] this Court held thus:

> Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.

Here, aside from Marcelino's self-serving testimony, appellants' claim of extortion is not substantiated by other convincing evidence. Neither was it established during trial that PO2 Noble or the other members of the buy-bust team were impelled by improper motive. Appellants' allegation that PO2 Noble and his team arrested them because of Marcelino's previous misunderstanding with a certain retired policeman named Rey deserves no credence. No evidence was presented to show any connection between Rey and the buy-bust team. It was not even shown by the defense who this person Rey really is. Also, it is highly unlikely that a team of police officers would pursue a surveillance, conduct a buy-bust operation, and arrest all the accused for a measly ₱1,000.00 VCD player. In view of these, appellants' allegation of extortion and improper motive deserves no credence.

Chain of Custody

Appellants argue that the procedure laid down in Section 21 of RA 9165 was not followed. They specifically harp on the fact that the confiscated drugs were not photographed and inventoried. Moreover, they contend that the police officers who handled the seized specimen were not presented in court to testify on the condition in which they received the said specimen. For

[33] G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727 citing *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 753 and *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

the appellants, these defects constitute a clear break in the chain of custody and, consequently, the prosecution failed to establish *corpus delicti*.[34]

The Court, however, finds this argument unmeritorious.

Section 21, paragraph 1, Article II of RA 9165 provides for the custody and disposition of the confiscated drugs, to wit:

> (1) 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;

This rule is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165, *viz*:

> 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 seizure; **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)

Pursuant to the above-cited provisions, this Court has consistently ruled that the failure of the police officers to inventory

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[34] *Rollo,* p. 44.

and photograph the confiscated items is not fatal to the prosecution's cause,[35] provided that the integrity and evidentiary value of the seized substance were preserved, as in this case. Here, PO2 Noble, after apprehending Marcelino and confiscating from him the sachets of *shabu*, immediately placed his markings on them. He testified thus:

PROSECUTOR PAZ:

Q: What did you do with that sachet containing white substance that was bought from Marcelino and the one that you were able to confiscate from him?
A: I put my markings.

Q: What were those markings?
A: MCC-RNN October 9, 2004.[36]

In the Request for Laboratory Examination[37] the seized items were listed and inventoried. After the conduct of the laboratory examination, Chemistry Report No. D-807-04[38] revealed that the contents of the said sachets tested positive for methylamphetamine hydrochloride or *shabu.*

Moreover, it is of no moment that Forensic Chemist Alejandro De Guzman who conducted the laboratory examination was not presented as a witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution.[39] There is no requirement for the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of the prohibited drugs from him.[40] To stress, the

[35] *People v. Campos*, G.R. No. 186526, August 25, 2010, 629 SCRA 462, 467.

[36] TSN, January 6, 2005, p. 15.

[37] Records, pp. 17-18.

[38] *Id.* at 19.

[39] *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235.

[40] *People v. Habana*, G.R. No. 188900, March 5, 2010, 614 SCRA 433, 438.

implementing rules are clear that non-compliance with the 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.[41]

Criminal Case No. 13784-D

With regard to Criminal Case No. 13784-D for illegal possession of drug paraphernalia, we find it imperative to re-examine the findings of both the RTC and the CA.

The RTC's findings are as follows:

> The evidence for the prosecution clearly shows that certain things or paraphernalia which are fit or intended [for] smoking *shabu* were found in the house of the accused Marcelino and Myra Collado on the same occasion that the said spouses were arrested by the police officers. This fact makes all the accused without exception liable for violation of Section 14. While it was only Reynaldo Ranada who was caught having in his possession an item used in smoking marijuana, *i.e.*, a strip of aluminum foil x x x and nothing was found in the possession of the other accused, this fact nonetheless does not render Reynaldo Ranada the only person liable for violation of Section 14. [Take note] that the law speaks not only of possession but also of having under one's control the paraphernalia intended for smoking. In the instant case, the paraphernalia were found by the police on top of the table around which the accused were gathered. Hence, even if the x x x accused other than Ranada did not have in their possession any of the paraphernalia, it can, however, be said that the paraphernalia found on top of the table were under their control. x x x[42]

Thus, the RTC found Ranada, Cipriano, Latario, Apelo Abache, Sumulong and Madarang all equally guilty of illegal possession of drug paraphernalia.

On appeal, however, the CA found Ranada guilty as principal while Cipriano, Latario, Apelo, Abache, Sumulong and Madarang

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[41] Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165.

[42] Records, pp. 211-212.

were adjudged as accessories only for the crime of illegal possession of drug paraphernalia. The CA ratiocinated thus:

> On the one hand, we sustain the conviction of Rañada in Crim. Case 13784-D. He was actually caught having custody and control of the confiscated drug paraphenalia intended for smoking, injecting, *etc*. into one's body. It was also indubitably shown that he failed to present authority to possess the prohibited articles, much less, an explanation of his possession thereof. However, as regards the other accused who were seen in the company of Rañada, the evidence of conspiracy against them was insufficient.
>
> To hold an accused guilty as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.
>
> It may be that appellants Mark Cipriano and Samuel Sherwin Latario and co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong, Jay Madarang were in close proximity [to] Rañada at the time and place of the incident. But mere presence at the scene of the crime does not imply conspiracy. The prosecution failed to show specific overt acts that would link these accused to Ranada's possession of the said contrabands. As to why they were there [in] the vicinity of the crime scene was not explained. They could be mere innocent onlookers although they were aware of the illegality of the principal's acts.
>
> In any event, appellants Cipriano and Latario and the rest of the accused cannot be totally exonerated. [However, we] downgrade their culpability corresponding to their criminal design and participation. Evidently, they are guilty as accessories who, according to paragraph 1, Article 19 of the Revised Penal Code, are criminally liable by 'profiting themselves or assisting the offender to profit by the effects of the crime.'[43]

We find that the CA erred in convicting Cipriano, Latario, Apelo, Abache, Sumulong and Madarang as accessories. As pointed out by Justice Arturo D. Brion:

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[43] CA *rollo*, p. 204. Citation omitted.

"[I]llegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs during parties, social gatherings or meetings under Section 14 of R.A. No. 9165 is a crime of *malum prohibitum*, that is, the act is made wrong or evil because there is a law prohibiting it. x x x

Since violation of Section 14 of R.A. No. 9165 is a crime of *mala prohibita*, the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal or accomplice or accessory to consider. In short, the degree of participation of the offenders does not affect their liability, and the penalty on all of them are the same whether they are principals or merely accomplices or accessories.[44]

In addition, Section 98 of RA 9165 specifically provides that "[n]otwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death." It is therefore clear that the provisions of the Revised Penal Code, particularly Article 19 on Accessories, cannot be applied in determining the degree of participation and criminal liability of Ranada's co-accused.

At any rate, this Court is convinced that only Ranada should be held liable for violation of Section 14 of RA 9165. It is clear that it was only Ranada who was caught having in his possession an aluminum foil intended for using dangerous drugs.[45] As to the other co-accused, namely Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong, not one drug paraphernalia was found in their possession. The police officers were only able to find the other drug paraphernalia scattered on top of a table. It is already established that there was no conspiracy between Ranada and the other co-accused. As the CA correctly

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[44] Citing Boado, *Notes and Cases on the Revised Penal Code*, 2008 edition.

[45] Records, p. 211.

held, mere presence at the scene of the crime does not imply conspiracy.[46]

PO2 Noble, when placed on the witness stand, only testified as follows:

A- While I was checking the item that I bought, I saw several persons inside their house.

Q- What were these persons doing?
A- Some were seated, some were standing and there was xxx smoke.

Q- Where was this smoke coming from?
A- I did not see where the smoke [was] coming from because some of the persons were blocking [my view].

Q- About how many persons were inside who were seated and who were standing?
A- Seven (7).

Q- Will you tell us if they are male or female or both?
A- Six (6) male persons and one (1) female.

Q- What are these persons who were seated inside the house doing?
A- They were allegedly engaged in drug session.

COURT:

Q- What do you mean allegedly?
A- Because there was smoke and I did not see what they were using.

PROSECUTOR PAZ:

Q- What about those who were standing, what were they doing?
A- The persons who were standing were looking at the persons who were sitting. I could not see them clearly because some of them were blocking my view.

Q- How far were they, those who were seated and those who were standing?
A- They were close to each other.

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[46] CA *rollo*, p. 204, Citation omitted.

Q- How long did you take a look at these persons inside the house?
A- Only for a while, only for a glance, sir.[47]

On the other hand, SPO2 Bernardo Cruz testified that it was only Ranada who was caught holding the aluminum foil, *viz*:

Q- How about the aluminum foil that you recovered from another?
A- I saw him holding the strip of aluminum foil, sir.

Q- So, nothing was confiscated in the person of all other accused except for Ranada?
A- Yes, sir.[48]

Therefore, Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong should be acquitted of the charge of violation of Section 14, RA 9165 on possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs.

All told, this Court upholds the presumption of regularity in the performance of official duties by the police officers involved in this case. The defense was not able to show by clear and convincing evidence why the presumption should be overturned. The prosecution, on the other hand, was able to establish that Marcelino, Myra and Ranada committed the crimes imputed against them, they having been caught *in flagrante delicto*. This Court, being convinced that the guilt of Marcelino, Myra, and Ranada have been proven beyond reasonable doubt, must uphold their conviction.

As to Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong, the Court finds that they should be acquitted of the offense of violation of Section 14, Article II, RA 9165, since the prosecution was not able to clearly show specific overt acts that would prove that they were in possession of drug paraphernalia.

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[47] TSN, January 6, 2005, pp. 12-13.

[48] TSN, June 22, 2005, pp. 4-5.

WHEREFORE, the appeal is **PARTLY GRANTED**. The February 28, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02626 is **AFFIRMED** with **MODIFICATION** that appellants Mark Cipriano and Samuel Sherwin Latario, including co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong, and Jay Madarang are hereby **ACQUITTED** of the crime of violation of Section 14, Article II of Republic Act No. 9165. They are ordered released unless they are being lawfully held for some other cause.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192890. June 17, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **VIRGINIA PALMARES, LERMA P. AVELINO, MELILIA P. VILLA, NINIAN P. CATEQUISTA, LUIS PALMARES, JR., SALVE P. VALENZUELA, GEORGE P. PALMARES, and DENCEL P. PALMARES, HEREIN REPRESENTED BY THEIR ATTORNEY-IN-FACT, LERMA P. AVELINO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN LAW OF 1988); JUST COMPENSATION;

BASIS OF COMPUTATION.— The principal basis of the computation for just compensation is Section 17 of RA 6657, which enumerates the following factors to guide the special agrarian courts in the determination thereof: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any. Pursuant to its rule-making power under Section 49 of the same law, the DAR translated these factors into a basic formula.

2. ID.; ID.; ID.; ID.; THE DETERMINATION THEREOF IS ESSENTIALLY A JUDICIAL FUNCTION BUT THE JUDGE CANNOT ABUSE HIS DISCRETION BY NOT TAKING INTO CONSIDERATION THE FACTORS SPECIFICALLY IDENTIFIED BY LAW AND IMPLEMENTING RULES.— In *Land Bank of the Philippines v. Barrido*, where the RTC adopted a different formula, as in this case, by considering the average between the findings of the DAR using the formula laid down in Executive Order No. 228 and the market value of the property as stated in the tax declaration, we declared it to be an obvious departure from the mandate of the law and the DAR administrative order. We emphasized therein that, while the determination of just compensation is essentially a judicial function vested in the RTC acting as a special agrarian court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules.

3. ID.; ID.; ID.; ID.; THE "DOUBLE TAKE UP" OF MARKET VALUE AS A VALUATION FACTOR COMPLETELY DESTROYS THE BASIC PRINCIPLE OF AFFORDABILITY IN THE VALUATION FORMULA FOR AGRARIAN REFORM.— We agree with LBP in the instant case that the "double take up" of the market value per tax declaration as a valuation factor completely destroys the rationale of the formula laid down by the DAR. Thus, argues LBP: x x x "The valuation formula is heavily production based (net income) because that

is the true value of what landowners lose when their lands are expropriated and what the farmers-beneficiaries gain when the lands are distributed to them. A more fundamental reason for the valuation formula of DAR is the fidelity to the principle of affordability, *i.e.* what the farmers-beneficiaries can reasonably afford to pay based on what the land can produce. It must be emphasized that agricultural lands are not residential lands, and farmers-beneficiaries are not given those lands so they can live there but so that they can till them. And since they generally live on hand to mouth existence, their source of repaying the just compensation is sourced from their income derived from the cultivation of the land. Thus, the double take up of market value as a valuation factor goes against the grain of affordability as the basic principle in the government-supervised valuation formula for agrarian reform."

4. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION OF CASES; PROPER WHEN THERE IS A REAL NEED TO FORESTALL THE POSSIBILITY OF CONFLICTING DECISIONS BEING RENDERED IN THE CASES.— Considering x x x that the RTC based its valuation on a different formula and without taking into full consideration the factors set forth in Section 17 of RA 6657, we order the consolidation of the instant case (CA-G.R. CEB SP No. 01846) with CA-G.R. CEB SP No. 01845, where the appeal of the DAR from the March 27, 2006 Decision of the RTC was granted and said case was remanded to the trial court for determination of just compensation with the assistance of commissioners. We have held that consolidation of cases is proper when there is a real need to forestall, as in this case, the possibility of conflicting decisions being rendered in the cases.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

Anacleto P. Arque, Jr. for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This petition for review on *certiorari*[1] assails the August 28, 2007 Decision[2] and June 29, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB SP No. 01846, which affirmed with modification the March 27, 2006 Decision[4] of the Regional Trial Court (RTC) of Iloilo City, Branch 34, ordering petitioner Land Bank of the Philippines (LBP) to pay respondents Virginia Palmares, Lerma P. Avelino, Melilia P. Villa, Ninian P. Catequista, Luis Palmares, Jr., Salve P. Valenzuela, George P. Palmares, and Dencel P. Palmares (respondents) the total sum of ₱669,962.53 as just compensation for their land plus twelve percent (12%) interest per annum from June 1995 until full payment.

The Factual Antecedents

Respondents inherited a 19.98-hectare agricultural land located in Barangay Tagubang, Passi City, Iloilo, registered under Transfer Certificate of Title (TCT) No. T-11311. In 1995, they voluntarily offered the land for sale to the government pursuant to Republic Act No. 6657 (RA 6657), the Comprehensive Agrarian Law of 1988. Accordingly, the Department of Agrarian Reform (DAR) acquired 19.1071 hectares of the entire area,[5] which was valued by LBP at ₱440,355.92. Respondents, however, rejected said amount. Consequently, the Department of Agrarian Reform Adjudication Board (DARAB)

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[1] *Rollo*, pp. 25-65.

[2] *Id.* at 69-77. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring.

[3] *Id.* at 78-79. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez, concurring.

[4] *Id.* at 328-343. Penned by Presiding Judge Ma. Yolanda M. Panaguiton-Gaviño.

[5] The remaining portion (0.8806 hectares) was excluded for being a road. See *id.* at 329.

conducted summary proceedings to determine just compensation for the land, but it resolved to adopt LBP's valuation. Hence, the same amount was deposited to respondents' credit as provisional compensation for the land.

On August 17, 2001, respondents filed a petition[6] for judicial determination of just compensation docketed as Civil Case No. 01-26876 before the RTC of Iloilo City. During the pendency of said petition, the trial court directed[7] LBP to recompute the value of the land. In compliance therewith, LBP filed a Manifestation[8] dated November 4, 2002 stating the recomputed value of the land from ₱440,355.92 to ₱503,148.97. Despite the increase, respondents still rejected the offer.

The RTC Ruling

On March 27, 2006, the RTC rendered the assailed Decision fixing the just compensation of the land at ₱669,962.53, thus:

> WHEREFORE, based on the foregoing premises, judgment is hereby rendered fixing the just compensation of the total area of the land actually taken in the amount of ₱669,962.53 and ordering the LBP to pay the plaintiffs Virginia Palmares, *et al*. the total sum of ₱669,962.53 as just compensation for the 19.1071 hectares taken by the government pursuant to R.A. 6657 plus 12% interest per annum from June, 1995 until full payment.
>
> Under Section 19 of R.A. 6657, plaintiffs are also entitled to an additional five percent (5%) cash payment by way of incentive for voluntarily offering the subject lot for sale.
>
> SO ORDERED.[9]

The trial court arrived at its own computation by getting the **average** of (1) the price per hectare as computed by LBP in

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[6] *Id.* at 202-205.

[7] *Id.* at 218.

[8] *Id.* at 219.

[9] *Id.* at 342-343.

accordance with DAR guidelines;[10] and (2) the market value of the land per hectare as shown in the 1997 tax declaration, *viz*:

	LBP price per ha. +	Market value	Average	x	Area		Value
Corn land	[₱17,773.91 +	₱39,760.00]/2 =	₱ 28,766.95	x	15.0234 has.	=	₱432,177.40
Rice land	[44,304.44 +	79,790.00]/2 =	62,047.22	x	3.6337 has.	=	225,460.98
Bamboo land	27,387.00		27,387.00	x	0.4500 has.	=	12,324.15
					Total Land Value		₱669,962.53[11]

LBP appealed to the CA arguing that the computation made by the RTC failed to consider the factors in determining just compensation enumerated under Section 17 of RA 6657, which reads:

SEC. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

The CA Ruling

On August 28, 2007, the appellate court affirmed the just compensation fixed by the RTC as having been arrived at in consonance with Section 17 of RA 6657 and pertinent DAR Administrative Orders. It emphasized that the determination of just compensation in eminent domain proceedings is essentially a judicial function and, in the exercise thereof, courts should be given ample discretion and should not be delimited by mathematical formulas.

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[10] DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Circular No. 11, Series of 1994, and its implementing guidelines.

[11] *Rollo,* pp. 186-187.

The CA modified the award of twelve percent (12%) interest to apply only to the remaining balance of the just compensation in the amount of ₱229,606.61, considering that LBP had already previously deposited in the name of respondents the amount of ₱440,355.92 corresponding to its valuation. Thus:

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The impugned Decision dated 27 March 2006 and Order dated 12 May 2006 are **AFFIRMED with the MODIFICATION** that petitioner is ordered to pay respondents the remaining balance of Php229,606.61 with legal interest thereon at 12% per annum computed from the taking of the property in June, 1995 until the amount shall have been fully paid.

SO ORDERED.[12]

In its motion for reconsideration[13] of the foregoing Decision, LBP insisted on its valuation of the subject land, which already factored in the market value per tax declaration in 1995 when the land was offered, in accordance with the formula[14] prescribed

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[12] *Rollo*, p. 76.

[13] *Id.* at 103-120.

[14] LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparative Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

under DAR Administrative Order (AO) No. 6, Series of 1992, as amended by AO No. 11, Series of 1994. The RTC, however, factored in the market value in the 1997 Tax Declaration of the subject land to arrive at its own valuation. Thus, LBP protested what it called the "double take up" of the market value per tax declaration.[15]

During the pendency of the said motion, LBP urgently moved[16] for the consolidation of the instant case with CA-G.R. CEB SP No. 01845 entitled *Republic of the Philippines, represented by the Department of Agrarian Reform v. Virginia Palmares, et al.* It appeared that the DAR had filed a separate appeal of the March 27, 2006 Decision of the RTC before a different division of the CA, which rendered a Decision on September 28, 2007, exactly a month after the promulgation of the assailed Decision in the instant case, reversing the RTC and ordering the remand of the case for determination of just compensation with the assistance of at least three (3) commissioners. LBP, however, failed to append a copy of the September 28, 2007 Decision in CA-G.R. SP No. 01845 both in its Urgent Manifestation with Motion to Consolidate before the appellate court, and in the instant petition before us.

LBP's motion for reconsideration of the August 28, 2007 Decision[17] of the CA and its Urgent Manifestation with Motion

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Where: CNI = Capitalized Net Income
AGP = One year's Average Gross Production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.
SP = Selling Price shall refer to average prices for the immediately preceding calendar year from the date of receipt of the claimfolder by LBP for processing secured from the Department of Agriculture and other appropriate regulatory bodies x x x
CO = Cost of Operations
.12 = Capitalization Rate

See *id.* at 106-108.

[15] *Id.* at 106-107.

[16] *Id.* at 127-132. Urgent Manifestation with Motion to Consolidate.

[17] *Id.* at 69-77.

to Consolidate were both denied in the June 29, 2010 Resolution,[18] for lack of merit.

Hence, LBP is now before us *via* the instant petition for review on *certiorari* alleging that –

1. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN **AFFIRMING WITH MODIFICATION** THE DECISION DATED MARCH 27, 2006 AND ORDER DATED MAY 12, 2006 OF THE SPECIAL AGRARIAN COURT (SAC), THE COMPENSATION FIXED BY THE SAC NOT BEING IN ACCORDANCE WITH THE LEGALLY PRESCRIBED VALUATION FACTORS UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 05, SERIES OF 1998 AND AS RULED BY THE SUPREME COURT IN THE CASES OF SPS. BANAL, G.R. NO. 143276 (JULY 20, 2004); CELADA, G.R. NO. 164876 (JANUARY 23, 2006); AND LUZ LIM, G.R. NO. 171941 (AUGUST 2, 2007).

2. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER LBP LIABLE FOR INTEREST OF 12% PER ANNUM.

3. THE COURT OF APPEALS EIGHTEENTH DIVISION ERRED IN NOT CONSOLIDATING THE CASE WITH CA-G.R. CEB SP NO. 01845 AND REMANDING THE CASE TO THE COURT *A QUO* CONSIDERING THE SEPTEMBER 28, 2007 DECISION OF THE SPECIAL TWENTIETH DIVISION OF THE COURT OF APPEALS IN CA-G.R. CEB-SP NO. 01845 TO REMAND THE CASE ON THE PETITION FILED BY THE DAR.[19]

The Court's Ruling

There is merit in the instant petition.

The principal basis of the computation for just compensation is Section 17 of RA 6657,[20] which enumerates the following factors to guide the special agrarian courts in the determination

[18] *Id.* at 78-79.

[19] *Id.* at 36.

[20] *Land Bank of the Philippines v. Barrido*, G.R. No. 183688, August 18, 2010, 628 SCRA 454, 458.

thereof: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.[21] Pursuant to its rule-making power under Section 49[22] of the same law, the DAR translated these factors into a basic formula.[23]

In the instant case, the trial court found to be "unrealistically low" the total valuation by LBP and the DAR in the amount of ₱440,355.92, which was computed on the basis of DAR AO No. 6, Series of 1992, as amended by DAR AO No. 11, Series of 1994. It then merely proceeded to add said valuation to the market value of the subject land as appearing in the 1997 Tax Declaration, and used the average of such values to fix the just compensation at ₱669,962.53.

In *Land Bank of the Philippines v. Barrido*,[24] where the RTC adopted a different formula, as in this case, by considering the average between the findings of the DAR using the formula laid down in Executive Order No. 228[25] and the market value of the property as stated in the tax declaration, we declared it to be an obvious departure from the mandate of the law and the

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[21] *Land Bank of the Philippines v. Heirs of Salvador Encinas*, G.R. No. 167735, April 18, 2012, 670 SCRA 52, 60.

[22] SEC. 49. *Rules and Regulations*. – The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act.

[23] *Land Bank of the Philippines v. Heirs of Encinas, supra* note 21.

[24] *Supra* note 20.

[25] *Declaring Full Land Ownership to Qualified Farmer Beneficiaries covered by Presidential Decree No. 27 (PD 27): Determining the Value of Remaining Unvalued Rice and Corn Lands subject to PD 27; and Providing for the Manner of Payment By the Farmer Beneficiary and Mode of Compensation to the Landowner*.

DAR administrative order. We emphasized therein that, while the determination of just compensation is essentially a judicial function vested in the RTC acting as a special agrarian court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules.

We agree with LBP in the instant case that the "double take up" of the market value per tax declaration as a valuation factor completely destroys the rationale of the formula laid down by the DAR. Thus, argues LBP:

> x x x Market value accounts for only 10% under the basic formula of LV = (CNI x 0.60) + (CS x .30) + (MV x .10). The 10% remains constant even under the variation formulae of LV = (CNI x .90) + (MV x .10) and LV = (CS x .90) + (MV x .10). It is only when the data constituting CS (Comparable sales) and CNI (capitalized net income) are absent that MV is given greater weight in determining just compensation. This is not obtaining in this case.
>
> x x x Greater weight is accorded CNI, 60% in the basic formula and 90% in the other variation thereof, and this is not without a valid reason. The valuation formula is heavily production based (net income) because that is the true value of what landowners lose when their lands are expropriated and what the farmers-beneficiaries gain when the lands are distributed to them. A more fundamental reason for the valuation formula of DAR is the fidelity to the principle of affordability, *i.e.* what the farmers-beneficiaries can reasonably afford to pay based on what the land can produce. It must be emphasized that agricultural lands are not residential lands, and farmers-beneficiaries are not given those lands so they can live there but so that they can till them. And since they generally live on hand to mouth existence, their source of repaying the just compensation is sourced from their income derived from the cultivation of the land. Thus, the double take up of market value as a valuation factor goes against the grain of affordability as the basic principle in the government-supervised valuation formula for agrarian reform.[26]

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[26] *Rollo*, pp. 107-109.

Considering, therefore, that the RTC based its valuation on a different formula and without taking into full consideration the factors set forth in Section 17 of RA 6657, we order the consolidation of the instant case (CA-G.R. CEB SP No. 01846) with CA-G.R. CEB SP No. 01845, where the appeal of the DAR from the March 27, 2006 Decision of the RTC was granted and said case was remanded to the trial court for determination of just compensation with the assistance of commissioners. We have held that consolidation of cases is proper when there is a real need to forestall, as in this case, the possibility of conflicting decisions being rendered in the cases.[27]

WHEREFORE, the petition is **GRANTED**. The August 28, 2007 Decision and June 29, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 01846 are hereby **REVERSED** and **SET ASIDE**. The case is **CONSOLIDATED** with CA-G.R. CEB SP No. 01845 and **REMANDED** to the Regional Trial Court of Iloilo City, Branch 34, which is directed to determine with dispatch, and with the assistance of at least three (3) commissioners, the just compensation due the respondents in accordance with Section 17 of Republic Act No. 6657 and the applicable DAR Administrative Orders.

SO ORDERED.

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

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[27] *Benguet Corporation, Inc. v. CA*, 247-A Phil. 356, 363 (1988).

THIRD DIVISION

[G.R. No. 194062. June 17, 2013]

REPUBLIC GAS CORPORATION, ARNEL U. TY, MARI ANTONETTE N. TY, ORLANDO REYES, FERRER SUAZO and ALVIN U. TY, *petitioners, vs.* **PETRON CORPORATION, PILIPINAS SHELL PETROLEUM CORPORATION, and SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* BEFORE A *CERTIORARI* PETITION MAY LIE; EXCEPTIONS.— [T]he general rule is that a motion for reconsideration is a condition *sine qua non* before a *certiorari* petition may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by re-examination of the legal and factual circumstances of the case. However, this rule is not absolute as jurisprudence has laid down several recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration, *viz.*: "(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."

2. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES); TRADEMARK INFRINGEMENT; COMMITTED BY THE MERE UNAUTHORIZED USE OF A CONTAINER BEARING A REGISTERED TRADEMARK IN CONNECTION WITH THE SALE, DISTRIBUTION OR ADVERTISING OF GOODS OR SERVICES WHICH IS LIKELY TO CAUSE CONFUSION AMONG THE CONSUMERS.— Section 155 of R.A. No. 8293 identifies the acts constituting trademark infringement x x x. [T]he Court in a very similar case, made it categorically clear that the mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers or consumers can be considered as trademark infringement. Here, petitioners have actually committed trademark infringement when they refilled, without the respondents' consent, the LPG containers bearing the registered marks of the respondents. As noted by respondents, petitioners' acts will inevitably confuse the consuming public, since they have no way of knowing that the gas contained in the LPG tanks bearing respondents' marks is in reality not the latter's LPG product after the same had been illegally refilled. The public will then be led to believe that petitioners are authorized refillers and distributors of respondents' LPG products, considering that they are accepting empty containers of respondents and refilling them for resale.

3. ID.; ID.; UNFAIR COMPETITION; DEFINED AS THE PASSING OFF OR ATTEMPTING TO PASS OFF UPON THE PUBLIC OF THE GOODS OR BUSINESS OF ONE PERSON AS THE GOODS OR BUSINESS OF ANOTHER WITH THE END AND PROBABLE EFFECT OF DECEIVING THE PUBLIC.— Section 168.3, in relation to Section 170, of R.A. No. 8293 describes the acts constituting unfair competition x x x. From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and

probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Thus, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor. In the present case, respondents pertinently observed that by refilling and selling LPG cylinders bearing their registered marks, petitioners are selling goods by giving them the general appearance of goods of another manufacturer.

4. ID.; CORPORATION CODE; PRIVATE CORPORATIONS; CORPORATE OFFICERS AND DIRECTORS; CANNOT HIDE BEHIND THE CLOAK OF THE SEPARATE CORPORATE PERSONALITY OF THE CORPORATION TO ESCAPE CRIMINAL LIABILITY.— [T]his Court finds that there is sufficient evidence to warrant the prosecution of petitioners for trademark infringement and unfair competition, considering that petitioner Republic Gas Corporation, being a corporation, possesses a personality separate and distinct from the person of its officers, directors and stockholders. Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime. Veritably, the CA appropriately pointed out that petitioners, being in direct control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime. Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.

APPEARANCES OF COUNSEL

Dulay & Ty Law Offices for petitioners.
Villaraza Cruz Marcelo & Angangco for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners seeking the reversal of the Decision[1] dated July 2, 2010, and Resolution[2] dated October 11, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 106385.

Stripped of non-essentials, the facts of the case, as summarized by the CA, are as follows:

Petitioners Petron Corporation ("Petron" for brevity) and Pilipinas Shell Petroleum Corporation ("Shell" for brevity) are two of the largest bulk suppliers and producers of LPG in the Philippines. Petron is the registered owner in the Philippines of the trademarks GASUL and GASUL cylinders used for its LGP (sic) products. It is the sole entity in the Philippines authorized to allow refillers and distributors to refill, use, sell, and distribute GASUL LPG containers, products and its trademarks. Pilipinas Shell, on the other hand, is the authorized user in the Philippines of the tradename, trademarks, symbols or designs of its principal, Shell International Petroleum Company Limited, including the marks SHELLANE and SHELL device in connection with the production, sale and distribution of SHELLANE LPGs. It is the only corporation in the Philippines authorized to allow refillers and distributors to refill, use, sell and distribute SHELLANE LGP (sic) containers and products. Private respondents, on the other hand, are the directors and officers of Republic Gas Corporation ("REGASCO" for brevity), an entity duly licensed to

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[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Stephen Cruz, concurring; *rollo*, pp. 7-24.

[2] *Id.* at 26-27.

engage in, conduct and carry on, the business of refilling, buying, selling, distributing and marketing at wholesale and retail of Liquefied Petroleum Gas ("LPG").

LPG Dealers Associations, such as the Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc. and Totalgaz Dealers Association, received reports that certain entities were engaged in the unauthorized refilling, sale and distribution of LPG cylinders bearing the registered tradenames and trademarks of the petitioners. As a consequence, on February 5, 2004, Genesis Adarlo (hereinafter referred to as Adarlo), on behalf of the aforementioned dealers associations, filed a letter-complaint in the National Bureau of Investigation ("NBI") regarding the alleged illegal trading of petroleum products and/or underdelivery or underfilling in the sale of LPG products.

Acting on the said letter-complaint, NBI Senior Agent Marvin E. De Jemil (hereinafter referred to as "De Jemil") was assigned to verify and confirm the allegations contained in the letter-complaint. An investigation was thereafter conducted, particularly within the areas of Caloocan, Malabon, Novaliches and Valenzuela, which showed that several persons and/or establishments, including REGASCO, were suspected of having violated provisions of Batas Pambansa Blg. 33 (B.P. 33). The surveillance revealed that REGASCO LPG Refilling Plant in Malabon was engaged in the refilling and sale of LPG cylinders bearing the registered marks of the petitioners without authority from the latter. Based on its General Information Sheet filed in the Securities and Exchange Commission, REGASCO's members of its Board of Directors are: (1) Arnel U. Ty – President, (2) Marie Antoinette Ty – Treasurer, (3) Orlando Reyes – Corporate Secretary, (4) Ferrer Suazo and (5) Alvin Ty (hereinafter referred to collectively as private respondents).

De Jemil, with other NBI operatives, then conducted a test-buy operation on February 19, 2004 with the former and a confidential asset going undercover. They brought with them four (4) empty LPG cylinders bearing the trademarks of SHELLANE and GASUL and included the same with the purchase of J&S, a REGASCO's regular customer. Inside REGASCO's refilling plant, they witnessed that REGASCO's employees carried the empty LPG cylinders to a refilling station and refilled the LPG empty cylinders. Money was then given as payment for the refilling of the J&S's empty cylinders

which included the four LPG cylinders brought in by De Jemil and his companion. Cash Invoice No. 191391 dated February 19, 2004 was issued as evidence for the consideration paid.

After leaving the premises of REGASCO LPG Refilling Plant in Malabon, De Jemil and the other NBI operatives proceeded to the NBI headquarters for the proper marking of the LPG cylinders. The LPG cylinders refilled by REGASCO were likewise found later to be underrefilled.

Thus, on March 5, 2004, De Jemil applied for the issuance of search warrants in the Regional Trial Court, Branch 24, in the City of Manila against the private respondents and/or occupants of REGASCO LPG Refilling Plant located at Asucena Street, Longos, Malabon, Metro Manila for alleged violation of Section 2 (c), in relation to Section 4, of B.P. 33, as amended by PD 1865. In his sworn affidavit attached to the applications for search warrants, Agent De Jemil alleged as follows:

> "x x x.
>
> "4. Respondent's REGASCO LPG Refilling Plant-Malabon is not one of those entities authorized to refill LPG cylinders bearing the marks of PSPC, Petron and Total Philippines Corporation. A Certification dated February 6, 2004 confirming such fact, together with its supporting documents, are attached as Annex "E" hereof.
>
> 6. For several days in the month of February 2004, the other NBI operatives and I conducted surveillance and investigation on respondents' REGASCO LPG refilling Plant-Malabon. Our surveillance and investigation revealed that respondents' REGASCO LPG Refilling Plant-Malabon is engaged in the refilling and sale of LPG cylinders bearing the marks of Shell International, PSPC and Petron.
>
> x x x.
>
> 8. The confidential asset and I, together with the other operatives of [the] NBI, put together a test-buy operation. On February 19, 2004, I, together with the confidential asset, went undercover and executed our test-buy operation. Both the confidential assets and I brought with us four (4) empty LPG cylinders branded as Shellane and Gasul. x x x in order to

have a successful test buy, we decided to "ride-on" our purchases with the purchase of Gasul and Shellane LPG by J & S, one of REGASCO's regular customers.

9. We proceeded to the location of respondents' REGASCO LPG Refilling Plant-Malabon and asked from an employee of REGASCO inside the refilling plant for refill of the empty LPG cylinders that we have brought along, together with the LPG cylinders brought by J & S. The REGASCO employee, with some assistance from other employees, carried the empty LPG cylinders to a refilling station and we witnessed the actual refilling of our empty LPG cylinders.

10. Since the REGASCO employees were under the impression that we were together with J & S, they made the necessary refilling of our empty LPG cylinders alongside the LPG cylinders brought by J & S. When we requested for a receipt, the REGASCO employees naturally counted our LPG cylinders together with the LPG cylinders brought by J & S for refilling. Hence, the amount stated in Cash Invoice No. 191391 dated February 19, 2004, equivalent to Sixteen Thousand Two Hundred Eighty-Six and 40/100 (Php16,286.40), necessarily included the amount for the refilling of our four (4) empty LPG cylinders. x x x.

11. After we accomplished the purchase of the illegally refilled LPG cylinders from respondents' REGASCO LPG Refilling Plant-Malabon, we left its premises bringing with us the said LPG cylinders. Immediately, we proceeded to our headquarters and made the proper markings of the illegally refilled LPG cylinders purchased from respondents' REGASCO LPG Refilling Plant-Malabon by indicating therein where and when they were purchased. Since REGASCO is not an authorized refiller, the four (4) LPG cylinders illegally refilled by respondents' REGASCO LPG Refilling Plant-Malabon, were without any seals, and when [weighed], were under-refilled. Photographs of the LPG cylinders illegally refilled from respondents' REGASCO LPG Refilling Plant-Malabon are attached as Annex "G" hereof. x x x."

After conducting a personal examination under oath of Agent De Jemil and his witness, Joel Cruz, and upon reviewing their sworn affidavits and other attached documents, Judge Antonio M. Eugenio,

Presiding Judge of the RTC, Branch 24, in the City of Manila found probable cause and correspondingly issued Search Warrants Nos. 04-5049 and 04-5050.

Upon the issuance of the said search warrants, Special Investigator Edgardo C. Kawada and other NBI operatives immediately proceeded to the REGASCO LPG Refilling Station in Malabon and served the search warrants on the private respondents. After searching the premises of REGASCO, they were able to seize several empty and filled Shellane and Gasul cylinders as well as other allied paraphernalia.

Subsequently, on January 28, 2005, the NBI lodged a complaint in the Department of Justice against the private respondents for alleged violations of Sections 155 and 168 of Republic Act (RA) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On January 15, 2006, Assistant City Prosecutor Armando C. Velasco recommended the dismissal of the complaint. The prosecutor found that there was no proof introduced by the petitioners that would show that private respondent REGASCO was engaged in selling petitioner's products or that it imitated and reproduced the registered trademarks of the petitioners. He further held that he saw no deception on the part of REGASCO in the conduct of its business of refilling and marketing LPG. The Resolution issued by Assistant City Prosecutor Velasco reads as follows in its dispositive portion:

> "WHEREFORE, foregoing considered, the undersigned finds the evidence against the respondents to be insufficient to form a well-founded belief that they have probably committed violations of Republic Act No. 9293. The DISMISSAL of this case is hereby respectfully recommended for insufficiency of evidence."

On appeal, the Secretary of the Department of Justice affirmed the prosecutor's dismissal of the complaint in a Resolution dated September 18, 2008, reasoning therein that:

> "x x x, the empty Shellane and Gasul LPG cylinders were brought by the NBI agent specifically for refilling. Refilling the same empty cylinders is by no means an offense in itself – it being the legitimate business of Regasco to engage in the

refilling and marketing of liquefied petroleum gas. In other words, the empty cylinders were merely filled by the employees of Regasco because they were brought precisely for that purpose. They did not pass off the goods as those of complainants' as no other act was done other than to refill them in the normal course of its business.

"In some instances, the empty cylinders were merely swapped by customers for those which are already filled. In this case, the end-users know fully well that the contents of their cylinders are not those produced by complainants. And the reason is quite simple – it is an independent refilling station.

"At any rate, it is settled doctrine that a corporation has a personality separate and distinct from its stockholders as in the case of herein respondents. To sustain the present allegations, the acts complained of must be shown to have been committed by respondents in their individual capacity by clear and convincing evidence. There being none, the complaint must necessarily fail. As it were, some of the respondents are even gainfully employed in other business pursuits. x x x."[3]

Dispensing with the filing of a motion for reconsideration, respondents sought recourse to the CA through a petition for *certiorari*.

In a Decision dated July 2, 2010, the CA granted respondents' *certiorari* petition. The *fallo* states:

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **GRANTED**. The assailed Resolution dated September 18, 2008 of the Department of Justice in I.S. No. 2005-055 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.[4]

Petitioners then filed a motion for reconsideration. However, the same was denied by the CA in a Resolution dated October 11, 2010.

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

[4] *Id.* at 24. (Emphasis in the original.)

Accordingly, petitioners filed the instant Petition for Review on *Certiorari* raising the following issues for our resolution:

Whether the Petition for *Certiorari* filed by RESPONDENTS should have been denied outright.

Whether sufficient evidence was presented to prove that the crimes of Trademark Infringement and Unfair Competition as defined and penalized in Section 155 and Section 168 in relation to Section 170 of Republic Act No. 8293 (The Intellectual Property Code of the Philippines) had been committed.

Whether probable cause exists to hold INDIVIDUAL PETITIONERS liable for the offense charged.[5]

Let us discuss the issues *in seriatim*.

Anent the first issue, the general rule is that a motion for reconsideration is a condition *sine qua non* before a *certiorari* petition may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by re-examination of the legal and factual circumstances of the case.[6]

However, this rule is not absolute as jurisprudence has laid down several recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration, *viz.*:

(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;

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[5] *Id.* at 38.

[6] *Medado v. Heirs of the Late Antonio Consing,* G.R. No. 186720, February 8, 2012, 665 SCRA 534, 547.

(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.[7]

In the present case, the filing of a motion for reconsideration may already be dispensed with considering that the questions raised in this petition are the same as those that have already been squarely argued and passed upon by the Secretary of Justice in her assailed resolution.

Apropos the second and third issues, the same may be simplified to one core issue: whether probable cause exists to hold petitioners liable for the crimes of trademark infringement and unfair competition as defined and penalized under Sections 155 and 168, in relation to Section 170 of Republic Act (R.A.) No. 8293.

Section 155 of R.A. No. 8293 identifies the acts constituting trademark infringement as follows:

Section 155. *Remedies; Infringement.* – **Any person who shall, without the consent of the owner of the registered mark**:

155.1 **Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark of the same container or a dominant feature thereof in connection with**

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[7] *HPS Software and Communication Corporation, et al. v. Philippine Long Distance Telephone Company (PLDT), et al.*, G.R. Nos. 170217 & 170694, December 10, 2012. (Emphasis supplied.)

> **the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive**; or
>
> 155.2 Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.[8]

From the foregoing provision, the Court in a very similar case, made it categorically clear that the mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers or consumers can be considered as trademark infringement.[9]

Here, petitioners have actually committed trademark infringement when they refilled, without the respondents' consent, the LPG containers bearing the registered marks of the respondents. As noted by respondents, petitioners' acts will inevitably confuse the consuming public, since they have no way of knowing that the gas contained in the LPG tanks bearing respondents' marks is in reality not the latter's LPG product

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[8] (Emphasis and underscoring supplied.)

[9] *Ty v. De Jemil*, G.R. No. 182147, December 15, 2010, 638 SCRA 671, 689.

after the same had been illegally refilled. The public will then be led to believe that petitioners are authorized refillers and distributors of respondents' LPG products, considering that they are accepting empty containers of respondents and refilling them for resale.

As to the charge of unfair competition, Section 168.3, in relation to Section 170, of R.A. No. 8293 describes the acts constituting unfair competition as follows:

Section 168. *Unfair Competition, Rights, Regulations and Remedies*. x x x.

168.3 In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

xxx xxx xxx

Section 170. *Penalties*. Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon

the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public.[10]

Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Thus, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.[11]

In the present case, respondents pertinently observed that by refilling and selling LPG cylinders bearing their registered marks, petitioners are selling goods by giving them the general appearance of goods of another manufacturer.

What's more, the CA correctly pointed out that there is a showing that the consumers may be misled into believing that the LPGs contained in the cylinders bearing the marks "GASUL" and "SHELLANE" are those goods or products of the petitioners when, in fact, they are not. Obviously, the mere use of those LPG cylinders bearing the trademarks "GASUL" and "SHELLANE" will give the LPGs sold by REGASCO the general appearance of the products of the petitioners.

In sum, this Court finds that there is sufficient evidence to warrant the prosecution of petitioners for trademark infringement and unfair competition, considering that petitioner Republic Gas Corporation, being a corporation, possesses a personality separate and distinct from the person of its officers, directors and stockholders.[12]

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[10] *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd. and Sports Concept & Distributor, Inc.*, G.R. No. 169974, April 20, 2010, 618 SCRA 531, 555.

[11] *McDonald's Corporation and McGeorge Food Industries, Inc. v. L.C. Big Mak Burger, Inc., et al.*, 480 Phil. 402, 440 (2004).

[12] *Kukan International Corporation v. Hon. Amor Reyes, et al.*, G.R. No. 182729, September 29, 2010, 631 SCRA 596, 617-618.

Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.[13] Veritably, the CA appropriately pointed out that petitioners, being in direct control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime. Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.[14]

WHEREFORE, premises considered, the petition is hereby **DENIED** and the Decision dated July 2, 2010 and Resolution dated October 11, 2010 of the Court of Appeals in CA-G.R. SP No. 106385 are **AFFIRMED**.

SO ORDERED.

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

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[13] *Ching v. Secretary of Justice*, 517 Phil. 151, 178 (2006).

[14] *Rollo*, p. 23.

EN BANC

[Adm. Case No. 7332. June 18, 2013]

EDUARDO A. ABELLA, *complainant, vs.* **RICARDO G. BARRIOS, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; THE LAWYER'S COMPLIANCE WITH THE RULES PROVIDED THEREIN SHOULD BE CONSIDERED IN DETERMINING HIS MORAL FITNESS TO CONTINUE IN THE PRACTICE OF LAW.—** [Rules 1.01 and 1.03, Canon 1, and Rule 6.02, Canon 6 of the Code of Professional Responsibility] which are contained under Chapter 1 of the Code, delineate the lawyer's responsibility to society: Rule 1.01 engraves the overriding prohibition against lawyers from engaging in any unlawful, dishonest, immoral and deceitful conduct; Rule 1.03 proscribes lawyers from encouraging any suit or proceeding or delaying any man's cause for any corrupt motive or interest; meanwhile, Rule 6.02 is particularly directed to lawyers in government service, enjoining them from using one's public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interests to interfere with public duties. It is well to note that a lawyer who holds a government office may be disciplined as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer. In this light, a lawyer's compliance with and observance of the above-mentioned rules should be taken into consideration in determining his moral fitness to continue in the practice of law.

2. **ID.; ATTORNEYS; PRACTICE OF LAW; THE POSSESSION OF GOOD MORAL CHARACTER IS BOTH A CONDITION PRECEDENT AND A CONTINUING REQUIREMENT TO WARRANT ADMISSION TO THE BAR AND TO RETAIN MEMBERSHIP IN THE LEGAL PROFESSION.—** "[T]he possession of good moral character is both a condition precedent and a continuing requirement to

warrant admission to the Bar and to retain membership in the legal profession." This proceeds from the lawyer's duty to observe the highest degree of morality in order to safeguard the Bar's integrity. Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

3. ID.; ID.; IMMORAL CONDUCT AND GROSS MISCONDUCT; DEFINED.— Jurisprudence illumines that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It treads the line of grossness when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency. On the other hand, gross misconduct constitutes "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."

4. REMEDIAL LAW; RULES OF COURT; ATTORNEYS AND ADMISSION TO BAR; GROSS IMMORAL CONDUCT OR GROSS MISCONDUCT; A LAWYER MAY BE SUSPENDED OR DISBARRED IF FOUND GUILTY THEREOF; CASE AT BAR.— Section 27, Rule 138 of the Rules of Court states that when a lawyer is found guilty of gross immoral conduct or gross misconduct, he may be suspended or disbarred x x x. Thus, as respondent's violations clearly constitute gross immoral conduct and gross misconduct, his disbarment should come as a matter of course. However, the Court takes judicial notice of the fact that he had already been disbarred in a previous administrative case, entitled *Sps. Rafols, Jr. v. Ricardo G. Barrios, Jr.*, which therefore precludes the Court from duplicitously decreeing the same. In view of the foregoing, the Court deems it proper to, instead, impose a fine in the amount of ₱40,000.00 in order to penalize respondent's transgressions as discussed herein and to equally deter the commission of the same or similar acts in the future.

5. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; REGARDED AS A PRIVILEGE ACCORDED ONLY TO THOSE WHO CONTINUE TO MEET ITS EXACTING QUALIFICATIONS.— [T]he Court staunchly reiterates the principle that the practice of law is a privilege accorded only to those who continue to meet its exacting qualifications. Verily, for all the prestige and opportunity which the profession brings lies the greater responsibility to uphold its integrity and honor. Towards this purpose, it is quintessential that its members continuously and unwaveringly exhibit, preserve and protect moral uprightness in their activities, both in their legal practice as well as in their personal lives. Truth be told, the Bar holds no place for the deceitful, immoral and corrupt.

APPEARANCES OF COUNSEL

Rowena G. Madrid for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] for disbarment filed by Eduardo A. Abella (complainant) against Ricardo G. Barrios, Jr. (respondent) based on the latter's violation of Rules 1.01 and 1.03, Canon 1, and Rule 6.02, Canon 6 of the Code of Professional Responsibility (Code).

The Facts

On January 21, 1999, complainant filed an illegal dismissal case against Philippine Telegraph and Telephone Corporation (PT&T) before the Cebu City Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC), docketed as RAB-VII-01-0128-99. Finding merit in the complaint, Labor Arbiter (LA) Ernesto F. Carreon, through a Decision dated May 13, 1999,[2] ordered PT&T to pay complainant ₱113,100.00 as

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

[2] *Id.* at 12-17.

separation pay and ₱73,608.00 as backwages. Dissatisfied, PT&T appealed the LA's Decision to the NLRC.

In a Decision dated September 12, 2001,[3] the NLRC set aside LA Carreon's ruling and instead ordered PT&T to reinstate complainant to his former position and pay him backwages, as well as 13th month pay and service incentive leave pay, including moral damages and attorney's fees. On reconsideration, it modified the amounts of the aforesaid monetary awards but still maintained that complainant was illegally dismissed.[4] Consequently, PT&T filed a petition for *certiorari* before the Court of Appeals (CA).

In a Decision dated September 18, 2003 (CA Decision),[5] the CA affirmed the NLRC's ruling with modification, ordering PT&T to pay complainant separation pay in lieu of reinstatement. Complainant moved for partial reconsideration, claiming that all his years of service were not taken into account in the computation of his separation pay and backwages. The CA granted the motion and thus, remanded the case to the LA for the same purpose.[6] On July 19, 2004, the CA Decision became final and executory.[7]

Complainant alleged that he filed a Motion for Issuance of a Writ of Execution before the Cebu City RAB on October 25, 2004. At this point, the case had already been assigned to the new LA, herein respondent. After the lapse of five (5) months, complainant's motion remained unacted, prompting him to file a Second Motion for Execution on March 3, 2005. Eight (8) months thereafter, still, there was no action on complainant's motion. Thus, on November 4, 2005, complainant proceeded

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[3] *Id.* at 19-25. Penned by Presiding Commissioner Irenea E. Ceniza, with Commissioner Edgardo M. Enerlan, concurring.

[4] *Id.* at 27-30. See Resolution dated October 8, 2002, penned by Presiding Commissioner Irenea E. Ceniza, with Commissioners Edgardo M. Enerlan and Oscar S. Uy, concurring.

[5] *Id.* at 33-45. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

[6] *Id.* at 52-53. See Resolution dated June 22, 2004.

[7] *Id.* at 54.

to respondent's office to personally follow-up the matter. In the process, complainant and respondent exchanged notes on how much the former's monetary awards should be; however, their computations differed. To complainant's surprise, respondent told him that the matter could be "easily fixed" and thereafter, asked "*how much is mine?*" Despite his shock, complainant offered the amount of ₱20,000.00, but respondent replied: "*make it ₱30,000.00.*" By force of circumstance, complainant acceded on the condition that respondent would have to wait until he had already collected from PT&T. Before complainant could leave, respondent asked him for some cash, compelling him to give the latter ₱1,500.00.[8]

On November 7, 2005, respondent issued a writ of execution,[9] directing the sheriff to proceed to the premises of PT&T and collect the amount of ₱1,470,082.60, inclusive of execution and deposit fees. PT&T moved to quash[10] the said writ which was, however, denied through an Order dated November 22, 2005.[11] Unfazed, PT&T filed a Supplemental Motion to Quash dated December 2, 2005,[12] the contents of which were virtually identical to the one respondent earlier denied. During the hearing of the said supplemental motion on December 9, 2005, respondent rendered an Order[13] in open court, recalling the first writ of execution he issued on November 7, 2005. He confirmed the December 9, 2005 Order through a Certification dated December 14, 2005[14] and eventually, issued a new writ of execution[15] wherein complainant's monetary awards were reduced from ₱1,470,082.60 to ₱114,585.00, inclusive of execution and deposit fees.

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[8] *Id.* at 304-305, 352.

[9] *Id.* at 55-59.

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

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

[12] *Id.* at 69-71.

[13] *Id.* at 72-76.

[14] *Id.* at 77-78.

[15] *Id.* at 79-81.

Aggrieved, complainant filed on December 16, 2005 a Petition for Injunction before the NLRC. In a Resolution dated March 14, 2006,[16] the NLRC annulled respondent's December 9, 2005 Order, stating that respondent had no authority to modify the CA Decision which was already final and executory.[17]

Aside from instituting a criminal case before the Office of the Ombudsman,[18] complainant filed the instant disbarment complaint[19] before the Integrated Bar of the Philippines (IBP), averring that respondent violated the Code of Professional Responsibility for (*a*) soliciting money from complainant in exchange for a favorable resolution; and (*b*) issuing a wrong decision to give benefit and advantage to PT&T.

In his Comment,[20] respondent denied the abovementioned accusations, maintaining that he merely implemented the CA Decision which did not provide for the payment of backwages. He also claimed that he never demanded a single centavo from complainant as it was in fact the latter who offered him the amount of ₱50,000.00.

The Recommendation and Action of the IBP

In the Report and Recommendation dated May 30, 2008,[21] IBP Investigating Commissioner Rico A. Limpingco (Commissioner Limpingco) found that respondent tried to twist the meaning of the CA Decision out of all logical, reasonable and grammatical context in order to favor PT&T.[22] He further

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[16] *Id.* at 83-93.

[17] *Id.* at 91-92, 353.

[18] *Id.* at 353. Complainant filed a criminal complaint against respondent before the Office of the Ombudsman, which issued an order of preventive suspension and thereafter indicted him for violation of Section 3(c) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act."

[19] *Id.* at 1-11.

[20] *Id.* at 101-115.

[21] *Id.* at 420-429.

[22] *Id.* at 428.

observed that the confluence of events in this case shows that respondent deliberately left complainant's efforts to execute the CA Decision unacted upon until the latter agreed to give him a portion of the monetary award thereof. Notwithstanding their agreement, immoral and illegal as it was, respondent later went as far as turning the proceedings into some bidding war which eventually resulted into a resolution in favor of PT&T. In this regard, respondent was found to be guilty of gross immorality and therefore, Commissioner Limpingco recommended that he be disbarred.[23]

On July 17, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-345 (IBP Resolution),[24] adopting and approving Commissioner Limpingco's recommendation, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby 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 for Respondent's violation of the provisions of the Code of Professional Responsibility, the Anti-Graft and Corrupt Practices Act and the Code of Ethical Standards for Public Officials and Employees, Atty. Ricardo G. Barrios, Jr. is hereby ***DISBARRED.***[25]

Issue

The sole issue in this case is whether respondent is guilty of gross immorality for his violation of Rules 1.01 and 1.03, Canon 1, and Rule 6.02, Canon 6 of the Code.

The Court's Ruling

The Court concurs with the findings and recommendation of Commissioner Limpingco as adopted by the IBP Board of Governors.

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[23] *Id.* at 428-429.

[24] *Id.* at 419.

[25] *Id.*

The pertinent provisions of the Code provide:

> CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
>
> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> xxx xxx xxx
>
> Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.
>
> CANON 6 — THESE CANONS SHALL APPLY TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.
>
> xxx xxx xxx
>
> Rule 6.02 — A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

The above-cited rules, which are contained under Chapter 1 of the Code, delineate the lawyer's responsibility to society: Rule 1.01 engraves the overriding prohibition against lawyers from engaging in any unlawful, dishonest, immoral and deceitful conduct; Rule 1.03 proscribes lawyers from encouraging any suit or proceeding or delaying any man's cause for any corrupt motive or interest; meanwhile, Rule 6.02 is particularly directed to lawyers in government service, enjoining them from using one's public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interests to interfere with public duties.[26] It is well to note that a lawyer who holds a government office may be disciplined as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.[27]

In this light, a lawyer's compliance with and observance of the above-mentioned rules should be taken into consideration

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[26] *Olazo v. Tinga*, A.M. No. 10-5-7-SC, December 7, 2010, 637 SCRA 1, 10.

[27] *Id.* at 8, citing *Vitriolo v. Dasig*, A.C. No. 4984, 448 Phil. 199, 2007 (2003).

in determining his moral fitness to continue in the practice of law.

To note, "the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession."[28] This proceeds from the lawyer's duty to observe the highest degree of morality in order to safeguard the Bar's integrity.[29] Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.[30]

In this case, records show that respondent was merely tasked to re-compute the monetary awards due to the complainant who sought to execute the CA Decision which had already been final and executory. When complainant moved for execution – twice at that – respondent slept on the same for more than a year. It was only when complainant paid respondent a personal visit on November 4, 2005 that the latter speedily issued a writ of execution three (3) days after, or on November 7, 2005. Based on these incidents, the Court observes that the sudden dispatch in respondent's action soon after the aforesaid visit casts serious doubt on the legitimacy of his denial, *i.e.*, that he did not extort money from the complainant.

The incredulity of respondent's claims is further bolstered by his complete turnaround on the quashal of the November 7, 2005 writ of execution.

To elucidate, records disclose that respondent denied PT&T's initial motion to quash through an Order dated November 22, 2005 but later reversed such order in open court on the basis of PT&T's supplemental motion to quash which was a mere

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[28] *Ventura v. Samson*, A.C. No. 9608, November 27, 2012, 686 SCRA 430, 440, citing *Zaguirre v. Castillo*, 446 Phil. 861, 870 (2003).

[29] *Advincula v. Macabata*, A.C. No. 7204, March 7, 2007, 517 SCRA 600, 609.

[30] *Id.*, citing *Rural Bank of Silay, Inc. v. Pilla*, 403 Phil. 1, 9 (2001).

rehash of the first motion that was earlier denied. As a result, respondent recalled his earlier orders and issued a new writ of execution, reducing complainant's monetary awards from ₱1,470,082.60 to ₱114,585.00, inclusive of execution and deposit fees.

To justify the same, respondent contends that he was merely implementing the CA Decision which did not provide for the payment of backwages. A plain and cursory reading, however, of the said decision belies the truthfulness of the foregoing assertion. On point, the dispositive portion of the CA Decision reads:

> **WHEREFORE,** the petition is **PARTIALLY GRANTED**. The decision of public respondent National Labor Relations Commission dated September 12, 2001 and October 8, 2002 are **AFFIRMED** with the **MODIFICATION**, ordering petitioner PT&T to pay private respondent Eduardo A. Abella separation pay (as computed by the Labor Arbiter) in lieu of reinstatement.[31]

Noticeably, the CA affirmed with modification the NLRC's rulings dated September 12, 2001 and October 8, 2002 which **both explicitly awarded backwages and other unpaid monetary benefits** to complainant.[32] The only modification was with respect to the order of reinstatement as pronounced in both NLRC's rulings which was changed by the CA to separation pay in view of the strained relations between the parties as well as the supervening removal of complainant's previous position.[33] In other words, the portion of the NLRC's rulings which awarded backwages and other monetary benefits subsisted and the modification pertained only to the CA's award of separation pay in lieu of the NLRC's previous order of reinstatement. This conclusion, palpable as it is, can be easily deduced from the records.

Lamentably, respondent tried to distort the findings of the CA by quoting portions of its decision, propounding that the

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[31] *Rollo,* p. 45.

[32] *Id.* at 24 and 29.

[33] *Id.* at 44-45.

CA's award of separation pay denied complainant's entitlement to any backwages and other consequential benefits altogether. In his Verified Motion for Reconsideration of the IBP Resolution,[34] respondent stated:

> From the above quoted final conclusions, the Court is very clear and categorical in directing PT&T to pay complainant his separation pay ONLY in lieu of reinstatement. Clearly, the Court did not direct the PT&T to pay him his backwages, and other consequential benefits that were directed by the NLRC because he could no longer be reinstated to his previous position on the ground of strained relationship and his previous position had already gone, and no equivalent position that the PT&T could offer. x x x .

Fundamental in the realm of labor law is the rule that backwages are separate and distinct from separation pay in lieu of reinstatement and are awarded conjunctively to an employee who has been illegally dismissed.[35] There is nothing in the records that could confound the finding that complainant was illegally dismissed as LA Carreon, the NLRC, and the CA were all unanimous in decreeing the same. Being a labor arbiter, it is hardly believable that respondent could overlook the fact that complainant was entitled to backwages in view of the standing pronouncement of illegal dismissal. In this regard, respondent's defense deserves scant consideration.

Therefore, absent any cogent basis to rule otherwise, the Court gives credence and upholds Commissioner Limpingco's and the IBP Board of Governor's pronouncement of respondent's gross immorality. Likewise, the Court observes that his infractions constitute gross misconduct.

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[34] *Id.* at 368.

[35] "[A]n illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. **These two reliefs are separate and distinct from each other and are awarded conjunctively**." *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 144, citing *Siemens v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 100. (Emphasis supplied)

Jurisprudence illumines that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community.[36] It treads the line of grossness when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[37] On the other hand, gross misconduct constitutes "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."[38]

In this relation, Section 27, Rule 138 of the Rules of Court states that when a lawyer is found guilty of gross immoral conduct or gross misconduct, he may be suspended or disbarred:

> 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 the admission to practice, or for a willfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis and underscoring supplied)

Thus, as respondent's violations clearly constitute gross immoral conduct and gross misconduct, his disbarment should come as a matter of course. However, the Court takes judicial notice of the fact that he had already been disbarred in a previous administrative case, entitled *Sps. Rafols, Jr. v. Ricardo G.*

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[36] *Cojuangco, Jr. v. Palma*, 481 Phil. 646, 656 (2004).

[37] *Garrido v. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508, 518, citing *St. Louis University Laboratory High School (SLU-LHS) and Faculty and Staff v. Dela Cruz*, 531 Phil. 213, 224 (2006).

[38] *Sps. Whitson v. Atienza*, 457 Phil. 11, 18 (2003).

Barrios, Jr.,[39] which therefore precludes the Court from duplicitously decreeing the same. In view of the foregoing, the Court deems it proper to, instead, impose a fine in the amount of ₱40,000.00[40] in order to penalize respondent's transgressions as discussed herein and to equally deter the commission of the same or similar acts in the future.

As a final word, the Court staunchly reiterates the principle that the practice of law is a privilege[41] accorded only to those who continue to meet its exacting qualifications. Verily, for all the prestige and opportunity which the profession brings lies the greater responsibility to uphold its integrity and honor. Towards this purpose, it is quintessential that its members continuously and unwaveringly exhibit, preserve and protect moral uprightness in their activities, both in their legal practice as well as in their personal lives. Truth be told, the Bar holds no place for the deceitful, immoral and corrupt.

WHEREFORE, respondent Ricardo G. Barrios, Jr. is hereby found **GUILTY** of gross immoral conduct and gross misconduct in violation of Rules 1.01 and 1.03, Canon 1, and Rule 6.02, Canon 6 of the Code of Professional Responsibility. Accordingly, he is ordered to pay a **FINE** of ₱40,000.00.

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[39] A.C. No. 4973, March 15, 2010, 615 SCRA 206.

[40] In *Lahm III v. Labor Arbiter Mayor, Jr.* (A.C. No. 7430, February 15, 2012, 666 SCRA 1, 17-18), the Court applied Rule 140 of the Rules of Court to a disciplinary case involving a labor arbiter. Under Section 8 in relation to Section 11 of the same rule, a fine of ₱40,000.00 may be imposed for the serious charges of bribery and immorality:

SEC. 8. *Serious charges.* — Serious charges include:

1. Bribery, direct or indirect;

xxx xxx xxx

8. Immorality;

xxx xxx xxx

SEC.11. *Sanctions.— A.* If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

xxx xxx xxx

3. A **fine** of more than ₱20,000.00 but not exceeding **₱40,000.00**. (Emphasis and underscoring supplied)

[41] *National Bureau of Investigation v. Reyes*, 382 Phil. 872, 886 (2000).

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

EN BANC

[A.M. No. SCC-08-11-P. June 18, 2013]

CIVIL SERVICE COMMISSION, *complainant, vs.* **ISMAEL A. HADJI ALI, Court Stenographer I, Shari'a Circuit Court, Tubod, Lanao del Norte [Formerly A.M. No. 04-9-03-SCC] (Re: *Formal Charge by the Civil Service Commission vs. Ismael A. Hadji Ali, Court Stenographer I, Shari'a Circuit Court, Tubod, Lanao del Norte*),** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY; USE OF A SPURIOUS CIVIL SERVICE ELIGIBILITY, A CASE OF; PENALTY.— Respondent's representation that he himself took the Civil Service Examination when someone else took it for him constitutes Dishonesty. It bears noting that per CSC Memorandum Circular No. 15, Series of 1991, the use of spurious Civil Service eligibility constitutes Dishonesty, among others x x x. Time and again, we have stated that Dishonesty is a malevolent act

that has no place in the judiciary. No other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary. Respondent failed to observe the strict standards and behavior required of an employee in the judiciary. He has shown his unfitness for public office. Under the Civil Service Rules, Dishonesty is a grave offense punishable by dismissal that carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1)] and disqualification from re-employment in the government service.

APPEARANCES OF COUNSEL

Abdallah M. Casar for respondent.

R E S O L U T I O N

PER CURIAM:

Before the Court is an administrative case for Dishonesty against respondent Ismael A. Hadji Ali, Court Stenographer I at the Shari'a Circuit Court of Tubod, Lanao del Norte.

In connection with the respondent's appointment as Court Stenographer I at the Tubod, Lanao del Norte Shari'a Circuit Court, Arturo SJ. Panaligan, Director II of the Civil Service Commission (referred here as the CSC) Field Office at the Supreme Court, sent a formal request on September 12, 2001 to Macybel Alfaro-Sahi, Director IV of the CSC Regional Office No. IX at Cabantagan, Zamboanga City, for the confirmation of respondent's civil service eligibility. Respondent had represented that he took and passed the Civil Service Professional Examination held on May 11, 2001 in Zamboanga City (referred here as the test).[1] The director received the following reply:[2]

[1] *Rollo*, p. 34.

[2] *Id.* at 35.

Dear **Director Panaligan**:

This refers to your request for verification of the Career Service (Professional) eligibility of **Mr. ISMAEL A. HADJI ALI**, taken on May 11, 2000.

A perusal of the Picture Seat Plan (Copy enclosed for your reference) of the room where he took the examination reveals that his picture and signature are different from the one appearing in the Personal Data Sheet (PDS) attached to your request.

We therefore, do not confirm Mr. Hadji Ali's eligibility and shall take appropriate legal action against him.

Very truly yours,

(Sgd.)
MACYBEL ALFARO-SAHI
Director IV

On July 6, 2004, respondent was charged with Dishonesty:[3]

FORMAL CHARGE

Sir:

After thorough preliminary investigation, this Office finds that a *prima facie* case of ***Dishonesty*** exists against you, committed as follows:

> ***That you (true Ismael A. Hadji Ali), knowingly and unlawfully allowed somebody else to take the 11 May 2000 Career Service Examination (Professional) through the Computer-Assisted Test given in Zamboanga City, for and in your behalf, as shown in the attached machine copies of the Picture Seat Plan used during the aforesaid examination and your Personal Data Sheet accomplished on 22 February 2000.***
>
> ***CONTRARY TO CIVIL SERVICE LAW AND RULES.***
>
> xxx xxx xxx
>
> (Sgd.)
> **ROGELIO C. LIMARE**
> Director IV

[3] *Id.* at 2.

The CSC furnished the Office of the Chief Justice (referred here as OCJ) with a copy of the formal charge docketed as CSC Administrative Case No. D-04-15.

In a 1st Indorsement dated August 31, 2004, the OCJ referred the formal charge to the Office of the Court Administrator (referred here as OCA) for appropriate action.[4] The OCA docketed the charge as Administrative Matter No. 04-9-03-SCC, or *Civil Service Commission v. Ismael A. Ali*, and required respondent to file a Comment.[5]

In lieu of a Comment, respondent filed before the OCA a copy of the Answer[6] that he had submitted to the CSC Regional Office No. IX. He requested that it be treated as his Comment in Administrative Matter No. 04-9-03-SCC.[7]

Respondent denied he allowed another person to take the Civil Service Examination in his behalf. He insisted he himself took the test and obtained a passing grade of 86.76%. He pointed out that the test was supervised by CSC personnel and that before he was allowed to take the test, a supervisor had received and checked his written application and supporting documents that included his identification photographs. While he admitted that his Personal Data Sheet contained his true photo, he insinuated that his "true" photo on the Picture Seat Plan for the test had been replaced with that of another person's.[8] He argued that the CSC was already estopped from questioning his Civil Service eligibility as it had confirmed and approved his appointment as Court Stenographer I.[9]

On the Recommendation of the OCA,[10] the Court referred the case to the Executive Judge of the Regional Trial Court of

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[4] *Id.* at 1.

[5] *Id.* at 5.

[6] *Id.* at 7-10.

[7] *Id.* at 6.

[8] *Id.* at 8.

[9] *Id.* at 8-9.

[10] *Id.* at 18.

Zamboanga City for investigation, report, and recommendation. The Court further instructed the Executive Judge to require the CSC Regional Office No. IX to submit a report on its investigation in CSC Administrative Case No. D-04-15.[11]

Executive Judge Reynerio G. Estacio (referred here as Judge Estacio) set hearings on September 25, 2007; October 30, 2007; and November 27, 2007. Incidentally, he reported that the CSC no longer conducted an investigation in CSC Administrative Case No. D-04-15 on jurisdictional grounds.[12] During the hearings, Atty. Fitzgerald Robert Tan and Noemi Cunting of the CSC Regional Office No. IX appeared and testified for the CSC. Despite notice, respondent failed to appear.[13]

On June 30, 2008, the Court received Judge Estacio's Report and Recommendation.[14] The investigating judge found substantial evidence for respondent's dismissal from the service. He stated:

xxx xxx xxx

It is clear that the picture of the person and signature appearing on the Picture Seat Plan (Exhibit "A", *Rollo*, p. 35) do not resemble the picture and signature of the respondent as appearing in his Personal Data Sheet (Exhibit "B" and "B-3", *Rollo*, pp. 36-37). And the respondent does not really dispute this fact more so, in light of his allegation and which respondent would want us to believe that the picture pasted on the Picture Seat Plan must have been replaced by someone who wanted him removed. However, the undersigned has carefully examined the Picture Seat Plan, particularly the picture appearing on the space provided for the respondent, and found no indication whatsoever that the same has been tampered. As with the pictures of other examinees pasted thereon, the picture pasted on the space provided for the respondent, was found by the undersigned, neatly intact.

According to Ms. Cunting, the Chief of the Examination Services Division, the examinees are the ones who paste their respective

[11] *Id.* at 19.

[12] *Id.* at 90-91.

[13] *Id.* at 90.

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

pictures on the Picture Seat Plan (TSN, November 27, 2007, p. 8). Before they allow them to take the examination, they have to accomplish among others, the attendance sheet and the picture seat plan and they have to paste their respective pictures on the Picture Seat Plan (TSN, November 27, 2007, pp. 5-6).

The conclusion therefore, [sic] is inescapable that contrary to the respondent's assertion that it was he who took the subject examination, it was someone else who took the subject examination for him. And it is significant to note that even the signature affixed on the Examinee Attendance Sheet (*Rollo*, p. 27) and on the Picture Seat Plan (Exhibit "A"), is strikingly different from the respondent's signature affixed on his Personal Data Sheet (Exhibit "B" and "B-1"). The respondent never contested this finding. And he cannot now pretend that he was not given the opportunity to examine the questioned documents. He was notified of the scheduled hearings to afford him the opportunity to examine for himself the subject Picture Seat Plan, but as earlier stated, despite notice, he failed to appear, thereby bolstering his desperate position on the matter of the finding of the Civil Service Commission that the picture appearing and the signature affixed on the Picture Seat Plan are not really his and the conclusion that someone else (not the respondent) took the subject examination. The respondent even failed to point to anyone who could have been so excessively interested in his position that he or she had to resort to framing him up.

That there might have been mixing up of the pictures and signatures of the examinees, or that respondent might have submitted the wrong picture as he would also want to impress, was unlikely in light of the strict procedures observed by the supervising Civil Service Commission officials during examination. Thus, in *Cruz and Paitim v. CSC* (G.R. No. 144[4]64, November 27, 2001), the Hon. Supreme Court sustained the findings of the Civil Service Commission regarding the procedures being observed during examinations:

> It should be stressed that as a matter of procedure, the room examiners assigned to supervise the conduct of a Civil Service examination closely examine the picture submitted and affixed on the Picture Seat Plan (CSC Resolution No. 95-3694, Obedencio, Jaime A.) The examiners carefully compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. In cases where the examinee does not look like the person in the picture submitted

> and attached on the PSP, the examiner will not allow the said person to take the examination (CSC Resolution No. 95-5195, Taguinay, Ma. Theresa).[15]

The Court referred the Report and Recommendation to the OCA for evaluation.[16] In a Memorandum[17] dated October 3, 2008, then Court Administrator Jose P. Perez made a separate appreciation of the evidence on record and agreed with the findings and recommendation of the investigating judge.[18]

We accept the recommendation of the Executive Judge and the OCA.

The distinct differences between respondent's identification photos and signatures on his Personal Data Sheet and the Picture Seat Plan for the test give rise to the reasonable conclusion that another person had taken the Civil Service Examination in respondent's behalf.

Unfortunately for respondent, his claim that his "true" photo on the Picture Seat Plan was replaced subsequently carries no persuasive weight. As the OCA noted, he failed to submit evidence to substantiate this claim. Thus, the claim remains speculative and also unlikely. The investigating judge observed no indication that the Picture Seat Plan had been tampered with. We consider also that respondent offered no motive for unknown persons to meddle with his Civil Service eligibility.

As Judge Estacio pointed out, the incident in the present case is not new. In *Civil Service Commission v. Zenaida T. Sta. Ana*,[19] the Court found that Sta. Ana, Court Stenographer 1 at the Municipal Circuit Trial Court of Quezon-Licab, Nueva Ecija, had taken and passed the Career Service Professional Examination Computer Assisted Test on September 16, 1998 when, in fact,

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[15] *Id.* at 92-93.

[16] *Id.* at 104.

[17] *Id.* at 106-110.

[18] *Id.* at 108.

[19] 450 Phil. 59 (2003).

someone else had taken the test for her. Sta. Ana's administrative case arose when the CSC found out that her photo and signature on her Personal Data Sheet were different from those on the Picture Seat Plan. As with respondent, Sta. Ana sought to explain the disparity by saying that an unknown person had replaced her photo on the Picture Seat Plan. The Court rejected this explanation for the following reason:

> x x x However, this Court agrees with the observation of the executive judge that the irregularity should not be attributed to the CSC which had no motive in tampering with such documents. Even if such irregularity was attributable to error or oversight, respondent did not present any proof that it occurred during the examination and, thus, the CSC officials who supervised the exam enjoyed the presumption of regularity in the performance of their official duty. Besides, for the CSC to commit such a mistake –mixing up the pictures and signatures of examinees – was unlikely due to the strict procedures it follows during civil service examinations.[20]

Thus, we dismissed Sta. Ana from the service for Dishonesty.

Respondent's representation that he himself took the Civil Service Examination when someone else took it for him constitutes Dishonesty. It bears noting that per CSC Memorandum Circular No. 15, Series of 1991, the use of spurious Civil Service eligibility constitutes Dishonesty, among others:

> An act which includes the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, cheating, collusion, impersonation, or any other anomalous act which amounts to any violation of the Civil Service examination, has been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service.[21]

Time and again, we have stated that Dishonesty is a malevolent act that has no place in the judiciary. No other office in the

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

[21] *Civil Service Commission v. Cayobit*, 457 Phil. 452, 460 (2003).

government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.[22]

Respondent failed to observe the strict standards and behavior required of an employee in the judiciary. He has shown his unfitness for public office. Under the Civil Service Rules, Dishonesty is a grave offense punishable by dismissal that carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1)] and disqualification from re-employment in the government service.[23]

WHEREFORE, respondent **ISMAEL A. HADJI ALI** is found guilty of Dishonesty. He is **DISMISSED** from the service with forfeiture of retirement and other benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, 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.

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[22] See *Momongan v. Sumayo*, A.M. No. P-10-2767, April 12, 2011, 648 SCRA 26, 30; *Retired Employee, MTC, Sibonga, Cebu v. Manubag*, A.M. No. P-10-2833, December 14, 2010, 638 SCRA 86, 89-90; *Anonymous v. Curamen*, A.M. No. P-08-2549, June 18, 2010, 621 SCRA 212, 218-219; *Re: Spurious Certificate of Eligibility of Tessie G. Quires, Regional Trial Court, Office of the Clerk of Court, Quezon City*, 523 Phil. 21, 23 (2006); *Disapproved Appointment of Maricel A. Cubijano, Court Stenographer III, RTC-Br. 28, Lianga, Surigao del Sur*, 504 Phil. 517, 520 (2005).

[23] *Civil Service Commission v. Zenaida T. Sta. Ana*, *supra* note 20, at 69.

EN BANC

[G.R. No. 191877. June 18, 2013]

PHILIPPINE AMUSEMENT and GAMING CORPORATION (PAGCOR), *petitioner, vs.* **ARIEL R. MARQUEZ,** *respondent.*

[G.R. No. 192287. June 18, 2013]

IRENEO M. VERDILLO, *petitioner, vs.* **PHILIPPINE AMUSEMENT and GAMING CORPORATION (PAGCOR),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— [I]n petitions for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, only questions of law may be raised. It is not our function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. This rule, however, is not ironclad. We have consistently recognized several exceptional circumstances where we disregarded the aforesaid tenet and proceeded to review the findings of facts of the lower court such as when the findings of fact are conflicting or when the CA manifestly overlooked certain relevant and undisputed facts which, if properly considered, would justify a different conclusion. Considering the conflict in the factual findings of the CSC and of the CA, we rule on the factual issues as an exception to the general rule.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; IN AN ADMINISTRATIVE CASE, IT IS SUFFICIENT THAT THE RESPONDENT IS APPRISED OF THE SUBSTANCE OF THE CHARGE AGAINST HIM.— In *Dadubo v. Civil Service Commission,* the Court pronounced 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. It must be stressed that what the law requires is to simply inform the civil servant of the nature and cause of accusation against him in a clear and concise manner for the purpose of giving him the right to confront the allegations against him.

3. ID.; ID.; ID.; THE ESSENCE OF DUE PROCESS IS THAT A PARTY BE AFFORDED A REASONABLE OPPORTUNITY TO BE HEARD AND TO SUBMIT ANY EVIDENCE HE MAY HAVE IN SUPPORT OF HIS DEFENSE.— The essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. The law simply requires that the civil servant is informed of the nature and cause of accusation against him in a clear and concise manner to give the person a chance to answer the allegations intelligently.

4. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY, DEFINED; PENALTY.— Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service.

5. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE RULE; A FINDING OF GUILT IN AN

ADMINISTRATIVE CASE IS SUSTAINED AS LONG AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.— Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.

APPEARANCES OF COUNSEL

PAGCOR Internal Counsels for PAGCOR.

Abing Abrenica Dagcuta & Associates Law Office for Ariel Marquez and Ireneo M. Verdillo.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

The petition in G.R. No. 191877 seeks to reverse the October 9, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 106196, which set aside Resolution Nos. 08-0702[2] and 08-1858[3] of the Civil Service Commission (CSC) dismissing respondent Ariel R. Marquez from service for serious dishonesty, violation of office rules and regulations, and conduct prejudicial to the best interest of the service.

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[1] *Rollo* (G.R. No. 191877), pp. 58-77. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez concurring.

[2] *Id.* at 144-155.

[3] *Id.* at 157-161.

The petition in G.R. No. 192287 meanwhile, questions the July 21, 2009 CA Decision[4] in CA-G.R. SP No. 106961, which affirmed CSC Resolution Nos. 08-0931[5] and 08-2231, dismissing petitioner Ireneo M. Verdillo from service for serious dishonesty, violation of office rules and regulations, and conduct prejudicial to the best interest of the service.

The antecedent facts of the case are as follows:

Ariel R. Marquez and Ireneo M. Verdillo were both employed as dealers in the game of Craps at the Philippine Amusement and Gaming Corporation (PAGCOR) at the Casino Filipino Heritage. The game of Craps is initiated when a player, called a "shooter," rolls a pair of dice that should pass a demarcation line set across the table. As a rule, at least one of the two dice must come in contact with the rubber wall at the end of the table. When these conditions are met, the dealer known as a stickman[6] considers the throw a "good dice" and the pay-off dealer pays the winner. Otherwise, the throw is invalidated, and the stickman must announce "no dice." The conditions are imposed to prevent manipulation of the results of the throw.

On November 26, 2006, Marquez and Verdillo alternately manned Craps Table No. 30, together with Joselito Magahis and Virgilio Ruanto. At around 2:46 a.m., Mr. Johnny Cheng[7] began playing at Craps Table No. 30 with Verdillo as stickman and Marquez as the pay-off dealer. While doing her rounds, Acting Pit Supervisor Eulalia Yang noticed that on several occasions Verdillo made a "good dice" call even though not one of the dice from the player's throw hit the table's rubber wall. Alarmed by what she saw, Yang reported the matter to

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[4] *Rollo* (G.R. No. 192287), pp. 38-59. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) with Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Baltazar-Padilla concurring.

[5] CA *rollo* (CA-G.R. SP No. 106961), pp. 65-78.

[6] Said dealer is called a stickman because among others he holds a stick up to signify that the game has started and that the shooter may throw the dice.

[7] Also referred to as Mr. Johnny Ching.

the Casino Management. Thereafter, Mr. Ariston Tangalin, the Acting Casino Shift Manager, requested to review the Closed Circuit Television (CCTV) footage of the incident. After watching the footage, the members of the Casino Management and the investigators from the Corporate Investigation Unit were convinced that several void throws were declared as "good dice" in Table No. 30 while the same was being manned by Marquez and Verdillo. Senior Branch Surveillance Officer Wilbur U. Isabelo also submitted a report to the Surveillance Unit, stating that

> Based on video footage, there were [eight (8)] occasions when the dices did not [touch] the rubber wall. Dealer Stickman Verdillo should have declared the games void or no dice but instead declared the games as good dice after which, Dealer Pay-off paid the bets of the customer, a certain Mr. Johnny Ching. It was noted that whenever A/PS Eulalia Yang, Dealers Joselito Magahis and Virgilio Ruanto were monitoring the transactions on said table, Mr. Ching would throw the dices normally which touched the rubber wall. It was also observed that Mr. Ching was positioned near the Stickman.
>
> Hereunder is the chronological fraudulent transactions which transpired from 0246H – 0314H November 27, 2006 at table #30 (Craps):
>
> 0246H : Customer Mr. Johnny Ching started playing at table #30.
>
> 0258:05H : Game was no dice. Customer's placed bet of ₱2,000 on point 5 was paid with ₱3,000.
>
> 0258:41H : Game was no dice. Customer's placed bet of ₱1,000 on point 6 was paid with ₱1,100.
>
> 0259:23H : Game was no dice. Customer's placed bet of ₱4,000 on point 5 was paid with ₱5,000.
>
> 0259:36H : Game was no dice. Customer's placed bet of ₱2,000 on point 6 was paid with ₱2,200.
>
> 0302:57H : Game was no dice. Customer's placed bet of ₱4,000 on point 6 was paid with ₱4,400.
>
> 0303:23H : Game was no dice. Customer's placed bet of ₱1,000 on point 8 was paid with ₱1,100.

0303:39H : Game was no dice. Customer's placed bet of ₱2,000 on point 9 was paid with ₱2,500.

0305:18H : Game was no dice. Customer's placed bet of ₱4,000 on point 9 was paid with ₱5,000.

0314H : Customer Mr. Ching stopped playing.[8]

On November 28, 2006, after conducting a fact-finding investigation, the Internal Security Investigation Section found that a *prima facie* case exists against Marquez and Verdillo. Hence, they were administratively charged with conspiring with Cheng in defrauding PAGCOR of an undetermined amount of money[9] and were required to submit a written explanation. In his *Sinumpaang Salaysay,*[10] Marquez admitted that he was aware of several erroneous calls made by Verdillo on the dice throws, but he still paid out winnings to Cheng. Meanwhile, Verdillo also submitted a written explanation, denying the accusations against him. On December 13, 2006, they were invited by the Branch Management Panel (BMP) to a hearing to explain their side of the controversy.[11]

Later, the BMP rendered its decision finding both Marquez and Verdillo liable for fraudulent transactions and recommended their dismissal from service, as follows:

Though it was only in November 26, 2006 that the anomaly was discovered, the information and revelations pronounced by PM Senatin[12] since August 2005 and the proof from the footages, are strong evidence to prove that there is something going on with craps.

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[8] *Rollo* (G.R. No. 191877), pp. 169-170.

[9] *Id.* at 180.

[10] *Id.* at 171-179.

[11] *Id.* at 182; CA *rollo* (CA-G.R. SP No. 106961), p. 145.

[12] Pit Manager Luis Senatin testified during the investigation that based on the records Mr. Cheng had won straight for five months from October 2005 to February 2006 and then again for five months straight from April 2006 to August 2006, which was statistically improbable. During those times he was winning, dealers Verdillo, Marquez and Felix Cajayon were on the table. Also, Mr. Cheng usually plays when he is on break and usually has already won by the time he gets back. [*Rollo* (G.R. No. 191877), p. 187.]

It was observed and viewed in the CCTV footages that whenever there are other customers watching his play, Mr. Cheng throws the dice with force passing through the center of the table in such a way that it produces a sound to be heard loudly when it touches the rubber wall. However, when both Marquez and Verdillo are around, the dice is thrown at the side of the table barely touching its rubber walling.

Dealer Pay-off may overrule the decision of the stickman. However, during the game on eight (8) occasions, Dealer Marquez did not become observant considering that Dealer Verdillo is not good in craps nor did not insist on calling his attention for the bad calls.

Foregoing considered, the Panel resolved **to dismiss Dealers Ireneo Verdillo and Ariel Marquez for the offense of "FRAUDULENT TRANSACTIONS AT CRAPS TO THE DISADVANTAGE OF THE HOUSE."**[13] (Emphasis and underscoring in the original.)

The BMP's recommendation was adopted by the Adjudication Committee and its findings were then forwarded to PAGCOR's Board of Directors for final approval. Senior Managing Head of the Human Resource and Development Department, Visitacion F. Mendoza, later sent a Memorandum to Marquez and Verdillo informing them that the Board had approved the Adjudication Committee's recommendation to dismiss them from the service due to "Dishonesty, Grave violation of company rules and regulations, Conduct prejudicial to the best interest of the company, and Loss of trust and confidence" for conspiring with a co-dealer and a customer in defrauding the house on numerous occasions on November 27, 2006.[14]

Marquez and Verdillo filed their motions for reconsideration, but both were denied by PAGCOR for lack of merit.[15]

Aggrieved, they appealed their dismissal from the service to the CSC.

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[13] *Rollo* (G.R. No. 191877), pp. 189-190.

[14] *Id.* at 191; *CA rollo* (CA-G.R. No. SP No. 106961), p. 146.

[15] *Id.* at 200; *rollo* (G.R. No. 192287), p. 73.

In Resolution No. 08-0702, the CSC dismissed Marquez's appeal for lack of merit. The decretal portion of the Resolution reads:

WHEREFORE, the appeal of Ariel R. Marquez is hereby **DISMISSED** for lack of merit. The decision of the PAGCOR Board of Directors dated February 1, 2007, finding respondent-appellant guilty of the administrative offenses of Dishonesty, Grave Violation of Company Rules and Regulations, Conduct Prejudicial to the Best Interest of the Company, Loss of Trust and Confidence and Conspiring with a co-Dealer and a Customer in Defrauding the House and imposing upon him the penalty of dismissal from the service and the decision of the same Board denying his Motion for Reconsideration is hereby **MODIFIED**. Accordingly, this Commission finds that respondent-appellant is guilty of the administrative offenses of Serious Dishonesty, Violation of Office Rules and Regulations and Conduct Prejudicial to the Best Interest of the Service and imposes the penalty of dismissal from the service with all its accessory penalties of forfeiture of retirement benefits, perpetual disqualification from re-employment in government service, bar from taking civil service examinations in the future and cancellation of civil service eligibilities.[16]

Likewise, in Resolution No. 08-0931, the appeal of Verdillo was dismissed as follows:

WHEREFORE, the appeal of Ireneo M. Verdillo, Dealer, Philippine Amusement and Gaming Corporation (PAGCOR), Manila is hereby **DISMISSED** for lack of merit. The decision of the PAGCOR Board of Directors dated February 1, 2007, finding respondent-Appellant guilty of the administrative offenses of Dishonesty, Grave Violation of Company Rules and Regulations, Conduct Prejudicial to the Best Interest of the Company, Loss of Trust and Confidence and Conspiring with a co-Dealer and a Customer in Defrauding the House and imposing upon him the penalty of dismissal from the service and the decision of the same Board denying his Motion for Reconsideration is hereby **MODIFIED**. Accordingly, this Commission finds that respondent-Appellant is guilty of the administrative offenses of Serious Dishonesty, Violation of Office Rules and Regulations and Conduct Prejudicial to the Best Interest of the Service and imposes

[16] *Id.* at 155.

the penalty of dismissal from the service with all its accessory penalties of forfeiture of retirement benefits, perpetual disqualification from reemployment in government service and cancellation of all eligibilities.[17]

The CSC held that it has reasonable ground to believe that Marquez and Verdillo were involved in a conspiracy to manipulate the game of Craps on November 27, 2006. It found that the statements made by Marquez and Verdillo, the CCTV footage, the investigation report, and the statements of the employees, all belie their innocence. The CSC further pointed out that it was incumbent upon Marquez to make sure that Verdillo's calls were in order, and it was Verdillo's duty to verify that his declarations on the dice throws were accurate. Hence, it concluded that together with Cheng, they were one in their goal to manipulate the game of Craps to the detriment of PAGCOR. The CSC denied their motions for reconsideration.

Not satisfied, Marquez filed a petition for review with the CA arguing that he was not accorded his right to due process and that there was no substantial evidence to support a finding of his guilt in the administrative charge.

In CA-G.R. SP No. 106196, the CA rendered a decision in his favor, to wit:

WHEREFORE, premises considered, the assailed resolutions dated February 1, 2007 and May 12, 2007 are **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered ordering respondent to reinstate petitioner to his former position and to pay his backwages and benefits from March 28, 2007 onwards.

SO ORDERED.[18]

The CA held that there is no administrative charge of conspiracy under the Uniform Rules of Administrative Cases in the Civil Service. It found Marquez's *Sinumpaang Salaysay* credible and ruled that there was no dishonesty on his part,

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[17] CA *rollo* (CA-G.R. SP No. 106961), p. 78.

[18] *Rollo* (G.R. No. 191877), pp. 76-77.

much less a conspiracy with Verdillo and Cheng to defraud PAGCOR. The CA observed that the fact that as stated in his sworn statement, Marquez called Verdillo's attention to his erroneous call only on the second time that Verdillo made an erroneous call, cannot be interpreted that he was dishonest or engaged in a conspiracy. Rather, it shows that he was negligent in the performance of his duties.

Meanwhile, Verdillo filed with the CA a separate petition for review which was docketed as CA-G.R. SP No. 106961. He argued that PAGCOR's Decision was not supported by the evidence on record. He also averred that he was denied due process of law.

The CA, however, denied Verdillo's petition, as follows:

> WHEREFORE, the petition is hereby DENIED and the assailed Civil Service Commission Resolution Nos. 080931 and 082231 are AFFIRMED.
>
> SO ORDERED.[19]

In that case, the CA found that Verdillo did not judiciously perform all the acts expected of him as a dealer-stickman and all acts necessary to protect PAGCOR's interest. The CA found that there exists substantial evidence to support the conclusion that Verdillo is guilty of the offense of violation of office rules and regulations and conduct prejudicial to the best interest of the service. The CA also concluded that the circumstances present in the case supply more than reasonable grounds to believe that Verdillo conspired with Marquez and Cheng to defraud PAGCOR.

Unsatisfied, PAGCOR filed before this Court a petition for review on *certiorari,* docketed as G.R. No. 191877, arguing that the CA erred in finding that the notice of charges against Marquez was not in accordance with the Uniform Rules on Administrative Cases. It contends that the designation of the offense in an administrative case is not controlling and one may be found guilty of another offense if it is based on the same

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[19] *Rollo* (G.R. No. 192287), pp. 58-59.

facts subject of the original designation. Furthermore, PAGCOR asserts that the CA erred in simply brushing aside the evidence considered by the CSC, stressing that the factual findings of administrative bodies are controlling on the reviewing authority.

On the other hand, Marquez maintains that there was no substantial evidence to support the findings of the CSC. He insists that conspiracy must be proved as sufficiently as the crime itself through clear and convincing evidence. In this case, there was no unity of purpose in the execution of the fraudulent acts since he called Verdillo's attention whenever he made bad calls. Marquez claims that the charges against him are based mainly on suspicions and are not supported by facts.

For his part, Verdillo also filed before this Court a petition for review on *certiorari* docketed as G.R. No. 192287. He argues that PAGCOR failed to present substantial evidence to justify his dismissal from service. He contends that his sworn statement cannot be considered as substantial evidence to support the offense of violation of office rules and regulations and conduct prejudicial to the best interest of the service as there was no admission on his part that he violated house rules. Finally, he stresses that the existence of conspiracy was not established. Thus, he prays for his reinstatement to his former position without loss of seniority rights and other benefits as well as back wages.

Essentially, the issue in this case is whether Marquez and Verdillo are guilty of dishonesty, violation of office rules and regulations and conduct prejudicial to the best interest of the service to justify their dismissal from service.

It is worthy to state that in petitions for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, only questions of law may be raised. It is not our function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must

not involve an examination of the probative value of the evidence presented by the litigants.[20]

This rule, however, is not ironclad. We have consistently recognized several exceptional circumstances where we disregarded the aforesaid tenet and proceeded to review the findings of facts of the lower court such as when the findings of fact are conflicting or when the CA manifestly overlooked certain relevant and undisputed facts which, if properly considered, would justify a different conclusion.[21] Considering the conflict in the factual findings of the CSC and of the CA, we rule on the factual issues as an exception to the general rule.

Marquez was administratively charged for conspiring with Verdillo and Cheng to defraud PAGCOR in CA-G.R. SP No. 106196. The CA observed that there was a disparity between the offense charged and the offenses for which Marquez was found guilty — dishonesty, grave violation of company rules and regulations, conduct prejudicial to the best interest of the company and loss of trust and confidence. The CA concluded that PAGCOR failed to comply with the requirement of administrative due process since Marquez was not duly apprised of the proper charges which led to his dismissal.

We do not agree.

Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service provides as follows:

> Section 16. ***Formal Charge***. – After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer

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[20] *University of San Agustin Employees' Union-FFW v. CA*, 520 Phil. 400, 409 (2006).

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

the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

xxx xxx xxx

In *Dadubo v. Civil Service Commission*,[22] the Court pronounced 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. It must be stressed that what the law requires is to simply inform the civil servant of the nature and cause of accusation against him in a clear and concise manner for the purpose of giving him the right to confront the allegations against him.

In the present case, the CSC found that a formal charge was issued identifying the administrative offenses committed by Marquez. A Memorandum[23] dated November 28, 2006 was issued charging Marquez of conspiring with Verdillo and Cheng in defrauding PAGCOR during void gaming transactions at Table No. 30 on several occasions. He was then required to explain in writing within 72 hours from receipt of the Memorandum. Records also show that he participated in the investigation by executing a *Sinumpaang Salaysay*. Thereafter, the BMP of Casino Filipino-Heritage conducted a formal investigation and invited him to attend the meeting on December 13, 2006 to explain his side. Clearly, Marquez was sufficiently informed of the basis of the charge against him and was able to defend himself. He was given every opportunity to present his side of the case.

The failure to designate the offense specifically and with precision is of no moment in this administrative case. The essence

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[22] G.R. No. 106498, June 28, 1993, 223 SCRA 747, 754.

[23] *Rollo* (G.R. No. 191877), p. 180.

of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. The law simply requires that the civil servant is informed of the nature and cause of accusation against him in a clear and concise manner to give the person a chance to answer the allegations intelligently. Evidently, PAGCOR substantially complied with the requirements of due process for administrative cases.

With regard to Verdillo's contention that he would be in a better position to defend himself if confronted with the CCTV footage, we find the same to be without merit. There is more than substantial evidence which proves that he indeed declared void transactions as valid on at least eight occasions. We note that the CCTV footage is not the only evidence against him. Acting Pit Supervisor Yang actually witnessed that several clearly void transactions were declared by Verdillo as good and valid.[24] Even Verdillo's sworn statement reveals that he did not see the dice hit the rubber wall. In fact, he mentioned in his statement that he used his sense of hearing in determining whether or not the dice hit the rubber wall.

The CSC, as affirmed by the CA in CA-G.R. SP No. 106961, found sufficient evidence to support a finding of dishonesty, grave violation of company rules and regulations, conduct prejudicial to the best interest of the company and loss of trust and confidence. The circumstances in this case all point to the conclusion that Verdillo conspired with Marquez and Cheng. Verdillo declared several dice throws of Cheng as "good dice" even if they were void. Marquez then paid Cheng his winnings in huge amounts. Whenever a customer or employee would pass the Craps table, Cheng would change his dice throws and would even comment "*may multo*" (there is a ghost) when Acting Pit Supervisor Yang would approach the craps table. These anomalous transactions were not only witnessed by Acting Pit Supervisor Yang, but were also confirmed by the CCTV footage.

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[24] *Rollo* (G.R. No. 192287), p. 49.

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[25] Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service.[26]

As regards Marquez, evidence shows that on eight occasions, Marquez paid customer Cheng despite the fact that the latter's throws were void. He admitted that he knew that on several occasions the throws made should have been declared void and that it was incumbent upon him to make sure that the calls were in order. This duty could not have escaped him as he had been a dealer for five years. Hence, it is our view that the conduct of Marquez amounts to serious dishonesty, and not merely negligence, since his dishonest act was committed not just a few times but repeatedly or eight times over a very short period of seven minutes, a statistical improbability.

Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[27] We find that Marquez and Verdillo failed to present any cogent reason for the Court to

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[25] *Japson v. Civil Service Commission*, G.R. No. 189479, April 12, 2011, 648 SCRA 532, 543-544.

[26] *Civil Service Commission v. Dasco*, A.M. No. P-07-2335, September 22, 2008, 566 SCRA 114, 122.

[27] *Velasquez v. Hernandez*, G.R. Nos. 150732 & 151095, August 31, 2004, 437 SCRA 357, 369.

deviate from the rule that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.

All told, we find that there was substantial evidence for the charges against Marquez and Verdillo, warranting their dismissal from service.

WHEREFORE, the petition in G.R. No. 191877 is **GRANTED**. The October 9, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 106196 is hereby **REVERSED** and **SET ASIDE**. Consequently, Resolution Nos. 08-0702 and 08-1858 of the Civil Service Commission dismissing Ariel R. Marquez from service are **REINSTATED and UPHELD**.

The petition in G.R. No. 192287 is **DENIED**. The July 21, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 106961, which affirmed Civil Service Commission Resolution Nos. 08-0931 and 08-2231 dismissing Ireneo M. Verdillo from service, is **AFFIRMED**.

With costs against the petitioner in G.R. No. 192287.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.*, concur.

Del Castillo, J., no part.

EN BANC

[G.R. No. 195842. June 18, 2013]

ROBERTO B. REBLORA, *petitioner, vs.* **ARMED FORCES OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DECISIONS AND RESOLUTIONS OF THE COMMISSION ON AUDIT ARE REVIEWABLE ONLY THRU A SPECIAL CIVIL ACTION FOR *CERTIORARI* BEFORE THE SUPREME COURT.— Decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, as is the present petition, but thru a special civil action of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. Section 2 of Rule 64, which implements the mandate of Section 7 of Article IX-A of the Constitution, is clear on this x x x. The distinction between an appeal under Rule 45 and a special civil action under Rule 64 in relation to Rule 65 could not be anymore overstated in remedial law—the most profound of which, arguably, is the difference of one to the other with respect to the permissible scope of inquiry in each. Indeed, by restricting the review of judgments or resolutions of the COA only thru a special civil action for *certiorari* before this Court, the Constitution and the Rules of Court precisely limits the permissible scope of inquiry in such cases only to errors of jurisdiction or grave abuse of discretion. Hence, unless tainted with grave abuse of discretion, simple errors of judgment committed by the COA cannot be reviewed—even by this Court.

2. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 1638; GOVERNS THE RETIREMENT AND SEPARATION OF MILITARY OFFICERS AND ENLISTED PERSONNEL.— PD No. 1638, as amended, is the law that governs the retirement and separation of military officers and enlisted personnel. With respect to the retirement of military officers and enlisted personnel, the law provides for two kinds: *compulsory retirement* and *optional retirement*.

Both kinds of retirements contemplate the satisfaction of a certain age or length of service requirement by, or the fulfillment of some other conditions on the part of, a military officer or personnel. Retirement, however, is deemed *compulsory* if, upon the satisfaction of the conditions prescribed by law, retirement of the concerned officer takes place by operation of law; while retirement is deemed *optional* if, despite the satisfaction of such conditions, retirement would only take place when elected by the officer himself.

3. ID.; ID.; ID.; COMPULSORY RETIREMENT; TAKES PLACE WHEN A MILITARY OFFICER OR ENLISTED PERSONNEL HAS REACHED THE AGE OF FIFTY-SIX OR HAS RENDERED THIRTY YEARS OF ACTIVE SERVICE, WHICHEVER COMES LATER; ACTIVE SERVICE, DEFINED.— Section 5(a) of PD No. 1638 explicitly provides that a military officer or enlisted personnel who has reached the **age of fifty-six (56)** or who has rendered **thirty (30) years of active service**, whichever comes later, shall be compulsorily retired. The term "**active service**" as used in Section 5(a) of PD No. 1638 is defined by Section 3 of the same law. Section 3 of PD No. 1638, as amended, defines "**active service**" of an officer or enlisted personnel as "*service rendered by him as a commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines*" **and** "*service rendered by him as a civilian official or employee in the Philippine government prior to the date of his separation or retirement from the Armed Forces of the Philippines…no[t]…longer than his active military service.*" Applying the foregoing provisions of PD No. 1638 to the circumstances surrounding petitioner's military service, this Court discerns that the COA was correct in holding that petitioner should be considered as compulsorily retired on 22 May 2000 for purposes of computing his retirement benefits under the same law.

APPEARANCES OF COUNSEL

Reblora Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This is an appeal via a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated 20 January 2010 and Resolution[3] dated 31 January 2011 of the Commission on Audit (COA), which denied the petitioner's claim for additional retirement benefit.

The facts are as follows:

Petitioner's Service Background

The petitioner is a retired Captain of the Philippine Navy.[4] He was born on 22 May 1944.[5]

Prior to entering military service, the petitioner rendered civilian government service as a Barrio Development Worker at the Department of the Interior and Local Government (DILG) from 6 January 1969 to 20 July 1974.[6]

On 21 May 1973, the petitioner entered military service as a Probationary Ensign in the Philippine Navy. He was called to active duty effective 26 August 1974.[7]

On 25 January 1996, the Armed Forces of the Philippines (AFP) officially confirmed the incorporation of petitioner's civilian government service at the DILG with his length of active

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 3-22.

[2] COA Decision No. 2010-009, *id.* at 92-96. The Decision was signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[3] COA Decision No. 2011-014, *id.* at 27-31. The Resolution was signed by Chairman Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

[4] *Id.* at 4.

[5] *Id.* at 33.

[6] *Id.*

[7] *Id.*

service in the military[8] pursuant to Section 3 of Presidential Decree (PD) No. 1638,[9] as amended by PD No. 1650,[10] which provides:

Section 3. **For purposes of this Decree active service of a military person shall mean active service rendered by him as a commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines and service rendered by him as a civilian official or employee in the Philippine government prior to the date of his separation or retirement from the Armed Forces of the Philippines**, for which military and/or civilian service he shall have received pay from the Philippine Government and/or such others as may hereafter be prescribed by law as active service; **Provided, That for purposes of retirement, he shall have rendered at least ten (10) years of active service as an officer or enlisted man in the Armed Forces of the Philippines; and Provided further, That no period of such civilian government service longer than his active military service shall be credited for purposes of retirement**. Service rendered as a cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines may be credited for retirement purposes at the option of the officer or enlisted man concerned, subject to such rules and regulations as the Minister of National Defense shall prescribe. (Emphasis supplied)

On 22 May 2003, at the age of 59 and after a total of thirty-four (34) years of active service, the petitioner was compulsorily retired from the military by virtue of General Order No. 142.[11] He was, at that time, already ranked as a Commander in the Philippine Navy.[12]

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[8] Per Special Orders No. 18, *id.* at 35.

[9] Entitled "*Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and for Other Purposes*"

[10] Entitled "*Amending Sections 3 and 5 of Presidential Decree No. 1638 entitled 'Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and for Other Purposes'*"

[11] Issued on 31 January 2003, *rollo* p. 48.

[12] *Id.*

Claim of Retirement Benefit

After his retirement, petitioner claimed retirement benefits under Section 17 of PD No. 1638, as amended *viz*:

Section 17. When an officer or enlisted man is retired from the Armed Forces of the Philippines under the provisions of this Decree, he shall, at his option, receive a gratuity equivalent to one (1) month of base and longevity pay of the grade next higher than the permanent grade last held for every year of service payable in one (1) lump sum or a **monthly retirement pay equivalent to two and one-half percent (2 ½%) for each year of active service rendered, but not exceeding eighty-five percent (85%) of the monthly base and longevity pay of the grade next higher than the permanent grade last held**: Provided, That an officer retired under Section 11 or 12 shall be entitled to benefits computed on the basis of the base and longevity pay of the permanent grade last held: Provided, further That such retirement pay shall be subject to adjustment on the prevailing scale of base pay of military personnel in the active service: Provided, furthermore, **That when he retires, he shall be entitled, at his option, to receive in advance and in lump sum his annual retirement pay for the first three (3) years and thereafter receive his annual retirement pay payable in equal monthly installment as they accrue**: Provided, finally, That if he dies within the three-year period following his retirement and is survived by beneficiaries as defined in his Decree, the latter shall only receive the derivative benefits thereunder starting the first month after the aforecited three-year period. Nothing in this Section shall be construed as authorizing adjustment of pay, or payment of any differential in retirement pay to officers and enlisted men who are already retired prior to the approval of this Decree as a result of increases in salary of those in the active duty may have their retirement pension adjusted based on the rank they hold and on the prevailing pay of military personnel in the active service, at the time of the termination of their recall to active duty. (Emphasis supplied)

Petitioner chose to avail of the **monthly retirement pay** with the option to receive in advance and in **lump sum an amount equivalent to three (3) years worth thereof** for the first three years after his retirement.

The AFP granted petitioner's claim of retirement benefits and immediately paid the latter the sum of ₱722,297.16 as advance lump sum.[13]

In computing for petitioner's retirement benefit, however, the AFP did not include petitioner's civilian government service at the DILG.[14] The AFP only considered petitioner's *actual* military service *i.e.*, covering the period between 21 May 1973 up to 22 May 2003 or a period of only thirty (30) years.

The petitioner disagreed with computation of the AFP. He insisted that the computation of his retirement benefit should include the period of his civilian government service at the DILG immediately before he entered military service, *i.e.* from 6 January 1969 up to 20 May 1973, or for a total of four (4) years and five (5) months. It is argued that the computation of the AFP does not reflect the true length of his military service of thirty-four (34) years and that it is, in fact, a full four (4) years short. Petitioner thus claims that he is entitled to ₱135,991.81 in additional retirement benefit.[15]

After an unsuccessful bid to obtain a favorable legal opinion from the AFP Judge Advocate General, the petitioner requested assistance from the COA for the collection of his claimed additional retirement benefit.[16]

Decision of the COA and this Petition

On 20 January 2010, the COA rendered a Decision denying petitioner's claim.

In substance, the COA agreed with the petitioner that his civilian service at the DILG should and ought to be included as part of his active service in the military for purposes of computing his retirement benefits under PD No. 1638. However, since his civilian service should be included as part of his active service

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[13] *Id.* at 92.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 9-10.

in the military, the COA opined that petitioner should also have been considered as compulsorily retired on 22 May 2000 and not on 22 May 2003.

The COA explained that as of 22 May 2000, petitioner has already reached the age of fifty-six (56) with a total of thirty-one (31) years in active service, inclusive of his four years in the DILG, which fulfilled the conditions for compulsory retirement under Section 5(a) of PD No. 1638, as amended.[17] Verily, the COA found that, applying the provisions of PD No. 1638 as amended, petitioner was not actually underpaid but was rather overpaid his retirement benefit in the amount of ₱77,807.16.[18] The COA thus disposed:

WHEREFORE, premises considered, this Commission is of the view that the applicable law in the case of Captain Reblora is PD No. 1638 as amended by PD No. 1650 and not RA No. 340 as the latter law applies only to those who retired prior to September 10, 1979. Thus, the limitation on the term of service of 56 years of age or upon accumulation of 30 years of satisfactory active service as provided under the said law should be complied with. Accordingly, the payment of his retirement benefit should be in accordance with PD No. 1638.

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[17] *Id.*

[18] *Id.* at 95. The COA held that petitioner's benefits should be computed based on the pay scale for the year 2000 (per National Budget Circular No. 468) instead of the year 2003. Thus recomputed, petitioner's benefits would be as follows:

Base Pay	₱ 15,400.00
Add: Longevity Pay	7,700.00
	23,100.00
Multiply by (31 yrs x 2.5%)	77.5%
	17,902.50
Multiply by 3 years (in months)	36
Adjusted Lump Sum	**644,490.00**

Since petitioner was able to receive ₱722,297.16 as his advanced lump sum, he actually received an excess of **₱77,807.16** (₱722,297.16 less 644,490.00).

The petitioner filed a motion for reconsideration, but the COA remained steadfast in its Resolution dated 31 January 2011.

Aggrieved, petitioner questioned the Decision and Resolution of the COA *via* the present Rule 45 petition before this Court.

OUR RULING

We deny the petition.

Petitioner Availed of Wrong Remedy

This Court can very well dismiss the instant petition on account of it being the wrong remedy. Decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, as is the present petition, but thru a special civil action of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. Section 2 of Rule 64, which implements the mandate of Section 7 of Article IX-A of the Constitution,[19] is clear on this:

> Section 2. Mode of Review.—A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

The distinction between an appeal under Rule 45 and a special civil action under Rule 64 in relation to Rule 65 could not be anymore overstated in remedial law—the most profound of which, arguably, is the difference of one to the other with respect to the permissible scope of inquiry in each. Indeed, by restricting the review of judgments or resolutions of the COA only thru a special civil action for *certiorari* before this Court, the Constitution and the Rules of Court precisely limits the permissible scope of inquiry in such cases only to errors of jurisdiction or grave abuse of discretion. Hence, unless tainted with grave abuse

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[19] Section 7 of Article IX-A of the Constitution provides:

> *Section 7.* x x x. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof**. (Emphasis supplied)

of discretion, simple errors of judgment committed by the COA cannot be reviewed—even by this Court.

That is where the present petition patently fails. It alleges neither grave abuse of jurisdiction nor any jurisdictional error on the part of the COA. It, in fact, contented itself with imputations of errors on the part of the COA and the AFP as to how they interpreted or applied PD No. 1638 to the petitioner's case. For all intents and purposes, the present petition is, on that account, an improper invocation of this Court's power of review over the judgments and resolutions of the COA.

Nevertheless, No Grave Abuse of Discretion on the Part of COA; COA Decision and Resolution Correct

Nevertheless, even if this Court should take a liberal appreciation of the present petition as one that is filed under Rule 65, such petition would still fail. We have taken an extra step and scoured the established facts *vis-à-vis* the allegations of the instant petition in search of any vestiges of grave abuse of discretion on the part of the COA, but we found none. What we did find, on the other hand, is that the assailed COA Decision and Resolution was rendered in accord with law.

The main controversy in this case is the computation of petitioner's retirement benefits under PD No. 1638, as amended. From the facts, we can see that the petitioner, the AFP and the COA each offered contrasting solutions to this query:

a. Petitioner, for his part, advocates for a computation of his retirement benefits that would include his four (4) years of civilian service at the DILG and his thirty (30) years of actual military service.

b. The AFP, on the other hand, advances a computation of retirement benefits that only covers the petitioner's thirty (30) years of actual military service *i.e.*, 21 May 1973 up to 22 May 2003. Petitioner's four (4) years of civilian service at the DILG is excluded.

c. The COA, meanwhile, advances a computation of petitioner's retirement benefits that covers the latter's four (4) years of civilian service at the DILG *plus* his years in actual military service but only up to 22 May 2000. Petitioner should be considered compulsorily retired on 22 May 2000 pursuant to Section 5(a) of PD 1638, as amended.

Of these three, this Court finds that the computation of COA is the one that is supported by PD No. 1638. The other two simply finds no basis in law.

PD No. 1638, as amended, is the law that governs the retirement and separation of military officers and enlisted personnel. With respect to the retirement of military officers and enlisted personnel, the law provides for two kinds: *compulsory retirement* and *optional retirement*. Both kinds of retirements contemplate the satisfaction of a certain age or length of service requirement by, or the fulfillment of some other conditions on the part of, a military officer or personnel. Retirement, however, is deemed *compulsory* if, upon the satisfaction of the conditions prescribed by law, retirement of the concerned officer takes place by operation of law; while retirement is deemed *optional* if, despite the satisfaction of such conditions, retirement would only take place when elected by the officer himself.

Sections 5 and 7 of PD No. 1638, as amended, identifies the instances of *compulsory retirement* in the military service:

Section 5 (a). **Upon attaining fifty-six (56) years of age or upon accumulation of thirty (30) years of satisfactory active service, whichever is later, an officer or enlisted man shall be compulsorily retired**; Provided, That such officer or enlisted-man who shall have attained fifty-six (56) years of age with at least twenty (20) years of active service shall be allowed to complete thirty (30) years of service but not beyond his sixtieth (60^{th}) birthday; Provided, however, That such military personnel compulsorily retiring by age shall have at least twenty (20) years of active service: Provided, further, That the compulsory retirement of an officer serving in a statutory position shall be deferred until completion of the tour of duty prescribed by law; and, Provided, finally, That the active service of military

personnel may be extended by the President, if in his opinion, such continued military service is for the good of the service. (b) Notwithstanding the provisions of Section 5 (a), military personnel in the active service, who otherwise will retire compulsorily under Section 1 (b) of Republic Act Numbered Three Hundred Forty, as amended, during the first, second, third, fourth, fifth, and sixth calendar years of the effectivity of this Decree, shall be retired compulsorily under this Decree on the dates they shall complete and additional period of service of one, two, three, four, five, and six years, respectively; Provided, That such additional period of service shall not extend beyond their fifty-sixth (56th) birthday or completion of thirty (30) years of active service, whichever is later. Provided, further, That such military personnel who have attained fifty-six (56) years of age but have not completed thirty (30) years of active service on the effectivity of this Decree shall be allowed to complete thirty (30) years of active service but not beyond their sixtieth (60th) birthday: Provided, finally, That such military personnel should have completed at least fifteen years of active service.

xxx xxx xxx

Section 7. An officer or enlisted man who, having accumulated at least twenty (20) years of active service, incurs total permanent physical disability in line of duty shall be compulsorily retired. (Emphasis supplied)

Section 5(a) of PD No. 1638 explicitly provides that a military officer or enlisted personnel who has reached the **age of fifty-six (56)** or who has rendered **thirty (30) years of active service**, whichever comes later, shall be compulsorily retired. The term "**active service**" as used in Section 5(a) of PD No. 1638 is defined by Section 3 of the same law.

Section 3 of PD No. 1638, as amended, defines "**active service**" of an officer or enlisted personnel as "*service rendered by him as a commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines*" **and** "*service rendered by him as a civilian official or employee in the Philippine government prior to the date of his separation or retirement from the Armed Forces of the Philippines…no[t]…longer than his active military service.*"

Applying the foregoing provisions of PD No. 1638 to the circumstances surrounding petitioner's military service, this Court discerns that the COA was correct in holding that petitioner should be considered as compulsorily retired on 22 May 2000 for purposes of computing his retirement benefits under the same law.

In the assailed Decision and Resolution, the COA correctly held that for purposes of computing his retirement benefits under PD No. 1638, as amended, petitioner should have been considered compulsorily retired as of 22 May 2000 per Section 5(a) of the same law.[20] This is so because it was on 22 May 2000 that petitioner reached the age of fifty-six (56) after a total of thirty-one (31) years in active service—fulfilling thereby the conditions for compulsory retirement under the said section.[21] In coming up with such a conclusion, the COA most certainly reckoned the beginning of petitioner's active service in the military from his stint as civilian worker at the DILG. The inclusion of petitioner's civilian government service at the DILG in the computation of his length of active service in the military, on the other hand, is only but proper in light of Section 3 of PD No. 1638, as amended.

We agree.

It thus becomes clear that the petitioner's claim for additional retirement benefits corresponding to his civilian service at the DILG is actually quite misplaced when made as against the COA. While the COA denied petitioner's claim, it did not actually conform *in toto* with the earlier computation made by the AFP. The clear import of the assailed COA Decision and Resolution is that petitioner's civilian service at the DILG should be included in his active military service for the purpose of computing his retirement benefits under PD No. 1638 *only that* **the services he rendered after 22 May 2000, for reasons explained above, should also be excluded from the same computation**.

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[20] *Rollo*, p. 95.

[21] *Id.*

The COA denied petitioner's claim for additional retirement benefit because when petitioner was considered as compulsory retired as of 22 May 2000 pursuant to PD No. 1638, instead of 22 May 2003, it found that petitioner was not underpaid but was actually overpaid his retirement benefits in the amount of ₱77,807.16.[22] This is what was being referred to by the COA when it disposed that, even if so, the payment of petitioner's retirement benefits "*should be in accordance with PD No. 1638*."[23] We find that the COA made no error of judgment, much less committed any error of jurisdiction or grave abuse of discretion, in disposing so.

A final note. It was not unnoticed by this Court that much of the instant controversy resulted from the inability of the AFP to observe the compulsory retirement scheme under PD No. 1638 by allowing petitioner to render service well beyond 22 May 2000. In hindsight, this case could have been avoided had the AFP just been more circumspect in applying the law as it was clearly written. The qualm of petitioner is certainly understandable. While we cannot sanction this error as we are duty-bound to uphold the application of PD No. 1638 to this case, this Court feels that the AFP should nevertheless be reminded that it needs to be more cautious and circumspect in observing the retirement law amongst its ranks.

WHEREFORE, in light of the foregoing premises, the instant petition is **DENIED**. The Decision dated 20 January 2010 (Decision No. 2010-009) and Resolution dated 31 January 2011 (Decision No. 2011-014) of the Commission on Audit are **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[22] *Id.* See note 18 for computation.

[23] *Id.* at 96.

EN BANC

[G.R. No. 205033. June 18, 2013]

ROMEO G. JALOSJOS, *petitioner, vs.* **THE COMMISSION ON ELECTIONS, MARIA ISABELLE G. CLIMACO-SALAZAR, ROEL B. NATIVIDAD, ARTURO N. ONRUBIA, AHMAD NARZAD K. SAMPANG, JOSE L. LOBREGAT, ADELANTE ZAMBOANGA PARTY, and ELBERT C. ATILANO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); THE CONSTITUTIONAL PROVISION REQUIRING A MOTION FOR RECONSIDERATION BEFORE THE COMELEC *EN BANC* MAY TAKE ACTION IS CONFINED ONLY TO CASES WHERE THE COMELEC EXERCISES ITS QUASI-JUDICIAL POWER.— Petitioner claims that the COMELEC *En Banc* usurped the COMELEC Divisions' jurisdiction by cancelling *motu proprio* petitioner's CoC through Resolution No. 9613, contrary to Section 3, Article IX-C of the 1987 Philippine Constitution xxx. The above-cited constitutional provision requiring a motion for reconsideration before the COMELEC *En Banc* may take action is confined ***only to cases where the COMELEC exercises its quasi-judicial power***. It finds no application, however, in matters concerning the COMELEC's exercise of administrative functions. xxx In *Jalosjos, Jr.* and *Cardino*, the Court held that the COMELEC's denial of due course to and/or cancellation of a CoC in view of a candidate's disqualification to run for elective office ***based on a final conviction*** is subsumed under its mandate to enforce and administer all laws relating to the conduct of elections. Accordingly, in such a situation, it is the COMELEC's duty to cancel *motu proprio* the candidate's CoC, notwithstanding the absence of any petition initiating a quasi-judicial proceeding for the resolution of the same. xxx In *Aratea v. COMELEC* (*Aratea*), the Court similarly pronounced that the disqualification of a convict to run for

public office, ***as affirmed by final judgment of a competent court***, is part of the enforcement and administration of all laws relating to the conduct of elections. Applying these principles to the case at bar, it is clear that the COMELEC *En Banc* did not exercise its quasi-judicial functions when it issued Resolution No. 9613 as it did not assume jurisdiction over any pending petition or resolve any election case before it or any of its divisions. ***Rather, it merely performed its duty to enforce and administer election laws in cancelling petitioner's CoC on the basis of his perpetual absolute disqualification, the fact of which had already been established by his final conviction***. In this regard, the COMELEC *En Banc* was exercising its administrative functions, dispensing with the need for a motion for reconsideration of a division ruling under Section 3, Article IX-C of the Constitution, the same being required only in quasi-judicial proceedings.

2. ID.; ID.; ID.; THE DENIAL OF DUE COURSE TO AND/OR CANCELLATION OF ONE'S CERTIFICATE OF CANDIDACY ON GROUNDS RENDERED CONCLUSIVE ON ACCOUNT OF FINAL AND EXECUTORY JUDGMENTS IS AN EXERCISE OF THE COMELEC'S ADMINISTRATIVE FUNCTIONS.— [W]hile the denial of due course to and/or cancellation of one's CoC generally necessitates the exercise of the COMELEC's quasi-judicial functions commenced through a petition based on either Sections 12 or 78 of the OEC, or Section 40 of the LGC, when the grounds therefor are rendered conclusive on account of final and executory judgments – as when a candidate's disqualification to run for public office is based on a final conviction – such exercise falls within the COMELEC's administrative functions, as in this case.

3. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; WHERE TWO STATUTES ARE OF EQUAL THEORETICAL APPLICATION TO A PARTICULAR CASE, THE ONE SPECIFICALLY DESIGNED THEREFOR SHOULD PREVAIL.— Well-established is the rule that every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. xxx Keeping with the above-

mentioned statutory construction principle, the Court observes that the conflict between x x x [Section 40(a) of the LGC and Article 30 of the RPC] may be properly reconciled. In particular, while Section 40(a) of the LGC allows a prior convict to run for local elective office after the lapse of two (2) years from the time he serves his sentence, the said provision ***should not be deemed to cover cases wherein the law imposes a penalty, either as principal or accessory, which has the effect of disqualifying the convict to run for elective office***. An example of this would be Article 41 of the RPC, which imposes the penalty of perpetual absolute disqualification as an accessory to the principal penalties of *reclusion perpetua* and *reclusion temporal* x x x. In this relation, Article 30 of the RPC x x x provides that the penalty of perpetual absolute disqualification has the effect of depriving the convicted felon of the privilege to run for elective office. To note, this penalty, as well as other penalties of similar import, is based on the presumptive rule that ***one who is rendered infamous by conviction of a felony, or other base offense indicative of moral turpitude, is unfit to hold public office***, as the same partakes of a privilege which the State grants only to such classes of persons which are most likely to exercise it for the common good. Pertinently, it is observed that the import of Article 41 in relation to Article 30 of the RPC is more direct and specific in nature – insofar as it deprives the candidate to run for elective office due to his conviction – as compared to Section 40(a) of the LGC which broadly speaks of offenses involving moral turpitude and those punishable by one (1) year or more of imprisonment without any consideration of certain disqualifying effects to one's right to suffrage. Accordingly, Section 40(a) of the LGC should be considered as a law of general application and therefore, must yield to the more definitive RPC provisions in line with the principle of *lex specialis derogat generali* – ***general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable***. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail.

4. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); SECTION 40(a) THEREOF DOES NOT APPLY TO CASES WHEREIN A PENAL PROVISION DIRECTLY AND SPECIFICALLY PROHIBITS THE CONVICT FROM RUNNING FOR ELECTIVE OFFICE.— In the present case, petitioner was sentenced to suffer the principal penalties of *reclusion perpetua* and *reclusion temporal* which, pursuant to Article 41 of the RPC, carried with it the accessory penalty of perpetual absolute disqualification and in turn, pursuant to Article 30 of the RPC, disqualified him to run for elective office. x x x Section 40(a) of the LGC would not apply to cases wherein a penal provision – such as Article 41 in this case – directly and specifically prohibits the convict from running for elective office. Hence, despite the lapse of two (2) years from petitioner's service of his commuted prison term, he remains bound to suffer the accessory penalty of perpetual absolute disqualification which consequently, disqualifies him to run as mayor for Zamboanga City. Notably, Article 41 of the RPC expressly states that one who is previously convicted of a crime punishable by *reclusion perpetua* or *reclusion temporal* continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, ***unless the said accessory penalty shall have been expressly remitted in the pardon***. In this case, the same accessory penalty had not been expressly remitted in the Order of Commutation or by any subsequent pardon and as such, petitioner's disqualification to run for elective office is deemed to subsist. Further, it is well to note that the use of the word "perpetual" in the aforementioned accessory penalty connotes a lifetime restriction and in this respect, does not depend on the length of the prison term which is imposed as its principal penalty.

BRION, *J., separate opinion:*

POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; PERPETUAL ABSOLUTE DISQUALIFICATION IS AN IMPROPER GROUND FOR THE CANCELLATION THEREOF.— [T]he Certificate of Candidacy (*CoC*) of petitioner Romeo G.

Jalosjos should be cancelled for his failure to comply with the ***voter registration requirement*** in light of the Regional Trial Court's (*RTC's*) final judgment denying Jalosjos' inclusion as a voter. To the extent that the RTC's basis for its denial was the perpetual absolute disqualification of Jalosjos arising from the *reclusion perpetua* imposed on him, I x x x agree that the Commission on Elections (*Comelec*) *en banc*'s ruling cannot legally be faulted. I make a reservation, however, on the latter ground to the extent that the perpetual absolute disqualification is *motu proprio* cited by the Comelec *en banc* in the ***exercise of its administrative power*** and as an ***independent ground*** for the cancellation it ordered. From this perspective, I take the position that the perpetual absolute disqualification is an improper ground whose proper place and role is the basis for disqualification, not for the cancellation of a CoC, and one that cannot be made *motu propio*. A candidate who has filed an otherwise valid CoC may, for example, put up as a defense that he or she has been granted an absolute pardon that erased the accessory penalties attached to his offense and its penalty (as in the recent case of former President Joseph Ejercito Estrada). This example glaringly shows that a perpetual absolute disqualification involves a question of fact that requires the full application of due process and cannot, *motu proprio* and in the exercise of administrative powers, be simply cited as a ground for the cancellation of a CoC. The Court should also note that in a cancellation of a CoC situation, time is usually of the essence because a candidate cannot be assured of a timely remedy and would simply be out of the ballot if no opportune remedial measure is applied. Thus, the Comelec cannot be overhasty in exercising its administrative powers and in *motu proprio* citing factual grounds. (The RTC decision in the present case was a different matter since it directly involved the right to vote in the then immediately coming election and related as well to a cited CoC.) Additionally, there are conceptual points of distinctions between the cancellation of a CoC and the disqualification of a candidate that I had occasion to discuss in my Dissent in another *Jalosjos* case – *Dominador G. Jalosjos, Jr. v. Commission on Elections*. In that case, I held the view that conviction of a crime involving moral turpitude under Section 12 of the Omnibus Election Code and Section 40 of the Local Government Code is a **distinct**

> **ground for disqualification that is not *directly* and *per se* a ground for the cancellation of a CoC.** (In this sense, the ground cited by the Comelec *en banc*, if cited independently of the RTC decision, would not be an appropriate basis for the cancellation of *Jalosjos'* CoC.) x x x These distinctions, to be sure, are not idle ones in light of the x x x time limitations involved in an election situation. There, too, is the reality x x x that a party whose CoC is denied or is cancelled would not be considered a candidate; on the other hand, one who filed a valid CoC but who is subsequently disqualified (*e.g.*, for unlawful electioneering under Sections 68 and 12 of the Omnibus Election Code) was a candidate but was not allowed to be voted for or, after elections, would not be allowed to serve if he would win. Directly relevant to this distinction is Section 77 of the Omnibus Election Code which allows the substitution of disqualified candidates as has been extensively discussed by Mr. Justice Lucas P. Bersamin in the recent case of *Talaga v. Commission on Elections.*

APPEARANCES OF COUNSEL

Romulo B. Macalintal and *Edgardo Carlo L. Vistan II* for petitioner.

The Solicitor General for public respondent.

Jesus C. Carbon, Jr. for Elbert C. Atilano.

Hernandez Surtida & Galicia for Maria Isabelle G. Climaco Salazar, Roel B. Natividad, Arturo N. Onrubia and Ahmad Narzad K. Sampang.

Jose Ma. D. Saavedra for Adelante Zamboanga Party and Jose L. Lobregat.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] filed under Rule 64 in relation to Rule 65 of the Rules of Court is the Commission

[1] *Rollo*, pp. 3-62.

on Elections' (COMELEC) *En Banc* Resolution No. 9613[2] dated January 15, 2013, ordering the denial of due course to and/or cancellation of petitioner Romeo G. Jalosjos' certificate of candidacy (CoC) as a mayoralty candidate for Zamboanga City.

The Facts

On November 16, 2001, the Court promulgated its Decision in G.R. Nos. 132875-76, entitled "*People of the Philippines v. Romeo G. Jalosjos,*"[3] convicting petitioner by final judgment of two (2) counts of statutory rape and six (6) counts of acts of lasciviousness.[4] Consequently, he was sentenced to suffer the principal penalties of *reclusion perpetua* and *reclusion temporal*[5] for each count, respectively, which carried the accessory penalty of perpetual absolute disqualification pursuant to Article 41 of the Revised Penal Code (RPC).[6] On April 30, 2007, then President Gloria Macapagal Arroyo issued an order commuting his prison term to sixteen (16) years, three (3) months and three (3) days (Order of Commutation). After serving the same, he was issued a Certificate of Discharge From Prison on March 18, 2009.[7]

On April 26, 2012,[8] petitioner applied to register as a voter in Zamboanga City. However, because of his previous conviction,

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[2] *Id.* at 69-71.

[3] *Id.* at 69. See *People v. Jalosjos*, 421 Phil. 43 (2001).

[4] In relation to Section 5(b), Article III of Republic Act No. 7610.

[5] Specifically, the indeterminate penalty of twelve years (12) and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.

[6] ART. 41. *Reclusion perpetua and reclusion temporal – Their accessory penalties.* - The penalties of *reclusion perpetua* and *reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[7] *Rollo*, p. 74.

[8] *Id.* at 398. See Comment of the Office of the Solicitor General.

his application was denied by the Acting City Election Officer of the Election Registration Board (ERB), prompting him to file a Petition for Inclusion in the Permanent List of Voters (Petition for Inclusion) before the Municipal Trial Court in Cities of Zamboanga City, Branch 1 (MTCC).[9] Pending resolution of the same, he filed a CoC[10] on October 5, 2012, seeking to run as mayor for Zamboanga City in the upcoming local elections scheduled on May 13, 2013 (May 2013 Elections). In his CoC, petitioner stated, *inter alia*, that he is eligible for the said office and that he is a registered voter of Barangay Tetuan, Zamboanga City.

On October 18, 2012,[11] the MTCC denied his Petition for Inclusion on account of his perpetual absolute disqualification which in effect, deprived him of the right to vote in any election. Such denial was affirmed by the Regional Trial Court of Zamboanga City, Branch 14 (RTC) in its October 31, 2012 Order[12] which, pursuant to Section 138[13] of Batas Pambansa Bilang 881, as amended, otherwise known as the "Omnibus Election Code" (OEC), was immediately final and executory.

Meanwhile, five (5) petitions were lodged before the COMELEC's First and Second Divisions (COMELEC Divisions),

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[9] *Id.* Docketed as Case No. 7433.

[10] *Id.* at 154.

[11] *Id.* at 81-96. Penned by Presiding Judge Nancy I. Bantayanon-Cuaresma.

[12] *Id.* at 97-100. Docketed as Civil Case No. 6479.

[13] SEC. 138. *Jurisdiction in inclusion and exclusion cases.* — The municipal and metropolitan trial courts shall have original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the list in their respective municipalities or cities. Decisions of the municipal or metropolitan trial courts may be appealed directly by the aggrieved party to the proper regional trial court within five days from receipt of notice thereof, otherwise said decision of the municipal or metropolitan trial court shall become final and executory after said period. The regional trial court shall decide the appeal within ten days from the time the appeal was received and **its decision shall be immediately final and executory**. No motion for reconsideration shall be entertained by the courts. (Emphasis and underscoring supplied)

praying for the denial of due course to and/or cancellation of petitioner's CoC. Pending resolution, the COMELEC *En Banc* issued *motu proprio* Resolution No. 9613[14] on January 15, 2013, resolving "to **CANCEL** and **DENY** due course the Certificate of Candidacy filed by Romeo G. Jalosjos as Mayor of Zamboanga City in the May 13, 2013 National and Local Elections" due to his perpetual absolute disqualification as well as his failure to comply with the voter registration requirement. As basis, the COMELEC *En Banc* relied on the Court's pronouncement in the consolidated cases of *Dominador Jalosjos, Jr. v. COMELEC* and *Agapito Cardino v. COMELEC*[15] (*Jalosjos, Jr.* and *Cardino*).

Hence, the instant petition.

Issues Before the Court

Submitted for the Court's determination are the following issues: (*a*) whether the COMELEC *En Banc* acted beyond its jurisdiction when it issued *motu proprio* Resolution No. 9613 and in so doing, violated petitioner's right to due process; and (*b*) whether petitioner's perpetual absolute disqualification to run for elective office had already been removed by Section 40(a) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC).

The Court's Ruling

The petition is bereft of merit.

At the outset, the Court observes that the controversy in this case had already been mooted by the exclusion of petitioner in the May 2013 Elections. Nevertheless, in view of the doctrinal value of the issues raised herein, which may serve to guide both the bench and the bar in the future, the Court takes this opportunity to discuss on the same.

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[14] *Rollo*, pp. 69-71. Issued by COMELEC Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca.

[15] G.R. Nos. 193237 & 193536, October 9, 2012, 683 SCRA 1.

A. Nature and validity of motu proprio issuance of Resolution No. 9613.

Petitioner claims that the COMELEC *En Banc* usurped the COMELEC Divisions' jurisdiction by cancelling *motu proprio* petitioner's CoC through Resolution No. 9613, contrary to Section 3, Article IX-C of the 1987 Philippine Constitution (Constitution) which reads:

> SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc***. (Emphasis and underscoring supplied)

Concomitantly, he also claims that his right to procedural due process had been violated by the aforementioned issuance.

The Court is not persuaded.

The above-cited constitutional provision requiring a motion for reconsideration before the COMELEC *En Banc* may take action is confined ***only to cases where the COMELEC exercises its quasi-judicial power***. It finds no application, however, in matters concerning the COMELEC's exercise of administrative functions. The distinction between the two is well-defined. As illumined in *Villarosa v. COMELEC*:[16]

> [T]he term '**administrative**' connotes, or pertains, **to 'administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things**. It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon. While a '**quasi-judicial function**' is a term which applies **to the action, discretion, *etc*., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to**

[16] 377 Phil. 497, 506-507 (1999).

exercise discretion of a judicial nature. (Emphasis and underscoring supplied)

Crucial therefore to the present disquisition is the determination of the nature of the power exercised by the COMELEC *En Banc* when it promulgated Resolution No. 9613.

The foregoing matter is not without established precedent. In *Jalosjos, Jr.* and *Cardino*, the Court held that the COMELEC's denial of due course to and/or cancellation of a CoC in view of a candidate's disqualification to run for elective office ***based on a final conviction*** is subsumed under its mandate to enforce and administer all laws relating to the conduct of elections. Accordingly, in such a situation, it is the COMELEC's duty to cancel *motu proprio* the candidate's CoC, notwithstanding the absence of any petition initiating a quasi-judicial proceeding for the resolution of the same. Thus, the Court stated:[17]

> **Even without a petition** under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, **the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction**. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.
>
> Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "[e]nforce and administer all laws and regulations relative to the conduct of an election." **The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent**

[17] *Jalosjos, Jr. v. COMELEC & Cardino v. COMELEC*, *supra* note 15, at 32-33.

court, is part of the enforcement and administration of "all laws" relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. **The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment**. (Emphasis and underscoring supplied)

In *Aratea v. COMELEC* (*Aratea*),[18] the Court similarly pronounced that the disqualification of a convict to run for public office, ***as affirmed by final judgment of a competent court***, is part of the enforcement and administration of all laws relating to the conduct of elections.[19]

Applying these principles to the case at bar, it is clear that the COMELEC *En Banc* did not exercise its quasi-judicial functions when it issued Resolution No. 9613 as it did not assume jurisdiction over any pending petition or resolve any election case before it or any of its divisions. ***Rather, it merely performed its duty to enforce and administer election laws in cancelling petitioner's CoC on the basis of his perpetual absolute disqualification, the fact of which had already been established by his final conviction***. In this regard, the COMELEC *En Banc* was exercising its administrative functions, dispensing with the need for a motion for reconsideration of a division ruling under Section 3, Article IX-C of the Constitution, the same being required only in quasi-judicial proceedings.

Lest it be misunderstood, while the denial of due course to and/or cancellation of one's CoC generally necessitates the exercise of the COMELEC's quasi-judicial functions commenced

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[18] G.R. No. 195229, October 12, 2012, 683 SCRA 105, 145.

[19] *Id.* at 149.

through a petition based on either Sections 12[20] or 78[21] of the OEC, or Section 40[22] of the LGC, when the grounds therefor are rendered conclusive on account of final and executory judgments – as when a candidate's disqualification to run for public office is based on a final conviction – such exercise falls within the COMELEC's administrative functions, as in this case.

In this light, there is also no violation of procedural due process since the COMELEC *En Banc* would be acting in a purely administrative manner. Administrative power is concerned with

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[20] SEC. 12. *Disqualifications.* — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty. x x x

[21] SEC. 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[22] SEC. 40. *Disqualifications.* — The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
(b) Those removed from office as a result of an administrative case;
(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
(d) Those with dual citizenship;
(e) Fugitives from justice in criminal or non-political cases here or abroad;
(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
(g) The insane or feeble-minded.

the work of applying policies and enforcing orders as determined by proper governmental organs.[23] As petitioner's disqualification to run for public office had already been settled in a previous case and now stands beyond dispute, it is incumbent upon the COMELEC *En Banc* to cancel his CoC as a matter of course, else it be remiss in fulfilling its duty to enforce and administer all laws and regulations relative to the conduct of an election.

Equally compelling is the fact that the denial of petitioner's Petition for Inclusion as a registered voter in Zamboanga City had already attained finality by virtue of the RTC's Order dated October 31, 2012. In this accord, petitioner's non-compliance with the voter registration requirement under Section 39(a) of the LGC[24] is already beyond question and likewise provides a sufficient ground for the cancellation of his CoC altogether.

B. Petitioner's right to run for elective office.

It is petitioner's submission that Article 30 of the RPC was partially amended by Section 40(a) of the LGC and thus, claims that his perpetual absolute disqualification had already been removed.

The argument is untenable.

Well-established is the rule that every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation.[25]

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[23] *Cipriano v. COMELEC,* 479 Phil. 677, 690 (2004).

[24] SEC. 39. *Qualifications.* – (a) An elective local official must be a citizen of the Philippines; **a registered voter in the** *barangay*, municipality, **city**, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district **where he intends to be elected**; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Emphasis supplied)

[25] RUBEN E. AGPALO, *Statutory Construction,* p. 377, citing *C & C Commercial Corp. v. National Waterworks & Sewerage Authority*, 129 Phil. 227 (1967).

On the one hand, Section 40(a) of the LGC, applicable as it is to *local* elective candidates, provides:

SEC. 40. *Disqualifications*. – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, **within two (2) years after serving sentence**; (Emphasis and underscoring supplied)

And on the other hand, Article 30 of the RPC reads:

ART. 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.

2. **The deprivation of the right to vote in any election for any popular office or to be elected to such office.**

3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this Article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held. (Emphasis and underscoring supplied)

Keeping with the above-mentioned statutory construction principle, the Court observes that the conflict between these provisions of law may be properly reconciled. In particular, while Section 40(a) of the LGC allows a prior convict to run for local elective office after the lapse of two (2) years from the time he serves his sentence, the said provision ***should not be deemed to cover cases wherein the law***[26] ***imposes a penalty, either as principal or accessory,***[27] ***which has the effect of***

[26] Either under the RPC or a special penal law.

[27] Under the RPC, a principal penalty is that which is provided for by law for a felony and which is imposed by the court expressly upon conviction.

disqualifying the convict to run for elective office. An example of this would be Article 41 of the RPC, which imposes the penalty of perpetual[28] absolute[29] disqualification as an accessory to the principal penalties of *reclusion perpetua* and *reclusion temporal*:

On the other hand, an accessory penalty is one that is deemed included in the imposition of the principal penalty. (See ANTONIO L. GREGORIO, "*Fundamentals of Criminal Law Review*," 10th Ed., 2008, p. 240)

[28] Under the RPC, and in particular, regarding disqualifications to run for elective office, **the difference between a perpetual and a temporary disqualification pertains to its duration**. A **perpetual penalty lasts for a lifetime** (see *Lacuna v. Abes*, G.R. No. L-28613, August 27, 1968, 24 SCRA 78), while the duration of a temporary disqualification, if imposed as an accessory penalty, is **coterminous** with the term of the imprisonment sentence. This may be gleaned from Articles 30 and 32 of the RPC which respectively read:

> ART. 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:
>
> 1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
>
> **2**. The deprivation of the right to vote in any election for any popular office or **to be elected to such office.**
>
> 3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.
>
> In case of **temporary disqualification**, **such disqualification as is comprised in paragraphs 2** and 3 **of this article shall last during the term of the sentence.**
>
> xxx xxx xxx
>
> ART. 32. *Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — The **perpetual or temporary** special **disqualification for the exercise of the right of suffrage** shall deprive the offender **perpetually or during the term of the sentence**, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

Meanwhile, a temporary disqualification which is **imposed as a principal penalty** shall be from six (6) years and one day to twelve (12) years as stated in Article 27 of the RPC:

> ART. 27. xxx xxx xxx

ART. 41. *Reclusion perpetua* and *reclusion temporal* – Their accessory penalties. - The penalties of *reclusion perpetua* and *reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of **perpetual absolute disqualification** which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis and underscoring supplied)

In this relation, Article 30 of the RPC, as earlier cited, provides that the penalty of perpetual absolute disqualification has the effect of depriving the convicted felon of the privilege to run for elective office. To note, this penalty, as well as other penalties of similar import, is based on the presumptive rule that ***one***

Prision mayor and temporary disqualification. — The **duration of the penalties** of p*rision mayo*r and **temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty**.

[29] Under the RPC, the **difference between an absolute and a special disqualification pertains to the kinds of effects attendant to the disqualification imposed.**

Under Article 30, the penalty of perpetual or temporary **absolute** disqualification has the effect of depriving the convict the right to vote in any election for any popular office or to be elected to such office; this effect is **cumulative with the other effects of the said penalty** namely, (*a*) deprivation of the public offices and employments which the offender may have held even if conferred by popular election; (*b*) the disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and (c) the loss of the rights to retirement pay or other pension for any office formerly held.

Under Article 31, the penalty of perpetual or temporary **special** disqualification has the following effects: (*a*) deprivation of the office, employment, profession or calling affected; and (*b*) disqualification for holding similar offices and employments.

Under Article 32, the penalty of perpetual or temporary **special** disqualification for the exercise of the right of suffrage has the following effects: (*a*) depriving the offender the right to vote in any popular election for any public office or to be elected to such office; and (*b*) the offender shall not be permitted to hold any public office during the period of his disqualification.

who is rendered infamous by conviction of a felony, or other base offense indicative of moral turpitude, is unfit to hold public office,[30] as the same partakes of a privilege which the State grants only to such classes of persons which are most likely to exercise it for the common good.[31]

Pertinently, it is observed that the import of Article 41 in relation to Article 30 of the RPC is more direct and specific in nature – insofar as it deprives the candidate to run for elective office due to his conviction – as compared to Section 40(a) of the LGC which broadly speaks of offenses involving moral turpitude and those punishable by one (1) year or more of imprisonment without any consideration of certain disqualifying effects to one's right to suffrage. Accordingly, Section 40(a) of the LGC should be considered as a law of general application and therefore, must yield to the more definitive RPC provisions in line with the principle of *lex specialis derogat generali* – ***general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable***. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail.[32]

In the present case, petitioner was sentenced to suffer the principal penalties of *reclusion perpetua* and *reclusion temporal* which, pursuant to Article 41 of the RPC, carried with it the accessory penalty of perpetual absolute disqualification and in turn, pursuant to Article 30 of the RPC, disqualified him to run for elective office. As discussed, Section 40(a) of the LGC would not apply to cases wherein a penal provision – such as Article 41 in this case – directly and specifically prohibits the convict from running for elective office. Hence, despite the lapse of two (2) years from petitioner's service of his commuted prison

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[30] *People v. Corral*, 62 Phil. 945, 948 (1936).

[31] *Id.* at 948-949.

[32] *Roque, Jr. v. COMELEC*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 196.

term, he remains bound to suffer the accessory penalty of perpetual absolute disqualification which consequently, disqualifies him to run as mayor for Zamboanga City.

Notably, Article 41 of the RPC expressly states that one who is previously convicted of a crime punishable by *reclusion perpetua* or *reclusion temporal* continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, ***unless the said accessory penalty shall have been expressly remitted in the pardon***.[33] In this case, the same accessory penalty had not been expressly remitted in the Order of Commutation or by any subsequent pardon and as such, petitioner's disqualification to run for elective office is deemed to subsist.

Further, it is well to note that the use of the word "perpetual" in the aforementioned accessory penalty connotes a lifetime restriction and in this respect, does not depend on the length of the prison term which is imposed as its principal penalty. Instructive on this point is the Court's ruling in *Lacuna v. Abes*,[34] where the Court explained the meaning of the term "perpetual" as applied to the penalty of disqualification to run for public office:

> The accessory penalty of *temporary absolute disqualification* disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.
>
> But this does not hold true with respect to the other accessory *penalty of perpetual special disqualification for the exercise of the right of suffrage*. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office **perpetually,** as distinguished from temporary special disqualification, which lasts during the term of the sentence. (Emphasis and underscoring supplied)

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[33] See Article 41 of the RPC.

[34] 133 Phil. 770 (1968).

Likewise, adopting the *Lacuna* ruling, the Court, in the more recent cases of *Aratea*,[35] *Jalosjos, Jr.* and *Cardino*,[36] held:

> Clearly, *Lacuna* instructs that the accessory penalty of perpetual special disqualification "**deprives the convict of the right to vote *or to be elected to or hold public office* <u>*perpetually*</u>**.**"**
>
> The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. **The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not.** The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." **Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and the convict becomes ineligible to run for any elective public office <u>perpetually</u>**. (Emphasis and underscoring supplied)

All told, applying the established principles of statutory construction, and more significantly, considering the higher interests of preserving the sanctity of our elections, the Court holds that Section 40(a) of the LGC has not removed the penalty of perpetual absolute disqualification which petitioner continues to suffer. Thereby, he remains disqualified to run for any elective office pursuant to Article 30 of the RPC.

WHEREFORE, the petition is **DISMISSED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Brion, J., see separate opinion.

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[35] *Aratea v. COMELEC, supra* note 18, at 134.

[36] *Jalosjos, Jr. v. COMELEC & Cardino v. COMELEC, supra* note 15, at 27.

SEPARATE OPINION

BRION, *J.*:

I **CONCUR** with the ruling that the Certificate of Candidacy (*CoC*) of petitioner Romeo G. Jalosjos should be cancelled for his failure to comply with the ***voter registration requirement*** in light of the Regional Trial Court's (*RTC's*) final judgment denying Jalosjos' inclusion as a voter. To the extent that the RTC's basis for its denial was the perpetual absolute disqualification of Jalosjos arising from the *reclusion perpetua* imposed on him, I also agree that the Commission on Elections (*Comelec*) *en banc's* ruling cannot legally be faulted.

I make a reservation, however, on the latter ground to the extent that the perpetual absolute disqualification is *motu proprio* cited by the Comelec *en banc* in the ***exercise of its administrative power*** and as an ***independent ground*** for the cancellation it ordered. From this perspective, I take the position that the perpetual absolute disqualification is an improper ground whose proper place and role is the basis for disqualification, not for the cancellation of a CoC, and one that cannot be made *motu propio*.

A candidate who has filed an otherwise valid CoC may, for example, put up as a defense that he or she has been granted an absolute pardon that erased the accessory penalties attached to his offense and its penalty (as in the recent case of former President Joseph Ejercito Estrada). This example glaringly shows that a perpetual absolute disqualification involves a question of fact that requires the full application of due process and cannot, *motu proprio* and in the exercise of administrative powers, be simply cited as a ground for the cancellation of a CoC.

The Court should also note that in a cancellation of a CoC situation, time is usually of the essence because a candidate cannot be assured of a timely remedy and would simply be out of the ballot if no opportune remedial measure is applied. Thus, the Comelec cannot be overhasty in exercising its administrative

powers and in *motu proprio* citing factual grounds. (The RTC decision in the present case was a different matter since it directly involved the right to vote in the then immediately coming election and related as well to a cited CoC.)

Additionally, there are conceptual points of distinctions between the cancellation of a CoC and the disqualification of a candidate that I had occasion to discuss in my Dissent in another *Jalosjos* case – *Dominador G. Jalosjos, Jr. v. Commission on Elections*.[1] In that case, I held the view that conviction of a crime involving moral turpitude under Section 12 of the Omnibus Election Code and Section 40 of the Local Government Code is a **distinct ground for disqualification that is not *directly* and *per se* a ground for the cancellation of a CoC. (**In this sense, the ground cited by the Comelec *en banc,* if cited independently of the RTC decision, would not be an appropriate basis for the cancellation of *Jalosjos'* CoC.) As I explained it in this Dissent:

> **To disqualify**, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules. It is in these senses that the term is understood in our election laws.
>
> Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a **trait or characteristic** that applies to him or an act that can be imputed to him as an individual, **separately from the general qualifications that must exist for a citizen to run for a local public office**.
>
> **In a disqualification situation**, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.
>
> **Sections 68 and 12 of the OEC** (together with Section 40 of LGC 1991, outlined below) cover the following as **traits,**

[1] G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1.

characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

b. Those removed from office as a result of an administrative case;

c. Those convicted by final judgment for violating the oath of allegiance to the Republic;

d. Those with dual citizenship;

e. Fugitives from justice in criminal or non-political cases here or abroad;

f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under **Section 68** of the OEC, it **refers only to a "candidate,"** not to one who is not

yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification**. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the cancellation of a candidate's CoC, the law considers the cancellation from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and **affects both the candidate and his CoC**. In contrast, when the law allows the **disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual**; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.[2] (emphases ours; citations omitted)

These distinctions, to be sure, are not idle ones in light of the above-mentioned time limitations involved in an election situation. There, too, is the reality, as pointed out above, that a party whose CoC is denied or is cancelled would not be considered a candidate; on the other hand, one who filed a valid CoC but who is subsequently disqualified (*e.g.*, for unlawful electioneering under Sections 68 and 12 of the Omnibus Election

[2] *Id*. at 41.

Code) was a candidate but was not allowed to be voted for or, after elections, would not be allowed to serve if he would win. Directly relevant to this distinction is Section 77 of the Omnibus Election Code which allows the substitution of disqualified candidates as has been extensively discussed by Mr. Justice Lucas P. Bersamin in the recent case of *Talaga v. Commission on Elections.*[3]

Subject to the above reservation, I fully concur with the majority.

THIRD DIVISION

[G.R. No. 157020. June 19, 2013]

REINIER PACIFIC INTERNATIONAL SHIPPING, INC. and NEPTUNE SHIP MANAGEMENT SVCS., PTE., LTD., *petitioners, vs.* **CAPTAIN FRANCISCO B. GUEVARRA, substituted by his heirs,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; COMPUTATION OF TIME FOR FILING A PLEADING; WHEN THE DUE DATE OF THE EXTENDED PERIOD FOR FILING A PLEADING FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE PLEADING MAY BE FILED ON THE NEXT WORKING DAY; APPLICATION.— Reinier Shipping's last day for filing its petition fell on July 26, a Friday. It asked for a 15-day extension before the period lapsed and this was granted. As it happened, 15 days from

[3] G.R. Nos. 196804 and 197015, October 9, 2012, 683 SCRA 197.

July 26 fell on August 10, a Saturday. The CA held that Reinier Shipping should have filed its petition before August 10 (Saturday) or at the latest on August 9 (Friday) since, in an extended period, the fact that the extended due date (August 10) falls on a Saturday is to be "disregarded." Reinier Shipping has no right to move the extended due date to the next working day even if such due date fell on a Saturday. Since the courts were closed on August 10 (Saturday), Reinier Shipping should have filed its petition, according to the CA, not later than Friday, August 9. But this is obviously wrong since it would mean compelling Reinier Shipping to file its petition one day short of the 15-day extension granted it. That would unjustly deprive it of the full benefit of that extension. Since its new due date fell on a Saturday when courts are close, however, the clear language of Section 1, Rule 21, applies. This gives Reinier Shipping up to Monday (August 12), the next working day, within which to file its petition. The clarification provided in A.M. 00-2-14-SC actually covers a situation where the due date falls on a Saturday, Sunday, or holiday. Precisely, what such clarification wanted to address is the erroneous claim that "the period of extension" in such a case "is to be reckoned from the next working day and not from the original expiration of the period." The correct rule, according to the clarification, is that "[a]ny extension of time to file the required pleading should x x x be counted from the expiration of the period **regardless of the fact that said due date is a Saturday, Sunday or legal holiday**."

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

ABAD, *J.*:

This petition for review concerns the reckoning of the extended period for the filing of a pleading that ends on a Saturday, Sunday, or legal holiday. May the pleading be filed on the following working day?

The Facts and the Case

On May 3, 2000 petitioner Reinier Pacific International Shipping, Inc. (Reinier Shipping), as agent of Neptune Ship Management Services, PTE, Limited, hired respondent Captain Francisco B. Guevarra to work as master of MV NOL SHEDAR. In the course of his work on board, Reinier Shipping sent him *Notice*, relieving him of command of the vessel upon the insistence of its charterers and owners. As a result, Guevarra filed a case for illegal dismissal and damages against Reinier Shipping and its principal.

Reinier Shipping countered that Guevarra had been negligent in the discharge of his duties as ship master. One of the vessel's hatch covers was damaged when it was discharging coal in Alabama, U.S.A. As a result, the charterers were forced to shoulder the repair costs. Reinier had no choice but yield to the demands of the charterers for Guevarra's replacement.

The Labor Arbiter found Guevarra's dismissal illegal and ordered Reinier Shipping and its principal to jointly and severally pay him the US$11,316.00 that represent his salaries for the remaining balance of the contract plus attorney's fees of US$1,131.60. The Labor Arbiter found that Reinier Shipping denied Guevarra his right to due process since it did not give him the opportunity to be heard. Guevarra claims that the damage to the vessel had been caused by cargo-handling stevedores. Reinier Shipping did not bother to ascertain his guilt; it merely invoked the demand of the charterers and vessel owners that he be replaced.

Reinier Shipping appealed to the National Labor Relations Commission (NLRC) but on February 22, 2002 the latter affirmed the Labor Arbiter's decision.

The due date to file a petition for special civil action of *certiorari* before the Court of Appeals (CA) fell on July 26, 2002, a Friday, but Reinier Shipping succeeded in obtaining an extension of 15 days, which period counted from July 26 began to run on July 27, a Saturday, and fell due on August 10,

a Saturday. Reinier Shipping filed its petition on the following Monday, August 12, 2002.

On November 11, 2002 the CA dismissed the petition for having been filed out of time.[1] The CA ruled that Reinier Shipping violated Supreme Court's A.M. 00-2-14-SC. Since August 10, 2002, the last day of the extended period, fell on a Saturday, automatic deferment to the next working day did not apply and Reinier Shipping should have filed its petition before August 10, a Saturday, considering that the court is closed on Saturdays.

Issue Presented

Reinier Shipping filed the present petition raising the issue of whether or not the CA erred in dismissing its petition for having been filed out of time.

The Court's Ruling

A.M. 00-2-14-SC clarifies the application of Section 1, Rule 22 of the Rules of Court when the last day on which a pleading is due falls on a Saturday, Sunday, or legal holiday and the original period is extended.[2] The clarification states:

> Whereas, the aforecited provision applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday, or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;
>
> Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the

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[1] CA-G.R. SP 71861; Resolution penned by now Supreme Court Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Godardo A. Jacinto and Mario L. Guariña III.

[2] In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period;

NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, **the due date ceases to be the last day** and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period **regardless of the fact that said due date is a Saturday, Sunday or legal holiday**. (Emphasis supplied)

Reinier Shipping's last day for filing its petition fell on July 26, a Friday. It asked for a 15-day extension before the period lapsed and this was granted. As it happened, 15 days from July 26 fell on August 10, a Saturday. The CA held that Reinier Shipping should have filed its petition before August 10 (Saturday) or at the latest on August 9 (Friday) since, in an extended period, the fact that the extended due date (August 10) falls on a Saturday is to be "disregarded." Reinier Shipping has no right to move the extended due date to the next working day even if such due date fell on a Saturday. Since the courts were closed on August 10 (Saturday), Reinier Shipping should have filed its petition, according to the CA, not later than Friday, August 9.

But this is obviously wrong since it would mean compelling Reinier Shipping to file its petition one day short of the 15-day extension granted it. That would unjustly deprive it of the full benefit of that extension. Since its new due date fell on a Saturday when courts are close, however, the clear language of Section 1, Rule 21, applies. This gives Reinier Shipping up to Monday (August 12), the next working day, within which to file its petition.

The clarification provided in A.M. 00-2-14-SC actually covers a situation where the due date falls on a Saturday, Sunday, or holiday. Precisely, what such clarification wanted to address is

the erroneous claim that "the period of extension" in such a case "is to be reckoned from the next working day and not from the original expiration of the period." The correct rule, according to the clarification, is that "[a]ny extension of time to file the required pleading should x x x be counted from the expiration of the period **regardless of the fact that said due date is a Saturday, Sunday or legal holiday**."

For example, if a pleading is due on July 10 and this happens to be a Saturday, the time for filing it shall **not run**, applying Section 1 of Rule 21, on July 10 (Saturday) nor on July 11 (Sunday) but will resume to run on the next working day, which is July 12 (Monday). The pleading will then be due on the latter date. If the period is extended by 10 days, such 10 days will be counted, not from July 12 (Monday) but from the original due date, July 10 (Saturday) "**regardless of the fact that said due date is a Saturday**." Consequently, the new due date will be 10 days from July 10 or precisely on July 20. As stated above, the situation of Reinier Shipping is different.

WHEREFORE, the Court **REVERSES and SETS ASIDE** the Court of Appeals' Resolutions in CA-G.R. SP 71861 dated November 11, 2002 and January 23, 2003 and **DIRECTS** it to give due course to petitioner Reinier Pacific International Shipping, Inc.'s petition before it.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169214. June 19, 2013]

SPOUSES MANUEL SY and VICTORIA SY, *petitioners, vs.* **GENALYN D. YOUNG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; LAW OF THE CASE; DEFINED AND EXPLAINED.— Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. We point out in this respect that the law of the case does not have the finality of *res judicata*. Law of the case applies only to the same case, whereas *res judicata* forecloses parties or privies in one case by what has been done in another case. In law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. Furthermore, law of the case relates entirely to questions of law while *res judicata* is applicable to the conclusive determination of issues of fact. Although *res judicata* may include questions of law, it is generally concerned with the effect of adjudication in a wholly independent proceeding.

2. ID.; ID.; ID.; RATIONALE; THERE WOULD BE ENDLESS LITIGATION IF A QUESTION, ONCE CONSIDERED AND DECIDED BY AN APPELLATE COURT, WERE TO BE LITIGATED ANEW IN THE SAME CASE UPON ANY AND EVERY SUBSEQUENT APPEAL.— The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely

ruled on solemn argument and handed down as the law of a given case.

3. ID.; ID.; ID.; THE PRESENT ACTION IS BARRED BY THE LAW OF THE CASE.— In denying the petition, we necessarily must reiterate our ruling in *Young* which constitutes as the controlling doctrine or the law of the case in the present case. x x x In *Young*, we directed the RTC to admit Genalyn's supplemental complaint. In so ruling, we also vacated the RTC Orders which dismissed Genalyn's complaint for failure to prosecute. Moreover, Genalyn's move to suspend the proceedings which led to the dismissal of her complaint stemmed essentially from the RTC's erroneous refusal to admit the supplemental complaint. On the second issue, we unequivocably also settled that Genalyn committed forum shopping when she filed an appeal and a petition for *certiorari* successively. This ruling we uphold as the ruling that should apply.

APPEARANCES OF COUNSEL

Raul S. Sison Law Offices for petitioners.

Buñag & Lotilla Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner-spouses Manuel Sy and Victoria Sy to challenge the March 30, 2005 Decision[2] and the August 8, 2005 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 74045.

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[1] Dated September 23, 2005 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 27-88.

[2] *Id.* at 14-22; penned by Associate Justice Edgardo F. Sundiam, and concurred in by Associate Justices Renato C. Dacudao and Japar B. Dimaampao.

[3] *Id.* at 90-92.

The Factual Antecedents

The petition originated from a Complaint for Nullification of Second Supplemental Extrajudicial Settlement, Mortgage, Foreclosure Sale and Tax Declaration[4] filed by respondent Genalyn D. Young with the Regional Trial Court of San Pablo City, Branch 32 (*RTC*). The complaint was docketed as Civil Case No. SP-5703.

Genalyn alleged that she is the legitimate daughter of spouses George Young and Lilia Dy.[5] When George died, he left an unregistered parcel of land *(property)* covered by Tax Declaration No. 91-48929[6] in San Roque, San Pablo City, Laguna. On September 3, 1993, Lilia executed a Second Supplemental to the Deed of Extrajudicial Partition.[7] The property was adjudicated solely in Lilia's favor in the partition. Lilia represented Genalyn, who was then a minor, in the execution of the document.

Subsequently, Lilia obtained a loan from the spouses Sy with the property as security.[8] When Lilia defaulted on her loan, the property was foreclosed and sold to the spouses Sy. Thereafter, the spouses Sy registered the certificate of sale[9] with the Office of the Register of Deeds and obtained a tax declaration[10] in their name.

In her complaint, Genalyn argued that the partition was unenforceable since she was only a minor at the time of its execution. She also pointed out that the partition was contrary to the Rules of Court because it was without the court's approval. She further asserted that the spouses Sy entered into the contract of mortgage with the knowledge that Lilia was unauthorized to mortgage the property.

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[4] *Id.* at 164-167.

[5] *Id.* at 154.

[6] *Id.* at 155.

[7] *Id.* at 157.

[8] *Id.* at 159-160.

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

[10] *Id.* at 163.

On July 20, 2000, Genalyn filed with the RTC a Motion to Admit a Supplemental Complaint with the attached Supplemental Complaint. In the supplemental complaint, she invoked her right to exercise legal redemption as a co-owner of the disputed property. However, the RTC denied the motion in its Order[11] dated December 28, 2000. **Subsequently, she filed a petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court docketed as CA-G.R. Sp. No. 65629 with the CA.**

The CA denied the petition in its decision dated November 18, 2002. It held that Genalyn's cause of action in the supplemental complaint is entirely different from her original complaint. **Thereafter, she elevated the case with this Court in a petition for *certiorari* under Rule 65 of the Rules of Court docketed as G.R. No. 157955.**[12]

Trial in the RTC continued while CA-G.R. Sp. No. 65629 was pending in the CA. Consequently, Genalyn moved to suspend the proceedings until the CA has decided on the propriety of the admission of the supplemental complaint. However, the RTC denied the motion.[13] At the pre-trial conference, Genalyn moved again for the suspension of the proceedings but to no avail. On a trial dated August 29, 2001, Genalyn filed a Motion to Cancel Hearing on the ground that she was indisposed. **As a result, the RTC issued an Order dated August 30, 2001 which dismissed the complaint on the ground of non-suit**. The RTC denied Genalyn's motion for reconsideration in an Order dated January 4, 2002. On January 16, 2002, the RTC issued an Order correcting the January 4, 2002 Order due to a typographical error.[14]

On January 31, 2002, Genalyn filed an appeal docketed as CA-G.R. SP No. 74045. In the appeal, she questioned the RTC Orders dated August 30, 2001, January 4, 2002, and January

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[11] Penned by Judge Zorayda Herradura Salcedo.

[12] *Young v. Spouses Sy*, 534 Phil. 246, 253 (2006).

[13] *Rollo*, p. 16.

[14] *Young v. Spouses Sy*, *supra* note 12, at 255-256.

16, 2002. **On May 28, 2002, Genalyn again filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court to annul the same RTC Orders that comprise the subject matter of the ordinary appeal.** However, the CA denied the said petition. **Tirelessly, Genalyn filed a petition for review under Rule 45 of the Rules of Court before this Court, docketed as G.R. No. 157745 which was consolidated with G.R. No. 157955**.[15]

With respect to CA-G.R. CV No. 74045, the CA reversed the RTC's ruling and remanded the case for further proceedings.[16] The CA also denied[17] the spouses Sy's motion for reconsideration, prompting them to file the present petition.

On September 26, 2006, this Court promulgated a decision on the consolidated cases entitled *"Young v. Spouses Sy."* We granted the petition in G.R. No. 157955 but denied the petition in G.R. No. 157745 for lack of merit.[18]

In G.R. No. 157955, we ruled that Genalyn's right to redeem the property is dependent on the nullification of the partition which is the subject of the original complaint. We held that the right of legal redemption as a co-owner is conferred by law and is merely a natural consequence of co-ownership. In effect, Genalyn's cause of action for legal redemption in her supplemental complaint stems directly from her rights as a co-owner of the property subject of the complaint. **We thus ordered the RTC to admit the supplemental complaint.**[19]

In G.R. No. 157745, we held that Genalyn had engaged in forum shopping in appealing the RTC Orders and in subsequently filing a petition for *certiorari* under Rule 65 with the CA involving the same RTC Orders. We found that the elements of *litis pendentia* are present in the two suits because they are founded

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[15] *Id.* at 258-259.

[16] *Supra* note 2.

[17] *Supra* note 3.

[18] *Young v. Spouses Sy*, *supra* note 12.

[19] *Id.* at 261-262.

on exactly the same facts and refer to the same subject matter. **We thus pronounced that the dismissal of the petition for *certiorari* was proper.**[20]

We entered the entry of judgment in *Young* on March 19, 2007.

The Issues

In the present case, the spouses Sy pray that the CA's Decision dated March 30, 2005 and Resolution dated August 8, 2005 be reversed and that the RTC's Orders dated August 30, 2001, January 4, 2002 and January 16, 2002 be reinstated. The spouses Sy raise the same issues which were already disposed by this Court in *Young*, namely:

(1) whether or not the CA erred in setting aside the RTC Orders dated August 30, 2001, January 4, 2002 and January 16, 2002 which dismissed the case for non-suit; and

(2) whether or not the CA erred in not holding Genalyn guilty of forum shopping in the CA's Decision dated March 30, 2005 and Resolution dated August 8, 2005.

The Court's Ruling

We deny the petition.

The present action is barred by the law of the case

In denying the petition, we necessarily must reiterate our ruling in *Young* which constitutes as the controlling doctrine or the law of the case in the present case.

Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as

[20] *Id.* at 264-266.

the facts on which such decision was predicated continue to be the facts of the case before the court.[21]

We point out in this respect that the law of the case does not have the finality of *res judicata*. Law of the case applies only to the same case, whereas *res judicata* forecloses parties or privies in one case by what has been done in another case. In law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. Furthermore, law of the case relates entirely to questions of law while *res judicata* is applicable to the conclusive determination of issues of fact. Although *res judicata* may include questions of law, it is generally concerned with the effect of adjudication in a wholly independent proceeding.[22]

The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case.[23]

In *Young*, we directed the RTC to admit Genalyn's supplemental complaint. In so ruling, we also vacated the RTC Orders which dismissed Genalyn's complaint for failure to prosecute. Moreover, Genalyn's move to suspend the proceedings which led to the dismissal of her complaint stemmed essentially from the RTC's erroneous refusal to admit the supplemental complaint. On the second issue, we unequivocably also settled that Genalyn committed forum shopping when she filed an appeal

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[21] *Radio Communications of the Phils., Inc. v. CA*, 522 Phil. 267, 273 (2006), citing *Padillo v. Court of Appeals*, 422 Phil. 334 (2001).

[22] *Padillo v. Court of Appeals, supra,* at 352, citing *Comilang v. Court of Appeals (Fifth Division),* 160 Phil. 85 (1975).

[23] *Zarate v. Director of Lands,* 39 Phil. 747, 749-750 (1919).

and a petition for *certiorari* successively. This ruling we uphold as the ruling that should apply.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. The CA Decision dated March 30, 2005 and Resolution dated August 8, 2005 are hereby **AFFIRMED**.

No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173946. June 19, 2013]

BOSTON EQUITY RESOURCES, INC., *petitioner, vs.* **COURT OF APPEALS and LOLITA G. TOLEDO**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY TO ASSAIL AN ORDER DENYING A MOTION TO DISMISS.— To begin with, the Court of Appeals erred in granting the writ of *certiorari* in favor of respondent. Well settled is the rule that the special civil action for *certiorari* is not the proper remedy to assail the denial by the trial court of a motion to dismiss. The order of the trial court denying a motion to dismiss is merely interlocutory, as it neither terminates nor finally disposes of a case and still leaves something to be done by the court before a case is finally decided on the merits. Therefore, "the proper remedy in such a case is to appeal after a decision has been rendered."

2. ID.; MOTION TO DISMISS; DESERVES OUTRIGHT DISMISSAL NOT ONLY FOR BEING FILED OUT OF TIME BUT ALSO FOR BEING IMPROPER AND DILATORY.— [T]he trial court did not commit grave abuse of discretion in denying respondent's motion to dismiss. It, in fact, acted correctly when it issued the questioned orders as respondent's motion to dismiss was filed SIX YEARS AND FIVE MONTHS AFTER SHE FILED HER AMENDED ANSWER. This circumstance alone already warranted the outright dismissal of the motion for having been filed in clear contravention of the express mandate of Section 1, Rule 16, of the Revised Rules of Court. Under this provision, a motion to dismiss shall be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim. More importantly, respondent's motion to dismiss was filed after petitioner has completed the presentation of its evidence in the trial court, giving credence to petitioner's and the trial court's conclusion that the filing of the motion to dismiss was a mere ploy on the part of respondent to delay the prompt resolution of the case against her. Also worth mentioning is the fact that respondent's motion to dismiss under consideration herein is not the first motion to dismiss she filed in the trial court. It appears that she had filed an earlier motion to dismiss on the sole ground of the unenforceability of petitioner's claim under the Statute of Frauds, which motion was denied by the trial court. x x x Respondent's act of filing multiple motions, such as the first and earlier motion to dismiss and then the motion to dismiss at issue here, as well as several motions for postponement, lends credibility to the position taken by petitioner, which is shared by the trial court, that respondent is deliberately impeding the early disposition of this case. The filing of the second motion to dismiss was, therefore, "not only improper but also dilatory."

3. ID.; COURTS; JURISDICTION; THE ASPECT OF JURISDICTION WHICH MAY BE BARRED AS A RESULT OF ESTOPPEL BY LACHES IS JURISDICTION OVER THE SUBJECT MATTER.— Petitioner x x x failed to consider that the concept of jurisdiction has several aspects, namely: (1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction

over the *res* or the thing which is the subject of the litigation. The aspect of jurisdiction which may be barred from being assailed as a result of estoppel by laches is **jurisdiction over the subject matter**.

4. ID.; ID.; ID.; WHEN THE QUESTION OF JURISDICTION OVER THE PERSON OF THE PARTY IS IN ISSUE, PRINCIPLE OF ESTOPPEL BY LACHES DOES NOT APPLY.— [W]hat respondent was questioning in her motion to dismiss before the trial court was that court's jurisdiction over the person of defendant Manuel. Thus, the principle of estoppel by laches finds no application in this case.

5. ID.; ID.; ID.; WHEN OBJECTION TO THE JURISDICTION OVER THE PERSON OF THE DEFENDANT IS DEEMED WAIVED; CASE AT BAR.— Since the defense of lack of jurisdiction over the *person* of a party to a case is not one of those defenses which are not deemed waived under Section 1 of Rule 9, such defense must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver of the defense. If the objection is not raised either in a motion to dismiss or in the answer, the objection to the jurisdiction over the person of the plaintiff or the defendant is deemed waived by virtue of the first sentence of the above-quoted Section 1 of Rule 9 of the Rules of Court. The Court of Appeals, therefore, erred when it made a sweeping pronouncement in its questioned decision, stating that "issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal" and that, therefore, respondent timely raised the issue in her motion to dismiss and is, consequently, not estopped from raising the question of jurisdiction. As the question of jurisdiction involved here is that over the person of the defendant Manuel, the same is deemed waived if not raised in the answer or a motion to dismiss. In any case, respondent cannot claim the defense since "lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence."

6. ID.; ID.; ID.; WHERE THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT DUE TO ABSENCE OF VALID SERVICE OF SUMMONS.— In the first place, jurisdiction over the

person of Manuel was never acquired by the trial court. A defendant is informed of a case against him when he receives summons. "Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person." In the case at bar, the trial court did not acquire jurisdiction over the person of Manuel since there was no valid service of summons upon him, precisely because he was already dead even before the complaint against him and his wife was filed in the trial court.

7. ID.; PARTIES; INDISPENSABLE PARTY; DEFINED AND EXPLAINED.— An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but "an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable." Further, an indispensable party is one who must be included in an action before it may properly proceed. On the other hand, a "person is not an indispensable party if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him or her and those already parties to the action, or if he or she has no interest in the subject matter of the action." It is not a sufficient reason to declare a person to be an indispensable party simply because his or her presence will avoid multiple litigations.

8. ID.; ID.; ID.; WHERE THE OBLIGATION ENTERED INTO BY THE SPOUSES IS SOLIDARY, THE ESTATE OF THE DECEASED SPOUSE IS NOT AN INDISPENSABLE PARTY TO THE COLLECTION CASE; REASON.— [I]t is clear that the estate of Manuel is not an indispensable party to the

collection case, for the simple reason that the obligation of Manuel and his wife, respondent herein, is solidary. xxx [P]ursuant to Article 1216 of the Civil Code, petitioner may collect the entire amount of the obligation from respondent only. x x x In other words, the collection case can proceed and the demands of petitioner can be satisfied by respondent only, even without impleading the estate of Manuel. Consequently, the estate of Manuel is not an indispensable party to petitioner's complaint for sum of money.

9. ID.; ID.; ID.; ID.; INCLUSION OF THE DECEASED SPOUSE AS A PARTY DEFENDANT IS NOT MISJOINDER OF PARTY; THE PROPER RECOURSE IS DISMISSAL OF THE CASE AGAINST THE DECEASED.— Based on the last sentence of [Section 11 of Rule 3 of the Rules of Court], a misjoined party must have the capacity to sue or be sued in the event that the claim by or against the misjoined party is pursued in a separate case. In this case, therefore, the inclusion of Manuel in the complaint cannot be considered a misjoinder, as in fact, the action would have proceeded against him had he been alive at the time the collection case was filed by petitioner. This being the case, the remedy provided by Section 11 of Rule 3 does not obtain here. The name of Manuel as party-defendant cannot simply be dropped from the case. Instead, the procedure taken by the Court in *Sarsaba v. Vda. de Te*, whose facts, as mentioned earlier, resemble those of this case, should be followed herein. There, the Supreme Court agreed with the trial court when it resolved the issue of jurisdiction over the person of the deceased Sereno in this wise: x x x ***Hence, only the case against Patricio Sereno will be DISMISSED*** and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused will proceed. As a result, the case, as against Manuel, must be dismissed. In addition, the dismissal of the case against Manuel is further warranted by Section 1 of Rule 3 of the Rules of Court, which states that: [o]nly natural or juridical persons, or entities authorized by law may be parties in a civil action." xxx [W]here the defendant is neither a natural nor a juridical person or an entity authorized by law, the complaint may be dismissed on the ground that the pleading asserting the claim states no cause of action or for failure

to state a cause of action pursuant to Section 1(g) of Rule 16 of the Rules of Court, because a complaint cannot possibly state a cause of action against one who cannot be a party to a civil action.

10. ID.; ID.; ID.; SUBSTITUTION OF PARTY IS PROPER ONLY IF THE PARTY TO BE SUBSTITUTED DIED DURING THE PENDENCY OF THE CASE; SUBSTITUTION, NOT PROPER IN CASE AT BAR.— Since the proper course of action against the wrongful inclusion of Manuel as party-defendant is the dismissal of the case as against him, thus did the trial court err when it ordered the substitution of Manuel by his heirs. Substitution is proper only where the party to be substituted died **during the pendency of the case**, as expressly provided for by Section 16, Rule 3 of the Rules of Court[.] xxx Here, since Manuel was already dead at the time of the filing of the complaint, the court never acquired jurisdiction over his person and, in effect, there was no party to be substituted.

APPEARANCES OF COUNSEL

Raymond Fortun Law Offices for petitioner.
Corpuz and Associates for private respondent

D E C I S I O N

PEREZ, ***J.*:**

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside: (1) the Decision,[1] dated 28 February 2006 and (2) the Resolution,[2] dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88586. The challenged decision granted herein respondent's petition for *certiorari* upon a finding that the trial court committed grave abuse of discretion in denying respondent's motion to dismiss the complaint against her.[3] Based on this finding, the Court of Appeals reversed and set aside the

[1] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe (now an Associate Justice of this Court) concurring. *Rollo*, pp. 23-29.

[2] *Id.* at 31.

[3] *Id.* at 28.

Orders, dated 8 November 2004[4] and 22 December 2004,[5] respectively, of the Regional Trial Court (RTC) of Manila, Branch 24.

The Facts

On 24 December 1997, petitioner filed a complaint for sum of money with a prayer for the issuance of a writ of preliminary attachment against the spouses Manuel and Lolita Toledo.[6] Herein respondent filed an Answer dated 19 March 1998 but on 7 May 1998, she filed a Motion for Leave to Admit Amended Answer[7] in which she alleged, among others, that her husband and co-defendant, Manuel Toledo (Manuel), is already dead.[8] The death certificate[9] of Manuel states "13 July 1995" as the date of death. As a result, petitioner filed a motion, dated 5 August 1999, to require respondent to disclose the heirs of Manuel.[10] In compliance with the verbal order of the court during the 11 October 1999 hearing of the case, respondent submitted the required names and addresses of the heirs.[11] Petitioner then filed a Motion for Substitution,[12] dated 18 January 2000, praying that Manuel be substituted by his children as party-defendants. It appears that this motion was granted by the trial court in an Order dated 9 October 2000.[13]

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[4] CA *rollo*, pp. 9-11.

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

[6] *Id.* at 16-21.

[7] *Id.* at 23-28.

[8] *Id.* at 24.

[9] *Id.* at 49.

[10] *Id.* at 31-33.

[11] *Id.* at 36.

[12] *Id.* at 34-35.

[13] Petitioner Boston's Opposition to Defendant's Motion to Dismiss, dated 20 October 2004, filed before the trial court, *id.* at 52; Respondent Toledo's Memorandum dated 8 December 2005 filed before the CA, *id.* at 176.

Pre-trial thereafter ensued and on 18 July 2001, the trial court issued its pre-trial order containing, among others, the dates of hearing of the case.[14]

The trial of the case then proceeded. Herein petitioner, as plaintiff, presented its evidence and its exhibits were thereafter admitted.

On 26 May 2004, the reception of evidence for herein respondent was cancelled upon agreement of the parties. On 24 September 2004, counsel for herein respondent was given a period of fifteen days within which to file a demurrer to evidence.[15] However, on 7 October 2004, respondent instead filed a motion to dismiss the complaint, citing the following as grounds: (1) that the complaint failed to implead an indispensable party or a real party in interest; hence, the case must be dismissed for failure to state a cause of action; (2) that the trial court did not acquire jurisdiction over the person of Manuel pursuant to Section 5, Rule 86 of the Revised Rules of Court; (3) that the trial court erred in ordering the substitution of the deceased Manuel by his heirs; and (4) that the court must also dismiss the case against Lolita Toledo in accordance with Section 6, Rule 86 of the Rules of Court.[16]

The trial court, in an Order dated 8 November 2004, denied the motion to dismiss for having been filed out of time, citing Section 1, Rule 16 of the 1997 Rules of Court which states that: "[W]ithin the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made x x x."[17] Respondent's motion for reconsideration of the order of denial was likewise denied on the ground that "defendants' attack on the jurisdiction of this Court is now barred by estoppel by laches" since respondent failed to raise the issue despite several chances to do so.[18]

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[14] *Id.* at 95-97.

[15] Order of the trial court dated 8 November 2004. *Id.* at 10.

[16] *Id.* at 37-48.

[17] *Id.* at 10-11.

[18] *Id.* at 13.

Aggrieved, respondent filed a petition for *certiorari* with the Court of Appeals alleging that the trial court seriously erred and gravely abused its discretion in denying her motion to dismiss despite discovery, during the trial of the case, of evidence that would constitute a ground for dismissal of the case.[19]

The Court of Appeals granted the petition based on the following grounds:

> It is elementary that courts acquire jurisdiction over the person of the defendant x x x only when the latter voluntarily appeared or submitted to the court or by coercive process issued by the court to him, x x x. In this case, it is undisputed that when [petitioner] Boston filed the complaint on ***December 24, 1997***, defendant Manuel S. Toledo was already dead, x x x. Such being the case, the court ***a quo*** could not have acquired jurisdiction over the person of defendant Manuel S. Toledo.
>
> x x x the court ***a quo's*** denial of [respondent's] motion to dismiss was based on its finding that [respondent's] attack on the jurisdiction of the court was already barred by ***laches*** as [respondent] failed to raise the said ground in its [sic] amended answer and during the pre-trial, despite her active participation in the proceedings.
>
> However, x x x it is well-settled that issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal. By timely raising the issue on jurisdiction in her motion to dismiss x x x [respondent] is not ***estopped*** [from] raising the question on jurisdiction. Moreover, when issue on jurisdiction was raised by [respondent], the court ***a quo*** had not yet decided the case, hence, there is no basis for the court ***a quo*** to invoke estoppel to justify its denial of the motion for reconsideration;
>
> It should be stressed that when the complaint was filed, defendant Manuel S. Toledo was already dead. The complaint should have impleaded the ***estate*** of Manuel S. Toledo as defendant, not only the wife, considering that the estate of Manuel S. Toledo is an indispensable party, which stands to be benefited or be injured in the outcome of the case. x x x
>
> xxx xxx xxx

[19] *Id.* at 4.

[Respondent's] motion to dismiss the complaint should have been granted by public respondent judge as the same was in order. Considering that the obligation of Manuel S. Toledo is solidary with another debtor, x x x, the claim x x x should be filed against the estate of Manuel S. Toledo, in conformity with the provision of Section 6, Rule 86 of the Rules of Court, x x x.[20]

The Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition.

The Issues

Petitioner claims that the Court of Appeals erred in not holding that:

1. Respondent is already estopped from questioning the trial court's jurisdiction;
2. Petitioner never failed to implead an indispensable party as the estate of Manuel is not an indispensable party;
3. The inclusion of Manuel as party-defendant is a mere misjoinder of party not warranting the dismissal of the case before the lower court; and
4. Since the estate of Manuel is not an indispensable party, it is not necessary that petitioner file its claim against the estate of Manuel.

In essence, what is at issue here is the correctness of the trial court's orders denying respondent's motion to dismiss.

The Ruling of the Court

We find merit in the petition.

Motion to dismiss filed out of time

To begin with, the Court of Appeals erred in granting the writ of *certiorari* in favor of respondent. Well settled is the rule that the special civil action for *certiorari* is not the proper remedy to assail the denial by the trial court of a motion to dismiss. The order of the trial court denying a motion to dismiss

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[20] *Rollo*, pp. 25-27.

is merely interlocutory, as it neither terminates nor finally disposes of a case and still leaves something to be done by the court before a case is finally decided on the merits.[21] Therefore, "the proper remedy in such a case is to appeal after a decision has been rendered."[22]

As the Supreme Court held in *Indiana Aerospace University v. Comm. on Higher Education*:[23]

> A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts – acts which courts or judges have no power or authority in law to perform. **It is not designed to correct erroneous findings and conclusions made by the courts.** (Emphasis supplied)

Even assuming that *certiorari* is the proper remedy, the trial court did not commit grave abuse of discretion in denying respondent's motion to dismiss. It, in fact, acted correctly when it issued the questioned orders as respondent's motion to dismiss was filed SIX YEARS AND FIVE MONTHS AFTER SHE FILED HER AMENDED ANSWER. This circumstance alone already warranted the outright dismissal of the motion for having been filed in clear contravention of the express mandate of Section 1, Rule 16, of the Revised Rules of Court. Under this provision, a motion to dismiss shall be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim.[24]

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[21] *Malicdem v. Flores*, 532 Phil. 689, 697 (2006) citing *East Asia Traders, Inc. v. Republic of the Philippines*, G.R. No. 152947, 7 July 2004, 433 SCRA 716.

[22] *Indiana Aerospace University v. Comm. on Higher Education*, 408 Phil. 483, 501 (2001) cited in *Bonifacio Construction Management Corporation v. Judge Perlas-Bernabe*, G.R. No. 185011, 501 Phil. 79, 84 (2005).

[23] *Id.*

[24] *Chan v. Court of Appeals*, 468 Phil. 244, 251 (2004) citing *Kho v. Court of Appeals*, G.R. No. 115758, 19 March 2002, 379 SCRA 410, 421.

More importantly, respondent's motion to dismiss was filed after petitioner has completed the presentation of its evidence in the trial court,[25] giving credence to petitioner's and the trial court's conclusion that the filing of the motion to dismiss was a mere ploy on the part of respondent to delay the prompt resolution of the case against her.

Also worth mentioning is the fact that respondent's motion to dismiss under consideration herein is not the first motion to dismiss she filed in the trial court. It appears that she had filed an earlier motion to dismiss[26] on the sole ground of the unenforceability of petitioner's claim under the Statute of Frauds, which motion was denied by the trial court. More telling is the following narration of the trial court in its Order denying respondent's motion for reconsideration of the denial of her motion to dismiss:

> As can be gleaned from the records, with the admission of plaintiff's exhibits, reception of defendants' evidence was set on March 31, and April 23, 2004 x x x . On motion of the defendant[s], the hearing on March 31, 2004 was cancelled.
>
> On April 14, 2004, defendants sought the issuance of subpoena *ad testificandum* and *duces tecum* to one Gina M. Madulid, to appear and testify for the defendants on April 23, 2004. Reception of defendants' evidence was again deferred to May 26, June 2 and June 30, 2004, x x x.
>
> On May 13, 2004, defendants sought again the issuance of a subpoena *duces tecum* and *ad testificandum* to the said Gina Madulid. On May 26, 2004, reception of defendants [sic] evidence was cancelled upon the agreement of the parties. On July 28, 2004, in the absence of defendants' witness, hearing was reset to September 24 and October 8, 2004 x x x.
>
> On September 24, 2004, counsel for defendants was given a period of fifteen (15) days to file a demurrer to evidence. On October 7, 2004, defendants filed instead a Motion to Dismiss x x x.[27]

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

[26] *Id.* at 11 and 13.

[27] *Id.* at 10.

Respondent's act of filing multiple motions, such as the first and earlier motion to dismiss and then the motion to dismiss at issue here, as well as several motions for postponement, lends credibility to the position taken by petitioner, which is shared by the trial court, that respondent is deliberately impeding the early disposition of this case. The filing of the second motion to dismiss was, therefore, "not only improper but also dilatory."[28] Thus, the trial court, "far from deviating or straying off course from established jurisprudence on [the] matter, x x x had in fact faithfully observed the law and legal precedents in this case."[29] The Court of Appeals, therefore, erred not only in entertaining respondent's petition for *certiorari*, it likewise erred in ruling that the trial court committed grave abuse of discretion when it denied respondent's motion to dismiss.

On whether or not respondent is estopped from questioning the jurisdiction of the trial court

At the outset, it must be here stated that, as the succeeding discussions will demonstrate, jurisdiction over the person of Manuel should not be an issue in this case. A protracted discourse on jurisdiction is, nevertheless, demanded by the fact that jurisdiction has been raised as an issue from the lower court, to the Court of Appeals and, finally, before this Court. For the sake of clarity, and in order to finally settle the controversy and fully dispose of all the issues in this case, it was deemed imperative to resolve the issue of jurisdiction.

1. Aspects of Jurisdiction

Petitioner calls attention to the fact that respondent's motion to dismiss questioning the trial court's jurisdiction was filed more than six years after her amended answer was filed. According to petitioner, respondent had several opportunities, at various stages of the proceedings, to assail the trial court's jurisdiction but never did so for six straight years. Citing the doctrine laid down in the case of *Tijam, et al. v. Sibonghanoy, et al.*[30] petitioner

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[28] *Suntay v. Cojuangco-Suntay*, 360 Phil. 932, 941 (1998).

[29] *Id.*

[30] 131 Phil. 556 (1968).

claimed that respondent's failure to raise the question of jurisdiction at an earlier stage bars her from later questioning it, especially since she actively participated in the proceedings conducted by the trial court.

Petitioner's argument is misplaced, in that, it failed to consider that the concept of jurisdiction has several aspects, namely: (1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction over the *res* or the thing which is the subject of the litigation.[31]

The aspect of jurisdiction which may be barred from being assailed as a result of estoppel by laches is **jurisdiction over the subject matter**. Thus, in *Tijam*, the case relied upon by petitioner, the issue involved was the authority of the then Court of First Instance to hear a case for the collection of a sum of money in the amount of ₱1,908.00 which amount was, at that time, within the exclusive original jurisdiction of the municipal courts.

In subsequent cases citing the ruling of the Court in *Tijam*, what was likewise at issue was the jurisdiction of the trial court over the subject matter of the case. Accordingly, in *Spouses Gonzaga v. Court of Appeals*,[32] the issue for consideration was the authority of the regional trial court to hear and decide an action for reformation of contract and damages involving a subdivision lot, it being argued therein that jurisdiction is vested in the Housing and Land Use Regulatory Board pursuant to PD 957 (The Subdivision and Condominium Buyers Protective Decree). In *Lee v. Presiding Judge, MTC, Legaspi City*,[33] petitioners argued that the respondent municipal trial court had

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[31] *Hasegawa v. Kitamura*, G.R. 149177, 23 November 2007, 538 SCRA 261, 273-274 citing Regalado, *Remedial Law Compendium*, Volume 1, 8th Revised Ed., pp. 7-8. See also Riano, *Civil Procedure* (The Bar Lecture Series), Volume I, 2011 edition, pp. 64-65.

[32] 442 Phil. 735, 740 (2002).

[33] 229 Phil. 405, 412 (1986).

no jurisdiction over the complaint for ejectment because the issue of ownership was raised in the pleadings. Finally, in *People v. Casuga*,[34] accused-appellant claimed that the crime of grave slander, of which she was charged, falls within the concurrent jurisdiction of municipal courts or city courts and the then courts of first instance, and that the judgment of the court of first instance, to which she had appealed the municipal court's conviction, should be deemed null and void for want of jurisdiction as her appeal should have been filed with the Court of Appeals or the Supreme Court.

In all of these cases, the Supreme Court barred the attack on the jurisdiction of the respective courts concerned over the subject matter of the case based on estoppel by laches, declaring that parties cannot be allowed to belatedly adopt an inconsistent posture by attacking the jurisdiction of a court to which they submitted their cause voluntarily.[35]

Here, what respondent was questioning in her motion to dismiss before the trial court was that court's jurisdiction over the person of defendant Manuel. Thus, the principle of estoppel by laches finds no application in this case. Instead, the principles relating to jurisdiction over the person of the parties are pertinent herein.

The Rules of Court provide:

RULE 9
EFFECT OF FAILURE TO PLEAD

Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

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[34] 153 Phil. 38, 42-43 (1973).

[35] *Lee v. Presiding Judge*, MTC, *Legaspi City, supra*, note 33 at 415.

RULE 15
MOTIONS

Sec. 8. *Omnibus motion*. – Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

Based on the foregoing provisions, the "objection on jurisdictional grounds which is not waived even if not alleged in a motion to dismiss or the answer is lack of jurisdiction over the *subject matter*. x x x Lack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived x x x subject, however, to the principle of estoppel by laches."[36]

Since the defense of lack of jurisdiction over the *person* of a party to a case is not one of those defenses which are not deemed waived under Section 1 of Rule 9, such defense must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver of the defense.[37] If the objection is not raised either in a motion to dismiss or in the answer, the objection to the jurisdiction over the person of the plaintiff or the defendant is deemed waived by virtue of the first sentence of the above-quoted Section 1 of Rule 9 of the Rules of Court.[38]

The Court of Appeals, therefore, erred when it made a sweeping pronouncement in its questioned decision, stating that "issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal" and that, therefore, respondent timely raised the issue in her motion to dismiss and is, consequently, not estopped from raising the question of jurisdiction. As the question of jurisdiction involved here is that over the person of the defendant Manuel, the same is deemed waived if not raised in the answer or a motion to dismiss. In

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[36] Regalado, *Remedial Law Compendium*, Volume One, Tenth Edition, p. 187.

[37] Riano, *Civil Procedure* (The Bar Lecture Series), Volume I, 2011 Edition, p. 90.

[38] *Id.* at 89.

any case, respondent cannot claim the defense since "lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence."[39]

2. Jurisdiction over the person of a defendant is acquired through a valid service of summons; trial court did not acquire jurisdiction over the person of Manuel Toledo

In the first place, jurisdiction over the person of Manuel was never acquired by the trial court. A defendant is informed of a case against him when he receives summons. "Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person."[40]

In the case at bar, the trial court did not acquire jurisdiction over the person of Manuel since there was no valid service of summons upon him, precisely because he was already dead even before the complaint against him and his wife was filed in the trial court. The issues presented in this case are similar to those in the case of *Sarsaba v. Vda. de Te*.[41]

In *Sarsaba*, the NLRC rendered a decision declaring that Patricio Sereno was illegally dismissed from employment and ordering the payment of his monetary claims. To satisfy the claim, a truck in the possession of Sereno's employer was levied upon by a sheriff of the NLRC, accompanied by Sereno and his lawyer, Rogelio Sarsaba, the petitioner in that case. A complaint for recovery of motor vehicle and damages, with prayer for the delivery of the truck *pendente lite* was eventually filed against Sarsaba, Sereno, the NLRC sheriff and the NLRC by the registered owner of the truck. After his motion to dismiss was denied by the trial court, petitioner Sarsaba filed his answer.

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[39] *Carandang v. Heirs of Quirino A. De Guzman*, 538 Phil. 319, 331 (2006).

[40] *Romualdez-Licaros v. Licaros*, G.R. No. 150656, 449 Phil. 824, 833 (2003) citing *Cano-Gutierrez v. Gutierrez*, G.R. No. 138584, 2 October 2000, 341 SCRA 670.

[41] G.R. No. 175910, 30 July 2009, 594 SCRA 410.

Later on, however, he filed an omnibus motion to dismiss citing, as one of the grounds, lack of jurisdiction over one of the principal defendants, in view of the fact that Sereno was already dead when the complaint for recovery of possession was filed.

Although the factual milieu of the present case is not exactly similar to that of *Sarsaba,* one of the issues submitted for resolution in both cases is similar: whether or not a case, where one of the named defendants was already dead at the time of its filing, should be dismissed so that the claim may be pursued instead in the proceedings for the settlement of the estate of the deceased defendant. The petitioner in the *Sarsaba Case* claimed, as did respondent herein, that since one of the defendants died before summons was served on him, the trial court should have dismissed the complaint against all the defendants and the claim should be filed against the estate of the deceased defendant. The petitioner in *Sarsaba*, therefore, prayed that the complaint be dismissed, not only against Sereno, but as to all the defendants, considering that the RTC did not acquire jurisdiction over the person of Sereno.[42] This is exactly the same prayer made by respondent herein in her motion to dismiss.

The Court, in the *Sarsaba Case*, resolved the issue in this wise:

> x x x We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. ***The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it.*** Obviously, it is now impossible for Sereno to invoke the same in view of his death. ***Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants.*** Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses

[42] *Id.* at 425.

and objections personal to them in their respective motions to dismiss and their subsequent answers.[43] (Emphasis supplied.)

Hence, the Supreme Court affirmed the dismissal by the trial court of the complaint against Sereno only.

Based on the foregoing pronouncements, there is no basis for dismissing the complaint against respondent herein. Thus, as already emphasized above, the trial court correctly denied her motion to dismiss.

On whether or not the estate of Manuel Toledo is an indispensable party

Rule 3, Section 7 of the 1997 Rules of Court states:

> SEC. 7. Compulsory joinder of indispensable parties.— Parties-in-interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but "an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable." Further, an indispensable party is one who must be included in an action before it may properly proceed.[44]

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[43] *Id.* at 427.

[44] *Lagunilla v. Velasco*, G.R. No. 169276, 16 June 2009, 589 SCRA 224, 232 citing *Regner v. Logarta*, G.R. No. 168747, 19 October 2007, 537 SCRA 277, 289 and *Arcelona v. Court of Appeals*, 345 Phil. 250, 267 (1997).

On the other hand, a "person is not an indispensable party if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him or her and those already parties to the action, or if he or she has no interest in the subject matter of the action." It is not a sufficient reason to declare a person to be an indispensable party simply because his or her presence will avoid multiple litigations.[45]

Applying the foregoing pronouncements to the case at bar, it is clear that the estate of Manuel is not an indispensable party to the collection case, for the simple reason that the obligation of Manuel and his wife, respondent herein, is solidary.

The contract between petitioner, on the one hand and respondent and respondent's husband, on the other, states:

FOR VALUE RECEIVED, I/We **jointly and severally**[46] (in solemn) promise to pay BOSTON EQUITY RESOURCES, INC. x x x the sum of PESOS: [ONE MILLION FOUR HUNDRED (₱1,400,000.00)] x x x.[47]

The provisions and stipulations of the contract were then followed by the respective signatures of respondent as "MAKER" and her husband as "CO-MAKER."[48] Thus, pursuant to Article 1216 of the Civil Code, petitioner may collect the entire amount of the obligation from respondent only. The aforementioned provision states: "The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

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[45] *Id.* at 232-233.

[46] Emphasis and underscoring supplied.

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

[48] *Id.*, dorsal portion.

In other words, the collection case can proceed and the demands of petitioner can be satisfied by respondent only, even without impleading the estate of Manuel. Consequently, the estate of Manuel is not an indispensable party to petitioner's complaint for sum of money.

However, the Court of Appeals, agreeing with the contention of respondent, held that the claim of petitioner should have been filed against the estate of Manuel in accordance with Sections 5 and 6 of Rule 86 of the Rules of Court. The aforementioned provisions provide:

SEC. 5. *Claims which must be filed under the notice. If not filed, barred; exceptions*. All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise, they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. x x x.

SEC. 6. *Solidary obligation of decedent.* Where the obligation of the decedent is solidary with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor. x x x.

The Court of Appeals erred in its interpretation of the above-quoted provisions.

In construing Section 6, Rule 87 of the old Rules of Court, the precursor of Section 6, Rule 86 of the Revised Rules of Court, which latter provision has been retained in the present Rules of Court without any revisions, the Supreme Court, in the case of *Manila Surety & Fidelity Co., Inc. v. Villarama, et al.*,[49] held:[50]

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[49] 107 Phil. 891, 897 (1960).

[50] *Philippine National Bank v. Asuncion*, 170 Phil. 356, 358-359.

Construing Section 698 of the Code of Civil Procedure from whence [Section 6, Rule 87] was taken, this Court held that where two persons are bound *in solidum* for the same debt and one of them dies, the whole indebtedness can be proved against the estate of the latter, the decedent's liability being absolute and primary; x x x. It is evident from the foregoing that Section 6 of Rule 87 provides the procedure *should the creditor desire to go against the deceased debtor*, but there is certainly nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or some or all of them simultaneously. There is, therefore, nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed.

The foregoing ruling was reiterated and expounded in the later case of *Philippine National Bank v. Asuncion*[51] where the Supreme Court pronounced:

A cursory perusal of Section 6, Rule 86 of the Revised Rules of Court reveals that nothing therein prevents a creditor from proceeding against the surviving solidary debtors. Said provision merely sets up the procedure in enforcing collection in case a creditor chooses to pursue his claim against the estate of the deceased solidary debtor. The rule has been set forth that a creditor (in a solidary obligation) has the option whether to file or not to file a claim against the estate of the solidary debtor. x x x

xxx xxx xxx

It is crystal clear that Article 1216 of the New Civil Code is the applicable provision in this matter. Said provision gives the creditor the right to "proceed against anyone of the solidary debtors or some or all of them simultaneously." The choice is undoubtedly left to the solidary creditor to determine against

[51] *Id.* at 358-360.

whom he will enforce collection. In case of the death of one of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors without necessity of filing a claim in the estate of the deceased debtors. It is not mandatory for him to have the case dismissed as against the surviving debtors and file its claim against the estate of the deceased solidary debtor, x x x. For to require the creditor to proceed against the estate, making it a condition precedent for any collection action against the surviving debtors to prosper, would deprive him of his substantive rights provided by Article 1216 of the New Civil Code. (Emphasis supplied.)

As correctly argued by petitioner, if Section 6, Rule 86 of the Revised Rules of Court were applied literally, Article 1216 of the New Civil Code would, in effect, be repealed since under the Rules of Court, petitioner has no choice but to proceed against the estate of [the deceased debtor] only. Obviously, this provision diminishes the [creditor's] right under the New Civil Code to proceed against any one, some or all of the solidary debtors. Such a construction is not sanctioned by principle, which is too well settled to require citation, that a substantive law cannot be amended by a procedural rule. Otherwise stated, Section 6, Rule 86 of the Revised Rules of Court cannot be made to prevail over Article 1216 of the New Civil Code, the former being merely procedural, while the latter, substantive.

Based on the foregoing, the estate of Manuel is not an indispensable party and the case can proceed as against respondent only. That petitioner opted to collect from respondent and not from the estate of Manuel is evidenced by its opposition to respondent's motion to dismiss asserting that the case, as against her, should be dismissed so that petitioner can proceed against the estate of Manuel.

On whether or not the inclusion of Manuel as party defendant is a misjoinder of party

Section 11 of Rule 3 of the Rules of Court states that "[n]either misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately."

Based on the last sentence of the afore-quoted provision of law, a misjoined party must have the capacity to sue or be sued in the event that the claim by or against the misjoined party is pursued in a separate case. In this case, therefore, the inclusion of Manuel in the complaint cannot be considered a misjoinder, as in fact, the action would have proceeded against him had he been alive at the time the collection case was filed by petitioner. This being the case, the remedy provided by Section 11 of Rule 3 does not obtain here. The name of Manuel as party-defendant cannot simply be dropped from the case. Instead, the procedure taken by the Court in *Sarsaba v. Vda. de Te*,[52] whose facts, as mentioned earlier, resemble those of this case, should be followed herein. There, the Supreme Court agreed with the trial court when it resolved the issue of jurisdiction over the person of the deceased Sereno in this wise:

> As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him.
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> However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein, does not render the action DISMISSIBLE, considering that the three (3) other defendants, x x x, were validly served with summons and the case with respect to the answering defendants may still proceed independently. Be it recalled that the three (3) answering defendants have previously filed a Motion to Dismiss the Complaint which was denied by the Court.
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> ***Hence, only the case against Patricio Sereno will be DISMISSED*** and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused [sic] will proceed. (Emphasis supplied.)[53]

As a result, the case, as against Manuel, must be dismissed.

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[52] *Supra* note 41.

[53] *Id.* at 427-428.

In addition, the dismissal of the case against Manuel is further warranted by Section 1 of Rule 3 of the Rules of Court, which states that: [o]nly natural or juridical persons, or entities authorized by law may be parties in a civil action." Applying this provision of law, the Court, in the case of *Ventura v. Militante*,[54] held:

> Parties may be either plaintiffs or defendants. x x x. In order to maintain an action in a court of justice, the plaintiff must have **an actual legal existence**, that is, he, she or it must be a person in law and possessed of a legal entity as either a natural or an artificial person, and no suit can be lawfully prosecuted save in the name of such a person.
>
> The rule is no different as regards party defendants. It is incumbent upon a plaintiff, when he institutes a judicial proceeding, to name the proper party defendant to his cause of action. In a suit or proceeding *in personam* of an adversary character, the court can acquire no jurisdiction for the purpose of trial or judgment until a party defendant who actually or legally exists and is legally capable of being sued, is brought before it. It has even been held that the question of the legal personality of a party defendant is a question of substance going to the jurisdiction of the court and not one of procedure.
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> The original complaint of petitioner named the "estate of Carlos Ngo as represented by surviving spouse Ms. Sulpicia Ventura" as the defendant. Petitioner moved to dismiss the same on the ground that the defendant as named in the complaint had no legal personality. We agree.
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> x x x. Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, **a decedent does not have the capacity to be sued and may not be named a party defendant in a court action**. (Emphases supplied.)

Indeed, where the defendant is neither a natural nor a juridical person or an entity authorized by law, the complaint may be dismissed on the ground that the pleading asserting the claim states no cause of action or for failure to state a cause of action

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[54] 374 Phil. 562, 571-573 (1999) citing 59 Am Jur 2d, Sec. 19, p. 407, 59 Am Jur 2d, Sec. 41, pp. 438 and 439 and 59 Am Jur 2d, Sec. 20, p. 440.

pursuant to Section 1(g) of Rule 16 of the Rules of Court, because a complaint cannot possibly state a cause of action against one who cannot be a party to a civil action.[55]

Since the proper course of action against the wrongful inclusion of Manuel as party-defendant is the dismissal of the case as against him, thus did the trial court err when it ordered the substitution of Manuel by his heirs. Substitution is proper only where the party to be substituted died **during the pendency of the case**, as expressly provided for by Section 16, Rule 3 of the Rules of Court, which states:

> ***Death of party;duty of counsel***. – Whenever a party to a **pending action** dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. x x x
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator x x x.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. (Emphasis supplied.)

Here, since Manuel was already dead at the time of the filing of the complaint, the court never acquired jurisdiction over his person and, in effect, there was no party to be substituted.

WHEREFORE, the petition is **GRANTED**. The Decision dated 28 February 2006 and the Resolution dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88586 are **REVERSED and SET ASIDE**. The Orders of the Regional Trial Court dated 8 November 2004 and 22 December 2004, respectively, in Civil Case No. 97-86672, are **REINSTATED**. The Regional Trial Court, Branch 24, Manila is hereby **DIRECTED** to proceed with the trial of Civil Case No. 97-86672 against respondent Lolita G. Toledo only, in accordance with

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[55] Riano, *Civil Procedure* (The Bar Lecture Series), Volume I, 2011 Edition, p. 229.

the above pronouncements of the Court, and to decide the case with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177812. June 19, 2013]

CONCRETE SOLUTIONS, INC./PRIMARY STRUCTURES CORPORATION, represented by ANASTACIO G. ARDIENTE, JR., *petitioners, vs.* **ARTHUR CABUSAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT; ELEMENTS THAT MUST CONCUR FOR ABANDONMENT TO BE A VALID CAUSE FOR DISMISSAL.— To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To be a valid cause for dismissal for abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is

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[*] Designated Additional Member per raffle dated 19 June 2013.

still the employee's ultimate act of putting an end to his employment.

2. ID.; ID.; ID.; ID.; ELEMENTS OF ABANDONMENT, NOT PRESENT; THERE IS NO SHOWING OF EMPLOYEE'S INTENT TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP.— We find that the elements of abandonment are lacking. The CA did not commit any reversible error in affirming the NLRC's decision that respondent was illegally dismissed for petitioners' failure to substantiate their claim that the former abandoned his work. The circumstances obtaining in this case do not indicate abandonment. x x x We find his absence from work not sufficient to establish that he already had intention of abandoning his job. Besides, settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. Even the failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. x x x There is no showing of respondent's intent to sever the employer-employee relationship. It is also notable that when respondent was refused entry to petitioners' premises and the letter of former's counsel was refused acceptance by the latter, there is already constructive dismissal which led respondent to seek recourse by filing an illegal dismissal case against petitioners on May 30, 2001. The proximity of respondent's filing of the complaint from the time he received the telegram and was refused entry to petitioners' premises showed that he had the least intention of abandoning his job. Well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment. x x x There is also no merit to petitioners' claim that respondent did not ask for reinstatement. While in his complaint filed with the LA, respondent failed to ask for reinstatement however, in his position paper, he specifically prayed for reinstatement[,] which showed that he had no intention of abandoning his work.

3. ID.; ID.; PROJECT EMPLOYEE; DEFINED.— Project employee is one whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the

employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. We held that the length of service of a project employee is not the controlling test of employment tenure but whether or not the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.

4. ID.; ID.; ID.; WHERE A PROJECT EMPLOYEE IS ILLEGALLY DISMISSED PRIOR TO THE EXPIRATION OF HIS EMPLOYMENT CONTRACT, HE IS ENTITLED TO HIS SALARY CORRESPONDING TO THE UNEXPIRED PORTION.— We rule that respondent is a project employee. x x x Considering that respondent was dismissed prior to the expiration of the duration of his employment and without a valid or just cause, his termination was therefore illegal. However, respondent could no longer be reinstated since the project he was assigned to was already completely finished. However, we find that he is entitled to the salary corresponding to the unexpired portion of his employment. Respondent is entitled to the payment of his salary from the time he was not admitted back to work on May 26, 2001 up to June 23, 2001, the expiration of his employment contract.

APPEARANCES OF COUNSEL

Girlie Young for petitioners.

Valencia & Valencia Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] dated December 21, 2006 of the Court of Appeals, Cebu City, in CA-G.R. SP No. 00685, which affirmed the NLRC decision

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicdican and Agustin S. Dizon, concurring; *rollo*, pp. 137-146.

finding that respondent was illegally dismissed. Also assailed is the CA Resolution[2] dated April 24, 2007 denying petitioners' motion for reconsideration.

The antecedent facts of the case are as follows:

Respondent Arthur Cabusas (respondent) was hired by petitioner Primary Structures Corporation (PSC) as transit mixer driver for petitioner Concrete Solutions Inc. (CSI) – Batching Plant Project. The appointment letter[3] dated June 27, 2000, which was signed by petitioner PSC's Human Resource Division Assistant with respondent's conformity, provided, among others: that respondent was hired for the period from June 28, 2000 until June 23, 2001; the status of his employment was that of a project employee and, as such, his employment was co-terminus with the completion of the project or any phase thereof; that upon completion of the particular project or phase, he was free to seek other employment of his choice; and, that within the duration of the work, petitioners shall have the right to terminate his employment without any liability on their part if his performance did not meet the company standards, or if he violated petitioners' rules and regulations.[4]

On February 16, 2001, a report reached petitioners that at around 5 o'clock in the afternoon of that day, respondent, as the driver of Transit Mixer 13, unloaded less than a cubic meter of concrete mix at Cabancalan, Mandaue City, more than two kilometers away from its project site located at Wireless, Mandaue City, instead of returning the excess concrete mix to the plant; and that respondent sold the excess concrete mix to the residents of the place where he unloaded the same.

On March 7, 2001, petitioners' Administrative Assistant, Carlo E. Gimena, submitted an Incident Report[5] where he stated that it is a company policy that washing/cleaning of drums must be

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[2] *Id.* at 148-149.

[3] *Id.* at 178.

[4] *Id.*

[5] *Id.* at 179-A.

done inside petitioners' plant to maximize the utilization of concrete residues for precast use; and nearly a cubic meter of concrete mix as excess would have been a substantial quantity for such purpose.

On March 8, 2001, petitioners' Manager, Anastacio G. Ardiente, Jr., required respondent to explain in writing[6] why he should not be meted with a disciplinary action for the alleged act of theft or dishonesty under the company's Code of Conduct and Discipline. In his explanation,[7] respondent stated that he threw away the concrete mix at Cabancalan, Mandaue City, instead of turning them over to the plant as he will wash the transit mixer at A.S. Fortuna, Mandaue City. Respondent was meted a three (3)-day suspension effective March 20, 2001 to March 22, 2001.[8]

On April 19, 2001, petitioners received an information that respondent allegedly took the company's plastic drum for personal gain. In his Incident Report[9] dated April 20, 2001, petitioners' Administrative Assistant Gimena reported that at 10:00 a.m. of April 19, 2001, respondent took an empty plastic drum and hid it in the Transit Mixer 13 he was driving on his way to deliver concrete mix to Ayala Heights; and that respondent even admitted the commission of such act which another transit mixer driver could attest to. Gimena recommended further investigation to include the security guards on duty at the time of the incident.[10] Respondent was asked to explain why no disciplinary action should be meted on him for such violation, and to attend the formal investigation on April 26, 2001.[11]

In his written explanation, respondent denied the accusation against him and claimed that he could not had driven the transit

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[6] *Id.* at 179.

[7] *Id.* at 180.

[8] *Id.* at 181.

[9] *Id.* at 186.

[10] *Id.*

[11] *Id.* at 185.

mixer out of the company's premises without passing through the guard house; hence, it was impossible to steal the plastic drum without the knowledge of the guard. He personally delivered his letter of explanation to the company, but was refused entry by the security guards. Respondent was placed under preventive suspension from April 20, 2001 to April 27, 2001 pending investigation of his case.[12]

The administrative investigation which was scheduled on April 26, 2001 was postponed to May 4, 2001 and respondent's preventive suspension was extended up to May 5, 2001. Respondent alleged that after the investigation on May 4, 2001, he and his counsel had asked for the result of the investigation and were waiting for such result.

While petitioners were deliberating on the violation committed by respondent, they went over the latter's 201 file and discovered that he appeared not to be registered with the Social Security System as the SSS number he submitted was that of another person in the name of Alex Cabusas.[13] Thus, petitioners needed clarifications from respondent, but the latter had been absent since May 6, 2001. On May 25, 2001, petitioners sent respondent a telegram,[14] to wit: "*You have been absent without official leave since May [6], 2001. Please notify CSI as soon as possible*."

On June 12, 2001, petitioners, thru Manager Ardiente, sent respondent a termination letter[15] reading as follows:

> Starting on May 6, 2001, you were absent from work without filing a Leave of Absence. A Notice of Abandonment was sent to you on May 25, 2001 via telegram. Likewise, you were required to report or notify the company as soon as possible. However, two weeks already elapsed from the time the notice was sent to you but you continued defying said request. Due to this, we are constrained

[12] *Id.* at 184.

[13] *Id.* at 194.

[14] *Id.* at 688.

[15] *Id.* at 196.

to TERMINATE your services effective on the date you abandoned your work with a strong belief that you are no longer interested to come back to your work anymore.[16]

Petitioners submitted to the Department of Labor and Employment an Establishment Termination Report[17] indicating that the project where respondent was assigned was already completed and also that respondent was terminated for being absent without leave (AWOL).

Earlier, however, on May 30, 2001, respondent had filed with Regional Arbitration Branch No. VII of Cebu City a Complaint[18] for unfair labor practice, illegal dismissal, non-payment of holiday pay, premium pay for holiday, rest day, night shift premium, separation pay and moral damages against petitioners. In his position paper,[19] respondent alleged among others: that it was not true that he went on AWOL. He alleged that when the administrative investigation on his alleged theft of company property was conducted and terminated on May 4, 2001, his counsel asked to be furnished a copy of the result of the investigation; that since then, they eagerly waited for such result, thus they were surprised to receive a telegram on May 26, 2001 where he was said to have been AWOL since May 5, 2001; that immediately upon receipt of the telegram, respondent went to petitioners' office, but he was refused entry for the reason that he was AWOL; that there was no valid cause for his dismissal and petitioners found the lame excuse of declaring him AWOL if only to create a semblance of justification for his unlawful termination; that he had previously tendered a follow-up letter for a copy of the resolution of the administrative investigation that was terminated on May 4, 2001, however, petitioners unceremoniously refused to receive a copy of the letter he personally delivered, thus his counsel was compelled

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[16] *Id.*

[17] *Id.* at 197.

[18] *Id.* at 177-A.

[19] *Id.* at 491-500.

to send the letter by way of registered mail on May 29, 2001;[20] that petitioners did not reply to his letter and did not even furnish his counsel with a copy of the suspension letter; that petitioners' imputation that he committed dishonest acts was founded on falsehood and fabrications as no evidence was presented during the so-called administrative hearing, except the self-serving and perjured statements of petitioners' employees who were merely cajoled into making unfounded stories. Respondent had prayed for his reinstatement, among others.

Petitioners, through counsel, submitted their position paper refuting respondent's allegations.

On September 26, 2001, the Labor Arbiter (LA) rendered his Decision,[21] the dispositive portion of which reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered DISMISSING this case for lack of merit. Respondents are, however, directed to pay complainant's proportionate 13th month pay in the amount of ₱1,603.33.
>
> SO ORDERED.[22]

The LA found that respondent was validly dismissed from his employment as he abandoned his job; that he failed to report for work despite the directive through a telegram for him to report back to work. The LA was not convinced of respondent's claim that immediately upon receipt of the telegram, he went to petitioners' office but he was refused entry for the alleged reason that he was AWOL since no evidence was presented to substantiate the same; and that his credibility was doubtful since he claimed that he was dismissed on May 4, 2001, however the records showed that he was being investigated for stealing plastic drums on that day; and that he furnished petitioners with an SSS number which did not belong to him.

As regards respondent's money claims, the LA ruled that since he had worked from January 2, 2001 to May 4, 2001, he

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[20] Records, p. 41.

[21] *Rollo*, pp. 151-159; Per LA Jose G. Gutierrez.

[22] *Id.* at 158-159.

was entitled to a proportionate amount of his 13th month pay equivalent to 4 months. However, his claim for salary differential due to underpayment was denied since based on the payroll, he was a paid a salary of ₱185.00 per day which was the prevailing minimum wage at the time his services were rendered.

Respondent filed an appeal with the National Labor Relations Commission (NLRC) to which petitioners filed their Comment thereto.

On January 12, 2005, the NLRC rendered its decision,[23] the decretal portion of which reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated 26 September 2001 is **MODIFIED**, to wit:

1. Ordering the respondents to reinstate the complainant and to pay his full backwages computed from 4 May 2001 up to the time of his actual reinstatement; and

2. Ordering respondents to pay complainant of his 13th month pay in the amount of ₱1,603.33 as awarded by the Labor Arbiter.

SO ORDERED.[24]

In ruling that there was no abandonment, the NLRC found that respondent's absence was not without justifiable reason since petitioners did not sufficiently make known to respondent that he should report for work on May 6, 2001 because the alleged preventive suspension order was unwritten; that the telegram sent to respondent on May 26, 2001 did not direct him to report for work but merely stated "you have been absent without official leave since May 5, 2001, please notify CSI as soon as possible" and that even before respondent was dismissed for abandonment of work on June 12, 2001, he had already filed a complaint for illegal dismissal on May 30, 2001 which negated any intention on his part to forsake his work.

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[23] *Id.* at 160-168; Penned by Commissioner Oscar S. Uy concurred in by Commissioners Gerardo C. Nograles and Aurelio D. Menzon.

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

The NLRC also found that upon receipt of the telegram on May 26, 2001, respondent went to petitioners' office but he was refused entry for the alleged reason that he was AWOL which showed that he was constructively dismissed. However, it found no credence to petitioners' allegation that respondent was a project employee applying the principle that where from circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy; and that the allegation that respondent was not registered with the SSS and the number he submitted to the company was that of Alex Cabusas has no bearing in this case and did not detract from the fact that he was illegally dismissed from employment.

Petitioners' motion for reconsideration was denied in a Resolution[25] dated March 10, 2005.

Petitioners filed with the CA a petition for *certiorari* under Rule 65 assailing the NLRC rulings for having been issued with grave abuse of discretion amounting to lack of jurisdiction. Respondent filed his comment thereto and petitioners filed their reply.

On December 21, 2006, the CA rendered its assailed decision affirming *in toto* the NLRC decision.

Petitioners' motion for reconsideration was denied in a Resolution dated April 24, 2007.

The issue for resolution is whether respondent deliberately abandoned his work which is a just cause for his dismissal or whether he was illegally dismissed by petitioners.

It must be stressed that in petitions for review under Rule 45, only questions of law must be raised. Whether respondent abandoned his job or was illegally dismissed are questions of fact better left to quasi-judicial agencies to determine.[26] It is elementary rule that the Supreme Court is not a trier of facts

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[25] *Id.* at 169-170.

[26] *Mame v. Court of Appeals*, 549 Phil. 337, 346 (2007).

and this doctrine applies with greater force in labor cases.[27] In exceptional cases, however, the Court may be urged to probe and resolve factual issues when the LA and the NLRC came up with conflicting positions.[28] Here, the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, are conflicting, thus we are constrained to determine the facts of the case.[29]

It is well settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal was for a just and valid cause, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.[30] In this case, petitioners claim that respondent was validly dismissed as he abandoned his work as shown by the following circumstances, to wit: He did not go back to work on May 6, 2001, *i.e*, after his preventive suspension expired on May 5, 2001; he did not report to work despite receipt of the telegram on May 25, 2001 stating that "he was absent without official leave since May 5, 2001, and to notify CSI as soon as possible," but instead , through his lawyer, sent a letter asking for a copy of the result of the investigation; despite not being given the result of the investigation, respondent still did not bother to report back to work; and the complaint he filed with the LA did not pray for reinstatement.

To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[31]

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[27] *Randrada v. Agemar Manning Agency Inc.*, G.R. No. 194758, October 24, 2012.

[28] *Id.*

[29] *RBC Cable Master System v. Baluyot*, G.R. No. 172690, January 20, 2009, 576 SCRA 668, 677.

[30] *Faeldonia v. Tong Yak Groceries*, G.R. No. 182499, October 2, 2009, 602 SCRA 677.

[31] *Pure Blue Industries, Inc. v. NLRC*, 337 Phil. 710, 717 (1997), citing *Labor v. NLRC*, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.[32] To be a valid cause for dismissal for abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship.[33] Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.[34]

We find that the elements of abandonment are lacking. The CA did not commit any reversible error in affirming the NLRC's decision that respondent was illegally dismissed for petitioners' failure to substantiate their claim that the former abandoned his work. The circumstances obtaining in this case do not indicate abandonment.

Respondent explained that his absence from work was due to the fact that he and his counsel had asked and were waiting for a copy of result of the investigation on his alleged act of theft or dishonesty conducted on May 4, 2001 but were not given at all. We find his absence from work not sufficient to establish that he already had intention of abandoning his job. Besides, settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.[35] Even the failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[36] In fact, when respondent received petitioners' telegram on May 25, 2001 stating that "he was absent without official leave since May 5, 2001, and to notify CSI as soon as possible", he went to petitioners premises but was refused entry for reason that he was AWOL. He also tried to give them a letter dated May 26, 2001 from his counsel requesting for a copy of the resolution

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[32] *Id.* at 718, citing *Cañete v. NLRC*, 320 Phil. 313 (1995) .

[33] *Hodieng Concrete Products v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249.

[34] *Id.*

[35] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 516 (2003); *Aliten v. U Need Lumber and Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577.

[36] *Id.*

of the investigation conducted on May 4, 2001 but petitioners refused to receive the same which prompted respondent's counsel to send the letter dated May 26, 2001 to petitioners by registered mail on May 29, 2001. The fact of petitioners' refusal to receive the letter was stated in that letter but they never refuted the same which in effect, negates petitioners' claim that respondent did not comply with the telegram sent to him.

There is no showing of respondent's intent to sever the employer-employee relationship. It is also notable that when respondent was refused entry to petitioners' premises and the letter of former's counsel was refused acceptance by the latter, there is already constructive dismissal which led respondent to seek recourse by filing an illegal dismissal case against petitioners on May 30, 2001. The proximity of respondent's filing of the complaint from the time he received the telegram and was refused entry to petitioners' premises showed that he had the least intention of abandoning his job. Well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment.[37] As correctly held by the CA:

> Besides, respondent Cabusas immediately filed on 30 May 2001 a complaint for illegal dismissal. An employee who forthwith takes steps to protest his layoff cannot by any stretch of imagination be said to have abandoned his work and the filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment. The Supreme Court pronounced in the case of *Judric Canning Corporation v. Inciong*, that "it would be illogical for the respondent to abandon his work and then immediately file an action seeking his reinstatement." Verily, Cabusas' act of contesting the legality of his dismissal ably supports his sincere intention to return to work, thus negating the stand of petitioner that he had abandoned his job.[38]

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[37] *New Ever Marketing, Inc v. Court of Appeals*, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 296.

[38] *Rollo*, p. 144.

There is also no merit to petitioners' claim that respondent did not ask for reinstatement. While in his complaint filed with the LA, respondent failed to ask for reinstatement however, in his position paper, he specifically prayed for reinstatement.[39] which showed that he had no intention of abandoning his work.

Petitioners' claim that respondent's violations of company rules also warranted his termination on account of loss of trust and confidence deserves scant consideration since the latter's dismissal was not due to those alleged dishonest acts but due to abandonment. As the CA correctly held:

> x x x It bears stressing that petitioner CSI's letter of 12 June 2001 addressed to respondent Cabusas merely sought an explanation from the latter on his alleged absence without official leave, or in short, his alleged abandonment, and informed him that such absence compelled them to terminate him from his employment. Nothing is mentioned about dishonesty or any other misconduct on the part of respondent. If indeed respondent was guilty of both abandonment and dishonesty or misconduct, then petitioners should have put them down in black and white. Petitioners had already conducted an administrative investigation on such matter and nothing can prevent them from citing its also as basis of terminating Cabusas if they were really convinced that the latter committed such an infraction. Thus, it is illogical for us to touch on the matter of the alleged dishonest acts of respondent since it was not the basis stated in the notice of termination sent to Cabusas.[40]

The next question is whether the CA committed a reversible error in affirming the NLRC's award of respondent's reinstatement and backwages.

Petitioners contend that respondent was a project employee and the project to which he was hired was already completed, thus he could not be reinstated anymore.

Project employee is one whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of

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[39] *Id.* at 497.

[40] *Id.* at 145.

the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.[41] We held that the length of service of a project employee is not the controlling test of employment tenure but whether or not the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.[42]

We rule that respondent is a project employee. His appointment letter showed that he was hired as transit mixer driver for the Concrete Solutions Inc. (CSI) – Batching Plant Project for the period from June 28, 2000 until June 23, 2001. The same letter provided that he was a project employee whose employment was co-terminus with the completion of the project or any phase thereof and upon completion of the particular project or phase, he was free to seek other employment of his choice. There is no evidence showing that respondent did not sign the conforme part of the appointment letter voluntarily. Hence, respondent was bound by the provisions in the appointment letter. Moreover, there is also no showing that the period fixed in the appointment

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[41] *D.M. Consunji, Inc. v. NLRC*, 401 Phil. 635, 639 (2000), citing Article 280 of the Labor Code which reads:

Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[42] *Id.* at 641, citing See *Hilario Rada v. NLRC*, G.R. No. 96078, January 9, 1992, 205 SCRA 69.

letter was imposed to preclude acquisition of tenurial security by the employee and should be disregarded for being contrary to public policy as ruled by the NLRC since no evidence exists on the record to support such conclusion.

Considering that respondent was dismissed prior to the expiration of the duration of his employment and without a valid or just cause, his termination was therefore illegal. However, respondent could no longer be reinstated since the project he was assigned to was already completely finished. However, we find that he is entitled to the salary corresponding to the unexpired portion of his employment.[43] Respondent is entitled to the payment of his salary from the time he was not admitted back to work on May 26, 2001 up to June 23, 2001, the expiration of his employment contract.

Finally, petitioners cannot raise for the first time their claim that it was only petitioner PSC which was respondent's employer and that petitioners PSC and CSI are two different corporate entities. Notably, this issue had not been submitted for determination before the LA, NLRC or the CA but only now in this petition. The settled rule is that issues not raised or ventilated in the court *a quo* cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice.[44]

WHEREFORE, the Decision dated December 21, 2006 and the Resolution dated April 24, 2007 of the Court of Appeals, Cebu City, in CA-G.R. SP No. 00685 are hereby **AFFIRMED** with **MODIFICATION** that the order for respondent's reinstatement is deleted and petitioners are **DIRECTED** to pay respondent his salary from May 26, 2001 up to June 23, 2001 only.

SO ORDERED.

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

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[43] *Id.* at 644.

[44] *R.P. Dinglasan Construction, Inc. v. Atienza*, G.R. No. 156104, June 29, 2004, 433 SCRA 263, 271 (2004).

THIRD DIVISION

[G.R. No. 179685. June 19, 2013]

CONRADA O. ALMAGRO, *petitioner, vs.* **SPS. MANUEL AMAYA, SR. and LUCILA MERCADO, JESUS MERCADO, SR., and RICARDO MERCADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION MAY RAISE ONLY QUESTIONS OF LAW; EXCEPTION, APPLIED.— The issue raised is essentially factual in nature. Under Rule 45 of the Rules of Court, only questions and errors of law, not of fact, may be raised before the Court. Not being a trier of facts, it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties. Corollary to this precept, but subject to well-defined exceptions, is the rule that findings of fact of trial courts or the CA, when supported by substantial evidence on record, are conclusive and binding on the Court. But for compelling reasons, such as when the factual findings of the trying court or body are in conflict with those of the appellate court, or there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken, this Court shall analyze or weigh the evidence again and if necessary reverse the factual findings of the courts *a quo.* This is precisely the situation obtaining in this case. The findings, on the one hand, of RARAD Arrieta and, those of the DARAB and the CA, on the other, relative to the appreciation of evidence adduced in hearings before RARAD Arrieta, are incompatible with each other.

2. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 27 (P.D. 27); APPLICATION FOR INCLUSION IN THE LIST OF AGRARIAN REFORM BENEFICIARIES; MATERIAL MISREPRESENTATION AND FRAUD, EXPLAINED.— Material means that it is "of such a nature that knowledge of the item would affect a person's decision-making; significant; essential; relevant."

Misrepresentation, on the other hand, means "the act of making a false or misleading assertion about something, usually with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion." A **material misrepresentation** is "a false statement to which a reasonable person would attach importance in deciding how to act in the transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance." Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another.

3. ID.; ID.; P.D. 27 IN RELATION TO DAR AO NO. 02, SERIES OF 1994; APPLICANT'S ASSERTION THAT THE LAND WAS PRIMARILY DEVOTED TO CORN PRODUCTION WHEN IN FACT NOT CONSTITUTES MATERIAL MISREPRESENTATION.— DAR AO No. 02, Series of 1994, lists and defines the grounds for cancellation of registered EPs or Certificates of Land Ownership Award (CLOA). Among these are: x x x 3. **Material misrepresentation of the ARB's basic qualifications as provided under** Section 22 of RA No. 6657, **PD No. 27**, and other agrarian laws; x x x Respondents' assertion in their application for lot award as ARBs under the OLT of PD 27 — that the parcels of land they respectively cultivate are devoted to corn production, when they are in fact not — cannot but be treated as erroneous, fraudulent deliberate statements of a material fact, constituting "material misrepresentation." Verily, the determination of whether the subject lot is dedicated to the "planting of corn," as to put it within the purview of PD 27, is, ultimately, a conclusion of fact. Since the subject lot was not primarily planted to corn, except occasionally during the *panuig* season (while the subject lot was planted to the regular vegetables during the *pangulilang* and *pang-enero* seasons), respondents' assertions in their application were willfully and deliberately erroneous and fraudulent. And such fraudulent and deliberate statement of an error, under the circumstances, is a falsity, a material misrepresentation in the context of DAR AO No. 02, Series of 1994. A willful and deliberate assertion of an erroneous

conclusion of fact is verily a deliberate untruthful statement of a material fact.

4. ID.; ID.; LANDS WHICH ARE PRIMARILY DEVOTED TO VEGETABLE PRODUCTION CANNOT BE PLACED UNDER THE COVERAGE OF P.D. 27.— PD 27 pertinently provides, "This shall apply to tenant farmers of private agricultural lands **primarily devoted to** rice and **corn under a system of sharecrop or lease-tenancy**, whether classified as landed estate or not." x x x It is, thus, clear that PD 27 encompasses only rice and corn land, *i.e.*, agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy. In the instant case, since the landholdings cultivated by respondents are primarily devoted to vegetable production, it is definitely outside the coverage, and necessarily cannot properly be placed under the umbrella, of PD 27. Thus, as the RARAD found, the landholdings cultivated by respondents which are portions of the subject lot were improperly placed under PD 27 through OLT. It may be, as the DARAB observed, that the process of placing under the land transfer program pursuant to PD 27 of tenanted rice/corn lands is a tedious exercise. Yet, given the proofs adduced in the hearing before the RARAD, there should be no serious quibbling about the fact that the subject lot is not covered by PD 27 simply because it is not corn/rice land.

D E C I S I O N

VELASCO, JR., *J.*:

This Petition for Review on *Certiorari* under Rule 45 assails and seeks to set aside the September 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 00111 and its September 11, 2007 Resolution[2] denying petitioner's motion for reconsideration. The assailed issuances effectively affirmed the October 19, 2004 Decision of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case

[1] *Rollo*, pp. 31-39. Penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justices Marlene Gonzales-Sison and Antonio L. Villamor.

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

Nos. 6858-59, which in turn reversed the Decision of the Regional Agrarian Reform Adjudicator (RARAD) in consolidated DARAB Case Nos. VII-140-C-93 and VII-C-90-95 declaring the property in question as outside the coverage of the Operation Land Transfer (OLT) scheme.

Central to this controversy is a parcel of land, denominated as Lot No. 13333, with an area of 6,000 square meters, more or less, located in Dalaguete, Cebu and covered by Tax Declaration No. 21-14946. Purchased in 1960[3] by petitioner Conrada Almagro (Conrada), Lot No. 13333 is bordered by a river in the north, a highway in the south, a public market in the east, and a privately-owned lot in the west. About 738 square meters of Lot No. 13333 is of residential-commercial use.

Antecedent Facts

In 1976, Conrada allowed respondent spouses Manuel Amaya, Sr. and Lucila Mercado (Sps. Amaya) to construct a house on a 46-square meter portion of Lot No. 13333 on the condition that no additional improvements of such nature requiring additional lot space shall be introduced and that they shall leave the area upon a 90-day notice. A decade later, Conrada asked the Amayas to vacate. Instead of heeding the vacation demand, the Amayas, in a virtual show of defiance, built permanent improvements on their house, the new structures eating an additional 48 square meters of land space. On November 3, 1993 Conrada filed a Complaint against the Sps. Amaya before the DARAB-Region 7 for "Ejectment, Payment of Rentals with Damages," docketed as DARAB Case No. VII-140-C-93.

In their Answer, the Amayas asserted possessory rights over the area on which their house stands and a portion of subject Lot No. 13333 they are cultivating, being, so they claimed, monthly-rental paying tenant-farmers. Said portion, the Amayas added, has been placed under OLT pursuant to Presidential Decree No. (PD) 27.[4]

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[3] CA *rollo*, p. 38.

[4] Issued on October 21, 1972, entitled "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership

Obviously disturbed by the Amayas' allegations in their answer, Conrada posthaste repaired to different government offices in Cebu to verify. From her inquiries, Conrada learned that herein respondents Manuel Amaya, Sr. (Manuel), Jesus Mercado, Sr. (Jesus) and Ricardo Mercado (Ricardo) have made tenancy claims over an area allegedly planted to corn area each was tilling. To add to her woes, she discovered that Emancipation Patents (EPs) have been generated over portions of Lot No. 13333.

EP Nos. 176987, 176985 and 176986 covering 1,156, 2,479, and 1,167 square meters, respectively, were issued in favor of Manuel, Jesus and Ricardo, respectively, on February 17, 1995. Shortly thereafter, the corresponding original certificates of title (OCTs), *i.e.*, OCT Nos. 6187,[5] 6188[6] and 6189[7] issued. As thus surveyed and partly titled, what was once the subject 6,000-square meter Lot 13333 has now the following ownership profile:

EP/OCT Holder	Patent No.	Title No.	Area
Manuel Amaya, Sr.	EP No. 176987	OCT No. 6189	1,156 sq. mtrs.
Jesus Mercado, Sr.	EP No. 176985	OCT No. 6187	2,479 sq. mtrs.
Ricardo Mercado	EP No. 176986	OCT No. 6188	1,167 sq. mtrs.
		Total Area	4,802 sq. mtrs.

In sum, the DAR awarded a total of 4,802 square meters of the subject lot to Jesus, Ricardo and Manuel, leaving Conrada with 1,198 square meters, a 738-square meter portion of which is classified as residential-commercial.

On October 16, 1995, Conrada filed a petition also before DARAB-Region 7 this time against Manuel, Jesus and Ricardo, praying, in the main, for the cancellation of EPs, docketed as DARAB Case No. VII-C-90-95. Conrada would later amend

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of the Land They Till and Providing the Instruments and Mechanisms Therefor."

[5] CA *rollo*, pp. 56-58.

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

[7] *Id.* at 62-64.

her petition to include as additional respondents the DAR Regional Director in Cebu, the Provincial Agrarian Reform Officer and the Register of Deeds of Cebu. The gravamen of Conrada's gripe is that the subject lot has been primarily devoted to vegetables production and cultivation, not to corn or rice, thus, outside the ambit of the OLT under PD 27. And as a corollary, obviously having in mind a DAR issuance treating "material misrepresentation" as a ground for the cancellation of an EP, she ascribed bad faith and gross misrepresentation on respondents when they had themselves listed as farmer-beneficiaries under the OLT scheme when they fully knew for a fact that vegetables were the primary crops planted on their respected areas since October 1972. And even as she rued the issuance of the EPs, most especially in favor of Manuel who she depicted as unqualified to be a PD 27 farmer-beneficiary being a landowner himself, Conrada denied receiving compensation payment from private respondents from the time of the issuance of the EPs.

In their joint *Answer & Position Paper*,[8] private respondents asserted their status as qualified farmer-beneficiaries of the OLT scheme. Their nonpayment or remittance of a share of their harvest to Conrada was, as they argued, justified under DAR Memorandum Circular (MC) No. 6, Series of 1978, which provided that once an agricultural land is placed under the OLT program, lease rentals otherwise due to a landowner may be paid to the Land Bank of the Philippines. Finally, private respondents averred, Conrada knew well of the OLT coverage of subject Lot No. 13333 as she in fact represented her siblings in their protest against the OLT coverage of their own landholdings in Dalaguete and Alcoy in 1989.

Ruling of the RARAD

In a joint Decision[9] dated June 10, 1997, RARAD Arnold C. Arrieta—on the issue of the propriety of bringing in the subject property within, or excluding it from, the coverage of the OLT

[8] *Id.* at 71-76, dated July 11, 1996.

[9] *Id.* at 77-93.

and the implications of a determination, one way or another––found for Conrada, pertinently disposing as follows:

WHEREFORE, in view of the foregoing, DECISION is hereby given as follows:

1. Declaring the coverage of Lot 13333 under Operation Land Transfer improper;

2. Ordering the Register of Deeds of Cebu to cause the cancellation of E.P. No. 176987 covered by OCT No. 6187, E.P. No. 176986 covered by OCT No. 6188, issued in the name of (sic) of Manuel Amaya, Sr., Ricardo Mercado and Jesus Mercado, respectively;

3. Ordering the Land Bank of the Philippines to turn over the amount of money paid (sic) private respondents to them in favor of Conrada Almagro;

4. Dismissing the ejectment case filed by plaintiff against herein private respondents for lack of merit;

5. Ordering the MARO concerned to assist the parties in the execution of lease rentals on the subject landholdings.

RARAD Arrieta predicated his case disposition on the finding that the disputed portions of the subject lot are primarily devoted to vegetable cultivation, which, thus, brings them outside of OLT coverage. In substantiation, he cited and drew attention to the following documentary and testimonial evidence: (1) the Certifications issued by the Municipal Agrarian Reform Officer (MARO) and the Municipal Assessor of Dalaguete, Cebu dated September 27, 1995 and October 4, 1995, respectively, attesting that subject lot is primarily devoted to vegetables since 1972; (2) the parallel admission of respondents made in their January 29, 1996 Answer in DARAB Case No. VII-C-90-95; (3) respondent Manuel's December 17, 1996 affidavit stating that he raised vegetables during the *pangulilang* and *pang-enero* seasons, resorting to corn crops only during the *panuig* season; and (4) Manuel's testimony given in response to clarificatory questions propounded by the Hearing Officer on December 17, 1996 that the corn he planted on his claimed portion was only for his consumption.

Taking cognizance, however, of the agricultural nature of the disputed parcels and the existing land tenancy relation between the private respondent, on one hand, and Conrada, on the other, the RARAD declined to proceed with the prayed ouster of respondents from their respective landholdings. To the RARAD, respondents' act of stopping payment of land rental at some point was justified under DAR MC No. 6, Series of 1978, hence, cannot, under the premises, be invoked to justify an ouster move.

Respondent spouses, *et al*., appealed to the DARAB Proper.

Ruling of the DARAB

On October 19, 2004, in DARAB Case Nos. 6858-6859, DARAB issued a Decision upholding the validity of the issuance of the EPs to Manuel, *et al*., thus effectively recognizing their tenurial rights over portions of Lot No. 13333. The *fallo* of the DARAB Decisions reads:

> WHEREFORE, premises considered, the assailed Decision is SET ASIDE and judgment is hereby rendered:
>
> 1.) **UPHOLDING the validity and efficacy of EP** Nos. 176987, 176986, and 176985 issued in the names of Manuel Amaya, Sr., Ricardo Mercado and Jesus Mercado, Sr. respectively;
>
> 2.) DISMISSING the above-mentioned complaints filed against respondents-appellants for lack of merit; and
>
> 3.) ORDERING the Land Bank of the Philippines to pay the complainant-appellee the full amount paid by the respondents-appellants.
>
> SO ORDERED.[10] (Emphasis added.)

From this adverse ruling, Conrada elevated the case to the CA.

Ruling of the CA

By Decision dated September 29, 2006, the CA affirmed that of the DARAB, thus:

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

WHEREFORE, premises considered, the instant petition is DENIED, and the assailed Decision dated October 19, 2004 of the Department of Agrarian Reform Adjudication Board, Diliman, Quezon City in DARAB Cases Nos. 6858-6859 is hereby AFFIRMED.

SO ORDERED.

Like the DARAB, the appellate court predicated its action on the following interacting premises: (1) Respondents did not, *vis-à-vis* their identification as OLT beneficiaries, commit an act constituting material misrepresentation, the issuance of an EP following as it does a "tedious process" involving the identification and classification of the land as well as the determination of the qualification of the farmer-beneficiaries; (2) Conrada has not, through her evidence, overturned the presumptive validity of the issuance of the EPs in question; and (3) Section 12(b) of PD 946 vests on the DAR Secretary the sole prerogative to identifying the land to be covered by PD 27. The CA wrote:

> Petitioner further contends that the DARAB totally ignored the evidence on record which preponderantly proved that vegetables have been and are still the principal crops planted on the litigated land.
>
> We are not persuaded.
>
> The DARAB cited the [A.O.] no. 2, [s.] of 1994 of the DAR in the assailed decision to show that one of the grounds in the cancellation of an [EP] is the material misrepresentation in the agrarian reform beneficiaries' qualification as provided under RA 6657, P.D. No. 27 x x x. Contrary to the assertion of the petitioner, nowhere can it be read in the challenged decision that it said that under the provisions of [A.O] No. 2 x x x the [EPs] could no longer be challenged. What can be gleaned in the assailed judgment is that DARAB had not given credence to the allegation of the petitioner that 'respondents acted with evident bad faith x x x and with gross misrepresentation when they allowed themselves to be identified and listed as alleged beneficiaries of [OLT], they themselves knowing fully well that their primary crops since October 21, 1972 x x x have been vegetables.' Stated differently, the DARAB had found that the petitioner had not sufficiently proven her allegation of bad faith x x x.

Also unmeritorious is the contention of petitioner that the evidence on record would prove that the land in controversy had been devoted to vegetable production and not to rice or corn, thus not covered under P.D. 27. The evidence alluded to by petitioner x x x could not sufficiently overcome the validity of the [EPs] issued to respondents. As aptly observed by the DARAB[,] the generation of these [EPs] went through tedious process x x x. The administrative identification and classification of the land as well as the determination of the qualification of the farmer-beneficiaries are **exclusively the functions of the Secretary of Agrarian Reform or his representative as provided under Section 12 (b) of P.D. No. 946** x x x.[11]

From the foregoing Decision, Conrada moved, but was denied reconsideration per the CA's equally assailed Resolution of September 11, 2007.

Hence, the instant petition.

The Issues

Petitioner contends: "The Honorable [CA] gravely erred in interpreting 'material misrepresentation' as provided for in Administrative Order No. 2 (AO 2), Series of 1994 of the [DAR] x x x."[12]

The underlying thrust of this petition turns on the critical issue of the propriety of placing portions of subject Lot No. 13333 under the coverage of PD 27, which in turn practically resolves itself into the question of whether or not said portions are primarily devoted to vegetable production, as petitioner insists or to corn production, as respondents assert.

The Court's Initial Actions

By Resolution of December 10, 2007, the Court directed respondents, through counsel, to submit their comment on the petition for review within ten (10) days from notice. Then came another resolution[13] requiring respondents' counsel of record,

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

[12] *Id.* at 21. Original in uppercase.

[13] *Id.* at 48, Resolution dated July 28, 2008.

Atty. Brigido Pasilan Jr., to show cause why he should not be disciplinary dealt with for failing to file the adverted comment. Three successive resolutions dated February 9, 2009, September 9, 2009 and April 12, 2010 followed, each imposing a fine on Atty. Pasilan for non-submission of comment.[14] Eventually, the Court directed the National Bureau of Investigation (NBI) to arrest him.[15] As per the NBI's compliance[16] report, Atty. Pasilan had died as early as August 28, 2002. This development prompted the Court to directly notify respondents for them to submit their comment and to inform the Court of their new counsel, if any.[17] On March 14, 2011, the Court issued a Resolution considering respondents as having waived their right to submit their comment.[18] As it were, the lackadaisical attitude of respondents in not even bothering to inform this Court, and previously the CA, of the demise of their counsel has caused so much delay in the resolution of this case.

The Court's Ruling

We find the petition meritorious.

The issue raised is essentially factual in nature. Under Rule 45 of the Rules of Court, only questions and errors of law, not of fact, may be raised before the Court.[19] Not being a trier of facts, it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties. Corollary to this precept, but subject to well-defined exceptions,[20]

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[14] *Id.* at 49, a fine of PhP 1,000 and imprisonment for five (5) days was imposed on Atty. Brigido Pasilan, Jr. per Resolution dated February 9, 2009.

[15] *Id.* at 64-68, per Resolution and Order of Arrest and Commitment both dated September 15, 2010.

[16] *Id.* at 81-83, dated February 16, 2011.

[17] *Id.* at 96, Resolution dated June 15, 2011.

[18] *Id.* at 106, Resolution dated April 11, 2012.

[19] *Usero v. Court of Appeals*, G.R. No. 152115, January 26, 2005, 449 SCRA 352, 358.

[20] Recognized exceptions to the rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the

is the rule that findings of fact of trial courts or the CA, when supported by substantial evidence on record, are conclusive and binding on the Court.[21] But for compelling reasons, such as when the factual findings of the trying court or body are in conflict with those of the appellate court, or there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken,[22] this Court shall analyze or weigh the evidence again and if necessary reverse the factual findings of the courts *a quo*. This is precisely the situation obtaining in this case. The findings, on the one hand, of RARAD Arrieta and, those of the DARAB and the CA, on the other, relative to the appreciation of evidence adduced in hearings before RARAD Arrieta, are incompatible with each other.

Petitioner Conrada argues that the CA, in affirming the ruling of the DARAB, erred in not finding respondents guilty of "material

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inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *Almendrala v. Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311, 322; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542; *Nokom v. National Labor Relations Commissions*, G.R. No. 140043, July 18, 2000, 336 SCRA 97; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phils.), Inc.*, G.R. No. 96262, March 22, 1999, 305 SCRA 70; *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351.

[21] *Almendrala v. Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311, 322.

[22] *Casol v. Purefoods Corporation*, G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589.

misrepresentation" or of having acted with bad faith or fraudulently. Petitioner notes in this regard that respondents have themselves listed as agrarian reform beneficiaries of PD 27, through the OLT, knowing fully well that the disputed parcels were, since 1972, planted to vegetables as primary crop.

There is merit to the argument.

Material means that it is "of such a nature that knowledge of the item would affect a person's decision-making; significant; essential; relevant."[23] **Misrepresentation**, on the other hand, means "the act of making a false or misleading assertion about something, usually with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion."[24] A **material misrepresentation** is "a false statement to which a reasonable person would attach importance in deciding how to act in the transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance."[25]

Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another.[26] It cannot be over-emphasized that fraud is a question of fact which cannot be presumed and must be proved by clear and convincing evidence by the party alleging fraud.[27] *Ei incumbit probation qui dicit,*

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[23] *BLACK'S LAW DICTIONARY* 1066 (9th ed., 2009).

[24] *Id.* at 1091.

[25] *Id.*

[26] *Makati Sports Club, Inc. v. Cheng*, G.R. No. 178523, June 16, 2010, 621 SCRA 103, 118; citing *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[27] *Petron Corporation v. Commissioner of Internal Revenue*, G.R. No. 180385, July 28, 2010, 626 SCRA 100, 116.

non que negat, otherwise stated, "he who asserts, not he who denies, must prove."[28]

As aptly found by RARAD Arrieta, there is ample evidence showing that respondents, in their application for inclusion in the list of agrarian reform beneficiaries (ARBs) under PD 27 through the OLT, made misrepresentation as to their entitlement to certain rights under the decree. Respondents were in bad faith in obtaining the EPs due to their fraudulent misrepresentation on a material point in the application as ARBs of PD 27 through the OLT. In their *Answer & Position Paper* dated July 11, 1996 filed in connection with DARAB Case No. VII-C-90-95, respondents averred, among other things, that:

> 10. That respondents are by law qualified farmer – beneficiaries of Operation land Transfer (OLT for brevity) scheme. Their primary crop produce is corn, however on seasons when planting corn is not feasible, vegetable is substituted. When the respondents were identified as beneficiaries of OLT, their primary crop planted is corn, as evidenced by their BCLP form, made integral part of this Answer. The fact remains that at the time of the identification and coverage of the farmlot, the primary produce is corn. What transpired as use of the agricultural land after the coverage is immaterial, since OLT is a continuing coverage. As a matter of fact, Section 7 on "Priorities," Phase One of R.A. 6657, specifically identified "Rice and corn lands under Presidential Decree No. 27" shall be acquired and distributed within four (4) years from the effectivity of said Act.[29]

The evidence adduced during the hearing of the consolidated land cases before the office of the RARAD contradicts and belies respondents' above averments. In this regard, the Court accords respect to the findings of the RARAD who has the primary jurisdiction and competence to determine the agricultural character of the land in question.[30] The following excerpts of RARAD Arrieta's findings embodied in his decision are instructive:

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[28] *Balanay v. Sandiganbayan*, G.R. No. 112924, October 20, 2000, 344 SCRA 1, 10.

[29] CA *rollo*, pp. 73-74.

[30] *Heirs of Francisco Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, May 5, 2006, 489 SCRA 590, 604.

x x x Nonetheless however, Certification issued by the [MARO] of Dalaguete, Cebu and Certification from the Municipal Assessor dated September 27, 1995 and October 4, 1995 respectively, shows that Lot No. 13333 which is the subject of this case is devoted to vegetables since 1972 up to present (Exhibits "F" and "G" respectively). The same was further buttressed by Tax Declaration No. 2102400636 which shows that it is devoted to vegetable production (Exhibit "E"). In the answer of herein respondents dated January 29, 1996, they admitted expressly the fact that the portions of parcel in question is devoted to vegetable production. Pertinent portion thereof is hereunder quoted:

> "(2) That they admit part of paragraph 4 of the allegation that respondents have been farming portions of the parcel in question for the production of vegetables, but only on season when production of rice is not feasible."

It must be noted also that in the affidavit of Manuel Amaya, Sr., dated Dec. 17, 1996 he admitted that he raised corn during panuig season only and that during the *pangulilang* and *pang-enero* seasons he raised vegetables like cabbage (Exhibit 1). Furthermore, in the clarificatory questions conducted by the Hearing Officer on Manuel Amaya, Sr., he testified that the corn products of his tillage was utilized **for his consumption only.** (TSN page 10, dated Dec. 17, 1996). From the foregoing facts and admissions it is very clear that the real intention of private defendants was to devote the subject landholdings primarily to vegetable production.

Under the rules, judicial admission cannot be contradicted unless shown to have been made by palpable mistake. (*De Jesus vs. Intermediate Appellate Court*, 175 SCRA 560, July 24, 1989).

Accordingly it cannot be gainsaid that the coverage of the subject landholdings under [OLT] was improper.[31] (Emphasis added.)

As determined by the RARAD on the basis of documentary and testimonial evidence, and the more conclusive judicial admissions made by respondents, vegetables are the primary crop planted in the areas respectively cultivated by respondents.

But the DARAB would have none of the RARAD's premised findings, relying instead on the presumptive correctness of the

[31] CA *rollo*, pp. 89-91.

agrarian reform officers' determination, supposedly reached after a **tedious** proceeding, as to the nature of the land subject of this case and the identity of the farmer-beneficiaries and their entitlement to lot award. To the DARAB, the fact that EPs have been issued to respondents is proof enough that the disputed portions are planted to corn as primary crop under the tillage of respondents. The DARAB held, thus:

> It must be stressed that the issuance of the EPs in the instant case creates a presumption which yields only to a clear and cogent evidence that the awardee is the qualified and lawful owner because it involves a tedious process. Moreover, the identification and classification of lands and qualification of farmer-beneficiaries are factual determination performed by government officials and personnel with expertise in the line of work they are doing. Their findings, conclusions/recommendations and final actions on the matter, after thorough investigation and evaluation, have the presumption of regularity and correctness (*La Campana Food Products, Inc. vs. Court of Appeals, 221 SCRA 770*). As such, the burden of proving the ineligibility or disqualification of the awardee rests upon the person who avers it through clear and satisfactory proof or substantial evidence as required by law. Complainant, other than her bare allegations, failed to prove that herein respondents-appellants do not deserve the said government grant. Under the circumstances, it is just proper to assume that the issuance of questioned documents was regular and correct. Thus, this Board finds no cogent reason to cause the cancellation of the subject EPs which had long been issued in favor of respondents-appellants.[32]

Clearly, the DARAB misappreciated the evidence adduced before the office of the RARAD and the judicial admissions made by respondents to prove certain key issues. DARAB relied upon the presumption based on what it points to as the tedious process in the issuance of the EPs. It considered as but "bare allegations" what were duly established by documentary and testimonial evidence and by respondents' admission no less that the primary crop planted in the subject landholdings is not corn but vegetables, and that corn is only planted sporadically and only for the personal consumption of one of the respondents.

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[32] *Id.* at 28.

To be sure, the presumption of regularity or correctness of official action cannot be used as springboard to justify the PD 27 coverage of the disputed lots because a presumption is precisely just that—a mere presumption. Once challenged by credibly convincing evidence, as here, it can no longer be treated as binding truth.

In *Mercado v. Mercado*[33] and *Gabriel v. Jamias*,[34] the Court has ruled that the mere issuance of an EP does not put the ownership of ARBs beyond attack and scrutiny. EPs issued to such beneficiaries may be corrected and canceled for violations of agrarian laws, rules and regulations. In fact, DAR AO No. 02, Series of 1994, lists and defines the grounds for cancellation of registered EPs or Certificates of Land Ownership Award (CLOA). Among these are:

> Grounds for the cancellation of registered EPs or CLOAs may include but not be limited to the following:
>
> 1. Misuse or diversion of financial and support services extended to the ARB; (Section 37 of RA No. 6657)
>
> 2. Misuse of the land; (Section 22 of RA No. 6657)
>
> 3. **Material misrepresentation of the ARB's basic qualifications as provided under** Section 22 of RA No. 6657, **PD No. 27**, and other agrarian laws;
>
> 4. Illegal conversion by the ARB; (cf. Section 73, paragraphs C and E of RA No. 6657)
>
> 5. Sale, transfer, lease or other forms of conveyance by a beneficiary of the right to use or any other usufructuary right over the land acquired by virtue of being a beneficiary, in order to circumvent the provisions of Section 73 of RA No. 6657, PD No. 27, and other agrarian laws x x x;
>
> 6. Default in the obligation to pay an aggregate of three (3) consecutive amortizations in case of voluntary land transfer/direct payment scheme, except in cases of fortuitous events and *force majeure*;

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[33] G.R. No. 178672, March 19, 2009, 582 SCRA 11, 18.

[34] G.R. No. 156482, September 17, 2008, 565 SCRA 443, 457.

7. Failure of the ARBs to pay for at least three (3) annual amortizations to the LBP, except in cases of fortuitous events and force majeure; (Section 26 of RA No. 6657)

8. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years x x x; (Section 22 of RA No. 6657)

9. **The land is found to be exempt/excluded from PD No. 27/ EO No. 228 or CARP coverage** or to be part of the landowner's retained area as determined by the Secretary or his authorized representative.

Respondents' assertion in their application for lot award as ARBs under the OLT of PD 27—that the parcels of land they respectively cultivate are devoted to corn production, when they are in fact not—cannot but be treated as erroneous, fraudulent deliberate statements of a material fact, constituting "material misrepresentation." Verily, the determination of whether the subject lot is dedicated to the "planting of corn," as to put it within the purview of PD 27, is, ultimately, a conclusion of fact. Since the subject lot was not primarily planted to corn, except occasionally during the *panuig* season (while the subject lot was planted to the regular vegetables during the *pangulilang* and *pang-enero* seasons), respondents' assertions in their application were willfully and deliberately erroneous and fraudulent. And such fraudulent and deliberate statement of an error, under the circumstances, is a falsity, a material misrepresentation in the context of DAR AO No. 02, Series of 1994. A willful and deliberate assertion of an erroneous conclusion of fact is verily a deliberate untruthful statement of a material fact.

PD 27 pertinently provides, "This shall apply to tenant farmers of private agricultural lands **primarily devoted to** rice and **corn under a system of sharecrop or lease-tenancy**, whether classified as landed estate or not."

Daez v. Court of Appeals sets forth the requisite essential to place a piece of land under PD 27, thusly:

P.D. No. 27, which implemented the Operation Land Transfer (OLT) Program, covers **tenanted rice or corn lands**. The requisite for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. If either of these requisite is absent, the land is not covered under OLT.[35] x x x (Emphasis added.)

It is, thus, clear that PD 27 encompasses only rice and corn land, *i.e.*, agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy. In the instant case, since the landholdings cultivated by respondents are primarily devoted to vegetable production, it is definitely outside the coverage, and necessarily cannot properly be placed under the umbrella, of PD 27. Thus, as the RARAD found, the landholdings cultivated by respondents which are portions of the subject lot were improperly placed under PD 27 through OLT.

It may be, as the DARAB observed, that the process of placing under the land transfer program pursuant to PD 27 of tenanted rice/corn lands is a tedious exercise. Yet, given the proofs adduced in the hearing before the RARAD, there should be no serious quibbling about the fact that the subject lot is not covered by PD 27 simply because it is not corn/rice land.

Given the above perspective, the collateral issue of whether or not the DAR duly furnished petitioner a copy of the notice of coverage under PD 27 of her landholding need not detain us long. Whether the necessary notice of coverage was in fact issued by the DAR and actually received by petitioner is of no moment at this stage and will not detract from the reality that portions of Lot No. 13333 claimed by respondents and over which EPs have been issued are outside the coverage of PD 27 and the OLT program.

This is not to minimize the importance of the notice of coverage and other processes preparatory to bringing an area within land

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[35] G.R. No. 133507, February 17, 2000, 325 SCRA 856, 862.

reform coverage or the compulsory acquisition of private land. Non-compliance with these processes would, applying by analogy the pronouncement in *Roxas & Co., Inc. v. Court of Appeals* (*Roxas*),[36] be an infringement of the requirements of administrative due process. In *Roxas*, a case involving non-observance of procedural requirements laid out in Sec. 16 of RA 6657, or the Comprehensive Agrarian Reform Law (CARL), the Court wrote:

> The importance of the first notice, *i.e.* the Notice of Coverage and the letter of invitation to the conference, and its actual conduct cannot be understated. They are steps designed to comply with the requirements of administrative due process.[37] x x x

Lest it be overlooked, agrarian reform acquisition of private lands, be it under PD 27 and its implementing issuances or RA 6657, is to some extent an exercise by the state of eminent domain and, hence, confiscatory in nature. Accordingly, notice must be given to the landowners of the fact that their property is being placed under the OLT program, if this be the case. And this required notice has a purpose that is at once legal and equitable. Thru this medium, the landowner is accorded the opportunity either to contest land grant to tenant-farmer or to make the requisite representations for the payment of just compensation for the landholdings placed under PD 27. Notably, after the issuance of PD 27 on October 21, 1972, the following pertinent directives were issued: (a) Memorandum[38] dated November 25, 1972; (b) Letter of Instructions No. (LOI) 474;[39]

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[36] G.R. No. 127876, December 17, 1999, 321 SCRA 106.

[37] *Id.* at 134.

[38] Issued by President Marcos postponing the promulgation of Rules and Regulations implementing PD 27 pending the results of the pilot projects in Nueva Ecija and other parts of the country.

[39] Issued on October 21, 1976 directing the DAR to place under OLT (PD 27) all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

(c) Department MC 02,[40] Series of 1978; (d) LOI 705;[41] (e) Ministry MC 23,[42] Series of 1978; and (f) Ministry MC 19,[43] Series of 1981.

Ministry MC 19, Series of 1981, explicitly provides, *inter alia*: (i) bases and determination of valuations for farmholdings and homelots;[44] (ii) modes of payment for land transfer compensation claims by landowners;[45] (iii) obligations of ARBs relative to land transfer payments;[46] and (iv) most importantly, the required notices to the landowner and ARBs.[47]

The records do not yield any indication that Conrada was duly served and received notices relative to the inclusion of portions of the subject lot under PD 27 through OLT. Consider also the following facts:

(a) Despite the issuance of Ministry MC 19, Series of 1981, such notice of inclusion has not been shown; and

(b) The OLT Valuation Form I Establishing the Average Gross Production per Hectare by the BCLP Based on 3 Normal Crop Years Before PD 27 for Mantalongon, Dalaguete,[48]

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[40] Guidelines on the Inclusion of Landholdings Tenanted After October 21, 1972 within the Coverage of Presidential Decree No. 27, issued by the DAR on January 17, 1978 placing rice and corn landholdings tenanted after October 21, 1972 under PD 27 through OLT.

[41] Issued on June 10, 1978, directing the DAR to transfer homelots actually occupied by tenant-farmers who are, or may be, beneficiaries of the OLT under PD 27.

[42] Implementing Guidelines of Letter of Instruction No. 705, issued by the DAR on October 24, 1978 implementing LOI 705.

[43] *Additional Policy Guidelines and Procedures on Land Valuation and Landowners Compensation Involving Operation Land Transfer (OLT) Covered Lands*, issued by the DAR on December 29, 1981.

[44] Ministry MC 19, Series of 1981, II.

[45] *Id.* at III, B, 1.

[46] *Id.* at III, B, 2.

[47] *Id.*, penultimate paragraph, and Annexes.

[48] CA *rollo*, p. 45.

presented by respondents, indubitably shows that it was issued on May 12, 1984, long after the issuance of Ministry MC 19, Series of 1981. Yet respondents have not adduced proof to show due notice as required by the rules on the inclusion of the three farmholdings (portions of subject lot) cultivated by respondents Jesus, Ricardo and Manuel under PD 27 through OLT.

For obvious lack of notice, petitioner was prevented from contesting the inclusion of the three farm lots under the OLT and their consequent award to respondents. The two consolidated complaints she commenced were way too late to defer the issuance of the adverted EPs and OCTs in favor of respondents despite their fraudulent, deliberate assertion of a material misrepresentation before the DAR officials undertaking the OLT under PD 27.

In all, there can be no doubt that petitioner has a clear cause of action and is entitled to the appropriate remedies, as pronounced by the RARAD in his June 10, 1997 Decision, against the DAR's erroneous action bringing portions of her property within the purview of PD 27 and subjected to OLT and other processes/ mechanisms set in motion pursuant to this basic land reform decree. The facts of the case and applicable law and jurisprudence call for this kind of disposition.

A final consideration. The portions subject of this recourse are doubtless agricultural. RARAD found and declared them so. Even petitioner, by not appealing the decision of the RARAD, agreed with the latter's determination. In fact, petitioner would assert at every opportunity that said portions are devoted vegetable production. Be that as it may, said portions, while exempt from the operation of PD 27, shall be amenable to compulsory acquisition and distribution under the CARL of 1988 (RA 6657), which has for its coverage all agricultural lands, be they publicly or privately owned, regardless of tenurial arrangement and commodity produced.[49] At the end of the day, it behooves the DAR to take the necessary procedural steps and issue the appropriate processes toward the acquisition of the disputed

[49] Sec. 4.

parcels for agrarian reform purposes, but subject to the landowner's right to compensation and retention, if applicable.

Since respondents were leasing the subject lots since 1976, it is only but fair and equitable that they are granted an extension of the lease period pursuant to Article 1687 of the Civil Code, which reads:

> If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

Respondents have been leasing the premises since 1976 or a period of 37 years. The court grants respondents an extension of one month for every year and, thus, the lease period is extended for three years and one month from finality of this judgment. Respondents shall pay the same lease rentals to petitioner during the extended period and shall be subject to the same terms and conditions of the original lease agreement. At the end of the period, respondents shall peacefully and voluntarily vacate the premises and surrender them to petitioner unless extended by the latter.

WHEREFORE, the instant Petition is **GRANTED**. The assailed September 29, 2006 Decision and September 11, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 00111 are hereby **REVERSED** and **SET ASIDE**, and the June 10, 1997 Decision of RARAD Arnold C. Arrieta is accordingly **REINSTATED** with **MODIFICATIONS**.

As modified, the *fallo* of the Joint Decision of DAR Regional Adjudicator Arnold C. Arrieta shall read as follows:

WHEREFORE, the office rules in favor of complainant Conrada O. Almagro as follows:

1. Sets asides and nullifies the coverage of Lot No. 13333 subject of Tax Declaration No. 21-14946 under Operation Land Transfer;

2. Orders the Register of Deeds of Cebu to cancel the following:

a. EP No. 176987 and OCT No. 6189 issued in the name of Manuel Amaya, Sr. covering an area of 1,156 square meters;

b. EP No. 176985 and OCT No. 6187 issued in the name of Jesus Mercado, Sr. with an area of 2,479 square meters; and

c. EP No. 176986 and OCT No. 6188 issued in the name of Ricardo Mercado with an area of 1,167 square meters.

3. Orders Land Bank of the Philippines to pay to complainant Almagro the amounts paid to the former by private respondents as payment of lease rentals to said complainant.

4. Allows the private respondents to lease the lots in question for 3 years and 1 month from date of finality of judgment in view of their continuous use of said lots since 1976 subject to the same rentals and terms of their lease agreement. The parties are ordered to faithfully comply with the terms and conditions of the lease.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182072. June 19, 2013]

UNIVAC DEVELOPMENT, INC., *petitioner, vs.* **WILLIAM M. SORIANO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT "FOR FAILURE TO MEET PROBATIONARY STANDARDS"; PROOF REQUIRED TO SHOW PROBATIONARY EMPLOYEE WAS APPRISED OF REGULARIZATION STANDARDS AND HOW THESE STANDARDS HAVE BEEN APPLIED TO HIM.— It is undisputed that respondent was hired as a probationary employee. As such, he did not enjoy a permanent status. Nevertheless, he is accorded the constitutional protection of security of tenure which means that he can only be dismissed from employment for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement. It is primordial that at the start of the probationary period, the standards for regularization be made known to the probationary employee. In this case, as held by the CA, petitioner failed to present adequate evidence to substantiate its claim that respondent was apprised of said standards. It is evident from the LA and NLRC decisions that they merely relied on surmises and presumptions in concluding that respondent should have known the standards considering his educational background as a law graduate. Equally important is the requirement that in order to invoke "failure to meet the probationary standards" as a justification for dismissal, the employer must show how these standards have been applied to the subject employee. In this case, aside from its bare allegation, it was not shown that a performance evaluation was conducted to prove that his performance was indeed unsatisfactory.

2. ID.; ID.; ID.; ID.; THREE LIMITATIONS ON THE POWER OF THE EMPLOYER TO DISMISS A PROBATIONARY EMPLOYEE.— [T]he power of the employer to terminate a probationary employee is subject to three limitations, namely: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no unlawful discrimination in the dismissal. In this case, not only did petitioner fail to show that respondent was apprised

of the standards for regularization but it was likewise not shown how these standards had been applied in his case.

3. ID.; ID.; ID.; ID.; EMPLOYER'S FAILURE TO SPECIFY THE REQUIREMENTS OF THE CONTRACT MAKES THE EMPLOYEE A REGULAR EMPLOYEE FROM THE DAY HE WAS HIRED.— Pursuant to well-settled doctrine, petitioner's failure to specify the reasonable standards by which respondent's alleged poor performance was evaluated as well as to prove that such standards were made known to him at the start of his employment, makes respondent a regular employee. In other words, because of this omission on the part of petitioner, respondent is deemed to have been hired from day one as a regular employee.

4. ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED PROBATIONARY EMPLOYEE.— To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. We find no reason to depart from the CA conclusion that respondent's termination from employment is without just and valid ground. Neither was due process observed, making his termination illegal. He is, therefore, entitled to the twin relief of reinstatement and backwages granted under the Labor Code. However, as aptly held by the CA, considering the strained relations between petitioner and respondent, separation pay should be awarded in lieu of reinstatement. This Court has consistently ruled that if reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal until the date the decision becomes final. Separation pay, on the other hand, is equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six months being considered as one whole year), computed from the time of employment or engagement up to the finality of the decision. Having been forced to litigate in order to seek redress of his grievances, respondent is entitled to the payment of attorney's fees equivalent to 10% of his monetary award. Pursuant to prevailing jurisprudence, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% *per annum* from date of termination until full payment.

APPEARANCES OF COUNSEL

Larry P. Ignacio for petitioner.
Conrado P. Paras for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated October 24, 2007 and Resolution[2] dated March 14, 2008 in CA-G.R. SP No. 96495. The assailed decision granted the petition filed by respondent William M. Soriano against petitioner Univac Development, Inc. and consequently nullified and set aside the April 28, 2006[3] and July 31, 2006[4] Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 046028-05 (NLRC NCR Case No. 00-02-01664-05); while the assailed resolution denied petitioner's motion for reconsideration.

The case stemmed from the Complaint[5] for Illegal Dismissal filed by respondent against petitioner, the company's Chairperson Sadamu Watanabe (Watanabe), and the Head of the Engineering Department Johnny Castro (Castro). Admittedly, respondent was hired on August 23, 2004 by petitioner on probationary basis as legal assistant of the company with a monthly salary of ₱15,000.00.[6] Respondent claimed that on February 15, 2005,

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring; *rollo*, pp. 26-45.

[2] *Id.* at 47.

[3] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring; CA *rollo*, pp. 19-23.

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

[5] CA *rollo*, p. 26.

[6] *Id.*

or eight (8) days prior to the completion of his six months probationary period, Castro allegedly informed him that he was being terminated from employment due to the company's cost-cutting measures.[7] He allegedly asked for a thirty-day notice but his termination was ordered to be effective immediately.[8] Thus, he was left with no choice but to leave the company.[9]

Petitioner, on the other hand, denied the allegations of respondent and claimed instead that prior to his employment, respondent was informed of the standards required for regularization. Petitioner also supposedly informed him of his duties and obligations which included safekeeping of case folders, proper coordination with the company's lawyers, and monitoring of the status of the cases filed by or against the company.[10] Petitioner recalled that on January 5, 2005, a company meeting was held where respondent allegedly expressed his intention to leave the company because he wanted to review for the bar examinations. It was also in that meeting where he was informed of his unsatisfactory performance in the company. Thus, when respondent did not report for work on February 16, 2005, petitioner assumed that he pushed through with his plan to leave the company.[11] In other words, petitioner claimed that respondent was not illegally dismissed from employment, rather, he in fact abandoned his job by his failure to report for work.

On July 29, 2005, Labor Arbiter (LA) Geobel A. Bartolabac rendered a Decision[12] dismissing respondent's complaint for lack of merit. The LA held that respondent was informed of his unsatisfactory performance. As a law graduate and a master's degree holder, respondent was presumed to know that his probationary employment would soon end. Considering, however,

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[7] *Rollo*, p. 27.

[8] *Id.*

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

[10] *Rollo*, p. 27.

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

[12] CA *rollo*, pp. 94-97.

that respondent was dismissed from employment eight days prior to the end of his probationary period, he was entitled to eight days backwages. In the end, though, the LA held that respondent's complaint for constructive dismissal did not match his narration of actual dismissal from employment, thus, a clear evidence that there was indeed no illegal dismissal.[13]

On appeal, the NLRC affirmed the LA decision in its entirety in its Resolution[14] dated April 28, 2006. Citing respondent's educational background and knowledge of the laws, he was presumed to know prior to employment the reasonable standards required for regularization. The tribunal also gave credence to petitioner's claim that a company meeting was held and that respondent was apprised of his unsatisfactory performance. Hence, petitioner was found to have validly exercised management prerogative when it terminated respondent's probationary employment.[15] Claiming that said decision never reached him because his manifestation of change of address was belatedly integrated with the record of the case,[16] respondent thus filed his motion for reconsideration but was likewise denied in a Resolution[17] dated July 31, 2006. The resolution became final and executory on August 24, 2006 and was entered in the Book of Entries of Judgment.[18]

On October 13, 2006, respondent elevated the matter to the CA *via* special civil action for *certiorari* under Rule 65 of the Rules of Court. On October 24, 2007, respondent was able to obtain a favorable decision when the CA granted his petition, the dispositive portion of which reads:

WHEREFORE, finding petitioner to have been illegally dismissed from work, the petition is hereby **GRANTED** and the assailed

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[13] *Id.* at 95-96.

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

[15] *Id.* at 21-23.

[16] *Rollo,* pp. 29-30.

[17] CA *rollo,* pp. 24-25.

[18] *Id.* at 141.

resolutions of the NLRC dated April 28, 2006 and July 31, 2006 are hereby **NULLIFIED** and **SET ASIDE**. Private respondent UNIVAC Development, Inc. is hereby **ORDERED** to pay petitioner his full backwages computed from February 15, 2005 until finality of this decision. Respondent UNIVAC is also **ORDERED** to pay petitioner separation pay in lieu of reinstatement in the amount of ₱15,000.00 multiplied by his years in service counted from August 23, 2004 until finality of this decision, as well as attorney's fees of ₱10,000.00

SO ORDERED.[19]

The CA gave more credence to respondent's claim that he was illegally dismissed rather than petitioner's theory of abandonment. Contrary to the LA and NLRC conclusions, the appellate court held that petitioner failed to apprise respondent of the standards required for regularization, coupled with the fact that it failed to make an evaluation of his performance, making his dismissal illegal. Petitioner's employment of another person to replace respondent on the day of the alleged abandonment was taken by the appellate court against petitioner as it negates the claim of abandonment. In sum, the CA considered respondent's dismissal from employment illegal because he was not informed of the standards required for regularization; petitioner failed to show proof that respondent's performance was poor and unsatisfactory constituting a just cause for termination; and that the evidence presented negates petitioner's claim that respondent abandoned his job. As a consequence of the illegal dismissal, the CA awarded respondent backwages, separation pay in lieu of reinstatement and attorney's fees.[20]

Aggrieved, petitioner comes before the Court raising both procedural and substantive errors, to wit:

UNIVAC RESPECTFULLY SUBMITS THAT THE HONORABLE COURT OF APPEALS (CA), IN RENDERING ITS ASSAILED DECISION PROMULGATED ON 24 OCTOBER 2007 AND RESOLUTION OF 14 MARCH 2008:

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[19] *Rollo*, p. 44. (Emphasis in the original)

[20] *Id.* at 33-44.

(A) DECIDED IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE JURISPRUDENCE RENDERED BY THIS HONORABLE COURT, AND/OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION VESTED IN THIS HONORABLE COURT. THIS IS PARTICULARLY TRUE WHEN THE CA GRANTED THE PETITION OF SORIANO EVEN IF THE RULINGS OF THE NLRC ALREADY ATTAINED FINALITY AND WAS IN FACT ENTERED IN THE LATTER'S BOOK OF ENTRIES OF JUDGMENT, and WHEN THE CA WENT OVERBOARD BEYOND THE NARROW SCOPE AND INFLEXIBLE CHARACTER OF *CERTIORARI* UNDER RULE 65 (*Tichangco v. Enriquez, G.R. No. 150629, 30 June 2004)* BY NOT LIMITING ITSELF IN DETERMINING THE EXISTENCE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE NLRC.

(B) COMMITTED SERIOUS ERRORS OF LAW IN THE FINDING OF FACTS OR CONCLUSIONS OF LAW WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO UNIVAC AS SHOWN IN THE FOLLOWING:

1) THE CA IN EFFECT RULED OF THE PRESENCE OF ACTUAL DISMISSALL (SIC) WHEN WHAT WAS FILED IS CONSTRUCTIVE ILLEGAL DISMISSAL.

2) THE CA REVERSED THE FINDINGS OF THE NLRC IN SPITE OF SUBSTANTIAL EVIDENCE TO SUPPORT ITS (NLRC) RULINGS (*PT & T v. NLRC, 183 SCRA 451 [1990]; Mateo v. Moreno, 28 SCRA 796 [1969]).*

3) THE CA FAILED TO CONSIDER THE FACT THAT UNIVAC IS NOW UNDER REHABILITATION WHERE ANY AND ALL CLAIMS AGAINST IT SHOULD BE SUSPENDED PURSUANT TO THE RULING IN *PAL vs. ZAMORA, G.R. NO. 166996, 06 FEBRUARY 2007*.[21]

The petition is without merit.

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

Under Article 223 of the Labor Code, the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties. However, the adverse party is not precluded from assailing the decision *via* petition for *certiorari* under Rule 65 of the Rules of Court before the CA and then to this Court *via* a petition for review under Rule 45.[22] Thus, contrary to the contention of petitioner, there is no violation of the doctrine of immutability of judgment when respondent elevated the matter to the CA which the latter consequently granted.

The power of the CA to review NLRC decisions has already been thoroughly explained and clarified by the Court in several cases,[23] to wit:

> The power of the Court of Appeals to review NLRC decisions *via* Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission.* This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg*. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[24]

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[22] *Panuncillo v. CAP Philippines, Inc.*, 544 Phil. 256, 278 (2007).

[23] *Lirio v. Genovia,* G.R. No. 169757, November 23, 2011, 661 SCRA 126; *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185; *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708.

[24] *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 513, citing *PICOP Resources, Incorporated (PRI) v. Tañeca*, G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66.

We agree with petitioner that in a special civil action for *certiorari*, the issues are confined to errors of jurisdiction or grave abuse of discretion. In exercising the expanded judicial review over labor cases, the Court of Appeals can grant the petition if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy which necessarily includes looking into the evidence presented by the parties.[25] In other words, the CA is empowered to evaluate the materiality and 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.[26] The CA can grant a petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[27] Thus, contrary to the contention of petitioner, the CA can review the finding of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion in finding that there was no illegal dismissal against respondent.[28]

Now on the main issue of whether respondent was illegally dismissed from employment by petitioner.

Article 281 of the Labor Code and its Implementing Rules describe probationary employment and set the guidelines to be followed by the employer and employee, to wit:[29]

Art. 281. *Probationary Employment.* — Probationary employment shall not exceed six (6) months from the date the employee started

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[25] *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 23, at 722.

[26] *Id.*; *Lirio v. Genovia, supra* note 23, at 137.

[27] *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 23, at 723.

[28] *Lirio v. Genovia*, *supra* note 23, at 137.

[29] *Hacienda Primera Development Corporation v. Villegas*, G.R. No. 186243, April 11, 2011, 647 SCRA 536, 541-542.

working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

LABOR CODE, Implementing Rules of Book VI, Rule I, Section 6

Sec. 6. *Probationary employment.* – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

xxx xxx xxx

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

It is undisputed that respondent was hired as a probationary employee. As such, he did not enjoy a permanent status. Nevertheless, he is accorded the constitutional protection of security of tenure which means that he can only be dismissed from employment for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement.[30]

It is primordial that at the start of the probationary period, the standards for regularization be made known to the

[30] *Tamson's Enterprises, Inc. v. Court of Appeals*, G.R. No. 192881, November 16, 2011, 660 SCRA 374, 384-385.

probationary employee.[31] In this case, as held by the CA, petitioner failed to present adequate evidence to substantiate its claim that respondent was apprised of said standards. It is evident from the LA and NLRC decisions that they merely relied on surmises and presumptions in concluding that respondent should have known the standards considering his educational background as a law graduate. Equally important is the requirement that in order to invoke "failure to meet the probationary standards" as a justification for dismissal, the employer must show how these standards have been applied to the subject employee. In this case, aside from its bare allegation, it was not shown that a performance evaluation was conducted to prove that his performance was indeed unsatisfactory.

Indeed, the power of the employer to terminate a probationary employee is subject to three limitations, namely: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no unlawful discrimination in the dismissal.[32] In this case, not only did petitioner fail to show that respondent was apprised of the standards for regularization but it was likewise not shown how these standards had been applied in his case.

Pursuant to well-settled doctrine, petitioner's failure to specify the reasonable standards by which respondent's alleged poor performance was evaluated as well as to prove that such standards were made known to him at the start of his employment, makes respondent a regular employee. In other words, because of this omission on the part of petitioner, respondent is deemed to have been hired from day one as a regular employee.[33]

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[31] *Id.* at 385.

[32] *Id.* at 387, citing *Dusit Hotel Nikko v. Gatbonton*, G.R. No. 161654, May 5, 2006, 489 SCRA 671.

[33] *Tamson's Enterprises, Inc. v. Court of Appeals*, *supra* note 30, at 388; *Hacienda Primera Development Corporation v. Villegas*, *supra* note 29, at 543.

To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal.[34] We find no reason to depart from the CA conclusion that respondent's termination from employment is without just and valid ground. Neither was due process observed, making his termination illegal. He is, therefore, entitled to the twin relief of reinstatement and backwages granted under the Labor Code.[35] However, as aptly held by the CA, considering the strained relations between petitioner and respondent, separation pay should be awarded in lieu of reinstatement. This Court has consistently ruled that if reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.[36] Separation pay, on the other hand, is equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six months being considered as one whole year),[37] computed from the time of employment or engagement up to the finality of the decision.[38]

Having been forced to litigate in order to seek redress of his grievances, respondent is entitled to the payment of attorney's fees equivalent to 10% of his monetary award.[39] Pursuant to prevailing jurisprudence, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% *per annum* from date of termination until full payment.[40]

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[34] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

[35] *Tamson's Enterprises, Inc. v. Court of Appeals*, *supra* note 30, at 389.

[36] *Aliling v. Feliciano*, *supra* note 34, at 213; *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 618.

[37] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577, 590.

[38] *Aliling v. Feliciano*, *supra* note 34, at 215; *Uy v. Centro Ceramica Corporation*, *supra* note 36, at 618.

[39] *Aliling v. Feliciano*, *supra* note 34, at 220.

[40] *Id.* at 221.

One final point. Petitioner claims that the instant case is covered by the stay order issued by the rehabilitation court in a rehabilitation case it earlier filed. The Court, however, takes judicial notice that in *Asiatrust Development Bank v. First Aikka Development, Inc.* [41] docketed as G.R. No. 179558, this Court rendered a decision on June 1, 2011 dismissing the petition for rehabilitation filed by petitioner before the RTC of Baguio City, Branch 59, for lack of jurisdiction. Petitioner cannot, therefore, rely on the orders issued by said court relative to its alleged rehabilitation.

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated October 24, 2007 and Resolution dated March 14, 2008 in CA-G.R. SP No. 96495, are **AFFIRMED** with **MODIFICATION**. Petitioner Univac Development, Inc. is liable to pay respondent William M. Soriano the following: (1) backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the date of his dismissal up to the finality of this decision; (2) separation pay in lieu of reinstatement equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six months being considered as one whole year), computed from the time of his employment or engagement up to the finality of the decision; (3) attorney's fees equivalent to 10% of the monetary awards; and (4) interest at 6% *per annum* from date of termination until full payment.

SO ORDERED.

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

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[41] 650 SCRA 172.

SECOND DIVISION

[G.R. No. 182130. June 19, 2013]

IRIS KRISTINE BALOIS ALBERTO and BENJAMIN D. BALOIS, *petitioners, vs.* **THE HON. COURT OF APPEALS, ATTY. RODRIGO A. REYNA, ARTURO S. CALIANGA, GIL ANTHONY M. CALIANGA, JESSEBEL-CALIANGA, and GRACE EVANGELISTA,** *respondents.*

[G.R. No. 182132. June 19, 2013]

THE SECRETARY OF JUSTICE, THE CITY PROSECUTOR OF MUNTINLUPA, THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY, BENJAMIN D. BALOIS, and IRIS KRISTINE BALOIS ALBERTO, *petitioners, vs.* **ATTY. RODRIGO A. REYNA, ARTURO S. CALIANGA, GIL ANTHONY M. CALIANGA, JESSEBEL CALIANGA, and GRACE EVANGELISTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; COURTS ARE PRECLUDED FROM DISTURBING THE FINDINGS OF PUBLIC PROSECUTORS IN THE DETERMINATION OF PROBABLE CAUSE UNLESS TAINTED WITH GRAVE ABUSE OF DISCRETION; RATIONALE.— It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while

the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

2. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION IN THE DETERMINATION OF PROBABLE CAUSE, EXPLAINED.— In the context of filing criminal charges, grave abuse of discretion exists in cases where the determination of probable cause is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law. In this regard, case law states that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.

3. ID.; ID.; ID.; PROBABLE CAUSE FOR THE PURPOSE OF FILING A CRIMINAL INFORMATION; EXPLAINED.— [P]robable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief. Accordingly, probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. x x x In order to engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

4. ID.; ID.; ID.; ID.; THERE IS GRAVE ABUSE OF DISCRETION IN FINDING THE EXISTENCE OF PROBABLE CAUSE FOR THE CRIME OF ILLEGAL DETENTION ABSENT A CLEAR SHOWING THEREOF.—

[T]he Court further holds that the DOJ Secretary gravely abused his discretion in finding that probable cause exists for the crime of Serious Illegal Detention. x x x [I]n Serious Illegal Detention, the victim is usually taken from one place and transferred to another – which is in fact what has been alleged in this case - making the commission of the offense susceptible to public view. Unfortunately, petitioners never presented any evidence to show that Iris was restrained of her liberty at any point in time during the period of her alleged captivity. x x x [G]iven the clear absence of probable cause for the crime of Serious Illegal Detention, the Court finds that the DOJ Secretary gravely abused his discretion in charging respondents for the same.

5. ID.; ID.; ID.; ID.; THE COURT FINDS GRAVE ABUSE OF DISCRETION IN FINDING PROBABLE CAUSE FOR THE CRIME OF FORCIBLE ABDUCTION WITH RAPE IN THE ABSENCE OF THE ELEMENTS OF THE CRIME.— [T]he DOJ Secretary also committed grave abuse of discretion in finding probable cause for the crime of Forcible Abduction with Rape. The elements of Forcible Abduction under Article 342 of the RPC are: (*a*) that the person abducted is any woman, regardless of her age or reputation; (*b*) that the abduction must be against her will; and (*c*) that the abduction must be with lewd designs. As this crime is complexed with the crime of Rape pursuant to Article 48 of the RPC, the elements of the latter offense must also concur. Further, owing to its nature as a complex crime proper, the Forcible Abduction must be shown to be a necessary means for committing the crime of Rape. As earlier discussed, there lies no evidence to prove that Iris was restrained of her liberty during the period of her captivity from June 23 to November 9, 2003 thus, denying the element of abduction. More importantly, even if it is assumed that there was some form of abduction, it has not been shown – nor even sufficiently alleged – that the taking was done with lewd designs. Lust or lewd design is an element that characterizes all crimes against chastity, apart from the felonious or criminal intent of the offender. As such, the said element must be always present in order that they may be so considered as a crime of chastity in contemplation of law.

APPEARANCES OF COUNSEL

Divina Manzanal Reyes Salvado & Arceo Law Offices for petitioners in G.R. No. 182130.

Yorac Arroyo Chua Caedo & Coronel Law Firm for respondents in both cases.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] assailing the January 11, 2008 Decision[2] and March 13, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 97863 which revoked the December 11, 2006 Resolution[4] and December 22, 2006 Amended Resolution[5] (DOJ Resolutions) issued by then Department of Justice (DOJ) Secretary Raul Gonzalez (DOJ Secretary) directing the City Prosecutor of Muntinlupa City to file charges of Rape,[6] in relation to Section 5(b), Article III of Republic Act No. 7610[7] (RA 7610), Serious Illegal Detention[8] and Forcible Abduction with Rape[9] against respondents.

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[1] *Rollo* (G.R. No. 182130), pp. 38-64; *rollo* (G.R. No. 182132), pp. 7-48.

[2] *Rollo* (G.R. No. 182130), pp. 9-31; *rollo* (G.R. No. 182132), pp. 53-75. Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring.

[3] *Rollo* (G.R. No. 182130), pp. 33-34; *rollo* (G.R. No. 182132), pp. 77-78.

[4] *Rollo* (G.R. No. 182130), pp. 202-209; *rollo* (G.R. No. 182132), pp. 273-280.

[5] *Rollo* (G.R. No. 182130), pp. 210-218; *rollo* (G.R. No. 182132), pp. 281-289.

[6] REVISED PENAL CODE, Art. 266-A.

[7] "SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT."

[8] REVISED PENAL CODE, Art. 267.

[9] REVISED PENAL CODE, Art. 342 & Art. 266-A.

The Facts

As culled from the assailed CA decision, the diametrically-opposed versions of the relevant incidents in this case are as follows:

A. Incidents of December 28, 2001

Petitioners alleged that at around midnight of December 28, 2001, respondent Gil Anthony Calianga (Gil) called petitioner Iris Kristine Alberto (Iris), then sixteen (16) years old,[10] informing her that he was at their garage with some food and drinks. For fear of being scolded, Iris refused to see Gil. But due to his insistence, Iris finally went out to meet Gil and thereafter, took the food and drinks which he brought. Eventually, while they were talking, Iris felt weak and dizzy and thus, tried to return to her room. Gil assisted Iris and when they reached the room, he laid her on the bed. A little later, Gil started kissing Iris which prompted her to scream. Consequently, Gil covered Iris' mouth with a pillow and soon after, he succeeded in having sexual intercourse with her. Before leaving, Gil warned Iris not to tell anyone about what happened or else he would kill her.[11]

By way of rebuttal, respondents averred that Gil and Iris met at the Mormon Church in Muntinlupa City and became sweethearts in 2001. They eventually developed an amorous physical relationship and on the evening of December 28, 2001, secretly slept together for the first time in Iris' own bedroom.[12]

B. Incidents of April 23 to 24, 2002

As for the second set of incidents, petitioners claimed that on April 23, 2002, Gil called Iris, then seventeen (17) years old,[13] telling her that he would pick her up for them to go to

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[10] Iris was born on December 30, 1984. See Memorandum dated August 2, 2011, *rollo* (G.R. No. 182130), p. 533.

[11] *Rollo* (G.R. No. 182130), p. 15; *rollo* (G.R. No. 182132), p. 59.

[12] *Rollo* (G.R. No. 182130), p. 10; *rollo* (G.R. No. 182132), p. 54.

[13] *Supra* note 10.

church in order to play volleyball. They met at about 5:30 in the afternoon in South Green Heights and proceeded to Camella to meet Gil's sister, respondent Jessebel Calianga (Jessebel), and her friend, respondent Grace Evangelista (Grace). At around 6:30 in the evening, Gil and Iris boarded a tricycle. At the outset, Iris thought they would be going to church for volleyball practice; but instead, Gil, while poking a knife at Iris' side, told her that they were headed to a different destination. Eventually, they reached a McDonald's restaurant located in San Pedro, Laguna where they transferred to a car driven by Grace's common-law husband. They then returned to Camella and stayed with a relative of Grace where they had dinner. While having dinner, Iris overheard respondent Atty. Rodrigo Reyna (Atty. Reyna) giving instructions to Jessebel to take Iris to Marikina City. When they finished their dinner, Atty. Reyna called again and told Iris not to go out as her relatives were around the area, on board several cars. Iris pleaded Gil to let her go, but her pleas were ignored. A little later, Jessebel and Grace led Gil and Iris to a tree house where Gil forced her to enter a room. She tried to resist but he threatened to kill her if she did not accede. Left with no option, Iris entered the room where Gil, holding her at knifepoint, succeeded in once again having sexual intercourse with her.[14]

The following day, or on April 24, 2002, at around 6:00 in the morning, Atty. Reyna arrived and instructed Iris to tell her relatives, who had been worriedly looking for her, that she voluntarily went with Gil; that she was treated with kindness; and that everything that happened was to her own liking because of her love for Gil. Atty. Reyna then asked Iris to go home but she refused because she did not know her way back. Because of Iris' refusal, Atty. Reyna called up her Auntie Vilma and Uncle Albert and agreed to meet at Chowking-Poblacion where Iris was finally released to her grandfather, petitioner Benjamin Balois (Benjamin).[15]

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[14] *Rollo* (G.R. No. 182130), pp. 15-17; *rollo* (G.R. No. 182132), pp. 59-61.

[15] *Rollo* (G.R. No. 182130), p. 17; *rollo* (G.R. No. 182132), p. 61.

In defense, respondents maintained that on April 23, 2002, Iris' brother, Eldon Alberto (Eldon), caught Gil inside Iris' bedroom where he had spent the night. Fearing the consequences of having been caught, Gil and Iris eloped and stayed at the house of Grace's grandfather. When Benjamin realized that Iris was missing, he sought the help of Atty. Reyna, since he was a family friend from their church. Iris' relatives also suspected that she might be with Gil after learning from the entries in her journal that Iris loved Gil very much. Coincidentally, Gil was the nephew of Atty. Reyna's wife and so they were hoping that Atty. Reyna would have some information as to Gil's whereabouts. Atty. Reyna and the Balois family searched together for Iris that night. In the course thereof, Atty. Reyna called Jessebel and Grace to ask if they knew where Gil was. Both stated that they were in Marikina but denied having any knowledge about Gil's location. Later, the party tried to search Gil's house as well as Grace's place (the latter being referred to as the "tree house"). However, both yielded negative results.

In the morning of April 24, 2002, Atty. Reyna proceeded to look for Grace and again asked where Gil and Iris were. Eventually, Grace admitted that the two were at her grandfather's house, which was only around 30 minutes away from her place. They proceeded accordingly and there, found Iris and Gil who were both surprised to see Atty. Reyna. Subsequently, Atty. Reyna asked Iris why she left home and she answered that it was because of her brother Eldon's warning that her family knew everything about her relationship with Gil. Atty. Reyna confirmed the veracity of Eldon's statement and went on to advise Iris to just tell the truth. Iris heeded Atty. Reyna's advice, allowing him to contact the Baloises and arrange for her return. As it turned out, they agreed to meet at Chowking-Poblacion for such purpose.[16]

In view of the incidents that transpired on December 28, 2001 and April 23 to 24, 2002, Benjamin filed a criminal complaint for Rape, Serious Illegal Detention and Child Abuse under

[16] *Rollo* (G.R. No. 182130), p. 11; *rollo* (G.R. No. 182132), p. 55.

Section 5(b), Article III of RA 7610 against Gil, Atty. Reyna, Jessebel and Grace before the Office of the City Prosecutor of Muntinlupa (Muntinlupa Pros. Office), docketed as **I.S. No. 02-G-03020-22**.[17]

C. Incidents of June 23 to November 9, 2003

Finally, as for the third set of incidents, petitioners asserted that on June 23, 2003, Iris was abducted in front of Assumption College. This time, Gil conspired with Atty. Reyna and respondent Arturo Calianga (Arturo), to take Iris in order to prevent her from appearing at the preliminary investigation in I.S. No. 02-G-03020-22 scheduled on June 25, 2003. In the afternoon of the same day, Iris' family brought Police Anti-Crime and Emergency Response (PACER) agents to Arturo's house. Upon their arrival, Grace told them that Gil left with some clothes and that he and Iris eloped and would proceed to Cagayan de Oro City. Soon after the abduction on June 23, 2003, Gil, Atty. Reyna and Arturo started their psychological manipulation of Iris.[18]

On June 27, 2003, Gil, with the help of two men, brought Iris to Cagayan de Oro City and there, held her captive in a small room with a small mat, near a pigpen. They controlled her movements, such as when she would eat, sleep, bathe or use the toilet. Gil raped her almost every day even during her menstrual period and would beat her up whenever she resisted. Also, Gil often told Iris that he would have her entire family killed by his Moslem relatives.[19]

Disputing petitioners' allegations, respondents denied that Gil, Atty. Reyna and Arturo abducted Iris and instead, claimed that Gil and Iris eloped for the second time, after visiting the Office of the City Prosecutor of Muntinlupa City where Iris declared that the charges against respondents were all fabricated

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[17] *Id.*

[18] *Rollo* (G.R. No. 182130), pp. 17-18; *rollo* (G.R. No. 182132), pp. 61-62.

[19] *Rollo* (G.R. No. 182130), p. 18; *rollo* (G.R. No. 182132), p. 62.

by her grandfather, Benjamin, and that she wanted them dismissed. Respondents claimed that Iris was quite prepared during her second elopement with Gil as she brought with her three bags containing several personal effects and other relevant documents. Eventually, Iris' family would discover that the reason for her elopement with Gil was because she was being maltreated and physically abused by her grandfather, Benjamin. Moreover, Iris could no longer stomach the lies Benjamin wanted her to say about Gil.[20]

Subsequently, Benjamin filed a second complaint against Gil, Atty. Reyna and Arturo for Kidnapping and Serious Illegal Detention, Grave Coercion and Obstruction of Justice before the Office of the City Prosecutor of Makati (Makati Pros. Office), docketed as **I.S. No. 03-G-14072-75**. [21]

On July 9, 2003, the City Prosecutor of Muntinlupa City dismissed the charges against Gil, Atty. Reyna, Jessebel and Grace for Rape and Serious Illegal Detention in I.S. No. 02-G-03020-22 for insufficiency of evidence. However, having found that he had sexual intercourse with a minor, Gil was charged for Child Abuse. Consequently, a warrant of arrest was issued against Gil.[22]

Determined to face the charges against him, Gil, together with Iris, returned from Cagayan de Oro City to Manila where he posted bail for the Child Abuse case.[23]

On August 6, 2003, Iris executed an affidavit (August 6, 2003 affidavit), sworn before Makati Assistant City Prosecutor George de Joya (Pros. de Joya), denying that she was kidnapped, detained or raped by Gil. She also affirmed that she loved Gil and eloped with him.[24]

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[20] *Rollo* (G.R. No. 182130), pp. 11-12; *rollo* (G.R. No. 182132), pp. 55-56.

[21] *Rollo* (G.R. No. 182130), p. 12; *rollo* (G.R. No. 182132), p. 56.

[22] *Id.*

[23] *Rollo* (G.R. No. 182130), p. 13; *rollo* (G.R. No. 182132), p. 57.

[24] *Id.*

On August 13, 2003, Iris and Gil appeared together on the GMA-7 television network's *Frontpage* news segment "*Magkasintahan Pala*" where Iris publicly declared that she loved Gil and that she went with him freely.[25]

On August 19, 2003, Iris appeared before the 9th Division of the CA in the hearing of the petition for *habeas corpus* filed by Benjamin in view of her second elopement on June 23, 2003.[26] During the said hearing, Iris declared that she was never kidnapped, detained or raped and that she loved Gil who was her boyfriend since December 2001. She also confirmed that she executed the August 6, 2003 affidavit before Pros. de Joya and that she appeared in "*Magkasintahan Pala*" on August 13, 2003. She also testified that she visited the Office of the City Prosecutor of Muntinlupa asking for the dismissal of the erroneous charges filed by Benjamin. When the CA Justices asked with whom she wanted to go home, she said that she wanted to go with Gil and his family. She added that she did not want her grandfather to visit her. Hence, in line with her decision during the foregoing proceedings, Iris and Gil freely cohabited beginning August 19, 2003 and were seen in public, freely roaming around the city. They regularly went to church together, underwent counseling and even planned to have their relationship bonded by marriage as soon as they got the required parental consent.[27]

On November 9, 2003, Benjamin forcibly took Iris away from Gil as the two were going to church. He subsequently kept Iris *incommunicado* for days and then had her declare through radio, newspaper and television that she was kidnapped and raped by

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[25] *Id.*

[26] Two (2) petitions for *habeas corpus* were filed before the CA. The first one, docketed as **CA-G.R. S.P. No. 78316**, was filed by Benjamin in view of the June 23, 2003 incidents. The second one, docketed as **CA-G.R. S.P. No. 80624**, was filed by Gil after Iris was purportedly "rescued" by her relatives on November 9, 2003. Both cases were eventually dismissed. *See* DOJ Resolution dated December 11, 2006, *rollo* (G.R. No. 182130), p. 206; *rollo* (G.R. No. 182132), p. 277.

[27] *Rollo* (G.R. No. 182130), pp. 13-14; *rollo* (G.R. No. 182132), pp. 57-58.

Gil and his family. While in the company of her relatives, Iris was able to sneak out text messages to Gil using the cellular phone of her grandfather, expressing her deep love and concern for him and warning his family about Benjamin's plans against them.[28]

On December 15, 2003, Iris, assisted by members of the groups Volunteers Against Crime and Corruption and Gabriela, proceeded to the DOJ Task Force on Women and Children Protection (DOJ Task Force) and filed a third complaint against Gil for Forcible Abduction with Rape and Obstruction of Justice, punished under Presidential Decree No. 1829,[29] docketed as **I.S. No. 2004-127**.[30]

Disposition of the Criminal Complaints

The three (3) criminal complaints filed by Iris and Benjamin against respondents were disposed as follows:

First, in **I.S. No. 02-G-03020-22**, State Prosecutor II Lilian Doris S. Alejo (Pros. Alejo) of the Muntinlupa Pros. Office issued the Resolution dated July 9, 2003,[31] dismissing the charges for Serious Illegal Detention and Rape against Gil, Atty. Reyna, Jessebel and Grace for insufficiency of evidence. In gist, Pros. Alejo found that the pieces of evidence showed that Gil and Iris were sweethearts and the sexual intercourse that transpired between them was consensual. Likewise, she observed that the story narrated by Iris was farfetched and, to a certain degree, unacceptable and unimaginable, intimating that it was unbelievable that Iris would still go to volleyball practice with Gil after the first rape he allegedly committed against her.[32]

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[28] *Rollo* (G.R. No. 182130), p. 14; *rollo* (G.R. No. 182132), p. 58.

[29] "PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS."

[30] *Rollo* (G.R. No. 182130), p. 14; *rollo* (G.R. No. 182132), p. 58.

[31] *Rollo* (G.R. No. 182130), pp. 122-125; *rollo* (G.R. No. 182132), pp. 122-125.

[32] *Rollo* (G.R. No. 182130), p. 124; *rollo* (G.R. No. 182132), p. 124.

Nonetheless, Pros. Alejo recommended the filing of informations for Child Abuse against Gil for having sexual intercourse with Iris on **December 28, 2001** and **April 23, 2003** by taking advantage of her minority and his moral influence as a pastor of their church.[33] Accordingly, Gil was charged under the following amended criminal informations,[34] docketed as **Criminal Case Nos. 03-549** and **03-551**:

Criminal Case No. 03-551

That on **December 28, 2001**, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his influence as Mormon priest of the church of which herein victim, seventeen (17) year[s] old IRIS KRISTINE ALBERTO y BALOIS is a member, and through moral compulsion, did then and there, willfully, unlawfully and feloniously **engaged in sexual intercourse with said minor**.

CONTRARY TO LAW.
Muntinlupa City, July 9, 2003.

Criminal Case No. 03-549

That on **April 23, 2002**, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his influence as Mormon priest of the church of which herein victim, seventeen (17) year old IRIS KRISTINE ALBERTO *y* BALOIS is a member, and through moral compulsion, did then and there, willfully, unlawfully and feloniously **engaged in sexual intercourse with said minor**.

CONTRARY TO LAW.
Muntinlupa City, July 9, 2003.

Second, in **I.S. No. 03-G-14027-75**, 2nd Assistant City Prosecutor Henry M. Salazar (Pros. Salazar) of the Makati Pros. Office issued a Resolution dated March 5, 2004,[35] equally

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[33] *Id.*

[34] See Consolidated Comment dated September 26, 2008, *rollo* (G.R. No. 182130), pp. 276-277; *rollo* (G.R. No. 182132), pp. 425-426.

[35] *Rollo* (G.R. No. 182132), pp. 156-167.

dismissing the charges for Kidnapping and Serious Illegal Detention, Grave Coercion and Obstruction of Justice against Gil, Atty. Reyna and Arturo for lack of merit and/or insufficiency of evidence. Anent the Kidnapping charge, Pros. Salazar found that no evidence was submitted which would prove that Iris was forcibly taken away and deprived of her liberty.[36] Similarly, he observed that there was no evidence or any particular allegation of facts in the complaint-affidavit constituting the acts which were claimed as coercive.[37] In the same vein, he found no evidence or any sufficient allegation to support the charge of Obstruction of Justice.[38]

Pros. Salazar further noted that aside from the insufficiency of the complainant's[39] evidence, the affidavit of Iris dated August 5, 2003, the news package entitled "*Magkasintahan Pala,*" and the transcript of stenographic notes of the hearing on August 19, 2003 of the petition for *habeas corpus* in CA-G.R. S.P. No. 78316 all support the dismissal of the foregoing charges.[40] He also observed that the complainant moved for the suspension of the preliminary investigation due to the need to have Iris mentally examined, alleging certain doubts on the voluntariness of her August 6, 2003 affidavit. However, no mental examination report was submitted to verify such doubts. In addition, Pros. Salazar took cognizance of the fact that while Iris was "rescued" on November 9, 2003, Benjamin only asked for the revival of the preliminary investigation of the case on January 22, 2004.[41]

Finally, the counter-charge of Perjury was dismissed, also for lack of merit.[42]

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

[37] *Id.* at 163.

[38] *Id.*

[39] The complainant in this case was Benjamin.

[40] *Rollo* (G.R. No. 182132), pp. 163-165.

[41] *Id.* at 166.

[42] *Id.*

Dissatisfied, Benjamin moved for reconsideration which was, however, denied in a Resolution dated July 30, 2004.[43]

Third, in **I.S. No. 2004-127**, State Prosecutor Zenaida M. Lim (Pros. Lim) of the DOJ Task Force issued a Resolution dated November 8, 2004,[44] also dismissing the third case for Forcible Abduction with Rape and Obstruction of Justice against Gil, Atty. Reyna and Arturo on the ground of insufficiency of evidence.

In addition to the above-stated incidents, complainant[45] averred that Atty. Reyna and Arturo also raped her in the month of August 2003. She alleged that Atty. Reyna gave her a drink laced with some kind of chemical substance which made her dizzy and weak and thereafter, succeeded to have sexual intercourse with her. Iris averred that Arturo also did the same thing to her. She likewise claimed that Atty. Reyna and Arturo sexually molested her every time they went to Taytay, while Gil continually raped her. After the *habeas corpus* proceedings in CA-G.R. S.P. No. 78316, Gil brought her to Atty. Reyna's house in Putatan, Muntinlupa where she was repeatedly raped by Gil and Atty. Reyna. According to Iris, Atty. Reyna also brought her to an apartment in Camella Homes, Muntinlupa where Arturo raped her. She stayed at Atty. Reyna's Putatan residence for three (3) months and the latter would bring her to the Camella Homes apartment whenever his wife sensed what they were doing to her.[46]

Pros. Lim found no probable cause for the crimes charged, holding that Iris was not a credible witness because of her flip-flopping testimonies and the serious contradictions therein. She observed that the fact that Iris admitted that she went back to school and even got exemplary grades confirmed that she was

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[43] *Rollo* (G.R. No. 182130), pp. 126-128.

[44] *Rollo* (G.R. No. 182130), pp. 129-140; *rollo* (G.R. No. 182132), pp. 187-198.

[45] The complainant in this case was Iris.

[46] *Rollo* (G.R. No. 182130), p. 131; *rollo* (G.R. No. 182132), p. 189.

of sound mind and acted with volition when she went away with Gil on June 23, 2003. Her mental condition was also adjudged to be normal by the CA justices who observed her personal demeanor during the August 19, 2003 hearing in CA-G.R. S.P. No. 78316. Further, the fact that Iris was not abducted but acted with free will was attested to by Gemma Cachuela (Cachuela), a staff of the Muntinlupa Prosecutor's Office, stating that Iris went to their office on June 23, 2003 to withdraw her complaint. Pros. Lim added that Cachuela had no reason or motive to fabricate her statement. Likewise, she noted that the fact that the presentation of the news program "*Magkasintahan Pala*" and Iris' text messages to Gil as evidence were suppressed meant that they were adverse to Iris' cause. She also found the assertion that Iris was made to undergo a mock trial twice a week to script her testimony for the first *habeas corpus* proceedings to be untrue as Iris herself admitted that respondents received the subpoena only on August 17, 2003, or two (2) days before the August 19, 2003 hearing. Further, she deemed that it was incredible that respondents would use a color-coding vehicle on the day of Iris' purported abduction. Complainant's sweeping statements against Atty. Reyna and Arturo were also found to be inadequate to establish their guilt, observing that if Iris were indeed drugged for the first time and raped, she should not have acceded to drink the same substance for a second time. Moreover, if she was indeed molested by Atty. Reyna and Arturo, she should have declared such fact during the proceedings in CA-G.R. S.P. No. 78316. Yet, on the contrary, Iris even praised Atty. Reyna and Arturo for being "*mababuting tao*" (good people).[47] In closing, Pros. Lim held that no abduction with rape took place but rather, the rule on two (2) consenting adults giving free reign to their emotions prevailed in this case.[48]

Finally, anent the charge of Obstruction of Justice, Pros. Lim dismissed the same, also for lack of sufficient evidence.[49]

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[47] *Rollo* (G.R. No. 182130), pp. 136-138; *rollo* (G.R. No. 182132), pp. 194-196.

[48] *Rollo* (G.R. No. 182130), p. 139; *rollo* (G.R. No. 182132), p. 197.

[49] *Rollo* (G.R. No. 182130), pp. 139-140; *rollo* (G.R. No. 182132), pp. 197-198.

Aggrieved, Iris and Benjamin appealed the dismissal of all the foregoing charges to the DOJ.[50]

Proceedings Before the DOJ

On December 11, 2006, the DOJ Secretary issued the first assailed Resolution of even date[51] which he later modified through an Amended Resolution dated December 22, 2006 (Amended Resolution).[52] In the Amended Resolution, the DOJ Secretary resolved the consolidated petitions in I.S. No. 02-G-03020-22, I.S. No. 03-G-14027-75 and I.S. No. 2004-127, finding probable cause to charge: (*a*) Gil for Rape, in relation to Section 5(b), Article III of RA 7610, on account of the December 28, 2001 incidents; (*b*) Gil, Jessebel, Atty. Reyna and Grace for one (1) count each of Serious Illegal Detention and Rape, in relation to Section 5(b), Article III of RA 7610, on account of the April 23 to 24, 2002 incidents; and (*c*) Gil, Atty. Reyna and Arturo for one (1) count each of Forcible Abduction with Rape on account of the June 23 to November 9, 2003 incidents.[53]

In granting the consolidated petitions, the DOJ Secretary observed, among others, that Gil merely interposed the sweetheart defense, which in itself was doubtful in view of Iris' positive identification of him as the culprit of the December 28, 2001 incident. He further held that it was error to have dismissed the charges against respondents on the basis of the dismissal of the two (2) *habeas corpus* cases considering that the causes of action

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[50] On July 25, 2003, Iris and Benjamin appealed the July 9, 2003 Resolution of Pros. Alejo. On October 7, 2004, they then appealed the July 30, 2004 Resolution of Pros. Salazar. Finally, on February 10, 2005, they appealed the November 8, 2004 Resolution of Pros. Lim. See Petition for Review on *Certiorari* dated May 8, 2008, *rollo* (G.R. No. 182132), pp. 12 & 14.

[51] *Rollo* (G.R. No. 182130), pp. 202-209; *rollo* (G.R. No. 182132), pp. 273-280.

[52] *Rollo* (G.R. No. 182130), pp. 210-218; *rollo* (G.R. No. 182132), pp. 281-289.

[53] *Rollo* (G.R. No. 182130), pp. 216-217; *rollo* (G.R. No. 182132), pp. 287-288.

therein were different and that the CA did not make any finding on the criminal liability of the respondents. Also, he noted that Iris' family reported to the authorities that she had been abducted. Moreover, he found that respondents conspired with one another in the abduction and consequent raping of Iris.[54]

On January 18, 2007, respondents moved for the reconsideration of the Amended Resolution.[55]

Meanwhile, on February 5, 2007, two (2) separate criminal Informations were filed for Forcible Abduction with Rape against Gil, Arturo, and Atty. Reyna, docketed as **Criminal Case No. 07-122**, and for Serious Illegal Detention with Rape against Gil, Atty. Reyna, Jessebel, and Grace, docketed as **Criminal Case No. 07-128**:

Criminal Case No. 07-122[56]

The undersigned Acting City Prosecutor upon sworn complaint duly attached and made an integral part hereof and marked as Annex "A", executed on December 15, 2003 before the Violence Against Women and Children Division (VAWCD) of the National Bureau of Investigation by the offended party, IRIS KRISTINE ALBERTO *Y* BALOIS, then eighteen (18) years old, accuses RODRIGO A. REYNA, GIL ANTHONY M. CALIANGA and ARTURO S. CALIANGA of FORCIBLE ABDUCTION WITH RAPE pursuant to Article 48 in relation to Article 342 and Article 266 paragraph 1(a) of the Revised Penal Code, and committed in relation to the incidents that occurred between June 23, 2003 until November 9, 2003 as follows:

That on June 23, 2003, in Makati City, Philippines and within the jurisdiction of this Honorable Court, all the above-named accused mutually helping, conspiring and confederating with each other, then and there willfully, unlawfully and feloniously abducted the private complainant, Iris Kristine Alberto *y* Balois, against her will

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[54] *Rollo* (G.R. No. 182130), pp. 214-215; *rollo* (G.R. No. 182132), pp. 285-286.

[55] See Consolidated Comment dated September 26, 2008, *rollo* (G.R. No. 182130), p. 268; *rollo* (G.R. No. 182132), p. 417.

[56] *Rollo* (G.R. No. 182130), pp. 223-225.

with the aid of two armed men in front of Assumption College in Makati City using a Tamaraw FX vehicle with plate number TRP-871, with lewd and unchaste designs and for the purpose of preventing the private complainant from pursuing her earlier complaint for rape, serious illegal detention and violation of Republic Act No. 7610 in I.S. No. 02-G-03020-22 before the Muntinlupa City Prosecutor's Office against accused Gil Anthony M. Calianga, Rodrigo A. Reyna and several other persons, and that thereafter the private complainant was taken to the house of accused Rodrigo A. Reyna at Unit 17, Dona Segundina Townhomes, Muntinlupa City, where she was detained against her will for two days, and later transferred to a house in San Pedro, Laguna where she was also detained against her will until June 27, 2003;

That on or about June 27, 2003, all the above-named accused, then and there, willfully, unlawfully and feloniously decided to hide the private complainant in Mindanao and, with the help of armed men and with threat, force and intimidation, accused Gil Anthony Calianga brought the private complainant to Cagayan de Oro where she was held captive in a house until about August 5, 2003 and where accused Gil Anthony M. Calianga had carnal knowledge of her repeatedly against her will, by means of threat, force, violence and intimidation and by making her take drinks laced with drugs;

That on or about August 5, 2003, accused Gil Anthony M. Calianga, with the aid or several unknown persons, brought the private complainant back to Metro Manila and thereafter, together with accused Rodrigo A. Reyna and Arturo S. Calianga, willfully, unlawfully and feloniously detain the private complainant in a house in Taytay, Rizal until she was transferred to the house of accused Rodrigo A. Reyna in Muntinlupa City where the three accused continued to hold her against her will, at which different places the three accused willfully, unlawfully and feloniously, by means of threat, force, violence, intimidation and psychological manipulation, and through the use of drugs, took turns in repeatedly having carnal knowledge of the private complainant against her will until she was rescued on November 9, 2003 by her relatives and NBI agents.

CONTRARY TO LAW.
Manila, January 30, 2007.

Criminal Case No. 07-128[57]

[57] *Id.* at 219-222.

The undersigned Acting City Prosecutor, upon sworn complaint duly attached and made an integral part hereof and marked as Annex "A", executed on July 4, 2002 before the Women's Desk, Muntinlupa City Police Station by the offended party, IRIS KRISTINE ALBERTO *Y* BALOIS, then seventeen (17) years old, assisted by her grandfather Benjamin D. Balois, accuses RODRIGO A. REYNA, GIL ANTHONY M. CALIANGA, JEZIBEL CALIANGA, GRACE EVANGELISTA confederating and mutually helping each other in the crime of SERIOUS ILLEGAL DETENTION and Rape of a minor as defined under Article 267, paragraph 1(4) and paragraph 3 of the Revised Penal Code, as amended by Republic Act No. 7659, committed as follows:

> That at about 5:30 [*sic*] in the afternoon of April 23, 2002, in the City of Muntinlupa and within the jurisdiction of this Honorable Court, accused GIL ANTHONY M. CALIANGA, through fraudulent misrepresentation, by means of force, threat and intimidation and by taking advantage of his influence as priest of the Mormon Church of which the private complainant Iris Kristine [Balois Alberto], female, then a minor, seventeen (17) years of age, was also a member, then and there, and with lewd and unchaste design, willfully, unlawfully and feloniously take and carry away Iris Kristine Balois Alberto against her will and without legal cause, from South Green Heights in Muntinlupa City and brought her to a tree house located at Camella Homes, Muntinlupa City where said accused, by means of threat, force, violence and intimidation, willfully, unlawfully and feloniously had carnal knowledge of the private complainant against her will in the evening of the said date and detained her until the morning of April 24, 2002; that said accused Gil Anthony Calianga would not have succeeded in detaining her until the morning of April 24, 2002 and in having carnal knowledge of her against her will on the night of April 23, 2002 without the indispensable cooperation of accused JEZIBEL CALIANGA and GRACE EVANGELISTA who padlocked the tree house from the outside while the private complainant was detained inside, and the indispensable cooperation of accused Atty. RODRIGO A. REYNA, a high priest of the Mormon church, a close friend and associate of private complainant's grandfather and a member of the legal profession, who, taking advantage of his ascendancy and moral persuasion, willfully, unlawfully and feloniously aided, abetted

and cooperated with accused Gil Anthony Calianga, Jezibel Calianga and Grace Evangelista by giving them instructions through cellular phone and by misleading and actively misrepresenting to the private complainant's family her whereabouts. Without such cooperation and unity in effort on the part of the above named accused, Iris Kristine Balois Alberto, a minor at that time, would not have been detained and raped on April 23 to 24, 2002.

CONTRARY TO LAW.
Manila, January 30, 2007.

For alleged reasons of extreme urgency, respondents filed a petition for *certiorari*[58] with the CA, docketed as CA-G.R. SP. No. 97863, while the resolution of their January 18, 2007 Joint Motion for Reconsideration was still pending.

In the interim, a warrant of arrest[59] was issued on February 23, 2007, by Presiding Judge Philip A. Aguinaldo of the RTC of Muntinlupa City, Branch 207 against all the accused in Criminal Case No. 07-128. Later, on January 14, 2008, Acting Presiding Judge Romulo SG. Villanueva of the RTC, Muntinlupa City, Branch 256 issued a warrant of arrest[60] against all the accused in Criminal Case No. 07-122.

The CA Ruling

The CA gave due course to respondents' petition for *certiorari* and on January 11, 2008 rendered its Decision[61] which revoked the DOJ Resolutions.

It ruled that the DOJ Secretary gravely abused his discretion in reversing the resolutions of no less than three (3) investigative bodies which all found lack of probable cause and in disregarding the overwhelming, credible and convincing evidence which negated

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[58] *Rollo* (G.R. No. 182132), pp. 344-384.

[59] *Rollo* (G.R. No. 182130), p. 226.

[60] *Id.* at 227.

[61] *Rollo* (G.R. No. 182130), pp. 9-31; *rollo* (G.R. No. 182132), pp. 53-75.

the charges filed against respondents.[62] Of particular note to the CA were the inconsistent and inherently improbable testimony of Iris, the existence of love letters and text messages of love and concern between Iris and Gil, and the hiatus of evidence that would show that Atty. Reyna, Arturo, Jessebel and Grace conspired to rape or illegally detain Iris.[63]

Petitioners filed a motion for reconsideration,[64] essentially arguing that the CA erroneously assumed the function of public prosecutor when it determined the non-existence of probable cause. The said motion was, however, denied in a Resolution dated March 13, 2008.[65]

Issue Before The Court

The core of the present controversy revolves around the issue of whether or not the CA erred in revoking the DOJ Resolutions based on grave abuse of discretion.

The Court's Ruling

The petitions are partly meritorious.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting

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[62] *Rollo* (G.R. No. 182130), pp. 24-25; *rollo* (G.R. No. 182132), pp. 68-69.

[63] *Rollo* (G.R. No. 182130), pp. 25-28; *rollo* (G.R. No. 182132), pp. 69-72.

[64] *Rollo* (G.R. No. 182130), pp. 228-235.

[65] *Rollo* (G.R. No. 182130), pp. 33-34; *rollo* (G.R. No. 182132), pp. 77-78.

principle of checks and balances,[66] whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[67]

In the case of *Callo-Caridad v. Esteban*,[68] citing *Metropolitan Bank & Trust Co. v. Tobias III*,[69] the Court held:

> In reviewing the findings of the [public prosecutor] on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.
>
> On the other hand, the courts could intervene in the Secretary of Justice's determination of probable cause only through a special civil action for *certiorari*. That happens when the Secretary of Justice acts in a limited sense like a quasi-judicial officer of the executive department exercising powers akin to those of a court of law. **But the requirement for such intervention was still for the petitioner to demonstrate clearly that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction**. **Unless such a clear demonstration is made, the intervention is disallowed in deference to the doctrine of separation**

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[66] "The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions. The review is a part of the **system of checks and balances** which is **a limitation on the separation of power**s and which forestalls arbitrary and unjust adjudications. Judicial review of the decision of an official or administrative agency exercising quasi-judicial functions is proper in cases of lack of jurisdiction, error of law, **grave abuse of discretion**, fraud or collusion or in case the administrative decision is corrupt, arbitrary or capricious." [*MERALCO v. CBAA*, 199 Phil. 453, 459 (1982); emphasis supplied; citations omitted]

[67] 1987 PHILIPPINE CONSTITUTION, Article VIII, Section 1.

[68] G.R. No. 191567, March 20, 2013, citing *Bautista v. CA*, 413 Phil. 168 (2001); *Sps. Dacudao v. Secretary of Justice*, G.R. No. 188056, January 8, 2013.

[69] G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177. (Citations omitted)

of powers. As the Court has postulated in *Metropolitan Bank & Trust Co. v. Tobias III*:

> Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. **The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion**. x x x x (Emphasis supplied)

In the context of filing criminal charges, grave abuse of discretion exists in cases where the determination of probable cause is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[70] In this regard, case law states that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[71] As held in *PCGG v. Jacobi*:[72]

> In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. **This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari***. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. **This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined**

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[70] See *Chua Huat v. CA*, 276 Phil. 1, 18 (1991). (Citations omitted)

[71] See *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340, 344 (1939).

[72] *PCGG v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 57. (Citations omitted)

or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. (Emphasis and underscoring supplied)

To note, probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief. Accordingly, probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged.[73] As pronounced in *Reyes v. Pearlbank Securities, Inc.*:[74]

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground **to engender a well-founded belief that a crime has been committed**, and **that the accused is probably guilty thereof and should be held for trial**. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction. (Emphasis and underscoring supplied)

In order to engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the

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[73] *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 120-121, citing *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 533-535.

[74] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 533-535.

principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.[75]

Guided by the foregoing considerations, the Court therefore holds as follows:

First, the DOJ Secretary did not gravely abuse his discretion in finding that probable cause exists for the crime of Rape against Gil, Atty. Reyna and Arturo.

Under Article 266-A of the RPC, as amended by Republic Act No. 8353, the elements of Rape are: (*a*) that the offender is a man; (*b*) that the offender had carnal knowledge of a woman; and (*c*) that such act is accomplished by using force or intimidation.[76]

In particular, with respect to Gil, Iris averred that on December 28, 2001, Gil drugged her and thereafter, through force and intimidation, succeeded in having sexual intercourse with her. She also claimed that on April 23, 2002, Gil, again through force and intimidation, had carnal knowledge of her in the tree house. Likewise, beginning June 27, 2003, Gil raped her almost every day up until her rescue on November 9 of the same year.

In defense, records show that Gil never denied any of the above-stated sexual encounters, but merely maintained the he and Iris were sweethearts, as shown by several love letters and text messages between them.

Ruling on the matter, the Court finds no grave abuse of discretion on the part of the DOJ Secretary, as the elements of rape, more likely than not, appear to be present.

The first and second elements of the crime are beyond dispute as Gil does not deny having carnal knowledge with Iris. Anent the third element of force and intimidation, Iris's version of the facts, as well as Gil's sole reliance on the sweetheart defense,

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[75] *Ang-Abaya v. Ang*, G.R. No. 178511, December 4, 2008, 573 SCRA 129, 143, citing *Duterte v. Sandiganbayan*, 352 Phil. 557 (1998).

[76] *People v. Alfredo*, G.R. No. 188560, December 15, 2010, 638 SCRA 749, 764; citing Luis B. Reyes, *Revised Penal Code* 525 (16th Ed., 2006).

leads the Court to believe that the said element, in all reasonable likelihood, appears to be present, considering that: (*a*) mere denial cannot prevail over the positive testimony of a witness;[77] (*b*) the sweetheart theory does not, by and of itself, negate the commission of rape;[78] and (*c*) the fact that Iris was a minor during the foregoing incidents casts serious doubt on the efficacy of the consent purportedly given by her,[79] especially in view of Gil's esteemed position of being a priest of the same congregation of which Iris belongs to.

Moreover, a perusal of the transcript of stenographic notes of the January 14, 2004 hearing in CA-G.R. S.P. No. 80624 (January 14, 2004 TSN) shows that Iris retracted her previous testimony during the August 19, 2003 hearing in the first *habeas*

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[77] "**Mere denial cannot prevail over the positive testimony of a witness**; it is self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail." (*People v. Serrano*, G.R. No. 179038, May 6, 2010, 620 SCRA 327, 345; citing *People v. Dumlao,* G.R. No. 181599, August 20, 2008, 562 SCRA 762, 769; emphasis and underscoring supplied)

[78] "[**I]t is well-settled that being sweethearts does not negate the commission of rape** because such fact does not give [the accused] license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act." (*People v. Magabanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 704; emphasis and underscoring supplied; words in brackets supplied; citations omitted)

[79] "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." (*Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 662; emphasis and underscoring supplied; citations omitted)

corpus case, *i.e.*, CA-G.R. S.P. No. 78316, to the effect that her statements that Gil never raped her and that she went with him on her own volition were merely "scripted" and conjured only upon the instruction of Atty. Reyna.[80] While case law holds

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[80] Witness: **During the Court of Appeals [hearing,] [i]t was August 19, 2002[,] I was under duress.**

Atty. Reyna: You mean to say that the Justices who acceded your decision forced you to love with Gil Anthony…

Witness: No, No, *Ikaw! Ikaw!*

Atty. Reyna: Your Honor, may I move…

Justice Brawner: Already answered. *No, No, ikaw ikaw*, witness pointing to Atty. Reyna. Alright any objection to that answer?

Atty. Pamaran: No. Your Honor, but we would like to reflect it on record that the witness said it in a very loud and forceful emotional voice.

Justice Brawner: Loud yes, but forceful I do not know. Emotional much less. But emotional well said…

Atty. Reyna: Please clarify that when you said that it was I who forced you on page 103 of the transcript of stenographic notes, I would like to read this to you –

It is Justice Magpale's speaking, he said – *Q –Ano ba ang gusto mo ngayon pagkatapos ng pag-uusap dito ay mag-isip ka ng gusto mong mangyari. Sumama sa NBI para ikaw ay maeksamin, o sumama sa lolo at lola mo na pareho nandito sa korte? O sumama sa boyfriend mo at sa kanyang pamilya? Ikaw and pipili ng gusto mong gawin ngayon.* Your answer was – A – *gusto ko pong sumama sa boyfriend ko at sa pamilya niya*. Do you confirm having said this madam witness?

Witness: **Yes I have said that *pero ikaw and nagturo sakin nyan, scripted yan.*** x x x

Atty, Reyna: May I ask that question again for the record. Do you confirm having said that madam witness before the Honorable Court that again, Your Honor, may I read forthe records. It says here on page 19 – Q: This is a petition filed against respondent Gil Anthony Calianga. Do you know him Ms. Alberto? A: Yes, Sir, he is my boyfriend. Next question, page 20 – Q: He is your boyfriend since when he became your boyfriend? A: Since December 25, 2001. Do you confirm this?

Witness: ***Ikaw and nagturo sa akin nyan.*** x x x

Atty. Reyna: you have said this in open court. That's the only question.

A – Yes, Your Honor, ***pero sya po ang nagturo nyan***.

that recantations do not necessarily cancel out an earlier declaration, ultimately, it should still be treated like any other testimony and as such, its credibility must be tested during trial.[81]

Based on the foregoing reasons, the Court finds reasonable bases to sustain the DOJ Secretary's finding of probable cause for Rape against Gil in connection with all three (3) incidents of December 28, 2001, April 23, 2002 and June 23 to November 9, 2003. In this respect, the DOJ Secretary committed no grave abuse of discretion.

Similarly, the Court finds no grave abuse of discretion in the DOJ Secretary's finding of probable cause for Rape against Atty. Reyna and Arturo, but only insofar as the June 23 to November 9, 2003 incidents are concerned.

The January 14, 2004 TSN reveals that Iris categorically declared in open court that she was raped by Atty. Reyna and Arturo during the aforesaid five month period.[82] It is a standing

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Justice Brawner: Next question.

Atty. Reyna: On page 30 madam witness, there is this question – Q: You said you have difficulty regarding telling xxx lies in all in the land. Will you be specific on the Honorable Jsutices what do you mean by that Ms. Alberto? A: *Kasi po nag-file po ng kaso ang grandfather ko sa kanila. Hindi naman po kasi totoo na nakidnap ako at hindi rin totoo na na-rape ako noong December 28, 2001. At isa pa noon April 23, 2002.* The same question I will ask you madam witness, do you confirm having said this under oath? Yes or no?

Witness: ***Ikaw and nagturo sa akin nyan eh!*** x x x (*Rollo* [G.R. No. 182132], pp. 179-181; emphasis and underscoring supplied)

[81] "A recantation does not necessarily cancel an earlier declaration**. <u>Like any other testimony, it is subject to the test of credibility</u>** based on the relevant circumstances and especially the demeanor of the witness on the stand." (*People v. Dalabajan*, G.R. No. 105668, October 16, 1997; emphasis and underscoring supplied)

[82] Atty. Reyna: You said that when you were with us, as a result of having decided to live with Gil, until you were restrained, will you please tell the Honorable Court how were you restrained by Anthony?

Witness: ***Dinala nyo po ako kung saan-saang lugar. Dinala nyo ako ng Cagayan De Oro, dinala nyo ako ng Taytay. Dinala nyo ako sa San***

rule that due to the nature of the commission of the crime of rape, the testimony of the victim may be sufficient to convict the accused, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[83] Applying the same, the Court deems it prudent to test the credibility of Iris's testimony during trial, in which her demeanor and deportment would be properly observable,[84] and likewise be subject to cross-examination.[85]

On the contrary, there appears to be no ample justification to support the finding of probable cause against Atty. Reyna and Arturo, with respect to the rape incidents of December 28,

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Pedro at kung saan-saan. At doon sa limang buwan na iyon, ni-rape mo ako. Ni-rape niyo akong lahat!

Atty. Pamaran: May we ask to make it on record [a]gain that the witness answer[s] in a very forceful and loud voice. And looking sharply at Atty. Reyna with a very serious face. x x x x [*Rollo* (G.R. No. 182132), pp. 179-181; emphasis and underscoring supplied]

[83] *People v. Olimba*, G.R. No. 185008, September 22, 2010, 631 SCRA 223, 235; citing *People v. Cadap*, G.R. No. 190633, July 5, 2010, 623 SCRA 655, 660-661; further citing *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[84] "**Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court** x x x. **Matters affecting credibility are best left to the trial court** because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case." (*People v. Dahilig*, G.R. No. 187083, June 13, 2011, 651 SCRA 778, 786; citing *People v. Dimacuha*, 467 Phil. 342, 349 (2004); *People v. Del Mundo, Sr.*, 408 Phil. 118, 129 (2001); emphasis and underscoring supplied)

[85] "**The cross-examination of a witness is essential to test his or her credibility**, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him." (*People v. Rivera*, G.R. No. 139180, July 31, 2001, 362 SCRA 153, 170; emphasis and underscoring supplied; citations omitted)

2001 and April 23, 2002, as well as against Jessebel and Grace for all three (3) incidents.

As may be gleaned from the Amended Resolution, the DOJ Secretary indicted Atty. Reyna, Arturo, Jessebel and Grace for these incidents only by reason of conspiracy. Yet, other than his general imputation thereof, the DOJ Secretary never provided any rational explanation for his finding of conspiracy against the aforementioned respondents. The rule is that conspiracy must be proved as clearly and convincingly as the commission of the offense itself. It can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[86] In this case, the Amended Resolution is bereft of any showing as to how the particular acts of the foregoing respondents figured into the common design of raping Iris and as such, the Court finds no reason to charge them for the same.

Therefore, finding no grave abuse of discretion in the following respects, the Court upholds the DOJ Secretary's finding of probable cause for the crime of Rape against Gil for all three (3) rape incidents and against Atty. Reyna and Arturo for the incidents of June 23 to November 9, 2003.

At this juncture, the Court observes that the DOJ charged Gil for Rape *in relation* to Child Abuse under Section 5(b), Article III of RA 7610[87] on account of the December 28, 2001

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[86] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 3 & 11; citing *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228.

[87] 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: xxx xxx xxx

(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 victims is under twelve (12) years of age,

and April 23, 2002 incidents. Existing jurisprudence, however, proscribes charging an accused for both crimes, rather, he may be charged only for either. As held in *People v. Pangilinan*:[88]

> [I]f the victim is 12 years or older, the offender should be charged with **either** sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, **the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced**. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. (Emphasis and underscoring supplied)

In this light, while the Court also finds that probable cause exists for the crime of Child Abuse against Gil for the same rape incidents of December 28, 2001 and April 23, 2002 in view of the substantial identity of its elements[89] with that of Rape, he cannot be charged for both. Records disclose that there are standing charges against Gil for Child Abuse in Criminal Case Nos. 03-551 and 03-549,[90] respectively on account of the

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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; xxx xxx xxx (Emphasis supplied)

[88] G.R. No. 183090, November 14, 2011, 660 SCRA 16, 34-35.

[89] For the same reasons attendant to the finding of probable cause for Rape, the Court observes that there lies probable cause for the crime of Child Abuse against Gil in connection with the December 28, 2001 and April 23, 2002 incidents. To note, the elements of Child Abuse under Section 5(b), Article III of RA 7610 are: (*a*) that the accused commits the act of sexual intercourse or lascivious conduct; (*b*) that the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (*c*) that the child, whether male or female, is below eighteen (18) years of age. (See *Olivarez v. CA*, G.R. No. 163866, July 29, 2005, 465 SCRA 473, citing *Amployo v. People*, 496 Phil. 747 (2005).

[90] *Supra* note 34.

same occurrences. Thus, so as not to violate his right against double jeopardy, the Court finds it proper to dismiss the charges of Rape against Gil with respect to the December 28, 2001 and April 23, 2002 incidents considering the subsisting charges of Child Abuse as herein discussed.

Notably, Gil, as well as Atty. Reyna and Arturo, cannot be charged for Child Abuse with respect to the June 23 to November 9, 2003 incidents since Iris had ceased to be a minor by that time.[91] Likewise, Atty. Reyna and Arturo cannot be indicted for Child Abuse in connection with the December 28, 2001 and April 23, 2002 incidents as there appears to be no sufficient bases to support the DOJ Secretary's finding of conspiracy.

Second, the Court further holds that the DOJ Secretary gravely abused his discretion in finding that probable cause exists for the crime of Serious Illegal Detention.

The elements of the crime of Serious Illegal Detention under Article 267 of the RPC are: (*a*) that the offender is a private individual; (*b*) that he kidnaps or detains another, or in any manner deprives the latter of his liberty; (*c*) that the act of detention is illegal, not being ordered by any competent authority nor allowed by law; and (*d*) that any of the following circumstances is present: (1) that the detention lasts for more than five days; or (2) that it is committed by simulating public authority; or (3) that any serious physical injuries are inflicted upon the person kidnapped or threats to kill him shall have been made; or (4) that the person kidnapped or detained is a minor, female, or a public officer.[92]

Based on the Amended Resolution, the DOJ Secretary charges all the respondents for Serious Illegal Detention for the incidents of April 23 to 24, 2002 and June 23 until November 9, 2003. Related to this, records show that Iris retracted her previous

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[91] *Supra* note 10. Iris would have turned eighteen (18) years old on December 30, 2002.

[92] *People v. Dayon*, G.R. No. 94704, January 21, 1993, 217 SCRA 334, 336-337, citing *People v. Mercado*, 216 Phil. 469, 472-473 (1984).

testimony wherein she stated that she voluntarily went with Gil.[93] She also stated that she was abducted on June 23, 2003 and brought to various places, such as Cagayan De Oro, Taytay and San Pedro, within a period of five (5) months.[94]

Aside from Iris's bare allegations, records are bereft of any evidence to support a finding that Iris was illegally detained or restrained of her movement. On the contrary, based on Pros. Lim's Resolution dated November 8, 2004, several disinterested witnesses had testified to the fact that Iris was seen freely roaming in public with Gil,[95] negating the quintessential element of deprivation of liberty.[96]

Towards the same end, the Court equally observes that the inherent inconsistencies in Iris's statements are too dire to ignore even only at the prosecutor's level. Anent the April 23, 2002 incidents, the Court finds it contrary to both reason and logic that Gil would stop-over at a McDonald's restaurant, a place widely open to the public eye, in the process of kidnapping Iris. Similarly, with respect to the June 23, 2003 incidents, if Iris was indeed abducted and detained during that time, then it is highly incredible that she would be voluntarily let go by her captors in order to attend a *habeas corpus* hearing before justices of the CA.

It is well to note that while the Court had given substantial weight to Iris's uncorroborated testimony to sustain the DOJ Secretary's finding of probable cause for the crime of Rape, the same treatment cannot be applied to the crime of Serious Illegal Detention. Comparing the two, Rape is an offense of

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[93] *Supra* note 80.

[94] *Supra* note 82.

[95] *Rollo* (G.R. No. 182130), pp. 134-135.

[96] "Indeed, for the charge of kidnapping to prosper, **the deprivation of the victim's liberty, which is the essential element of the offense, must be duly proved**. In a prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty needs to be established by indubitable proof." [*People v. Fajardo*, 373 Phil. 915, 926-927 (1999); emphasis and underscoring supplied; citations omitted]

secrecy[97] which, more often than not, happens in a private setting involving only the accused and the victim; likewise, the degree of humiliation and disgrace befalling a rape victim who decides to come forward must be taken into consideration.[98] For these reasons, the testimony of the latter, even if uncorroborated, can lead to a conviction. On the other hand, in Serious Illegal Detention, the victim is usually taken from one place and transferred to another – which is in fact what has been alleged in this case - making the commission of the offense susceptible to public view. Unfortunately, petitioners never presented any evidence to show that Iris was restrained of her liberty at any point in time during the period of her alleged captivity.

All told, given the clear absence of probable cause for the crime of Serious Illegal Detention, the Court finds that the DOJ Secretary gravely abused his discretion in charging respondents for the same.

Third, the DOJ Secretary also committed grave abuse of discretion in finding probable cause for the crime of Forcible Abduction with Rape.

The elements of Forcible Abduction under Article 342 of the RPC are: (*a*) that the person abducted is any woman, regardless of her age or reputation; (*b*) that the abduction must be against

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[97] "**Rape is essentially an offense of secrecy**, not generally attempted except in dark or deserted and secluded places away from prying eyes, and **the crime usually commences solely upon the word of the offended woman herself** and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence." (*People v. Molleda*, 462 Phil. 461, 468 (2003); emphasis and underscoring supplied; citations omitted)

[98] "[C]ourts usually give credence to the testimony of a girl who is a victim of sexual assault particularly if it constitutes incestuous rape because, normally, **no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice**. Needless to say, it is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity." [*People v. Oliva*, 226 Phil. 518, 522 (1986); emphasis and underscoring supplied]

her will; and (*c*) that the abduction must be with lewd designs.[99] As this crime is complexed with the crime of Rape pursuant to Article 48 of the RPC, the elements of the latter offense must also concur. Further, owing to its nature as a complex crime proper,[100] the Forcible Abduction must be shown to be a necessary means for committing the crime of Rape.

As earlier discussed, there lies no evidence to prove that Iris was restrained of her liberty during the period of her captivity from June 23 to November 9, 2003 thus, denying the element of abduction. More importantly, even if it is assumed that there was some form of abduction, it has not been shown – nor even sufficiently alleged – that the taking was done with lewd designs. Lust or lewd design is an element that characterizes all crimes against chastity, apart from the felonious or criminal intent of the offender. As such, the said element must be always present in order that they may be so considered as a crime of chastity in contemplation of law.[101]

Moreover, the Court observes that even if it is assumed that all of the elements of Forcible Abduction were present, it was not shown nor sufficiently alleged how the said abduction constituted a necessary means for committing the crime of Rape. As earlier discussed, records disclose that there lies probable cause to indict Gil, Atty. Reyna and Arturo only for the component

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[99] *People v. Ng*, 226 Phil. 518, 522 (1986).

[100] "Article 48 of the Revised Penal Code provides that "[w]hen 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." There are, thus, two kinds of complex crimes. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. **The second is known as complex crime proper, or when an offense is a necessary means for committing the other**." (*People v. Rebucan*, G.R. No. 182551, July 27, 2011, citing *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88; emphasis and underscoring supplied)

[101] *Luansing v. People*, 136 Phil. 510, 516 (1969), citing *People v. Gilo*, 119 Phil. 1030, 1033 (1964).

crime of Rape. In this accord, the charge of the complex crime of Forcible Abduction with Rape was improper and, hence, there was grave abuse of discretion.

In sum, the Court finds probable cause for Rape against Gil, Atty. Reyna and Arturo in connection with the June 23 to November 9, 2003 incidents. Consequently, the DOJ Secretary is ordered to direct the City State Prosecutor of Muntinlupa or any of its subordinates to file such charge. Meanwhile, the charges of Child Abuse against Gil in Criminal Case Nos. 03-551 and 03-549 are deemed to subsist. Aside from the foregoing, all other charges are hereby nullified on the ground of grave abuse of discretion. Accordingly, in order to conform with the pronouncements made herein, the DOJ Secretary is directed to drop (*a*) any subsisting charges against Jessebel and Grace in connection with this case; (*b*) the charge of Rape, in relation to Section 5(b), Article III of RA 7610, for the incidents of December 28, 2001 and April 23, 2002 against Gil, Atty. Reyna and Arturo; and (*c*) the charges of Serious Illegal Detention and Forcible Abduction with Rape against all respondents.

WHEREFORE, the petitions are **PARTLY GRANTED**. The Decision dated January 11, 2008 and March 13, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 97863 are hereby **SET ASIDE**. The Department of Justice is **ORDERED** to issue the proper resolution in accordance with this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183091. June 19, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNESTO DE LA CRUZ @ BERNING**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; RAPE WITH HOMICIDE; ESTABLISHED BY OVERWHELMING CIRCUMSTANTIAL EVIDENCE.— After a careful review of the records of the case, we agree with the Court of Appeals that there was overwhelming circumstantial evidence presented to point that appellant is guilty beyond reasonable doubt of committing the crime of rape with homicide. As we have stated before, circumstantial evidence may be resorted to establish the complicity of the perpetrator's crime when these are credible and sufficient, and could lead to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. xxx To an unprejudiced mind, the above circumstances form a solid unbroken chain of events which ties appellant to the crime beyond reasonable doubt. BBB saw appellant at the scene of the crime; he was wearing bloodied underwear; he was wielding a bolo owned by AAA, cutting branches which he used to cover something; on seeing BBB he threw the bolo away and ran; when BBB checked what the appellant was trying to hide, she discovered it to be the headless body of AAA; AAA's undergarments had been removed; upon medical examination spermatozoa was found in her genitalia; and AAA was hacked several times before she was beheaded.

2. ID.; ID.; ID.; THE COURT MODIFIED THE AWARD OF DAMAGES AND IMPOSED INTEREST THEREON.— [I]n line with current jurisprudence, we modify the awards for civil indemnity and exemplary damages. Civil indemnity shall be increased to ₱100,000.00. We also increase the award of moral damages to ₱75,000.00. Lastly, respecting exemplary damages we decrease the same to ₱30,000.00. In conformity with current policy, we also impose on all the monetary awards for damages

interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT ON THE CREDIBILITY OF WITNESSES, ACCORDED RESPECT.— With respect to the appellant's contention that the witnesses presented were not credible, we reiterate the jurisprudential principle affording great respect and even finality to the trial court's assessment of the credibility of witnesses especially if the factual findings are affirmed by the Court of Appeals. The trial judge can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. xxx Given that in the present case, the courts *a quo* have sufficiently addressed the question on the alleged inconsistencies in the testimony of BBB and appellant does not present to this Court any scintilla of evidence to prove that the testimony of the witness was not credible, the Court must uphold the identical assessment of the RTC as affirmed by the Court of Appeals. In any event, the alleged inconsistencies in the testimonies of the prosecution's witnesses did not detract from BBB's credibility as a witness.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the December 28, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C.

[1] *Rollo*, pp. 4-27; penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe (now a member of this Court), concurring.

No. 01973[2] affirming with modification the July 5, 2003 Judgment[3] of the Regional Trial Court (RTC), Branch 61, Gumaca, Quezon in Crim. Case No. 6852-G, entitled *People of the Philippines v. Bernesto de la Cruz @ Berning* finding appellant Bernesto de la Cruz guilty beyond reasonable doubt of the crime of rape with homicide.

On March 19, 2001, an information for the crime of rape with homicide was filed against appellant, to wit:

> That on or about the 27th day of May 2000, at Sitio [XXX], Municipality of San Narciso, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], armed with a bladed weapon, with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one [AAA[4]], a married woman, against her will and consent; and that on the same occasion and by reason thereof, said [appellant] with intent to kill and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously hack and behead with said weapon the said [AAA] and further inflicting upon the latter wounds on various parts of her body, thereby causing her death.[5]

On arraignment, appellant pleaded not guilty.[6] Trial ensued thereafter.

The Court of Appeals summarized the facts as follows:

> [AAA] left her house in Sitio [XXX], San Narciso, Quezon at 6:30 a[.]m[.] of May 27, 2000 to gather *gabi* in [the] nearby mountain

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[2] Entitled *People of the Philippines v. Bernesto de la Cruz @ Berning.*

[3] CA *rollo*, pp. 13-41; penned by Presiding Judge Aurora V. Maqueda-Roman.

[4] Pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006), 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, fictitious initials are used to preserve the confidentiality of the identity of the woman-victim and her immediate family and other identifying details such as their address.

[5] Records, pp. 2-3.

[6] *Id.* at 18.

farm about 50 meters away. When she did not return by 9:00 a[.]m[.], [BBB], [AAA]'s sister, went to look for her. Along the way, [BBB] found the *gabi* gathered by [AAA]. Then she spotted Bernesto de la Cruz, undressed except for his blood-drenched briefs. He was cutting minongga tree branches and covering something with them. He was also rubbing coconut husks on his body. Upon the sight of [BBB], Bernesto ran down the mountain slope towards his house, throwing the bolo he was using. It was after he had gone that [BBB] found the headless body of [AAA], covered by minongga tree branches. [AAA]'s head lay a few meters away from her body.[7]

In her *post mortem* examination[8] of the body of the deceased, Dr. Adoracion Florido, the Medical Officer III of San Narciso Municipal Hospital, Quezon, made the following findings:

1. Whole head and neck was cut
2. Lacerated wound, 4 cm. armpit (L)
3. Lacerated wound, 6 cm. clavicular area (R)
4. Lacerated wound, 5 cm. hand dorsum (R)

Vaginal Examination:

- Old laceration at 3, 6, 9, o'clock position

Laboratory examination:

- Positive for spermatozoa

Dr. Florido stated that AAA had been raped due to the presence of spermatozoa in her vaginal secretion within more or less twenty-four hours prior to her examination and that AAA had passed away ten hours prior to the examination.[9]

In his defense, appellant denied the prosecution's allegations. He maintained that he had been working in his farm in Sitio Mabilog, Quezon from 6:30 a.m. to 12:00 noon after which he went home. On his way, he met BBB who asked if he had seen

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[7] *Rollo,* pp. 4-5.

[8] Records, p. 13.

[9] TSN, January 23, 2000, p. 5.

AAA. He denied having seen AAA. He was fully dressed when the conversation occurred.[10]

After considering the evidence presented by both parties, the RTC noted the lack of eyewitnesses to the crime. However, it stated that the prosecution was able to establish the guilt of the appellant by circumstantial evidence. It pointed to the confluence of evidence presented before it: BBB saw appellant who was undressed and bloodied and cutting minongga branches to cover up the body of her sister. BBB also saw appellant running away from the scene upon being discovered. Appellant was found in possession of the bolo owned by the victim which he used to cut the minongga branches and which in turn were used to cover the body of AAA. The RTC, thus, rendered the July 5, 2003 Judgment finding appellant guilty of rape with homicide, stating:

> WHEREFORE, in view of all the foregoing, the Court finds BERNESTO DELA CRUZ guilty beyond reasonable doubt of the crime of Rape with Homicide defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659 and further amended by R.A. 8353 and renumbered as Article 266-A and 266-B of the Revised Penal Code and is hereby sentenced to DEATH.
>
> He is further ordered to pay the amount of ₱75,000.00 as civil indemnity to the heirs of [AAA] and the amount of ₱50,000.00 as moral damages.[11]

On automatic review, the Court of Appeals in its December 28, 2007 Decision affirmed the RTC's Judgment with modification as to the award of damages. Moreover, the Court of Appeals found BBB to be a credible witness. It said that the minor inconsistencies in her testimony and the testimony of the other witness presented were not significant enough to warrant the acquittal of the appellant. In any event, it stated that appellant's bare denial of his guilt against the positive testimony and categorical assertions of the prosecution's witnesses proved to

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[10] TSN, October 23, 2002, pp. 3-6.

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

be worthless since it was uncorroborated.[12] The Court of Appeals thus stated:

WHEREFORE, the decision is **AFFIRMED** with the following **MODIFICATIONS**:

1. **BERNESTO DELA CRUZ** *alias* **BERNING** shall suffer ***RECLUSION PERPETUA*** without eligibility for parole under the *Indeterminate Sentence Law*;
2. **BERNESTO DELA CRUZ** *alias* **BERNING** is **ORDERED** to pay to the **HEIRS OF [AAA]**, represented by her husband, **[CCC]**, the sums of ₱50,000.00 as death indemnity; ₱50,000.00 as civil indemnity of rape; and ₱50,000.00 as exemplary damages.

The rest of the decision stands.[13]

Appellant filed his notice of appeal on January 30, 2008.[14]

After appellant's confinement was confirmed, both the Office of the Solicitor General (OSG) and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.[15]

We affirm the December 28, 2007 decision of the Court of Appeals with modification on the award of moral damages and exemplary damages.

Appellant was charged and convicted of the complex crime of rape with homicide. The felony of rape with homicide is a special complex crime, that is, two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.[16] As provided in Articles 266-A and 266-B of the Revised Penal Code:

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[12] *Rollo*, p. 24.

[13] *Id.* at 26-27.

[14] *Id.* at 28-30.

[15] *Id.* at 34-36 and 38-40.

[16] *People v. Villaflores*, G.R. No. 184926, April 11, 2012, 669 SCRA 365, 380.

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:

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;

xxx xxx xxx

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

xxx xxx xxx

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The Court has acknowledged the difficulty in proving cases of rape with homicide, to wit:

We have often conceded the difficulty of proving the commission of rape when only the victim is left to testify on the circumstances of its commission. The difficulty heightens and complicates when the crime is *rape with homicide*, because there may usually be no living witnesses if the rape victim is herself killed. Yet, the situation is not always hopeless for the State, for the *Rules of Court* also allows circumstantial evidence to establish the commission of the crime as well as the identity of the culprit. Direct evidence proves a fact in issue directly without any reasoning or inferences being drawn on the part of the factfinder; in contrast, circumstantial evidence indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence. To be clear, then, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting a felon free.[17] (Citations omitted.)

[17] *Id.* at 384.

After a careful review of the records of the case, we agree with the Court of Appeals that there was overwhelming circumstantial evidence presented to point that appellant is guilty beyond reasonable doubt of committing the crime of rape with homicide. As we have stated before, circumstantial evidence may be resorted to establish the complicity of the perpetrator's crime when these are credible and sufficient, and could lead to the inescapable conclusion that the appellant committed the complex crime of rape with homicide.[18] As the Court of Appeals stated:

> The Prosecution presented sufficient circumstantial evidence to establish beyond reasonable doubt that the accused, and no other, had raped and killed [AAA]. The following are the circumstantial evidence, to wit:
>
> 1. [BBB] went to the mountain farm to look for [AAA] and in the process saw the accused from 10 arms-stretches away covering the victim's body with tree branches;
> 2. The accused was then holding a bolo and clad only in his bloodied briefs while covering the headless body of the victim with tree branches;
> 3. The victim's head was found 5 meters away from her body;
> 4. The victim's body was exposed, with her undergarments missing;
> 5. After medical examination, the victim's vagina tested positive for the presence of spermatozoa;
> 6. [AAA] also suffered 3 hack wounds, one of which was found to have been inflicted before the victim expired;
> 7. The accused threw the bolo he used in cutting tree branches, which, when recovered, was determined to be the bolo brought by [AAA] from her house; and
> 8. He left the victim's body and ran down the mountainous terrain.[19]

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[18] *People v. Villarino*, G.R. No. 185012, March 5, 2010, 614 SCRA 372, 384.

[19] *Rollo*, pp. 18-19.

To an unprejudiced mind, the above circumstances form a solid unbroken chain of events which ties appellant to the crime beyond reasonable doubt. BBB saw appellant at the scene of the crime; he was wearing bloodied underwear; he was wielding a bolo owned by AAA, cutting branches which he used to cover something; on seeing BBB he threw the bolo away and ran; when BBB checked what the appellant was trying to hide, she discovered it to be the headless body of AAA; AAA's undergarments had been removed; upon medical examination spermatozoa was found in her genitalia; and AAA was hacked several times before she was beheaded.

With respect to the appellant's contention that the witnesses presented were not credible, we reiterate the jurisprudential principle affording great respect and even finality to the trial court's assessment of the credibility of witnesses especially if the factual findings are affirmed by the Court of Appeals. The trial judge can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying.[20]

In *People v. Dion*[21] we stated that:

> Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. **Inconsistencies in the victim's testimony do not impair her credibility, especially**

[20] *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

[21] G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.

if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. **The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding**. x x x. (Citations omitted, emphasis added.)

Given that in the present case, the courts *a quo* have sufficiently addressed the question on the alleged inconsistencies in the testimony of BBB and appellant does not present to this Court any scintilla of evidence to prove that the testimony of the witness was not credible, the Court must uphold the identical assessment of the RTC as affirmed by the Court of Appeals. In any event, the alleged inconsistencies in the testimonies of the prosecution's witnesses did not detract from BBB's credibility as a witness.

However, in line with current jurisprudence, we modify the awards for civil indemnity and exemplary damages. Civil indemnity shall be increased to ₱100,000.00.[22] We also increase the award of moral damages to ₱75,000.00.[23] Lastly, respecting exemplary damages we decrease the same to ₱30,000.00.[24]

In conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[25]

WHEREFORE, the appeal is hereby **DENIED**. The December 28, 2007 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01973 is **AFFIRMED WITH MODIFICATION**. Appellant Bernesto de la Cruz @ Berning is hereby found **GUILTY** beyond reasonable doubt of the special complex crime of rape with homicide. Appellant is ordered to pay the heirs of [AAA] civil indemnity of One Hundred Thousand Pesos (₱100,000.00), moral damages of Seventy-Five Thousand Pesos (₱75,000.00),

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[22] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 260.

[23] *Id.* at 261.

[24] *People v. Sace*, G.R. No. 178063, April 5, 2010, 617 SCRA 336, 342.

[25] *People v. Deligero*, G.R. No. 189280, April 17, 2013.

and exemplary damages of Thirty Thousand Pesos (₱30,000.00). All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184116. June 19, 2013]

CENTURY IRON WORKS, INC. and BENITO CHUA, *petitioners, vs.* **ELETO B. BAÑAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DISTINCTION BETWEEN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 AND A PETITION FOR *CERTIORARI* UNDER RULE 65, REITERATED.— In several Supreme Court cases, we have clearly differentiated between a petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65. A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts,

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[*] Per raffle dated June 19, 2013.

while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. On the other hand, a petition for *certiorari* under Rule 65 is a special civil action, an original petition confined solely to questions of jurisdiction because a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT DUE TO LOSS OF TRUST AND CONFIDENCE; APPLIES TO AN ORDINARY RANK-AND-FILE EMPLOYEE ROUTINELY CHARGED WITH THE CARE AND CUSTODY OF EMPLOYER'S MONEY OR PROPERTY; DOCTRINE NOT APPLICABLE IN CASE AT BAR. — The CA properly affirmed the NLRC's ruling that Bañas was a rank-and-file employee who was not charged with the care and custody of Century Iron's money or property. x x x Since Bañas did not occupy a position of trust and confidence nor was he routinely in charge with the care and custody of Century Iron's money or property, his termination on the ground of loss of confidence was misplaced. We point out in this respect that loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) *employees who are routinely charged with the care and custody of the employer's money or property which may include* ***rank-and-file employees.*** Examples of rank-and-file employees who may be dismissed for loss of confidence are cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property. Thus, the phrasing

of the petitioners' second assignment of error is inaccurate because **a rank-and-file employee who is routinely charged with the care and custody of the employer's money or property may be dismissed on the ground of loss of confidence.**

3. ID.; ID.; ID.; GROSS AND HABITUAL NEGLECT OF DUTIES AS A GROUND FOR TERMINATING AN EMPLOYMENT, EXPLAINED.— Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness. "Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."

4. ID.; ID.; ID.; WHERE THE TOTALITY OF INFRACTIONS COMMITTED BY AN EMPLOYEE CONSTITUTES GROSS AND HABITUAL NEGLIGENCE THAT MERITS HIS DISMISSAL.— The NLRC's finding that there was illegal dismissal on the ground of gross and habitual neglect of duties is not supported by the evidence on record. It believed in Bañas' bare and unsubstantiated denial that he was not grossly and habitually neglectful of his duties *when the record is replete with pieces of evidence showing the contrary*. x x x Bañas' self-serving and unsubstantiated denials cannot defeat the concrete and overwhelming evidence submitted by the petitioners. The evidence on record shows that Bañas committed numerous infractions in his one year and eleven-month stay in Century Iron. x x x To our mind, such numerous infractions are sufficient to hold him grossly and habitually negligent. His repeated negligence is not tolerable. The totality of infractions or the number of violations he committed during his employment merits his dismissal. Moreover, gross and habitual negligence includes unauthorized absences and tardiness, as well as gross inefficiency, negligence and carelessness.

APPEARANCES OF COUNSEL

Radaza Law Office for petitioners.
Conrado P. Paras for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioners Century Iron Works, Inc. (*Century Iron*) and Benito Chua to challenge the January 31, 2008 decision[2] and the August 8, 2008 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 98632.

The Factual Antecedents

Respondent Eleto B. Bañas worked at petitioner Century Iron beginning July 5, 2000[4] until his dismissal on June 18, 2002.[5] Bañas responded to his dismissal by filing a complaint for illegal dismissal with prayer for reinstatement and money claims.[6]

According to Century Iron, Bañas worked as an inventory comptroller whose duties are to: (1) train newly hired warehouseman; (2) initiate analysis on the discrepancies concerning records and inventories; (3) check and confirm warehouseman's report; (4) check the accuracy of materials requisition before issuance to the respective warehouseman at

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[1] Dated August 29, 2008 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 3-20.

[2] *Id.* at 23-30; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Monina Arevalo Zenarosa and Apolinario D. Bruselas, Jr.

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

[4] *Id.* at 109.

[5] *Ibid.*

[6] *Ibid.*

the jobsite; (5) monitor and maintain records; and (6) recommend and initiate corrective or preventive action as may be warranted.[7]

Sometime in 2002, Century Iron received letters of complaint from its gas suppliers regarding alleged massive shortage of empty gas cylinders.[8] In the investigation that Century Iron conducted in response to the letters, it found that Bañas failed to make a report of the missing cylinders. On May 14, 2002, Century Iron required Bañas to explain within forty-eight (48) hours from receipt of its letter why no disciplinary action should be taken against him for loss of trust and confidence and for gross and habitual neglect of duty.[9] On May 31, 2002, Century Iron issued a Memorandum requiring Bañas to attend a hearing regarding the missing cylinders.[10] Bañas subsequently appeared at the hearing to air his side.

On June 17, 2002, Century Iron, through Personnel Officer Mr. Virgilio T. Bañaga, terminated Bañas' services on grounds of loss of trust and confidence, and habitual and gross neglect of duty.[11] The termination was effective June 18, 2002.

In his defense, Bañas alleged that he merely worked as an inventory clerk who is not responsible for the lost cylinders. He pointed out that his tasks were limited to conducting periodic and yearly inventories, and submitting his findings to the personnel officer. He maintained that unlike a supervisory employee, he was not required to post a bond and he did not have the authority to receive and/or release cylinders in the way that a warehouseman does. Therefore, he cannot be terminated on the ground of loss of confidence.[12]

On the other hand, the petitioners asserted that Bañas was a supervisory employee who was responsible for the lost cylinders.

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[7] *Id.* at 4.

[8] *Id.* at 52, 54 and 63.

[9] *Id.* at 57.

[10] *Id.* at 59.

[11] *Id.* at 62.

[12] *Id.* at 110 and 305-306.

They maintained that Bañas committed numerous infractions during his tenure amounting to gross and habitual neglect of duty. These included absences without leave, unauthorized under time, failure to implement proper standard warehousing and housekeeping procedure, negligence in making inventories of materials, and failure to ensure sufficient supplies of oxygen-acetylene gases.[13]

The Labor Arbitration Rulings

In a decision[14] dated January 31, 2005, Labor Arbiter (*LA*) Joel S. Lustria ruled that Bañas was illegally dismissed. The LA did not believe Century Iron's assertions that Bañas worked as an inventory comptroller and that he was grossly and habitually neglectful of his duties. The evidence on record shows that Bañas was an inventory clerk whose duties were merely to conduct inventory and to submit his report to the personnel officer. As an inventory clerk, it was not his duty to receive the missing items. The LA also ruled that Century Iron deprived Bañas of due process because the purpose of the hearing was to investigate the lost cylinders and not to give Bañas an opportunity to explain his side.

On appeal by Century Iron, the National Labor Relations Commission (*NLRC*) affirmed the LA's ruling *in toto*.[15] It ruled that the various memoranda issued by Century Iron explicitly show that Bañas was an inventory clerk. It noted that Century Iron unequivocally stated in its termination report dated July 29, 2002 that Bañas was an inventory clerk. It also pointed out that Century Iron failed to present the Contract of Employment or the Appointment Letter which was the best evidence that Bañas was an inventory comptroller.

The NLRC denied[16] the motion for reconsideration[17] that Century Iron subsequently filed, prompting the employer company

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

[14] *Id.* at 123-136.

[15] *Id.* at 166-176.

[16] *Id.* at 200-202.

[17] *Id.* at 177-183.

to seek relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[18]

The CA Ruling

On January 31, 2008, the CA affirmed with modification the NLRC decision. It agreed with the lower tribunals' finding that Bañas was merely an inventory clerk. It, however, ruled that Bañas was afforded due process. It held that Bañas had been given ample opportunity to air his side during the hearing, pointing out that the essence of due process is simply an opportunity to be heard.[19]

Century Iron filed the present petition[20] after the CA denied[21] its motion for reconsideration.[22]

The Petition

The petitioners impute the following errors committed by the appellate court:

1) The CA erred in holding that the factual findings of the NLRC may not be inquired into considering that only questions of law may be brought in an original action for *certiorari;*

2) The CA erred in finding that Bañas was not a supervisory employee*;* and

3) The CA erred in not holding that Bañas' termination from his employment was for valid and just causes.[23]

The petitioners argue that the CA erred when it did not disturb the NLRC's finding that Bañas was merely a rank-and-file

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[18] *Id.* at 184-198.

[19] *Supra* note 2.

[20] *Rollo*, pp. 3-20.

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

[22] *Id.* at 31-42.

[23] *Id.* at 8.

employee. Citing *Capitol Medical Center, Inc. v. Dr. Meris,*[24] they contend that for factual findings of the NLRC to be accorded respect, these must be sufficiently supported by the evidence on record. The petitioners assert that Bañas was a supervisory employee who, in the interest of the employer, effectively recommended managerial actions using his independent judgment. They point out that one of Bañas' duties as an inventory comptroller was to recommend and initiate corrective or preventive action as may be warranted.

The petitioners also maintain that Bañas was dismissed for just and valid causes. They reiterate that since Bañas was a supervisory employee, he could be dismissed on the ground of loss of confidence. Finally, the petitioners claim that Bañas was grossly and habitually negligent in his duty which further justified his termination.

The Respondent's Position

In his *Comment,*[25] Bañas posits that the petition raises purely questions of fact which a petition for review on *certiorari* under Rule 45 of the Rules of Courts does not allow. He additionally submits that the petitioners' arguments have been fully passed upon and found unmeritorious by the lower tribunals and the CA.

The Issues

This case presents to us the following issues:

1) Whether or not questions of fact may be inquired into in a petition for *certiorari* under Rule 65 of the Rules of Court*;*

2) Whether or not Bañas occupied a position of trust and confidence, or was routinely charged with the care and custody of Century Iron's money or property; and

3) Whether or not Century Iron terminated Bañas for just and valid causes.

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[24] 507 Phil. 130 (2005).

[25] *Rollo,* pp. 303-308.

As part of the third issue, the following questions are raised:

a) Whether or not loss of confidence is a ground for terminating a rank-and-file employee who is not routinely charged with the care and custody of the employer's money or property; and

b) Whether or not Bañas was grossly and habitually neglectful of his duties.

The Court's Ruling

We reverse the CA's decision.

In a petition for review on certiorari under Rule 45, only questions of law may be put into issue while in a petition for certiorari under Rule 65, only questions of jurisdiction may be inquired into

On the first issue, the CA relied on *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*[26] in affirming the lower tribunals' finding that Bañas worked as an inventory clerk. According to the CA, this Court has ruled in *Cebu Shipyard* that in **petitions for *certiorari***, only **questions of law** may be put into issue and questions of fact cannot be entertained. Not noticing such glaring error, the petitioners agree to such disquisition. They, however, assert that there is an exception to the rule that only questions of law may be brought in an original action for *certiorari*, such as when the lower court's findings of facts are not supported by sufficient evidence or that the same was based on misapprehension or erroneous appreciation of facts.[27]

A revisit of *Cebu Shipyard* shows that the CA has inadvertently misquoted this Court. In the said case, we held:[28]

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[26] 366 Phil. 439 (1999).

[27] *Rollo*, p. 9.

[28] *Supra* note 26, at 452.

[I]n **petitions for review on *certiorari*,** only questions of law may be put into issue. Questions of fact cannot be entertained. The finding of negligence by the Court of Appeals is a question which this Court cannot look into as it would entail going into factual matters on which the finding of negligence was based. [emphasis ours; italics supplied]

We clarify that the petitioners filed a **petition for *certiorari* under Rule 65 of the Rules of Court** before the CA. Both the petitioners and the CA have confused Rule 45 and Rule 65. In several Supreme Court cases,[29] we have clearly differentiated between a petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65. A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law.[30] It is only in exceptional circumstances[31] that we admit and review questions of fact.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of

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[29] *Rigor v. Tenth Division of the Court of Appeals*, 526 Phil. 852 (2006); and *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154.

[30] RULES OF COURT, Rule 45, Section 1.

[31] In *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 401 SCRA 79, the Supreme Court recognized several exceptions to this rule, to wit: "(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[32]

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[33]

On the other hand, a petition for *certiorari* under Rule 65 is a special civil action, an original petition confined solely to questions of jurisdiction because a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[34]

The petition before us involves mixed questions of fact and law. The issues of whether Bañas occupied a position of trust and confidence, or was routinely charged with the care and custody of the employer's money or property, and whether Bañas was grossly and habitually neglectful of his duties involve questions of fact which are necessary in determining the legal question of whether Bañas' termination was in accordance with Article 282 of the Labor Code.

We will only touch these factual issues in the course of determining whether the CA correctly ruled whether or not the NLRC committed grave abuse of discretion in the process of

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[32] *Leoncio v. De Vera*, G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184, citing *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña,* G.R. No. 163683, June 8, 2007, 524 SCRA 248.

[33] *Ibid.*

[34] RULES OF COURT, Rule 65, Section 1.

deducing its conclusions from the evidence proffered by the parties. In reviewing in this Rule 45 petition the CA's decision on a Rule 65 petition, we will answer the question: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on this case?*[35]

Bañas did not occupy a position of trust and confidence nor was he in charge of the care and custody of Century Iron's money or property

The CA properly affirmed the NLRC's ruling that Bañas was a rank-and-file employee who was not charged with the care and custody of Century Iron's money or property. The ruling of the CA, finding no grave abuse of discretion in the LA and the NLRC rulings and are supported by substantial evidence, is, to our mind, correct. The evidence on record supports the holding that Bañas was an ordinary employee. There is no indication that the NLRC's decision was unfair or arbitrary. It properly relied on Century Iron's numerous memoranda[36] where Bañas was identified as an inventory clerk. It correctly observed that Century Iron unequivocably declared that Bañas was an inventory clerk in its July 29, 2002 termination report with the Department of Labor and Employment.[37] Moreover, as the NLRC judiciously pointed out, Century Iron failed to present the Contract of Employment or the Appointment Letter, the best evidence that would show that Bañas was an inventory comptroller.

Since Bañas was an ordinary rank-and-file employee, his termination on the ground of loss of confidence was illegal

Since Bañas did not occupy a position of trust and confidence nor was he routinely in charge with the care and custody of

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[35] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 344.

[36] See *rollo*, pp. 227-228, 230-234, 236, 239, and 250.

[37] *Id.* at 173.

Century Iron's money or property, his termination on the ground of loss of confidence was misplaced.

We point out in this respect that loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) *employees who are routinely charged with the care and custody of the employer's money or property which may include* ***rank-and-file employees.*** Examples of rank-and-file employees who may be dismissed for loss of confidence are cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property.[38] Thus, the phrasing of the petitioners' second assignment of error is inaccurate because **a rank-and-file employee who is routinely charged with the care and custody of the employer's money or property may be dismissed on the ground of loss of confidence.**

Bañas was grossly and habitually neglectful of his duties

With respect to Century Iron's assertion that Bañas was grossly and habitually neglectful of his duties, the CA erred in ruling that the NLRC did not commit grave abuse of discretion in concluding that the dismissal was illegal. The NLRC's finding that there was illegal dismissal on the ground of gross and habitual neglect of duties is not supported by the evidence on record. It believed in Bañas' bare and unsubstantiated denial that he was not grossly and habitually neglectful of his duties *when the record is replete with pieces of evidence showing the contrary.* Consequently, the NLRC capriciously and whimsically exercised its judgment by failing to consider all material evidence presented to it by the petitioners and in giving credence to Bañas' claim which is unsupported by the evidence on record.[39]

Bañas' self-serving and unsubstantiated denials cannot defeat the concrete and overwhelming evidence submitted by the

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[38] *Mabeza v. NLRC,* 338 Phil. 386, 396 (1997).

[39] *Prince Transport, Inc. v. Garcia,* G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325.

petitioners. The evidence on record shows that Bañas committed numerous infractions in his one year and eleven-month stay in Century Iron. On October 27, 2000, Century Iron gave Bañas a warning for failing to check the right quantity of materials subject of his inventory.[40] On December 29, 2000, Bañas went undertime.[41] On January 2, 2001, Bañas incurred an absence without asking for prior leave.[42] On August 11, 2001, he was warned for failure to implement proper warehousing and housekeeping procedures.[43] On August 21, 2001, he failed to ensure sufficient supplies of oxygen-acetylene gases during business hours.[44] On November 15, 2001, Bañas was again warned for failing to secure prior permission before going on leave.[45] In May 2002, Century Iron's accounting department found out that Bañas made double and wrong entries in his inventory.[46]

Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness.[47] "Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other

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[40] *Rollo*, p. 43.

[41] *Id.* at 47.

[42] *Ibid.*

[43] *Id.* at 48.

[44] *Id.* at 49.

[45] *Id.* at 50.

[46] *Id.* at 59.

[47] *Challenge Socks Corp. v. Court of Appeals (Former First Division)*, 511 Phil. 4, 10 (2005), citing *Meralco v. NLRC*, 331 Phil. 838, 847 (1996).

hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."[48]

To our mind, such numerous infractions are sufficient to hold him grossly and habitually negligent. His repeated negligence is not tolerable. The totality of infractions or the number of violations he committed during his employment merits his dismissal. Moreover, gross and habitual negligence includes unauthorized absences and tardiness,[49] as well as gross inefficiency, negligence and carelessness.[50] As pronounced in *Valiao v. Court of Appeals*,[51] "[f]itness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other."

Besides, the determination of who to keep in employment and who to dismiss for cause is one of Century Iron's prerogatives. Time and again, we have recognized that the employer has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[52] It would be the height of injustice if we force an employer to retain the services of an employee who does not value his work.

In view of all the foregoing, we find the petition meritorious.

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[48] *Jumuad v. Hi-Flyer Food, Inc.*, G.R. No. 187887, September 7, 2011, 657 SCRA 288, 300, citing *St. Luke's Medical Center, Inc. and Robert Kuan v. Estrelito Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.

[49] *Challenge Socks Corp. v. Court of Appeals (Former First Division), supra* note 47, at 10-11; and *Meralco v. NLRC, supra* note 47, at 847.

[50] *Ibid.*

[51] 479 Phil. 459, 470-471 (2004).

[52] *Challenge Socks Corp. v. Court of Appeals (Former First Division), supra* note 47, at 11-12, citing *Deles, Jr. v. NLRC*, 384 Phil. 271, 281-282 (2000).

WHEREFORE, premises considered, we hereby **GRANT** the petition. The assailed decision and resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. The complaint for illegal dismissal is **DISMISSED** for lack of merit. Costs against respondent Eleto B. Bañas.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 191391. June 19, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENEDICT HOMAKY LUCIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PROVEN.— In *People v. Llanita* citing *People v. Unisa,* the Court ruled that in order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. In illegal sale, what the prosecution needs to present is proof that a transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from

the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale with moral certainty.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, SUFFICIENTLY ESTABLISHED.— Lucio's conviction on illegal possession is likewise affirmed. To prosecute Lucio of illegal possession of dangerous drugs, there must be a showing that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. It must be noted that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict him, unless there is a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to Lucio to explain the absence of knowledge or *animus possidendi*. In this case, the illegal possession came about when Lucio allowed PO1Castro to look for other bricks inside the sack. The x x x narration [of PO1 Castro] shows wilful possession of illegal drugs[.]

3. ID.; ID.; PRIOR SURVEILLANCE IS NOT REQUIRED FOR A VALID BUY-BUST OPERATION; IT MAY BE JUSTIFIED BY THE URGENCY OF THE SITUATION.— It must be stressed that prior surveillance is not a prerequisite for the validity of an entrapment operation. This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant. In *People v. Eugenio*, the Court held that there is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken especially when the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. When time is of essence, the police may dispense

with the need for prior surveillance. The buy-bust operation conducted by PO1 Castro and the rest of them, together with their civilian informant is justified by the urgency of the situation.

4. ID.; ID.; CHAIN OF CUSTODY OF ILLEGAL DRUGS SEIZED FROM THE ACCUSED, SUFFICIENTLY PROVED.— Upon review, we are convinced that the prosecution had sufficiently proved all the elements to establish chain of custody of illegal drugs. In his direct examination, PO1 Castro positively identified the marijuana brick sold to him through the markings "GCPC GCP Castro" and date "3/31/04" placed on the brick also identified as Exhibit A. The rest of the marijuana bricks subject of illegal possession case were likewise marked with AAL, LPL GCPC and HPE and dated as "3/31/04" numbered from B-1 to B-35. Upon taking custody of the marijuana bricks, the marijuana bricks were brought to the PDEA Office for proper investigation and documentation. The same were properly inventoried and recounted in the presence of the fiscal and the arresting team. Thereafter, a request for examination of the marijuana bricks was sent to the PNP Crime Laboratory to determine presence of illegal drug. As per Chemistry Report identified as Exhibit "G" made by Forensic Chemist Officer Emilia Gracio Montes, Exhibits "A" and "B", consisting of the marijuana brick sold to PO1 Castro as well the thirty five bricks confiscated, all resulted positive of presence of dangerous drug.

5. ID.; ID.; STRICT COMPLIANCE WITH SECTION 21 OF R.A. 9165 MAY BE DISPENSED WITH AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.— It has been ruled time and again that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused. The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence

are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This is an appeal filed by herein accused Benedict Homaky Lucio (Lucio) from the Decision[1] of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court, Branch 61 of Baguio City for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.[2]

Factual Antecedents

The prosecution presented a buy-bust case.

On 31 March 2004, at around 7:00 o'clock in the evening, a male informant went to the office of Philippine Drug Enforcement Agency-Cordillera Administrative Region (PDEA-CAR) in Baguio City to give information regarding an illegal sale or distribution of dangerous drugs, particularly dried marijuana being done in *Barangay* Lucnab, Baguio City by a couple identified as Wilma and Ben. Upon receiving this

[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Japar B. Dimaampao concurring. *Rollo*, pp. 2-19.

[2] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes.

information, PO1 Cesario Castro (PO1 Castro), then on-duty as a member of PDEA-CAR, immediately referred the informant to his senior officers, Police Senior Inspectors Edgar S. Apalla (PSI Apalla) and Paul John Mencio (PSI Mencio).[3] PSI Apalla and PSI Mencio interviewed the informant regarding the alleged illegal activities of the couple. Giving merit to the statement of the informant, PSI Apalla and PSI Mencio decided to conduct a buy-bust operation.[4] Thereafter, a buy-bust team was formed composed of PO1 Castro, as the poseur-buyer, SPO4 Arthur Lucas (SPO4 Lucas) as the arresting officer, Officer Lito Labbutan (Officer Labbutan) as the seizing officer and PO1 Harold Estacio (PO1 Estacio) as the back-up officer. Correlative to his duty as poseur-buyer, PO1 Castro was given two (2) pieces of five hundred peso (₱500.00) bill marked money by PSI Apalla to be used in buying marijuana from the couple.[5] PO1 Castro then placed his initials in the marked money and gave it to PO3 Dorotheo T. Supa (PO3 Supa) for the purpose of writing the details of the money in the blotter of Police Precint 3, Pacdal, Baguio City and coordinating the PDEA's buy-bust operation with the police.[6]

At around 8:15 in the evening, the members of the buy-bust team, together with the informant proceeded to the area of operation in *Barangay* Lucnab, Baguio City on board the PDEA's service vehicle.[7] Upon arrival, the informant led PO1 Castro to the shanty of the couple, while the back-up police officers followed from behind.[8] The informant then called for the name Ben several times.[9] A male individual came out from the shanty

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[3] TSN, 22 February 2005, pp. 4-5; Direct Examination of PO1 Castro.

[4] *Id.* at 9.

[5] *Id.* at 9-10.

[6] TSN, 16 March 2005, p. 15; Cross Examination of PO1 Castro; Records, p. 361. RTC Decision.

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

[8] *Id.* at 23 and 26-27.

[9] *Id.* at 28.

and asked what their business was.[10] Both standing in front of the door, the informant introduced PO1 Castro to Ben (identified as the accused Benedict Homaky Lucio during trial) as a taxi driver from Manila interested in buying marijuana to be transported back to Manila.[11] Afterwards, PO1 Castro and Lucio transacted which led to the latter's offer that he was selling the marijuana brick for ₱1000.00 each. Lucio further offered that he would sell the brick for ₱800.00 each if PO1 Castro would buy at least five (5) bricks. PO1 Castro then asked for a sample to determine the quality of the marijuana which prompted Lucio to ask his female companion Wilma Padillo Tomas (Wilma) to get one inside. Upon examination of the brick handed by Wilma, PO1 Castro requested Lucio and Wilma if he could see other samples.[12] Lucio heeded to his request and allowed him to go inside and look for something of bigger size. Inside the shanty, PO1 Castro noticed a white nylon sack just behind the door with marijuana bricks inside. Lucio pointed at the nylon sack and asked if he can choose the brick he wanted. PO1 Castro examined one from the sack but opted to choose the one given by Wilma. During this time, the informant only entered half of his body to observe the transaction while Wilma stood in the middle of the half-opened door.[13] Afterwards, Lucio and PO1 Castro went out in order to examine the brick because the shanty was only lighted by a candle. PO1 Castro decided to buy one (1) brick of marijuana from the accused and handed the two (2) five hundred bills to Lucio as payment.[14]

After handling the money, he then switched off his flashlight several times as his pre-arranged signal that transaction has been consummated. Immediately thereafter, the arresting and back-up officers hiding from behind approached them and arrested Lucio and Wilma. The officers then informed the couple that

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[10] *Id.* at 30.

[11] *Id.* at 34.

[12] TSN, 15 March 2005, pp. 9-11; Direct Examination of PO1 Castro.

[13] *Id.* at 14-17.

[14] TSN, 16 March 2005, p. 34; Cross Examination of PO1 Castro.

they were being arrested for selling marijuana and informed them of their constitutional rights in Tagalog and Ilocano.[15] Lucio immediately denied ownership of the marijuana bricks.[16] A body search was conducted against Lucio and the marked money, still being held by him, was recovered.[17] Thereafter the officers confiscated the sack containing the marijuana bricks and made an inventory of the bricks inside the shanty in the presence of the couple[18] which yielded thirty six (36) marijuana bricks on initial count, thirty-five (35) bricks inside the sack and one (1) brick sold to PO1 Castro.

Lucio and Wilma, together with the confiscated marijuana bricks, were brought by the arresting officers to the PDEA Office for proper documentation and identification.[19] Inside the office, PO1 Castro then put his initial *"GCPC,"* signature *"GCP Castro"* and the date on the marijuana brick sold to him as well as on the confiscated 35 marijuana bricks.[20] Other members of the buy-bust team also affixed their initials on the bricks for proper identification as evidenced by the markings *"LPL"* as the initial of Officer Labbutan as the seizing officer, *"HPE"* as the initial of PO1 Estacio as the back-up element and *"AAL"* as the initial of SPO4 Lucas as the arresting officer.[21] Inside the office, a recounting of the confiscated bricks was done in the presence of the Prosecutor E. Sagsago, the buy-bust team, the *Barangay* Officials and media personalities who thereafter affixed their signatures on the Inventory of the Seized Item[22] prepared in relation to the operation.[23] Thereafter, the seized

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[15] TSN, 15 March 2005, pp. 19-21; Direct Examination of PO1 Castro.

[16] *Id.* at 22.

[17] Records, p. 58. Joint Affidavit of Arrest.

[18] TSN, 15 March 2005, pp. 22-23; Direct Examination of PO1 Castro.

[19] *Id.* at 25.

[20] *Id.* at 4; Records, p. 59. Inventory of Seized Item.

[21] Records, p. 59; Inventory of Seized Item.

[22] *Id.*

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

marijuana bricks were sent to the PNP Crime Laboratory Service-CAR for laboratory examination. The laboratory examination conducted by Forensic Officer Emilia Gracio Montes yielded positive results for marijuana, a dangerous drug on all the thirty-five bricks tested.[24]

The other prosecution witnesses SPO4 Lucas and Officer Labbutan corroborated the statements of PO1 Castro on materials points.[25]

The defense interposed frame-up.

On his part, accused Lucio denied both illegal sale and possession of marijuana bricks that occurred on 31 March 2004 at Lucnab, Baguio City. He testified that on 28 March 2004, he met his uncle Alex Accatan (Alex), a cousin of his father, at the trading post at Km. 5, La Trinidad, Benguet. He was there with his live-in partner Wilma to bring vegetables; while Alex was there to get some vegetables for his pigs. During the course of their conversation, Alex told him and Wilma that he has a house located at Lucnab, Baguio City and invited them to come on 31 March 2004 as his son will be graduating from elementary education.[26] For them to know how they can reach the house on the 31st, Alex asked them go with him on that day to his residence. At around 3:00 in the afternoon, they all went to Alex's house as planned where the couple met for the first time Alex's wife. After a brief talk, Lucio and Wilma went back to their residence at Bugias, Ifugao.[27]

On 31 March 2004, Lucio and Wilma went to the house of Alex as requested and arrived there at around 4:30 in the afternoon. Upon arrival, Lucio was told by his uncle's minor child that Alex went to Teacher's Camp. As it was already getting late, Lucio called his uncle through his cellular phone

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[24] Records, p. 66; Initial Laboratory Examination Report.

[25] TSN, 27 September 2005; TSN, 26 October 2005.

[26] TSN, 30 January 2006, pp. 6-7; Direct Examination of Lucio.

[27] *Id.* at 8.

and was told by the latter that they can spend the night at the house of his neighbor identified as Kollit. This Kollit, as told by his uncle, permitted them to use the house.[28] He was then instructed to get the key from his uncle's daughter Arlene Accatan (Arlene). Lucio and Wilma proceeded to the house of Kollit to rest but left their small bag inside the house of Alex.[29]

While resting inside, somebody knocked at the door and shouted the name, "Kollit, Kollit." Lucio answered that Kollit was not there but the persons outside responded by kicking the door open and entered the house. These persons inquiring about Kollit introduced themselves as policemen and asked about marijuana. When the accused denied any knowledge, these policemen, whom he noticed as armed, searched the room and recovered a sack under the bed.[30] Afterwards, Lucio was handcuffed to the left hand of PO1 Estacio and was brought to another house located below the place of Kollit.[31] The policemen inquired again about Kollit and destroyed the door of the second house adjacent to the first house where Lucio and Wilma were resting.[32] Thereafter, the couple were brought to the PDEA Office where they were told that marijuana was recovered from them. They denied ownership of the marijuana found inside the sack and reiterated their plea that they were only allowed to sleep inside the house of Kollit.[33]

Lucio and Wilma were brought to the Baguio General Hospital for physical examination. Upon their return to the PDEA Office, the PDEA Officers then called a media representative, a member of the Department of Justice and a *barangay* official for inventory witnessing. Afterwards, pictures of the sack allegedly recovered

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

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

[30] *Id.* at 15-17.

[31] *Id.* at 17.

[32] TSN, 6 February 2006, pp. 9-10; Continuation of the Direct Testimony of Lucio.

[33] *Id.* at 10-11.

from them together with the two pieces of five hundred peso (₱500.00) bill were taken.[34]

Alex corroborated the testimony of Lucio that he invited him and his companion Wilma into his house on 31 March 2004 when they met at the trading post on 28 March 2004.[35] He narrated that when Lucio called him, he was doubtful if the latter was already at his residence or just on his way. Alex told Lucio that if he would still be going, there might be several visitors in his home at that time. He added that he can get the key of his neighbor's house from his daughter Arlene. He identified the name of his neighbor Kullit[36] as Arthur Basilan.[37]

Upon returning home, he was surprised to know that Lucio was arrested by policemen and was being investigated for a sack of marijuana allegedly taken from him.[38]

Another witness for the defense is Martisio Paguli, the *Barangay* Chairman of Lucnab, Baguio City. He testified that at around 9:00 in the morning of 1 April 2004, he received a message that somebody was arrested in his *purok*. He then proceeded to the PDEA Office and was asked by PSI Mencio to identify Lucio and Wilma. He replied that he did not know them and that was the first time he saw the two accused.[39] He was able to talk to Lucio who informed him of his name and that the purpose of his visit to Lucnab was to attend the graduation of Alex's son.[40] He also identified that a certain Arthur Basilan owned the house where Lucio and Wilma were arrested.[41]

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

[35] TSN, 13February 2006, pp. 3-4; Direct Examination of Alex.

[36] Termed as Kollit by Lucio.

[37] TSN, 13February 2006, pp. 10-12; Direct Examination of Alex.

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

[39] TSN, 15 February 2006, p. 8; Direct Examination of Martisio Paguli.

[40] *Id.* at 9.

[41] *Id.* at13-14; Cross Examination of Martisio Paguli.

Wilma and Arlene, daughter of Alex, were also presented to corroborate the testimony of Lucio regarding the real circumstances of what transpired on 31 March 2004.[42]

Lucio and Wilma were eventually charged with Illegal Sale and Possession of Dangerous Drugs punishable under Sections 5 and 11 of Article II of R.A. No. 9165. Two sets of information were eventually filed by the Office of the Prosecutor of Baguio City. The accusatory portion of the Information in violation of Section 5 of Article II of R.A. No. 9165 reads:

Criminal Case No. 22910-R

That on or about the 31st day of March, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [referring to Lucio and Wilma] conspiring, confederating and mutually aiding one another and without the authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver one (1) brick of dried marijuana leaves, weighing 741.7 grams for One Thousand Pesos (₱1,000.00), Philippine Currency, to PO1 Gil Cesario P. Castro, a member of the PNP who acted as poseur buyer, knowing fully well that said dried marijuana leaves, is a dangerous drug, in violation of the aforementioned provision of law.[43]

On the other hand, the accusatory portion of the Information in violation of Section 11 of Article II of R.A. No. 9165 reads:

Criminal Case No. 22911-R

That on or about the 31st day of March, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [referring to Lucio and Wilma] conspiring, confederating and mutually aiding one another and without the authority of law, did then and there willfully, unlawfully and feloniously have in their possession and control thirty five (35) bricks of dried marijuana leaves with approximate total weight of twenty

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[42] TSN, 16 November 2006; Cross Examination of Wilma; TSN, 27 April 2006; Direct Examination of Arlene.

[43] Records of Criminal Case No. 22910-R, p. 1.

four (24) kilos, a dangerous drug, without the corresponding license or prescription, in violation of the aforecited provision of law.[44]

When arraigned, both accused pleaded not guilty to the offenses charged.

Ruling of the Trial Court

The trial court on 12 December 2006 rendered a decision,[45] the dispositive portion reads:

> **WHEREFORE**, judgment is rendered finding the accused Benedict Homaky Lucio **GUILTY** beyond reasonable doubt in both cases and he is sentenced to suffer Life Imprisonment in each case and likewise to pay a fine of ₱500,000.00 in each case and the costs.
>
> The accused Wilma Padillo Tomas is **ACQUITTED** in both cases on grounds of reasonable doubt and she is hereby **ORDERED RELEASED** from the custody unless being held for some other offense requiring her continued detention.[46]

The trial court justified the guilty verdict against Lucio as it was convinced that the elements of both illegal sale and possession of dangerous drug were sufficiently established by the prosecution.[47] It also recognized the credibility of the testimonies of the police officers pertaining to the buy-bust operation[48] and the positive identification of the accused as the seller of the bricks of marijuana.[49]

Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court, the dispositive portion[50] reads:

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[44] Records of Criminal Case No. 22911-R, p. 1.

[45] Records, pp. 360-375.

[46] *Id.* at 375.

[47] *Id.* at 368.

[48] *Id.* at 369-370.

[49] *Id.* at 370-371.

[50] CA *rollo*, pp. 149-150.

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 61, Baguio City, in Criminal Case Nos. 22910-R & 22911-R finding appellant Benedict Homaky Lucio guilty of Violation of R.A. 9165 is AFFIRMED *in toto*.

It ruled that all the elements of illegal sale and illegal possession of dangerous drug were proven by the prosecution. It also upheld the credibility of the witnesses and placed highest respect on the findings of facts of the trial court. It likewise disregarded the absence of surveillance or test buy prior to the buy-bust operation as well as the strict compliance of the requirements to establish chain of custody under Sec. 21 of R.A. No. 9165.

Our Ruling

After a careful review of the evidence, we affirm the ruling of conviction of both the trial court and CA.

In *People v. Llanita*[51] citing *People v. Unisa*,[52] the Court ruled that in order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

In illegal sale, what the prosecution needs to present is proof that a transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale with moral certainty.[53]

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[51] G.R. No. 189817, 3 October 2012.

[52] G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 citing *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 653 SCRA 673, 686.

[53] *People v. Reyna Llanita and Sotero Buar, supra* note 51.

Upon examination of the testimonies of PO1 Castro on both his direct and cross examinations, we are convinced of Lucio's guilt on both charges.

The following narrates the course of buying and selling to constitute illegal sale:

Q: While you were transacting with the other accused Benedict Homaky Lucio where were you again situated?
A: Just infront of their shanty, Sir.
Q: Who was beside you?
A: The male Informant, Sir.

xxx xxx xxx

Q: What was the gist of your conversation then with Benedict Lucio?
A: We were transacting with the marijuana he was selling it for [₱]1,000.00 per brick so during our conversation I made some bargain, Sir.[54]

xxx xxx xxx

His cross-examination supplants further details:

Q: And so after huddling (sic) you decided to buy just one (1) brick?
A: Yes, Sir.
Q: And you said that you delivered the buy-bust money to one of the accused?
A: Yes, Sir.
Q: How did you deliver it?
A: I handed to him the two (2) 500.00 peso bills, Sir.
Q: Where did he place it?
A: He was holding it, Sir.[55]

In this case, the police officers positively identified Lucio as the one who transacted and sold marijuana bricks to PO1 Castro in exchange of the marked money consisting of two (2) five

[54] TSN, 15 March 2005, pp. 8-9; Direct Examination of PO1 Castro.

[55] TSN, 16 March 2005, p. 34; Cross Examination of PO1 Castro.

hundred peso (₱500.00) bills. As per Chemistry Report of Police Inspector Emilia Gracio Montese, the submitted items consisting of thirty five suspected marijuana bricks to the Benguet Provincial Crime Laboratory Office for examination yielded positive results for presence of dangerous drugs.[56] The marijuana brick marked as Exhibit A was likewise presented in court with the proper identification by PO1 Castro.

Lucio's conviction on illegal possession is likewise affirmed. To prosecute Lucio of illegal possession of dangerous drugs, there must be a showing that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[57]

It must be noted that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict him, unless there is a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to Lucio to explain the absence of knowledge or *animus possidendi*.[58] In this case, the illegal possession came about when Lucio allowed PO1Castro to look for other bricks inside the sack. The following narration shows wilful possession of illegal drugs:

Q: What did you actually tell him?
A: I told him it cost a lot, Sir.
Q: And so what did he say?
A: He said that if I will take at least five (5) bricks of marijuana he will give it for ₱800.00 per brick, Sir.
Q: So for five (5) bricks that would be about…
A: ₱4,000.00, Sir.
Q: What did you say to that?

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[56] Records, p. 66.

[57] *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 328, 342-343 citing *People v. Lagman*, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.

[58] *People v. Unisa*, *supra* note 52 citing *People v. Pendatun*, 478 Phil. 201, 212 (2004).

A: I asked him to look for the sample of the marijuana in order to determine if it is with good quality, Sir.
Q: What did he do to comply with your request?
A: He asked Wilma Padillo to get sample inside their shanty, Sir.
Q: What happened next?
A: Wilma Padillo reached for the half opened door just behind the door of their shanty that sample, Sir.[59]

xxx xxx xxx

Q: From the time that it was given to you by the accused Wilma Padillo, who had custody of it if you know?
A: I took hold of this as my sample but at the same time requested the couple to see if there are some other things because it appears to be like it doesn't look like one (1) kilo.
Q: What did the two (2) say to that request of yours?
A: I requested if Benedict would allow me to go inside their shanty and to look for something that has a bigger size, Sir.
Q: What happened next after that?
A: He acceded, he allowed me to enter inside their shanty, Sir.[60]

xxx xxx xxx

Q: What happened next?
A: When I entered their shanty, I noticed a white nylon sack just behind the door with some marijuana bricks inside, Sir.
Q: Is that the same door where Benedict and Wilma were standing?
A: Yes, Sir.
Q: And that is the same door you were facing while you were talking with Benedict and Wilma?
A: Yes, Sir.
Q: How were you able to see this white nylon sack?
A: Benedict pointed it, Sir.
Q: When he pointed it did you see anything?

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[59] TSN, 15 March 2005, pp. 9-10; Direct Examination of PO1 Castro.

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

A: He said that I can choose what brick I wanted, Sir.
Q: How did he say it?
A: In Ilocano, Sir.
Q: Tell us how he told it in Ilocano?
A: "*Agpili ka latta ditan,*" Sir.

COURT: Which means "just choose from the sack."

Q: After he said that what happened next?
A: I carefully choose one but I opted to get hold of the previous one that was given to me and told "*daytoy laengan,*" Sir.[61]

To recapitulate the elements, Lucio was in possession of marijuana bricks identified to be prohibited drugs, such possession was not authorized by law and he freely and consciously possessed the said drugs.

In his appellant's brief, Lucio questions the full credence given by the lower courts to the version of the prosecution despite their irregularities and inconsistencies. Among the lapses asserted was the lack of previous surveillance prior to the buy-bust operation. No test buy was conducted to confirm the truthfulness of the statements given by the informant which prompted the operation.[62]

It must be stressed that prior surveillance is not a prerequisite for the validity of an entrapment operation. This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant.[63]

In *People v. Eugenio*,[64] the Court held that there is no requirement that prior surveillance should be conducted before

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

[61] CA *rollo*, p. 55; Brief for the Accused-Appellant.

[63] *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 338 citing *People v. Lacbanes*, 336 Phil. 933, 941 (1997).

[64] 443 Phil. 411, 422-423 (2003).

a buy-bust operation can be undertaken especially when the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. When time is of essence, the police may dispense with the need for prior surveillance. The buy-bust operation conducted by PO1 Castro and the rest of them, together with their civilian informant is justified by the urgency of the situation.

Another point argued is the inconsistency of the recollection of events by PO1 Castro, PO1 Labbutan and SPO4 Lucas with regard to the recovery of the marked money from the accused. PO1 Castro recalled that it was recovered from the hand of Lucio while PO1 Labbutan and SPO4 Lucas testified that the same was recovered from the pocket of the accused after a body search.[65]

We cannot sustain his argument. In order for a discrepancy or inconsistency between the testimonies of witnesses to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused x x x. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused."[66]

As stated in *People v. Albarido*:[67]

It is elementary in the rule of evidence that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed. Further, in *People vs. Maglente*, this Court ruled that

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[65] CA *rollo*, p. 56; Brief of the Accused-Appellant.

[66] *People v. Gonzaga*, G.R. No. 184952, 11 October 2010, 632 SCRA 551, 570 citing *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250, 272.

[67] 420 Phil. 235, 244 (2001).

inconsistencies in details which are irrelevant to the elements of the crime are not grounds for acquittal. x x x.[68]

In this case, the question as to what part of the body of the accused did the police officers recover the money does not dissolve the elements of illegal sale and possession as minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime.[69] Minor inconsistencies in the narration of PO1 Castro, PO1 Labbutan and SPO4 Lucas do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable.[70]

The accused also put into issue the capacity of the back-up officers to witness the alleged transaction as the place was very dark and without electricity. He argues that the only source of light was a candle inside the shanty.[71]

We disagree. The fact that the area and shanty were poorly lighted did not prevent the members of the buy-bust team to witness the transaction. During his cross examination, prosecution witness SPO4 Lucas was able to describe the surrounding environment at the time of the transaction.

Q: Are there lights along the way going to the shanty of the accused?
A: From the road to the houses there are lights but there is no light near the shanty, sir.
Q: What do you mean *sa taas*?
A: Because the shanty house is located below, sir.
Q: What then illuminates the shanty, are there light[s] near the house of the accused?

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[68] *People v. Asilan*, G.R. No. 188322, 11 April 2012, 669 SCRA 405, 418.

[69] *People v. Daen, Jr.*, G.R. No. 112015, 26 March 1995, 244 SCRA 382, 390.

[70] *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364.

[71] CA *rollo*, 56-57; Brief for the Accused-Appellant.

A: There is because there is a street light, sir.
Q: So a light coming from a post illuminates the vicinity of the shanty?
A: *Yes even the neighbors illuminates the shanty dahil ang lapit lang ng bahay dito yung kapitbahay mo dito lang sa baba yung shanty house, sir.*
Q: Now you said that when the back up team followed secretly the C.I. and thee poseur buyer.
A: Yes, sir.
Q: So that they were ahead with you?
A: Not too far, sir.
Q: And according to you the rest of the team [hide] behind big trees and tall grasses?
A: Yes, sir.
Q: That is why the accused were not able to notice your presence?
A: No, because we were almost seven meters from the shanty house, sir.
Q: And you were able to see the transaction between the accused?
A: Yes, because there is light at the shanty house and the transaction is being conducted outside the shanty, sir.
Q: Now you said that after the transaction between the poseur buyer and the accused Homacky, you immediately rush to the place and arrested the accused, correct?
A: When the poseur buyer signal that's the time when we the back up team rush to the scene and effect the arrest of the suspect, sir.[72] (Emphasis supplied)

The accused also put in issue the withdrawal of the chemistry reports on the urine tests conducted on the accused. The accused noted as an intriguing circumstance why it was withdrawn as part of the prosecution's exhibit.[73]

In the presentation of evidence, the prosecution or the defense has the discretion on what to present as evidence or choose whom it wishes to present as witnesses in order to establish its

[72] TSN, 17 October 2005, pp. 10-13; Cross Examination of SPO4 Lucas.

[73] CA *rollo*, p. 57; Brief for the Accused-Appellant.

cause of action. For example, the prosecution's failure to present the chief investigator in court is not fatal to its cause.[74]

In his final effort to evade conviction, the accused challenged the establishment of chain of custody of illegal drugs.

In *People v. Kamad*,[75] the following elements are necessary in order to establish the chain of custody in a buy-bust operation:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[76]

Upon review, we are convinced that the prosecution had sufficiently proved all the elements to establish chain of custody of illegal drugs. In his direct examination, PO1 Castro positively identified the marijuana brick sold to him through the markings "GCPC GCP Castro" and date "3/31/04" placed on the brick also identified as Exhibit A.[77] The rest of the marijuana bricks subject of illegal possession case were likewise marked with AAL, LPL GCPC and HPE and dated as "3/31/04" numbered from B-1 to B-35.[78] Upon taking custody of the marijuana bricks, the marijuana bricks were brought to the PDEA Office for proper investigation and documentation.[79] The same were properly

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[74] *People v. Ulama*, G.R. No. 186530, 14 December 2011, 662 SCRA 599, 612.

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

[76] *Id.* at 307-308.

[77] TSN, 15 March 2005, p. 4; Direct Examination of PO1 Castro.

[78] Records, p. 59.

[79] TSN, 15 March 2005, p. 25; Direct Examination of PO1 Castro.

inventoried and recounted in the presence of the fiscal and the arresting team.[80] Thereafter, a request for examination of the marijuana bricks was sent to the PNP Crime Laboratory to determine presence of illegal drug.[81] As per Chemistry Report identified as Exhibit "G" made by Forensic Chemist Officer Emilia Gracio Montes, Exhibits "A" and "B", consisting of the marijuana brick sold to PO1 Castro as well as the thirty five bricks confiscated, all resulted positive of presence of dangerous drug.[82]

There was a question regarding the physical condition of the marijuana bricks when they were allegedly bought and confiscated compared to when they were presented in court. It was argued that the bricks were wrapped in newspapers when bought, but when presented in court, they were already found with packing tape and contained in a plastic bag.[83]

This observation cannot be taken against the prosecution. It is only natural that the bricks were no longer be wrapped in newspapers as they were opened by the forensic chemist for testing purposes. It was explained by the prosecution that when the bricks were brought back to the prosecutor's office, a portion of the bricks was cut in order to take representative samples.

It has been ruled time and again that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165[84] does not

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[80] *Id.* at 27.

[81] *Id.* at 28.

[82] Records, p. 66.

[83] CA *rollo*, p. 56; Brief for the Accused-Appellant.

[84] **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:

necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.[85]

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[86]

WHEREFORE, the instant appeal is **DENIED**. Accordingly, the decision of the Court of Appeals dated 14 December 2009 in CA-G.R. CR-H.C. No. 02676 is hereby **AFFIRMED**. No cost.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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(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;

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[85] *Imson v. People,* G.R. No. 193003, 13 July 2011, 653 SCRA 826, 835.

[86] *People v. Unisa, supra* note 52 at 334-335 citing *People v. Dela Rosa,* G.R. No. 185166, 26 January 2011 further citing *People v. Rosialda,* G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521.

SECOND DIVISION

[G.R. No. 191903. June 19, 2013]

MAGSAYSAY MARITIME CORPORATION and/or WESTFAL-LARSEN AND CO., A/S, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, First Division, and WILSON G. CAPOY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; *"SPINAL STENOSIS, CERVICAL"* IS A WORK-RELATED INJURY.— The records show that Capoy suffered an injury while at work on board the vessel *M/S Star Geiranger*, which injury resulted in his disability. x x x [I]t is undisputed that Capoy was *medically repatriated* on August 31, 2005. He reported to Dr. Salvador, the company-designated physician, who subjected him to physical and neurological examinations. Dr. Salvador's initial diagnosis — "spinal stenosis, cervical" — confirmed the findings of Dr. Tai and Dr. Clement in Vancouver. Capoy was subsequently examined by an orthopedic surgeon. He also underwent an MRI and later, he went through surgery. These examinations, treatments and procedures duly established that Capoy suffered from a work-related injury while on board *M/S Star Geiranger*.

2. ID.; ID.; ID.; A SEAFARER IS NOT ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS WHEN HIS CLAIM WAS FILED WHILE HE WAS STILL UNDERGOING TREATMENT AND THE 240-DAY PERIOD HAS NOT YET LAPSED; HE IS ENTITLED ONLY TO INCOME BENEFIT FOR TEMPORARY TOTAL DISABILITY.— [B**]**ased on the records, we cannot see how the award of permanent total disability compensation in his favor can be justified. As pointed out, Capoy reported to the company-designated physician, Dr. Salvador, the day after his repatriation on August 31, 2005. Dr. Salvador's initial diagnosis of Capoy's condition confirmed the findings of the doctors who examined and treated Capoy in Vancouver. Thereafter, he went through specialized medical procedures

— an MRI, as suggested by Dr. Tai of Vancouver, and a laminectomy, as recommended by the company orthopedic surgeon who examined the MRI results. **As part of his intensive treatment, he was subjected to continuous therapy sessions before and after his operation**. x x x. The surgeon recommended that Capoy continue the therapy sessions. But, for reasons known only to him, Capoy became non-compliant to therapy, as reported by the company doctor, which is why there was slow progress in his condition, although the repeat EMG-NCV procedure showed that his nerve injury was healing; thus, he was cleared from the physiatrist standpoint. **He failed to return on April 6, 2006 for re-evaluation by the orthopedic surgeon**. As matters stood on March 17, 2006, when Dr. Salvador issued her last progress report, 197 days from Capoy's repatriation on August 31, 2005, Capoy was legally under temporary total disability since the 240-day period under Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code had not yet lapsed. **The LA, the NLRC and the CA, therefore, grossly misappreciated the facts and the applicable law when they ruled that because Capoy was unable to perform his work as a fitter for more than 120 days, he became entitled to permanent total disability benefits**. The CA cited in support of its challenged ruling Dr. Salvador's failure to make a disability assessment or a fit-to-work declaration for Capoy after 197 days from his repatriation. This is a misappreciation of the underlying reason for the absence of Dr. Salvador's assessment. There was no assessment yet because Capoy was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period provided under the above-cited rule. To reiterate, Capoy was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment. x x x Dr. Sabado's declaration would not alter the fact that Capoy's claim for permanent total disability benefits was premature. **Considering that Capoy was still under treatment by the company doctors even after the lapse of 120 days but within the 240-day extended period allowed by the rules, he was under temporary total disability and entitled to temporary total disability benefits under the same rules**. x x x In light of these considerations, Capoy's claim for permanent total disability benefits must necessarily fail.

> However, since it is undisputed that Capoy still needed medical treatment beyond the initial 120 days from his repatriation – it lasted for 197 days as found by the CA – he is entitled, under the rules, to the income benefit for temporary total disability during the extended period or for one hundred ninety-seven (197) days. This benefit must be paid to him.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.

Rebene Carrera for private respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] assailing the decision[2] dated December 18, 2009 and the resolution[3] dated April l9, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 104859.

The Factual Antecedents

The petitioner manning agency, Magsaysay Maritime Corporation, in behalf of its foreign principal, co-petitioner Westfal-Larsen and Co., A/S, hired respondent Wilson G. Capoy as Fitter on board the vessel *M/S Star Geiranger* for nine months, with a monthly salary of US$666.00.[4]

Sometime in July 2005, while he was at work, Capoy allegedly fell down a ladder from a height of about two meters. He claimed that he immediately felt numbness in his fingertips that gradually extended to his hands and elbows. Despite the incident, he

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[1] *Rollo*, pp. 42-83; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 13-34; penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

[3] *Id.* at 36-40.

[4] *Id.* at 137; Contract of Employment dated March 30, 2005.

continued performing his work. On August 15, 2005, while climbing a flight of stairs, he again fell from a height of one meter. He claimed that he could not tightly hold to the railings of the stairs due to the numbness of his fingers and that he felt electricity-like sensation in his body, legs and hands.

After being first examined by Dr. Dietmar E. Raudzus in Vancouver, Canada, Capoy was referred to Dr. Charles Tai, also in Vancouver. Dr. Tai assessed Capoy to be suffering from C-spine disease with bilateral sensory symptoms and upper neuron disorder. Dr. Tai expressed concern that Capoy had a central cord problem requiring an urgent magnetic resonance imaging (*MRI*). He found Capoy unfit to work and advised him not to return to work until the examination was complete.[5] Subsequently, Capoy was referred to Dr. J. Clement of the CML Health Care, still in Vancouver, for further examination. Dr. Clement's "impression"[6] of Capoy's condition substantially confirmed Dr. Tai's assessment.

On August 31, 2005, Capoy was medically repatriated. The following day, he reported to the company-designated physician, Dr. Sussanah Ong-Salvador of the Sachly International Health Partners, Inc. (SHIP). Dr. Salvador required him to undergo physical and neurological examinations.[7] Dr. Salvador initially diagnosed Capoy's condition as "spinal stenosis, cervical."[8] On September 16, 2005, Capoy underwent an MRI. On September 20, 2005, Dr. Salvador reported that the orthopedic surgeon who examined the MRI results recommended that Capoy undergo a multilevel laminectomy, C3 to C6 spine, to relieve him of his pain.[9] The estimated cost of the surgical procedure was ₱280,000.00, which the petitioners later on shouldered.

Capoy was hesitant to submit to a laminectomy, suggesting that he would just undergo physiotherapy, but he eventually

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[5] CA *rollo*, pp. 67-68.

[6] *Id.* at 70.

[7] *Id.* at 72.

[8] *Ibid.*

[9] *Rollo*, p. 143.

agreed to the procedure which took place on October 24, 2005. His post-surgery condition was diagnosed as Herniated Nucleous Pulpusos C3-C4; Chronic bilateral C6 Radiculopathies; S/P Laminoplasty of the C3-C5. He was seen and evaluated by SHIP'S specialists and was cleared for discharge. He remained under the care of the specialists for therapy sessions[10] which continued until March 17, 2006. He was to return on April 6, 2006 for re-evaluation by the orthopedic surgeon.[11]

In the interim (*i.e.*, on January 19, 2006 or while still undergoing treatment by the company doctors), Capoy filed a complaint for disability benefits, maintenance allowance, damages and attorney's fees against the petitioners.[12] He argued that after the lapse of 120 days without being declared fit to work, he was entitled to permanent total disability benefits in accordance with the collective bargaining agreement (*CBA*) his union, the Associated Marine Officers and Seamen's Union of the Philippines (*AMOSUP*), had with his employer.

Capoy presented in compulsory arbitration two documents to support his claim. He first introduced a one-page paper, purportedly a part of the AMOSUP/TCCC Collective Agreement for 2004-2005.[13] Under this document, the compensation for a 100% degree of disability for "Ratings" was US$75,000.00. Thereafter, Capoy presented a second document, supposedly the CBA for January 1, 2004 to December 31, 2005 between the Norwegian Shipowners Association (*NSA*), on the one hand, and the AMOSUP and the Norwegian Seamen's Union (*NSU*), on the other hand.[14] It provides for a "Ratings" compensation of $70,000.00 for a l00% degree of disability.

The petitioners responded to the complaint by denying liability. They argued that Capoy was not entitled to permanent disability

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[10] *Id.* at 148.

[11] *Id.* at 150; Medical Progress Report.

[12] CA *rollo*, pp. 84-85.

[13] *Id.* at 187.

[14] *Id.* at 205-220.

benefits as his claim was premature since no disability assessment has yet been made by the company-designated physician. The petitioners further argued that the injury which caused Capoy's disability was self-inflicted due to his failure to follow the recommended medical treatment. Additionally, they disputed Capoy's claim that he suffered a fall twice on board the vessel, in July and August 2005, pointing out that the vessel's logbook had no record of the incidents. They presented the affidavit of the vessel M/S *Star Geiranger's* Master, Tomas Littaua, on the absence of reports regarding the incidents.[15]

Before the complaint could be resolved (or on April 28, 2006), Capoy had himself examined by a physician of his choice, Dr. Raul F. Sabado, who declared him "[u]nfit to any kind of work permanently."[16]

The Compulsory Arbitration Rulings

On June 26, 2006, Labor Arbiter (*LA*) Teresista D. Castillon-Lora rendered a decision finding merit in the complaint.[17] She awarded Capoy permanent total disability benefits of US$70,000.00, pursuant to the NSA/AMOSUP-NSU CBA. Citing *Crystal Shipping, Inc. v. Natividad*,[18] LA Lora held that Capoy suffered from permanent total disability as the medical records showed that he was unable to perform work or earn a living in the same kind of work for more than 120 days from his repatriation.

The petitioners appealed. In its decision of March 28, 2008,[19] the National Labor Relations Commission (*NLRC*) denied the appeal and affirmed with modification LA Lora's award by absolving Eduardo U. Menese, the President of the manning agency, from liability. The NLRC likewise denied the petitioners'

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[15] *Id.* at 193; Littaua's Affidavit.

[16] *Id.* at 185; Medical Certificate dated April 28, 2006.

[17] *Id.* at 221-243.

[18] 510 Phil. 332 (2005).

[19] CA *Rollo*, pp. 55-60.

motion for reconsideration,[20] prompting them to elevate the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

On December 18, 2009, the CA denied the petition for lack of merit and upheld the NLRC rulings.[21] It sustained the application by the labor authorities of the NSA/AMOSUP-NSU CBA for 2004-2005[22] as basis for Capoy's claim to disability benefits, in relation to Article 20(B) of the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*).[23] The CA pointed out that the petitioners failed to disprove the authenticity of the CBA.

The CA brushed aside the petitioners' contention that Capoy failed to show proof that his injury was work-connected. It stressed that according to jurisprudence, "probability and not the ultimate degree of certainty is the test of proof in compensation proceedings."[24] It thus declared that "Capoy's repatriation due to medical reasons raises no other logical conclusion but that, he was injured while on board the vessel."[25]

With respect to the degree of Capoy's disability, the CA took note of the compulsory arbitration finding that Capoy could not perform his work as a fitter for more than one hundred twenty (120) days — **l97** days to be exact — counted from the date of his last Medical Progress Report.[26] It added that Dr. Salvador, the company-designated physician, failed to assess Capoy's condition, by way of either a disability grading or a fit-to-work declaration.

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[20] *Id.* at 61-62; Resolution dated June 10, 2008.

[21] *Supra* note 2

[22] *Supra* note 14.

[23] DOLE Department Order No. 4, series of 2000.

[24] *NFD International Manning Agents, Inc. v. NLRC*, 336 Phil. 466, 474 (l997).

[25] *Supra* note 2, at 16.

[26] CA *rollo*, p. 83.

The CA gave no credit to the petitioners' submission that Capoy is not entitled to disability benefits because he willfully and deliberately discontinued his medical treatment under the supervision of the company-designated physician. In any event, it emphasized that Capoy remained under Dr. Salvador's care until March 17, 2007 or for more than 120 days, as above mentioned. In this light, it concluded that there is merit in Capoy's claim for permanent total disability benefits. The petitioners moved for reconsideration, but the CA denied the motion in its resolution of April 19, 2010. Hence, this petition.[27]

The Petition

The petitioners seek a reversal of the CA rulings under the following arguments:

1. The appellate court committed a serious error of law when it failed to consider that Capoy's abandonment of his medication and therapy with the company-designated physician is a criminal act or a willful or intentional breach of duty, resulting in an injury, incapacity or disability attributable to him. They submit that for this reason, they cannot be held liable under Section 20(D) of the POEA-SEC, which provides as follows:

> No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

The petitioners stress that despite Capoy's failure to faithfully comply with his physical therapy, his condition was improving. In fact, the company-designated physiatrist already cleared Capoy from a physiatrist standpoint;[28] Capoy could have already been considered fit to work had he not totally abandoned his medication and physical treatment.

2. The CA gravely erred in awarding Capoy permanent total disability benefits absent the company-designated physician's

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[27] *Supra* note 3.

[28] *Supra* note 11.

assessment of his disability. Section 20(B)(3) of the POEA-SEC recognizes only the disability grading provided by the company-designated physician. The petitioners contend that the absence of the company-designated physician's medical opinion on Capoy's case renders any subsequent medical findings unacceptable and without basis.

3. The CA gravely erred in applying the 120-day rule to justify the award of permanent total disability compensation to Capoy. The rule has already been modified in *Vergara v. Hammonia Maritime Services, Inc.*[29] where the Court held that the company doctor, overseeing a seafarer's treatment, is given a maximum of 240 days to assess the seafarer's disability or declare him fit to work. It is only after the lapse of the 240-day period and the company doctor fails to give a final assessment of the seafarer's medical condition may the seafarer be considered permanently and totally disabled.

4. The CA likewise gravely erred in applying the NSA/AMOSUP-NSU CBA in this case, despite the lack of substantial evidence on the occurrence of an accident on board the vessel. Their implied admission of the existence of the CBA cannot automatically be deemed admission of its application as there are rules to be applied before it is given effect.

5. It was also grave error on the part of the CA to award Capoy attorney's fees because the petitioners are not guilty of fraud or bad faith in denying his claim as it was based on just, reasonable and valid grounds.

The Case for Capoy

In his Comment dated August 4, 2010,[30] Capoy prays that the petition be denied for lack of merit. He contends that the CA acted in accordance with law and applicable jurisprudence, and that it did not commit any patent error or grave abuse of discretion in affirming the NLRC decision, it being supported by substantial evidence. He insists that after 120 days from

[29] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[30] *Rollo*, pp. 154-166.

his repatriation that he was unable to work, he became entitled to permanent total disability compensation.

Capoy assails the petitioners' reliance on *Vergara* in denying his claim, contending that it is not *Vergara* but the CBA between the parties and the POEA-SEC that are applicable in his case. He argues that under the POEA-SEC, a seafarer in his situation shall be subjected to medical treatment, but for a period not to exceed 120 days, after which the seafarer shall be assessed by the company-designated physician as to whether he is fit to work or not. If the company doctor fails to make the assessment, he is considered to have suffered from permanent total disability.

The Court's Ruling

The issues

Based on the nature of this case – a Rule 45 review of a Rule 65 ruling of the CA – as well as the submissions of the parties, submitted for our resolution is the question of whether the CA correctly found no grave abuse of discretion in the NLRC's ruling and thus denied the company's petition. The question of fact the CA faced was whether Capoy sustained a work-related injury on board the vessel *M/S Star Geiranger*. The question of law involved, on the other hand was on the question of whether the resulting disability entitles him to permanent total disability benefits, assuming that he did indeed sustain a work-related injury.

We find that the CA properly found factual basis in the conclusion that Capoy's injury was work-related. However, it grossly misappreciated and misapplied the law in ruling on Capoy's entitlement to permanent total disability.

Is Capoy's injury work-related?

The records show that Capoy suffered an injury while at work on board the vessel *M/S Star Geiranger*, which injury resulted in his disability. While the petitioners argue that Capoy could not have fallen on deck twice to cause his injury, the evidence shows that Capoy had been examined by three doctors in Vancouver. Two of these doctors, Dr. Tai and Dr. Clement,

reported that Capoy was suffering from C-spine injury.[31] The vessel *M/S Star Geiranger's* Master at the time, Rodolfo Casipe (not Tomas Littaua as the petitioners claimed) confirmed Capoy's condition, even if only for the initial consultation and examination.[32]

Moreover, it is undisputed that Capoy was *medically repatriated* on August 31, 2005. He reported to Dr. Salvador, the company-designated physician, who subjected him to physical and neurological examinations. Dr. Salvador's initial diagnosis — "spinal stenosis, cervical" — confirmed the findings of Dr. Tai and Dr. Clement in Vancouver. Capoy was subsequently examined by an orthopedic surgeon. He also underwent an MRI and later, he went through surgery. These examinations, treatments and procedures duly established that Capoy suffered from a work-related injury while on board *M/S Star Geiranger*.

Is Capoy entitled to permanent total disability benefits?

Although Capoy sustained a work-related injury, the CA did not properly appreciate that Capoy is not entitled to permanent total disability compensation based on the applicable contract, rules and laws. The CA failed to appreciate the grave abuse of discretion that the NLRC committed, as discussed below.

First. There was no assessment of the extent of Capoy's disability by the company-designated physician, as required by Section 20(B)(3) of the POEA-SEC, which provides:

> 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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> xxx xxx xxx
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> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the

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[31] *Supra* notes 5 and 6.

[32] *Rollo*, p. 138.

seafarer. The third doctor's decision shall be final and binding on both parties. [underscore ours]

Considering that Capoy was still undergoing medical treatment, particularly through therapy sessions under the care of the company-designated specialists, Dr. Salvador (the lead company doctor) cannot be faulted for not issuing an assessment of Capoy's disability or fitness for work at that time. In fact, as Dr. Salvador's progress report of March 17, 2006[33] showed that Capoy was expected to return on April 6, 2006 for re-evaluation by the orthopedic surgeon. This aspect of the POEA-SEC and Capoy's compliance totally escaped the labor tribunals and the CA.

Second. The conclusions of the LA, the NLRC and the CA that Capoy is entitled to permanent total disability benefits because his disability lasted for more than 120 days, without need for an assessment from Dr. Salvador, must be viewed in the context of the established facts and the applicable Philippine law. The law in this jurisdiction must be determined in the context of the disagreement on Capoy's claim between the foreign employer, represented by the manning agency, and Capoy whose employment relationship is governed by the POEA-SEC and supplemented by the parties' CBA. As explained in *Vergara*, under Section 31 of the POEA-SEC, in case of any unresolved dispute, claim or grievance arising out of or in connection with the contract, the matter shall be governed by Philippine laws, as well as international conventions, treaties and covenants where the Philippines is a signatory.[34]

This signifies that the terms agreed upon by the parties pursuant to the POEA-SEC are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance. Article 192(3) of the Labor Code which deals with the period of disability states that:

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[33] *Supra* note 11.

[34] *Vergara v. Hammonia Maritime Services, Inc., supra* note 30, at 626-627.

The following disabilities **shall be deemed total and permanent**:

1. Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided for in the Rules**[.] [emphases ours]

The rule adverted to is Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which provides:

Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for **temporary total disability** shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as detemined by the System[.] [emphasis ours; underscore ours]

The above provisions must be read together with Section 20(B)(3) of the POEA-SEC which states as follows:

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.

The *Vergara* ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus —

[T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws.

If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[35] (italics supplied; citations omitted)

As applied to Capoy's situation based on the records, we cannot see how the award of permanent total disability compensation in his favor can be justified. As pointed out, Capoy reported to the company-designated physician, Dr. Salvador, the day after his repatriation on August 31, 2005. Dr. Salvador's initial diagnosis of Capoy's condition[36] confirmed the findings of the doctors who examined and treated Capoy in Vancouver. Thereafter, he went through specialized medical procedures — an MRI, as suggested by Dr. Tai of Vancouver, and a laminectomy, as recommended by the company orthopedic surgeon who examined the MRI results. **As part of his intensive treatment, he was subjected to continuous therapy sessions before and after his operation**.

The therapy sessions appeared to be yielding positive results. Dr. Salvador's progress report of January l2, 2006[37] showed that Capoy's vital signs were improving and that the orthopedic surgeon observed that he was responding well to therapy, as evidenced by the improved sensation of both his lower extremities. The surgeon recommended that Capoy continue the therapy sessions. But, for reasons known only to him, Capoy became non-compliant to therapy, as reported by the company doctor, which is why there was slow progress in his condition, although the repeat EMG-NCV procedure showed that his nerve injury was healing; thus, he was cleared from the physiatrist standpoint. **He failed to return on April 6, 2006 for re-evaluation by the orthopedic surgeon**.

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[35] *Id.* at 628.

[36] *Supra* note 8.

[37] *Rollo*, p. 148.

As matters stood on March 17, 2006, when Dr. Salvador issued her last progress report, 197 days from Capoy's repatriation on August 31, 2005, Capoy was legally under temporary total disability since the 240-day period under Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code had not yet lapsed. **The LA, the NLRC and the CA, therefore, grossly misappreciated the facts and the applicable law when they ruled that because Capoy was unable to perform his work as a fitter for more than 120 days, he became entitled to permanent total disability benefits**. The CA cited in support of its challenged ruling Dr. Salvador's failure to make a disability assessment or a fit-to-work declaration for Capoy after 197 days from his repatriation. This is a misappreciation of the underlying reason for the absence of Dr. Salvador's assessment. There was no assessment yet because Capoy was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period provided under the above-cited rule. To reiterate, Capoy was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment.

We cannot, under these circumstances, blame the petitioners for claiming that Capoy abandoned his treatment. Worse, he could even be dealing with the company doctors in bad faith while he was still undergoing treatment. For instance, he never offered any explanation for his failure to report to the orthopedic surgeon. The reason for this could be that he was just going through the motions of undergoing treatment with the company doctors. This is supported by the fact that while he still had schedules with the company doctors and without waiting for Dr. Salvador's assessment of his condition, he filed a claim for permanent total disability benefits on January 19, 2006.[38] Even before his claim could be resolved, he had himself examined by Dr. Sabado who declared him "[u]nfit to any kind of work permanently."[39]

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[38] *Supra* note 12.

[39] *Supra* note 16.

Dr. Sabado's declaration would not alter the fact that Capoy's claim for permanent total disability benefits was premature. **Considering that Capoy was still under treatment by the company doctors even after the lapse of 120 days but within the 240-day extended period allowed by the rules, he was under temporary total disability and entitled to temporary total disability benefits under the same rules**. Moreover, with respect to Capoy's failure to comply with the procedure under the POEA-SEC *vis-a-vis* Dr. Sabado's certification, we find the following Court pronouncement in *C.F. Sharp Crew Management, Inc. v. Taok*[40] most applicable, thus:

> Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable. Under the same provision, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disablity and there is a procedure to contest his findings. It is patent from the records that Taok submitted these medical certificates during the pendency of his appeal before the NLRC. **More importantly, Taok prevented the company-designated physician from determining his fitness or unfitness for sea duty when he did not return on October 18, 2006 for re-evaluation.** Thus, Taok's attempt to convince this Court to put weight on the findings of his doctors-of-choice will not prosper given his failure to comply with the procedure prescribed by the POEA-SEC.[41] (emphasis ours)

Very obviously, Capoy's case suffers from the same infirmities committed by Taok in the cited case, when he presented Dr. Sabado's certification to the LA without going through the procedure under the POEA-SEC. **Capoy, needless to say, prevented Dr. Salvador from determining his fitness or unfitness for sea duty when he did not return on April 6, 2006 for re-evaluation**.

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[40] G.R. No. 193679, July 18, 2012, 677 SCRA 296.

[41] *Id.* at 316-317.

For grossly misappreciating the facts, the clear import of the law and the rules, as well as recent jurisprudence on maritime compensation claims, the NLRC gravely abused its discretion in sustaining the award of permanent total disability benefits to Capoy. For upholding the NLRC ruling, the CA itself committed a reversible error of judgment.

In light of these considerations, Capoy's claim for permanent total disabilty benefits must necessarily fail. However, since it is undisputed that Capoy still needed medical treatment beyond the initial 120 days from his repatriation – it lasted for 197 days as found by the CA – he is entitled, under the rules,[42] to the income benefit for temporary total disability during the extended period or for one hundred ninety-seven (197) days. This benefit must be paid to him.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals awarding permanent total disability benefits to Wilson G. Capoy are **SET ASIDE**. The petitioners, Magsaysay Maritime Corporation and Westfal-Larsen and Co., A/S are **ORDERED**, jointly and severally, to pay Wilson G. Capoy income benefit for one hundred ninety-seven (197) days. The complaint is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[42] Rules and Regulations implementing Book IV of the Labor Code, Section 2, Rule X.

SECOND DIVISION

[G.R. No. 194247. June 19, 2013]

BASES CONVERSION DEVELOPMENT AUTHORITY, *petitioner, vs.* **ROSA REYES, CENANDO REYES and CARLOS REYES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.

2. ID.; ID.; TWO IMPELLING REASONS FOR RELAXATION OF PROCEDURAL RULES, PRESENT; REMAND OF THE CASE TO THE RTC TO DETERMINE THE PROPER AMOUNT OF JUST COMPENSATION.— While the RTC's November 27, 2007 Order should – as a matter of course – already be regarded as final and executory due to petitioner's erroneous appeal, the Court, nonetheless, deems it proper to relax the rules of procedure and remand the case to the RTC in order to re-evaluate, on trial, the proper amount of just compensation. Two (2) reasons impel this course of action: ***First***, petitioner's appeal – at least as to the first issue – would have been granted due to its merit were it not for the foregoing

procedural lapse. As earlier discussed, genuine issues remain to be threshed out in this case which thereby negate the propriety of a summary judgment. In this respect, the RTC improperly issued the November 27, 2007 Order which granted respondents' motion for summary judgment. ***Second***, expropriation cases involve the expenditure of public funds and thus, are matters of public interest. In this light, trial courts are required to be more circumspect in their evaluation of the just compensation to be awarded to the owner of the expropriated property, as in this case. Records, however, show that the adjudged amount of just compensation was not arrived at judiciously since the RTC based the same solely on respondents' intimation that they were willing to settle for the rate of ₱3,000.00 per square meter. It is settled that the final conclusions on the proper amount of just compensation can only be made after due ascertainment of the requirements set forth under RA 8974 and not merely based on the declarations of the parties.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Manuel B. Imbong for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the May 7, 2010[2] and October 15, 2010[3] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 92181, dismissing petitioner Bases Conversion Development Authority's appeal from the November 27, 2007 Order[4] issued by the Regional Trial Court of Dinalupihan, Bataan, Branch 5 (RTC) in Civil

[1] *Rollo,* pp. 22-61.

[2] *Id.* at 10-13. Penned by Associate Justice Noel G. Tijam, with Associate Justices Mariflor P. Punzalan-Castillo and Danton Q. Bueser, concurring.

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

[4] *Id.* at 162-170. Penned by Executive Judge Jose Ener S. Fernando.

Case Nos. DH-1136-07, DH-1137-07 and DH-1138-07 for lack of jurisdiction, as only questions of law were raised on the aforesaid appeal.

The Facts

On February 13, 2007, petitioner filed a complaint[5] before the RTC, docketed as Civil Case No. DH-1136-07, seeking to expropriate 308 square meters of a parcel of land located in Barangay San Ramon, Dinalupihan, Bataan, registered in the name of respondent Rosa Reyes (Rosa) under Transfer Certificate of Title (TCT) No. CLOA-10265, in view of the construction of the Subic-Clark-Tarlac Expressway (SCTEx). It claimed that the said property is an irrigated riceland with a zonal value of ₱20.00 per square meter, based on the relevant zonal valuation of the Bureau of Internal Revenue (BIR). Consequently, pursuant to Section 4(a)[6] of Republic Act No. 8974[7] (RA 8974), petitioner deposited the amount of ₱6,120.00,[8] representing 100% of the zonal value of the same.

Similar complaints for expropriation, docketed as Civil Case Nos. DH-1137-07 and DH-1138-07, were also filed over the 156 and 384 square meter portions of certain parcels of land

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[5] *Id.* at 70-77.

[6] SEC. 4. *Guidelines for Expropriation Proceedings.*— Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

xxx xxx xxx

[7] "AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES."

[8] *Rollo*, p. 81.

owned by respondents Cenando Reyes[9] (Cenando) and Carlos Reyes[10] (Carlos), respectively, for which petitioner deposited the sums of ₱3,120.00[11] and ₱7,680.00[12] also in accordance with Section 4(a) of RA 8974.

In their separate Answers,[13] respondents uniformly alleged that while they had no objection to petitioner's right to expropriate, they claimed that the amount of just compensation which petitioner offered was ridiculously low considering that the subject properties were already re-classified into residential lots as early as October 6, 2003 and as such, their zonal value ranged from ₱3,000.00 to ₱6,000.00 per square meter, as determined by the BIR. Nevertheless, to expedite the proceedings, respondents expressed that they were amenable to be paid the rate of ₱3,000.00 per square meter, at the lowest, translating to ₱924,000.00 for Rosa,[14] ₱468,000.00 for Cenando[15] and ₱1,152,000.00 for Carlos.[16]

The three (3) cases were subsequently consolidated as per the RTC's Order dated May 23, 2007[17] and a writ of possession was granted in petitioner's favor on December 12, 2007.[18]

Meanwhile, on April 27, 2007, respondents filed a Motion for Summary Judgment[19] (motion for summary judgment), contending that there were no genuine issues left for resolution, except for the amount of damages to be paid as just compensation.

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[9] *Id.* at 91-97.

[10] *Id.* at 113-119.

[11] *Id.* at 101.

[12] *Id.* at 118.

[13] *Id.* at 82-84; 102-104; and 121-124.

[14] *Id.* at 84.

[15] *Id.* at 103.

[16] *Id.* at 124.

[17] *Id.* at 133.

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

[19] *Id.* at 141-150.

In opposition,[20] petitioner argued that Rule 35 of the Rules of Court on summary judgment applies only to ordinary civil actions for recovery of money claims and not to expropriation cases. Moreover, it claimed that the mandatory constitution of a panel of commissioners for the purpose of ascertaining the amount of just compensation due under Section 5, Rule 67 of the Rules of Court precludes a summary judgment.

In turn, respondents filed a Reply,[21] asserting that Rule 35 of the Rules of Court applies to both ordinary and special civil actions.

The RTC Ruling

On November 27, 2007, the RTC issued an Order,[22] granting the motion for summary judgment and thereby ordered petitioner to pay respondents just compensation at the rate of ₱3,000.00 per square meter, for a total of ₱924,000.00 for Rosa, ₱1,152,000.00 for Carlos and ₱468,000.00 for Cenando.

In ruling for respondents, the RTC observed that the subject properties were already re-classified from agricultural to residential in 2004, or long before the corresponding expropriation complaints were filed in February 2007. In this regard, it held that the amount of just compensation should be pegged anywhere between the range of ₱3,000.00 to ₱6,000.00 per square meter, pursuant to the relevant zonal valuation of the BIR as published in the December 9, 2002 issue of the Official Gazette.[23] Thus, considering that respondents had already signified their willingness to accept the rate of ₱3,000.00 per square meter as just compensation, it ruled that there was nothing left for it to do but to terminate the proceedings through summary judgment. In view of the foregoing, the RTC brushed aside petitioner's insistence for the constitution of a panel of commissioners under

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[20] *Id.* at 153-155.

[21] *Id.* at 158-161.

[22] *Id.* at 162-170.

[23] *Id.* at 553. See Official Gazette, Volume 98, No. 49, page 1220 (December 9, 2002).

Section 5, Rule 67 of the Rules of Court, dismissing the same as a futile exercise which would only delay the proceedings.[24]

Dissatisfied, petitioner filed a motion for reconsideration[25] based on the following grounds: (*a*) respondents failed to prove that the properties sought to be expropriated were properly re-classified; (*b*) the RTC erred in fixing the value thereof at the rate of ₱3,000.00 per square meter given that they are not located along a national highway or road but are inner lots which should be classified as "all other streets" and hence, accorded a lower zonal valuation; (*c*) the non-appointment of the panel of commissioners was fatal; and (*d*) the issues surrounding the overlap of Rosa's and Cenando's properties with that of the Philippine National Bank[26] must first be resolved so as not to prejudice the rights of the parties. In line with these factual issues, petitioner maintained that a full-blown trial should have been conducted by the RTC.

Petitioner's motion for reconsideration was, however, denied in an Order[27] dated May 12, 2008, prompting it to file a notice of appeal.[28]

For their part, respondents filed a Motion to Dismiss Appeal,[29] averring that an appeal from a summary judgment raises only questions of law; hence, the proper recourse to assail its propriety should be a petition for review on *certiorari* under Rule 45 of the Rules of Court and not an ordinary appeal under Rule 41 as adopted by petitioner.

In response, petitioner filed a Comment,[30] asserting that its appeal raised both questions of fact and law and thus, was properly lodged before the CA.

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[24] *Id.* at 168-169.

[25] *Id.* at 173-179.

[26] *Id.* at 180.

[27] *Id.* at 218.

[28] *Id.* at 219-220.

[29] *Id.* at 409-412.

[30] *Id.* at 474-484.

The CA Ruling

On May 7, 2010, the CA rendered a Resolution,[31] dismissing petitioner's appeal for being the wrong mode to assail the RTC's summary judgment.

It found that the errors raised in petitioner's appeal essentially pertained to the propriety of the RTC's grant of respondents' motion for summary judgment and thus, involved only questions of law of which the CA had no jurisdiction. Hence, considering its dismissal of petitioner's appeal, it held that the assailed RTC Orders fixing the amount of just compensation had already become final and executory.

Petitioner moved for reconsideration which was, however, denied in a Resolution dated October 15, 2010,[32] prompting it to file the instant petition.

Issue Before The Court

The sole issue in this case is whether or not the CA erred in dismissing petitioner's appeal.

The Court's Ruling

The petition is meritorious.

A. Propriety of the CA's dismissal of petitioner's appeal.

Under Section 2, Rule 41[33] of the Rules of Court, there are two (2) modes of appealing a judgment or final order of the RTC in the exercise of its original jurisdiction:

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[31] *Id.* at 10-13.

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

[33] SEC. 2. *Modes of appeal*. –

(a) *Ordinary appeal*. – The **appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal** with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. xxx xxx xxx

(*a*) If the issues raised involve questions of fact or mixed questions of fact and law, the proper recourse is an ordinary appeal to the CA in accordance with Rule 41 in relation to Rule 44 of the Rules of Court; and

(*b*) If the issues raised involve only questions of law, the appeal shall be to the Court by petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court.

Corollary thereto, should a party raise only questions of law through an ordinary appeal taken under Rule 41, Section 2, Rule 50 of the Rules of Court provides that the said appeal shall be dismissed.[34]

Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact.[35] In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question

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(c) *Appeal by certiorari*. – In all cases where **only questions of law are raised or involved**, the **appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45**. (Emphasis supplied)

[34] SEC. 2. *Dismissal of improper appeal to the Court of Appeals*. – **An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court**. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (Emphasis supplied)

[35] *Land Bank of the Philippines v. Ramos*, G.R. No. 181664, November 14, 2012, 685 SCRA 540, 547-548.

of law.[36] However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[37]

Applying these principles, the Court finds that the CA did not err in dismissing petitioner's appeal.

Records show that petitioner raised four (4) issues[38] in its appeal before the CA:

> ***First***, whether or not summary judgment was properly rendered by the RTC;
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> ***Second***, whether or not there is any evidence on record to support the conclusion that the subject lots had already been re-classified from agricultural to residential; and if in the affirmative, whether or not the same may be considered as "interior lots" which would necessarily affect its zonal valuation;
>
> ***Third***, whether or not the appointment of commissioners is indispensable in an expropriation case; and
>
> ***Fourth***, whether or not the properties of Cenando and Rosa Reyes overlap that of the Philippine National Bank.

At the outset, it bears to note that the second and fourth issues were not raised by petitioner in its opposition to respondents' motion for summary judgment[39] but only in its motion for reconsideration

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[36] *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 655.

[37] *Cucueco v. CA*, 484 Phil. 254, 264-265.

[38] *Rollo*, pp. 438-439.

[39] *Id.* at 168-169. The RTC observed:

> Plaintiff BCDA, in their Opposition to the Motion for Summary Judgment, **limits its objection** on the grounds that summary judgment applies only to ordinary actions for the recovery of money claims, and that Section 5, Rule 67 of the Revised Rules of Court precludes summary judgment as said provision mandatorily calls for the constitution of not more than three (3) commissioners. **Unlike in Civil Cases Nos. DH-863-03, DH-874-03 AND DH-137-07, plaintiff raises no objection that the subject properties**

from the RTC's Order dated November 27, 2007.[40] It has been consistently held that appellate courts are precluded from entertaining matters neither alleged nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[41] Thus, while these issues may be classified as questions of fact since their resolution would require an evaluation of the evidence on record, the CA was precluded from considering the same. Consequently, only the first and third issues were left for its determination.

Unlike the second and fourth issues, the first and third issues can be properly classified as questions of law since their resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts.

To elucidate, the **first issue** regarding the **propriety of the RTC's summary judgment** involves only a question of law since one need not evaluate the evidence on record to assess if the unresolved issues in this case, *i.e.*, the classification of the properties expropriated, its location and valuation, constitute genuine issues.[42] This is in line with the rule that a summary judgment is not warranted when there are genuine issues which call for a full blown trial.[43] Similarly, the **third issue** concerning the **propriety of the appointment of a panel of commissioners**

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were already re-classified as residential when the complaint[s] in the above-captioned cases were filed. (Emphasis supplied)

[40] *Id.* at 174-177.

[41] *Maxicare PCIB Cigna Healthcare (now Maxicare Healthcare Corporation) v. Contreras*, G.R. No. 194352, January 30, 2013.

[42] "The term 'genuine issue' has been defined as an issue of fact which calls for the presentation of evidence as distinguished from an issue which is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial." [*Excelsa Industries, Inc. v. CA*, 317 Phil. 664, 671 (1995).]

[43] See *Nocom v. Camerino*, G.R. No. 182984, February 10, 2009, 578 SCRA 390, 410. See also Section 3, Rule 35 of the Rules of Court.

only requires an application of Section 5, Rule 67 of the Rules of Court,[44] without the need of examining the evidence on record. Thus, given that the issues to be resolved on appeal only involve questions of law, no reversible error was committed by the CA in dismissing petitioner's appeal. The proper recourse should have been to file a petition for review on *certiorari* under Rule 45 of the Rules of Court.

B. Relaxation of procedural rules.

While the RTC's November 27, 2007 Order should – as a matter of course – already be regarded as final and executory due to petitioner's erroneous appeal, the Court, nonetheless, deems it proper to relax the rules of procedure and remand the case to the RTC in order to re-evaluate, on trial, the proper amount of just compensation. Two (2) reasons impel this course of action:

First, petitioner's appeal – at least as to the first issue – would have been granted due to its merit were it not for the foregoing procedural lapse.

As earlier discussed, genuine issues remain to be threshed out in this case which thereby negate the propriety of a summary judgment. In this respect, the RTC improperly issued the November 27, 2007 Order which granted respondents' motion for summary judgment.

Second, expropriation cases involve the expenditure of public funds and thus, are matters of public interest. In this light, trial courts are required to be more circumspect in their evaluation

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[44] SEC. 5. *Ascertainment of compensation.*— Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court.

Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections.

of the just compensation to be awarded to the owner of the expropriated property,[45] as in this case.

Records, however, show that the adjudged amount of just compensation was not arrived at judiciously since the RTC based the same solely on respondents' intimation that they were willing to settle for the rate of ₱3,000.00 per square meter.[46] It is settled that the final conclusions on the proper amount of just compensation can only be made after due ascertainment of the requirements set forth under RA 8974 and not merely based on the declarations of the parties.[47]

Further, it is observed that the RTC simply glossed over the issue regarding the proper classification of the subject properties as either residential or agricultural lands when the said matter should have been circumspectly resolved considering that land classification accounts for a significant discrepancy in the valuation of the property. Based on the evidence on record, the residential lots in Barangay San Ramon, Dinalupihan, Bataan have a zonal valuation ranging from ₱2,000.00 (for all other streets) to ₱6,000.00 per square meter (for those situated within the vicinity of the national highway and San Juan to Payumo Streets).[48] On the other hand, petitioner claims that agricultural lands command a zonal valuation of only ₱20.00.[49] Moreover, a property's zonal valuation cannot, by and of itself, be considered as the sole basis for "just compensation"; hence, the RTC was duty bound to look at other indices of fair market value.[50] Unfortunately, records show that it did not.

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[45] *Republic v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, January 25, 2012, 664 SCRA 233, 250.

[46] *Rollo*, p. 347.

[47] *Republic v. Gingoyon*, G.R. No. 166429, December 19, 2005, 478 SCRA 474, 528.

[48] *Rollo*, p. 553.

[49] *Id.* at 72.

[50] *Republic v. Tan Song Bok*, G.R. No. 191448, November 16, 2011, 660 SCRA 330, 348, citing *Leca Realty Corp. v. Republic*, G.R. Nos. 155605 and 160179, September 27, 2006, 503 SCRA 563, 566 and 579.

In fine, given the special and compelling reasons as above-discussed, the Court finds it appropriate to relax the rules of procedure in the interest of substantial justice. In *Twin Towers Condominium Corp. v. CA*,[51] the Court held that the merits of the case may be regarded as a special or compelling reason to relax procedural rules. Likewise, in *Apo Fruits Corporation v. Land Bank of the Philippines*,[52] special and compelling reasons constitute recognized exceptions to the rule on immutability of judgment, *viz*:

> As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. In the past, however, **we have recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons for such actions**. (Emphasis supplied)

Accordingly, the case is hereby remanded to the RTC for further proceedings in order to determine the proper amount of just compensation due to respondents.

WHEREFORE, the petition is **GRANTED**. The May 7, 2010 and October 15, 2010 Resolutions of the Court of Appeals in CA-G.R. CV No. 92181 and the November 27, 2007 and May 12, 2008 Orders of the Regional Trial Court of Dinalupihan, Bataan, Branch 5 are hereby **SET ASIDE**. Let the records of this case be **REMANDED** to the trial court for further proceedings to determine the proper amount of just compensation.

SO ORDERED.

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

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[51] G.R. No. 123552, February 27, 2003, 398 SCRA 203, 212. (Citations omitted)

[52] G.R. No. 164195, October 12, 2010, 632 SCRA 727, 760, citing *Equitable Banking Corp. v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 416-417.

THIRD DIVISION

[G.R. No. 194846. June 19, 2013]

[*]HOSPICIO D. ROSAROSO, ANTONIO D. ROSAROSO, MANUEL D. ROSAROSO, ALGERICA D. ROSAROSO and CLEOFE R. LABINDAO, *petitioners, vs.* **LUCILA LABORTE SORIA, SPOUSES HAM SOLUTAN and [**]LAILA SOLUTAN, and MERIDIAN REALTY CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THE PRESUMPTION THAT THERE WAS SUFFICIENT CONSIDERATION FOR A CONTRACT MUST BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE; WHERE THERE IS FAILURE OF THE PARTY TO SUPPLY THE REQUIRED EVIDENCE, THE PRESUMPTION PREVAILS.— The fact that the first deed of sale was executed, conveying the subject properties in favor of petitioners, was never contested by the respondents. What they vehemently insist, though, is that the said sale was simulated because the purported sale was made without a valid consideration. Under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) *there was sufficient consideration for a contract.* These presumptions operate against an adversary who has not introduced proof to rebut them. They create the necessity of presenting evidence to rebut the *prima facie* case they created, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is but, by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption

[*] The name does not appear in the petition but appears in all the pleadings beginning with Motion for Extension (*Rollo,* p. 3).

[**] "Leila" in the title of the petition but records of RTC, CA and pleadings of respondents show it is "Laila."

stands in the place of evidence unless rebutted. In this case, the respondents failed to trounce the said presumption. Aside from their bare allegation that the sale was made without a consideration, they failed to supply clear and convincing evidence to back up this claim. It is elementary in procedural law that bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; NON-DELIVERY OF THE CONSIDERATION WOULD NOT ENTITLE THE SELLER TO SELL AGAIN THE PROPERTY; THE SELLER'S REMEDY IS TO RESCIND THE SALE FOR BUYER'S FAILURE TO PERFORM HIS OBLIGATION.— Granting that there was no delivery of the consideration, the seller would have no right to sell again what he no longer owned. His remedy would be to rescind the sale for failure on the part of the buyer to perform his part of their obligation pursuant to Article 1191 of the New Civil Code. In the case of *Clara M. Balatbat v. Court Of Appeals and Spouses Jose Repuyan and Aurora Repuyan*, it was written: The **failure of the buyer to make good the price does not, in law, cause the ownership to revest to the seller** unless the bilateral contract of sale is first rescinded or resolved pursuant to Article 1191 of the New Civil Code. **Non-payment only creates a right to demand the fulfillment of the obligation or to rescind the contract.**

3. ID.; ID.; DOUBLE SALE; THE REQUIREMENT OF THE LAW FOR THE TRANSFER OF OWNERSHIP IS TWO FOLD; ACQUISITION IN GOOD FAITH AND REGISTRATION IN GOOD FAITH.— [O]wnership of an immovable property which is the subject of a double sale shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. The requirement of the law then is two-fold: acquisition in good faith and registration in good faith. Good faith must concur with the registration. If it would be shown that a buyer was in bad faith, the alleged registration they have made amounted to no registration at all.

4. ID.; ID.; ID.; ID.; A BUYER WHO FAILED TO INQUIRE AND INVESTIGATE AS TO THE RIGHTS OF THOSE IN POSSESSION OF THE LAND SUBJECT OF THE SALE CANNOT CLAIM THAT HE IS A BUYER IN GOOD FAITH.— When a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. *Without making such inquiry, one cannot claim that he is a buyer in good faith.* When a man proposes to buy or deal with realty, his duty is to read the public manuscript, that is, to look and see who is there upon it and what his rights are. A want of caution and diligence, which an honest man of ordinary prudence is accustomed to exercise in making purchases, is in contemplation of law, a want of good faith. The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer in bad faith. x x x [In this case] it is clear that Meridian, through its agent, knew that the subject properties were in possession of persons other than the seller. Instead of investigating the rights and interests of the persons occupying the said lots, however, it chose to just believe that Luis still owned them. Simply, Meridian Realty failed to exercise the due diligence required by law of purchasers in acquiring a piece of land in the possession of person or persons other than the seller.

APPEARANCES OF COUNSEL

Gabriel J. Cañete for petitioners.
Pio S. Fuentes II for Lucila Laborte Soria and Spouses Solutan.
Petronilo B. Flores for Meridian Realty Corp.

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 December 4, 2009 Decision[1] of the Court of Appeals *(CA)*, in CA G.R. CV No. 00351, which

[1] *Rollo*, pp. 51-65. Penned by Associate Justice Rodil V. Zalameda with Associate Justice Amy C. Lazaro-Javier and Associate Justice Samuel H. Gaerlan, concurring.

reversed and set aside the July 30, 2004 Decision[2] of the Regional Trial Court, Branch 8, 7th Judicial Region, Cebu City *(RTC)*, in Civil Case No. CEB-16957, an action for declaration of nullity of documents.

The Facts

Spouses Luis Rosaroso *(Luis)* and Honorata Duazo *(Honorata)* acquired several real properties in Daan Bantayan, Cebu City, including the subject properties. The couple had nine (9) children namely: Hospicio, Arturo, Florita, Lucila, Eduardo, Manuel, Cleofe, Antonio, and Angelica. On April 25, 1952, Honorata died. Later on, Luis married Lourdes Pastor Rosaroso *(Lourdes)*.

On January 16, 1995, a complaint for Declaration of Nullity of Documents with Damages was filed by Luis, as one of the plaintiffs, against his daughter, Lucila R. Soria *(Lucila)*; Lucila's daughter, Laila S. Solutan *(Laila)*; and Meridian Realty Corporation *(Meridian)*. Due to Luis' untimely death, however, an amended complaint was filed on January 6, 1996, with the spouse of Laila, Ham Solutan *(Ham)*; and Luis' second wife, Lourdes, included as defendants.[3]

In the Amended Complaint, it was alleged by petitioners Hospicio D. Rosaroso, Antonio D. Rosaroso *(Antonio)*, Angelica D. Rosaroso *(Angelica)*, and Cleofe R. Labindao *(petitioners)* that on November 4, 1991, Luis, with the full knowledge and consent of his second wife, Lourdes, executed the Deed of Absolute Sale[4] *(First Sale)* covering the properties with Transfer Certificate of Title *(TCT)* No. 31852 (Lot No. 8); TCT. No. 11155 (Lot 19); TCT No. 10885 (Lot No. 22); TCT No. 10886 (Lot No. 23); and Lot Nos. 5665 and 7967, all located at Daanbantayan, Cebu, in their favor.[5]

They also alleged that, despite the fact that the said properties had already been sold to them, respondent Laila, in conspiracy

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[2] *Id.* at 28-49. Penned by Judge Antonio T. Echavez.

[3] *Id.* at 52-53.

[4] Records, pp. 21-24.

[5] *Rollo*, p. 53.

with her mother, Lucila, obtained the Special Power of Attorney *(SPA)*,[6] dated April 3, 1993, from Luis *(First SPA)*; that Luis was then sick, infirm, blind, and of unsound mind; that Lucila and Laila accomplished this by affixing Luis' thumb mark on the SPA which purportedly authorized Laila to sell and convey, among others, Lot Nos. 8, 22 and 23, which had already been sold to them; and that on the strength of another SPA[7] by Luis, dated July 21, 1993 *(Second SPA)*, respondents Laila and Ham mortgaged Lot No. 19 to Vital Lending Investors, Inc. for and in consideration of the amount of ₱150,000.00 with the concurrence of Lourdes.[8]

Petitioners further averred that a second sale took place on August 23, 1994, when the respondents made Luis sign the Deed of Absolute Sale[9] conveying to Meridian three (3) parcels of residential land for ₱960,500.00 *(Second Sale)*; that Meridian was in bad faith when it did not make any inquiry as to who were the occupants and owners of said lots; and that if Meridian had only investigated, it would have been informed as to the true status of the subject properties and would have desisted in pursuing their acquisition.

Petitioners, thus, prayed that they be awarded moral damages, exemplary damages, attorney's fees, actual damages, and litigation expenses and that the two SPAs and the deed of sale in favor of Meridian be declared null and void *ab initio*.[10]

On their part, respondents Lucila and Laila contested the First Sale in favor of petitioners. They submitted that even assuming that it was valid, petitioners were *estopped* from questioning the Second Sale in favor of Meridian because they failed not only in effecting the necessary transfer of the title, but also in annotating their interests on the titles of the questioned

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[6] Records, p. 25.

[7] *Id.* at 130-131.

[8] *Rollo*, pp. 53-54.

[9] Record, pp. 26-28.

[10] *Rollo*, p. 54.

properties. With respect to the assailed SPAs and the deed of absolute sale executed by Luis, they claimed that the documents were valid because he was conscious and of sound mind and body when he executed them. In fact, it was Luis together with his wife who received the check payment issued by Meridian where a big part of it was used to foot his hospital and medical expenses.[11]

Respondent Meridian, in its Answer with Compulsory Counterclaim, averred that Luis was fully aware of the conveyances he made. In fact, Sophia Sanchez *(Sanchez)*, Vice-President of the corporation, personally witnessed Luis affix his thumb mark on the deed of sale in its favor. As to petitioners' contention that Meridian acted in bad faith when it did not endeavor to make some inquiries as to the status of the properties in question, it countered that before purchasing the properties, it checked the titles of the said lots with the Register of Deeds of Cebu and discovered therein that the First Sale purportedly executed in favor of the plaintiffs was not registered with the said Register of Deeds. Finally, it argued that the suit against it was filed in bad faith.[12]

On her part, Lourdes posited that her signature as well as that of Luis appearing on the deed of sale in favor of petitioners, was obtained through fraud, deceit and trickery. She explained that they signed the prepared deed out of pity because petitioners told them that it was necessary for a loan application. In fact, there was no consideration involved in the First Sale. With respect to the Second Sale, she never encouraged the same and neither did she participate in it. It was purely her husband's own volition that the Second Sale materialized. She, however, affirmed that she received Meridian's payment on behalf of her husband who was then bedridden.[13]

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[11] *Id.* at 54-55.

[12] *Id.* at 55.

[13] *Id.* at 55-56.

RTC Ruling

After the case was submitted for decision, the RTC ruled in favor of petitioners. It held that when Luis executed the second deed of sale in favor of Meridian, he was no longer the owner of Lot Nos. 19, 22 and 23 as he had already sold them to his children by his first marriage. In fact, the subject properties had already been delivered to the vendees who had been living there since birth and so had been in actual possession of the said properties. The trial court stated that although the deed of sale was not registered, this fact was not prejudicial to their interest. It was of the view that the actual registration of the deed of sale was not necessary to render a contract valid and effective because where the vendor delivered the possession of the parcel of land to the vendee and no superior rights of third persons had intervened, the efficacy of said deed was not destroyed. In other words, Luis lost his right to dispose of the said properties to Meridian from the time he executed the first deed of sale in favor of petitioners. The same held true with his alleged sale of Lot 8 to Lucila Soria.[14] Specifically, the dispositive portion of the RTC decision reads:

IN VIEW OF THE FOREGOING, the Court finds that a preponderance of evidence exists in favor of the plaintiffs and against the defendants. Judgment is hereby rendered:

a. Declaring that the Special Power of Attorney, Exhibit "K", for the plaintiffs and Exhibit "3" for the defendants null and void including all transactions subsequent thereto and all proceedings arising therefrom;

b. Declaring the Deed of Sale marked as Exhibit "E" valid and binding;

c. Declaring the Deed of Absolute Sale of Three (3) Parcels of Residential Land marked as Exhibit "F" null and void from the beginning;

d. Declaring the Deed of Sale, Exhibit "16" (Solutan) or Exhibit "FF", null and void from the beginning;

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[14] *Id.* at 48.

e. Declaring the vendees named in the Deed of Sale marked as Exhibit "E" to be the lawful, exclusive and absolute owners and possessors of Lots Nos. 8, 19, 22, and 23;

f. Ordering the defendants to pay jointly and severally each plaintiff ₱50,000.00 as moral damages; and

g. Ordering the defendants to pay plaintiffs ₱50,000.00 as attorney's fees; and ₱20,000.00 as litigation expenses.

The crossclaim made by defendant Meridian Realty Corporation against defendants Soria and Solutan is ordered dismissed for lack of sufficient evidentiary basis.

SO ORDERED."[15]

Ruling of the Court of Appeals

On appeal, the CA reversed and set aside the RTC decision. The CA ruled that the first deed of sale in favor of petitioners was void because they failed to prove that they indeed tendered a consideration for the four (4) parcels of land. It relied on the testimony of Lourdes that petitioners did not pay her husband. The price or consideration for the sale was simulated to make it appear that payment had been tendered when in fact no payment was made at all.[16]

With respect to the validity of the Second Sale, the CA stated that it was valid because the documents were notarized and, as such, they enjoyed the presumption of regularity. Although petitioners alleged that Luis was manipulated into signing the SPAs, the CA opined that evidence was wanting in this regard. Dr. Arlene Letigio Pesquira, the attending physician of Luis, testified that while the latter was physically infirmed, he was of sound mind when he executed the first SPA.[17]

With regard to petitioners' assertion that the First SPA was revoked by Luis when he executed the affidavit, dated November

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[15] *Id.* at 49.

[16] *Id.* at 60.

[17] *Id.* at 61.

24, 1994, the CA ruled that the Second Sale remained valid. The Second Sale was transacted on August 23, 1994, before the First SPA was revoked. In other words, when the Second Sale was consummated, the First SPA was still valid and subsisting. Thus, "Meridian had all the reasons to rely on the said SPA during the time of its validity until the time of its actual filing with the Register of Deeds considering that constructive notice of the revocation of the SPA only came into effect upon the filing [of the] Adverse Claim and the aforementioned Letters addressed to the Register of Deeds on 17 December 1994 and 25 November 1994, respectively, informing the Register of Deeds of the revocation of the first SPA."[18] Moreover, the CA observed that the affidavit revoking the first SPA was also revoked by Luis on December 12, 1994.[19]

Furthermore, although Luis revoked the First SPA, he did not revoke the Second SPA which authorized respondent Laila to sell, convey and mortgage, among others, the property covered by TCT T-11155 (Lot No. 19). The CA opined that had it been the intention of Luis to discredit the Second Sale, he should have revoked not only the First SPA but also the Second SPA. The latter being valid, all transactions emanating from it, particularly the mortgage of Lot 19, its subsequent redemption and its second sale, were valid.[20] Thus, the CA disposed in this wise:

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 30 July 2004 is hereby **REVERSED AND SET ASIDE**, and in its stead a new decision is hereby rendered:

1. DECLARING the Special Power of Attorney, dated 21 July 1993, as valid;
2. DECLARING the Special Power of Attorney, dated 03 April 1993, as valid up to the time of its revocation on 24 November 1994;

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[18] *Id.* at 62.

[19] *Id.*

[20] *Id.* at 63.

3. DECLARING the Deed of Absolute [sale], dated 04 November 1991, as ineffective and without any force and effect;

4. DECLARING the Deed of Absolute Sale of Three (3) Parcels of Residential Land, dated 23 August 1994, valid and binding from the very beginning;

5. DECLARING the Deed of Absolute Sale, dated 27 September 1994, also valid and binding from the very beginning;

6. ORDERING the substituted plaintiffs to pay jointly and severally the defendant-appellant Meridian Realty Corporation the sum of Php100,000.00 as moral damages, Php100,000.00 as attorney's fee and Php100,000.00 as litigation expenses; and

7. ORDERING the substituted plaintiffs to pay jointly and severally the defendant-appellants Leila Solutan *et al*., the sum of Php50,000.00 as moral damages.

SO ORDERED.[21]

Petitioners filed a motion for reconsideration, but it was denied in the CA Resolution,[22] dated November 18, 2010. Consequently, they filed the present petition with the following

ASSIGNMENT OF ERRORS

I.

THE HONORABLE COURT OF APPEALS (19TH DIVISION) GRAVELY ERRED WHEN IT DECLARED AS VOID THE FIRST SALE EXECUTED BY THE LATE LUIS ROSAROSO IN FAVOR OF HIS CHILDREN OF HIS FIRST MARRIAGE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT SUSTAINING AND AFFIRMING THE RULING OF THE TRIAL COURT DECLARING THE MERIDIAN REALTY CORPORATION A BUYER IN BAD FAITH, DESPITE THE

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

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

TRIAL COURT'S FINDINGS THAT THE DEED OF SALE (First Sale), IS GENUINE AND HAD FULLY COMPLIED WITH ALL THE LEGAL FORMALITIES.

III.

THE HONORABLE COURT OF APPEALS FURTHER ERRED IN NOT HOLDING THE SALE (DATED 27 SEPTEMBER 1994), NULL AND VOID FROM THE VERY BEGINNING SINCE LUIS ROSAROSO ON NOVEMBER 4, 1991 WAS NO LONGER THE OWNER OF LOTS 8, 19, 22 AND 23 AS HE HAD EARLIER DISPOSED SAID LOTS IN FAVOR OF THE CHILDREN OF HIS (LUIS ROSAROSO) FIRST MARRIAGE.[23]

Petitioners argue that the second deed of sale was null and void because Luis could not have validly transferred the ownership of the subject properties to Meridian, he being no longer the owner after selling them to his children. No less than Atty. William Boco, the lawyer who notarized the first deed of sale, appeared and testified in court that the said deed was the one he notarized and that Luis and his second wife, Lourdes, signed the same before him. He also identified the signatures of the subscribing witnesses.[24] Thus, they invoke the finding of the RTC which wrote:

> In the case of *Heirs of Joaquin Teves, Ricardo Teves versus Court of Appeals, et al.*, G.R. No. 109963, October 13, 1999, the Supreme Court held that a public document executed [with] all the legal formalities is entitled to a presumption of truth as to the recitals contained therein. In order to overthrow a certificate of a notary public to the effect that a grantor executed a certain document and acknowledged the fact of its execution before him, mere preponderance of evidence will not suffice. Rather, the evidence must (be) so clear, strong and convincing as to exclude all reasonable dispute as to the falsity of the certificate. When the evidence is conflicting, the certificate will be upheld x x x .
>
> A notarial document is by law entitled to full faith and credit upon its face. (*Ramirez vs. Ner*, 21 SCRA 207). As such it … must

[23] *Id* at 15-16.

[24] *Id.* at 18.

be sustained in full force and effect so long as he who impugns it shall not have presented strong, complete and conclusive proof of its falsity or nullity on account of some flaw or defect provided against by law (*Robinson vs. Villafuerte*, 18 Phil. 171, 189-190). [25]

Furthermore, petitioners aver that it was erroneous for the CA to say that the records of the case were bereft of evidence that they paid the price of the lots sold to them. In fact, a perusal of the records would reveal that during the cross-examination of Antonio Rosaroso, when asked if there was a monetary consideration, he testified that they indeed paid their father and their payment helped him sustain his daily needs.[26]

Petitioners also assert that Meridian was a buyer in bad faith because when its representative visited the site, she did not make the necessary inquiries. The fact that there were already houses on the said lots should have put Meridian on its guard and, for said reason, should have made inquiries as to who owned those houses and what their rights were over the same.[27]

Meridian's assertion that the Second Sale was registered in the Register of Deeds was a falsity. The subject titles, namely: TCT No. 11155 for Lot 19, TCT No. 10885 for Lot 22, and TCT No. 10886 for Lot 23 were free from any annotation of the alleged sale.[28]

After an assiduous assessment of the records, the Court finds for the petitioners.

The First Deed Of Sale Was Valid

The fact that the first deed of sale was executed, conveying the subject properties in favor of petitioners, was never contested by the respondents. What they vehemently insist, though, is that the said sale was simulated because the purported sale was made without a valid consideration.

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[25] *Id.* at 47.

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

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

[28] *Id.* at 25.

Under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) *there was sufficient consideration for a contract*.[29] These presumptions operate against an adversary who has not introduced proof to rebut them. They create the necessity of presenting evidence to rebut the *prima facie* case they created, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is but, by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.[30]

In this case, the respondents failed to trounce the said presumption. Aside from their bare allegation that the sale was made without a consideration, they failed to supply clear and convincing evidence to back up this claim. It is elementary in procedural law that bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court.[31]

The CA decision ran counter to this established rule regarding disputable presumption. It relied heavily on the account of Lourdes who testified that the children of Luis approached him and convinced him to sign the deed of sale, explaining that it was necessary for a loan application, but they did not pay the purchase price for the subject properties.[32] This testimony, however, is self-serving and would not amount to a clear and convincing evidence required by law to dispute the said presumption. As such, the presumption that there was sufficient consideration will not be disturbed.

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[29] *Surtida v. Rural Bank of Malinao (Albay), Inc.*, G.R. No. 170563, December 20, 2006, 511 SCRA 507, 519.

[30] *Id.* at 519-520.

[31] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 469.

[32] *Rollo*, p. 60.

Granting that there was no delivery of the consideration, the seller would have no right to sell again what he no longer owned. His remedy would be to rescind the sale for failure on the part of the buyer to perform his part of their obligation pursuant to Article 1191 of the New Civil Code. In the case of *Clara M. Balatbat v. Court Of Appeals and Spouses Jose Repuyan and Aurora Repuyan*,[33] it was written:

> The **failure of the buyer to make good the price does not, in law, cause the ownership to revest to the seller** unless the bilateral contract of sale is first rescinded or resolved pursuant to Article 1191 of the New Civil Code. **Non-payment only creates a right to demand the fulfillment of the obligation or to rescind the contract.** [Emphases supplied]

Meridian is Not a Buyer in Good Faith

Respondents Meridian and Lucila argue that, granting that the First Sale was valid, the properties belong to them as they acquired these in good faith and had them first recorded in the Registry of Property, as they were unaware of the First Sale.[34]

Again, the Court is not persuaded.

The fact that Meridian had them first registered will not help its cause. In case of double sale, Article 1544 of the Civil Code provides:

> ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof; to the person who presents the oldest title, provided there is good faith.

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[33] G.R. No. 109410, August 28, 1996, 329 Phil. 870.

[34] *Id.* at 116.

Otherwise stated, ownership of an immovable property which is the subject of a double sale shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. The requirement of the law then is two-fold: acquisition in good faith and registration in good faith. Good faith must concur with the registration. If it would be shown that a buyer was in bad faith, the alleged registration they have made amounted to no registration at all.

The principle of *primus tempore, potior jure* (first in time, stronger in right) gains greater significance in case of a **double sale** of immovable property. When the thing sold twice is an immovable, the one who acquires it and first records it in the Registry of Property, both made in good faith, shall be deemed the owner. Verily, the **act of registration must be coupled with good faith— that is, the registrant must have no knowledge of the defect or lack of title of his vendor or must not have been aware of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.)**[35] [Emphases and underlining supplied]

When a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. *Without making such inquiry, one cannot claim that he is a buyer in good faith.* When a man proposes to buy or deal with realty, his duty is to read the public manuscript, that is, to look and see who is there upon it and what his rights are. A want of caution and diligence, which an honest man of ordinary prudence is accustomed to exercise in making purchases, is in contemplation of law, a want of good faith. The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer

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[35] *San Lorenzo Development Corporation v. Court of Appeals*, 490 Phil. 7, 23 (2005).

in bad faith.[36] In the case of *Spouses Sarmiento v. Court of Appeals*,[37] it was written:

> Verily, 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. Thus, the general rule is that a purchaser may be considered a purchaser in good faith when he has examined the latest certificate of title. An exception to this rule is when there exist important facts that would create suspicion in an otherwise reasonable man to go beyond the present title and to investigate those that preceded it. Thus, it has been said *that a person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. As we have held:*
>
> > The failure of appellees to take the ordinary precautions which a prudent man would have taken under the circumstances, specially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith.
> >
> > In this connection, it has been held that where, as in this case, the land sold is in the possession of a person other than the vendor, the purchaser is required to go beyond the certificate of title to ma[k]e inquiries concerning the rights of the actual possessor. Failure to do so would make him a purchaser in bad faith. (Citations omitted).
> >
> > One who purchases real property which is in the actual possession of another should, at least make some inquiry concerning the right of those in possession. The actual possession by other than the vendor should, at least put the purchaser upon inquiry. He can scarely, in the absence of such inquiry, be regarded as a bona fide purchaser as against such possessors. (Emphases supplied)

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[36] *Id.*

[37] 507 Phil. 101,127-129 (2005).

Prescinding from the foregoing, the fact that private respondent RRC did not investigate the Sarmiento spouses' claim over the subject land despite its knowledge that Pedro Ogsiner, as their overseer, was in actual possession thereof means that it was not an innocent purchaser for value upon said land. Article 524 of the Civil Code directs that possession may be exercised in one's name or in that of another. In herein case, Pedro Ogsiner had informed RRC that he was occupying the subject land on behalf of the Sarmiento spouses. **Being a corporation engaged in the business of buying and selling real estate**, it was **gross negligence** on its part to merely rely on Mr. Puzon's assurance that the occupants of the property were mere squatters considering the invaluable information it acquired from Pedro Ogsiner and considering further that it had the means and the opportunity to investigate for itself the accuracy of such information. [Emphases supplied]

In another case, it was held that if a vendee in a double sale registers the sale after he has acquired knowledge of a previous sale, the registration constitutes a registration in bad faith and does not confer upon him any right. *If the registration is done in bad faith, it is as if there is no registration at all, and the buyer who has first taken possession of the property in good faith shall be preferred.*[38]

In the case at bench, the fact that the subject properties were already in the possession of persons other than Luis was never disputed. Sanchez, representative and witness for Meridian, even testified as follows:

x x x; that she together with the two agents, defendant Laila Solutan and Corazon Lua, the president of Meridian Realty Corporation, went immediately to site of the lots; that the agents brought with them the three titles of the lots and Laila Solutan brought with her a special power of attorney executed by Luis B. Rosaroso in her favor but she went instead directly to Luis Rosaroso to be sure; that the lots were pointed to them and she saw that there were houses on it but she did not have any interest of the houses because her interest was on the lots; that Luis Rosaroso said that

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[38] *San Lorenzo Development Corporation v. Court of Appeals*, *supra* note 35, citing *Abarquez v. Court of Appeals*, G.R. No. 95843, September 2, 1992, 213 SCRA 415.

the houses belonged to him; that he owns the property and that he will sell the same because he is very sickly and he wanted to buy medicines; that she requested someone to check the records of the lots in the Register of Deeds; that one of the titles was mortgaged and she told them to redeem the mortgage because the corporation will buy the property; that the registered owner of the lots was Luis Rosaroso; that in more or less three months, the encumbrance was cancelled and she told the prospective sellers to prepare the deed of sale; that there were no encumbrances or liens in the title; that when the deed of absolute sale was prepared it was signed by the vendor Luis Rosaroso in their house in Opra x x x.[39] (Underscoring supplied)

From the above testimony, it is clear that Meridian, through its agent, knew that the subject properties were in possession of persons other than the seller. Instead of investigating the rights and interests of the persons occupying the said lots, however, it chose to just believe that Luis still owned them. Simply, Meridian Realty failed to exercise the due diligence required by law of purchasers in acquiring a piece of land in the possession of person or persons other than the seller.

In this regard, great weight is accorded to the findings of fact of the RTC. Basic is the rule that the trial court is in a better position to examine real evidence as well as to observe the demeanor of witnesses who testify in the case.[40]

WHEREFORE, the petition is **GRANTED**. The December 4, 2009 Decision and the November 18, 2010 Resolution of the Court of Appeals, in CA-G.R. CV No. 00351, are **REVERSED** and **SET ASIDE**. The July 30, 2004 Decision of the Regional Trial Court, Branch 8, 7th Judicial Region, Cebu City, in Civil Case No. CEB-16957, is hereby **REINSTATED**.

SO ORDERED.

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

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[39] *Rollo*, p. 44.

[40] *Ferrer v. Court of Appeals*, G.R. No. 98182, March 1, 1993, 219 SCRA 302, 307.

SECOND DIVISION

[G.R. No. 195777. June 19, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERDINAND CASTRO *Y* LAPENA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ELEMENTS OF ILLEGAL SALE OF *SHABU*, PROVEN.— To secure a conviction for illegal sale of *shabu*, the following elements must be present: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing." The prosecution must show that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* as evidence. We find these present in the case at bar. PO1 Mapula testified that accused-appellant, not being authorized by law, sold a sachet of shabu to PO1 Mapula during a buy-bust operation; that he was introduced by the informant as the person who wanted to buy *shabu*; that he told accused-appellant that he wanted to buy a hundred peso-worth of *shabu*; that accused-appellant asked for and received the marked money; that accused-appellant thereafter handed PO1 Mapula the substance, which later tested for *shabu*. The testimony of PO1 Mapula was corroborated on material points by PO1 Familara. Also, the prosecution was able to present in court the item subject of the sale including the marked money tendered to accused-appellant.

2. ID.; ID.; ID.; PENALTY.— [T]he law provides that the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (₱500,000.00) Pesos to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person found guilty of the crime of illegal sale of *shabu*. x x x The Indeterminate Sentence Law, in turn, provides that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall

not be less than the minimum term prescribed by the same. Accordingly, with respect to Criminal Case No. 12472-D for illegal sale of *shabu*, the Court of Appeals correctly affirmed the penalty of life imprisonment imposed by the trial court. The fine of Five Hundred Thousand Pesos (₱500,000.00) is also within the range of the fine prescribed under Section 5 of R.A. 9165.

3. ID.; ID.; ELEMENTS OF ILLEGAL POSSESSION OF *SHABU*, SUFFICIENTLY ESTABLISHED.— The presence of the elements of the crime of illegal possession of *shabu* has likewise been sufficiently established, to wit: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug." When asked to empty his pocket, accused-appellant produced therefrom two (2) more transparent plastic sachets containing white substance, which also tested positive for *shabu*. Such possession was likewise unauthorized by law.

4. ID.; ID.; ID.; TRIAL COURT'S IMPOSITION OF PENALTY, MODIFIED.— The crime of illegal possession of *shabu* weighing less than five (5) grams is punishable by imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). x x x The modification of the penalty imposed in Criminal Case No. 12473-D for illegal possession of *shabu* from *six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum* to *imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum, and payment of a fine of three hundred thousand pesos (₱300,000.00)* is likewise in order.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— [W]e have said, time and again, that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings." Also, "the determination by

the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect." We find nothing in the records that would justify a deviation from the findings of the trial court and the appellate court. Supported by evidence, the arresting officers rendered a straightforward narration of the details of the operation relative to the following: (1) the receipt of an information as to the illegal drugs activity in the area where accused-appellant was apprehended; (2) the organization of the buy-bust team; (3) the preparations made for the purpose; (4) the entrapment itself leading to the arrest of accused-appellant; (5) the marking of the seized items; and (6) the eventual delivery of the specimens to the crime laboratory. x x x Necessarily, the finding of the credibility of the testimonies of the arresting officers should prevail over the testimonies of the accused-appellant and his friend-witnesses especially so when their respective testimonies were inconsistent on material points.

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.*:

We review the conviction[1] of accused-appellant for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165).[2] The Court of Appeals affirmed with

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[1] Records, pp. 97-103. Decision dated 11 August 2004. Penned by Judge Pablito M. Rojas, Regional Trial Court, Branch 70, Pasig City.

CA rollo, pp. 83-99. Decision dated 28 May 2010. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

[2] Section 5, Article II, R.A. 9165 provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled*

modification[3] the trial court's decision finding him guilty beyond reasonable doubt of the crimes charged, and denied the motion for reconsideration.[4]

The Facts

On 14 July 2003, accused-appellant pleaded "not guilty" to the charges of illegal sale and illegal possession of methamphetamine hydrochloride (*shabu*)[5] before the Regional Trial Court of Pasig City.

Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

xxx xxx xxx.

Section 11, Article II, R.A. 9165, on the other hand, provides:

Section 11. *Possession of Dangerous Drugs.* — x x x

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*," or other dangerous drugs x x x.

[3] *CA rollo*, pp. 83-99. Decision dated 28 May 2010.

[4] *Id.* at 117-118. Resolution dated 27 August 2010. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

[5] The accusatory portions of the separate Informations dated 30 May 2003 and 9 May 2003, respectively, read:

Criminal Case No. 12472-D:

On or about May 8, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give

During pre-trial, the presentation of the prosecution witness, Forensic Chemist Senior Police Inspector Annalee R. Forro (Sr. Police Inspector Forro), was dispensed with[6] after the parties stipulated on the following:

1. The due execution and genuineness of the Request for Laboratory Examination dated May 8, 2003 x x x and the stamp showing receipt thereof by the PNP Crime Laboratory x x x;

2. The due execution and genuineness, as well as the truth of the contents, of [Chemistry] Report No. D-849-03E issued by Forensic Chemist Police Inspector Annalee R. Forro of the PNP Crime Laboratory x x x, the finding and conclusion as appearing on the report x x x and the signature of the forensic chemist x x x[;]

3. The existence of the plastic sachets, but not their source or origin, the contents of which was the subject of the Request for Laboratory Examination, x x x and x x x (the plastic sachets).[7]

On trial, the following witnesses were presented: PO1 Allan Mapula[8] (PO1 Mapula) and PO1 Michael Familara[9] (PO1

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away to PO1 Allan Mapula, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing three centigrams (0.03 gram) of white crystalline substance, which was found positive x x x for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Criminal Case No. 12473-D:

On or about May 8, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets containing three centigrams (0.03 gram) and five centigrams (0.05 gram) of white crystalline substance, which were found positive x x x for methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the said law.

Records, pp. 1 and 20.

[6] *Id.* at 54. Pre-Trial Order dated 8 September 2003.

[7] *Id.* at 53-54.

[8] TSN, 8 September 2003.

[9] TSNs, 3 November 2003 and 19 November 2003.

Familara), both of the Station Drug Enforcement Unit, Eastern Police District, Pasig City Police Station – for the prosecution; and the accused-appellant,[10] Arturo Millare[11] (Millare) and Romeo dela Cruz[12] (dela Cruz) – for the defense.

The version of the prosecution was summarized by the Court of Appeals in the following manner:

On May 7, 2003, while on duty at the Drug Enforcement Unit (DEU) of the Pasig City Police Station, [PO1 Familara] received a telephone call from a confidential informant who reported that a certain "Fredie" (later identified as appellant) was selling illegal drugs at Kalamansi Street, Napiko, Barangay Manggahan, Pasig City.

PO1 Familara relayed the information to his superior, SPO4 Danilo Tuano. Initially, a buy-bust team, composed of PO3 Carlo Luna as team leader, PO1 Familara, and [PO1 Mapula,] as poseur-buyer was organized to apprehend appellant. The team coordinated with the Philippine Drugs Enforcement Agency (PDEA) and the buy-bust money, a ₱100 denomination bill, was marked with the initials "AVM."

The team proceeded to Kalamansi Street, x x x around midnight of the same day. Thereat, the informant approached the members of the team. He then accompanied PO1 Mapula to appellant. In their meeting, the [i]nformant introduced PO1 Mapula to appellant as a buyer of illegal drugs.

Appellant asked PO1 Mapula how much *shabu* he wanted to buy, to which the latter replied one hundred Pesos (₱100.00). PO1 Mapula handed appellant the buy-bust money. In return, appellant gave PO1 Mapula one plastic sachet containing white crystalline substance which he took from his right pocket.

PO1 Mapula put his cap on, which was the pre-arranged signal to the other members of the buy-bust team that the sale has been consummated. After introducing himself as a police officer, he arrested appellant. The other team members surfaced and converged on the

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[10] TSN, 14 January 2004.

[11] TSN, 10 March 2004.

[12] TSN, 23 June 2004.

scene. PO1 Familara frisked appellant and asked him to empty his pockets. Two pieces of transparent plastic sachets and the buy-bust money were found in his possession and confiscated. While at the scene of the buy-bust operation, PO1 Mapula marked the sachet of *shabu* which was the subject of the sale with "AVM/FLC 05/08/03", which stood for PO1 Mapula and appellant's initials. The other two plastic sachets retrieved from appellant's pocket were marked by PO1 Familara with "MRF" and "FLC," which stood for Michael R. Familara and Ferdinand L. Castro's initials.

Appellant was brought to the police station for further questioning. PO1 Mapula personally brought the three seized plastic sachets containing white crystalline substance to the Philippine National Police Crime Laboratory for examination together with the written Request for Laboratory Examination. The qualitative tests conducted by Forensic Chemist, Sr. Police Inspector x x x (Forro) on the contents of the sachets proved positive for methamphetamine hydrochloride or *shabu*.[13]

The defense gave a different version of the story. Thus:

On May 7, 2003, around 11 in the evening, appellant was engaged in a drinking spree with his friends, Arthur [Millare] and Luloy [dela Cruz], in front of his house at 1170 Kalamansi Street, Dapigo, Pasig City. Past midnight, he excused himself from the group to prepare for his trip to Nueva Ecija the following morning.

When he was about to enter the gate of his house, four persons suddenly confronted him. Two of them, who were identified as PO1 Mapula and PO1 Familara grabbed him. He asked why he was being arrested, but did not get a reply. His name, age and address were then taken by the police officers. He was thereafter charged with possession and sale of illegal drugs.

[Millare] corroborated appellant's testimony. He stated that he saw appellant being pushed toward his house by four men who had just alighted from a white car without a plate number. He saw appellant being handcuffed. He shouted and asked, *Pare, anong kasalanan mo, bakit ka nakaposas?"* but received no response. He went to inform appellant's mother about the incident. They rushed to the

[13] CA *rollo,* pp. 87-89. Decision dated 28 May 2010 of the Court of Appeals.

scene of the incident but the four officers had already left with appellant.

[Dela Cruz] alleged that he was the drinking buddy of appellant at the time he was arrested and confirmed the foregoing defense witnesses' testimonies.[14]

After trial, the court convicted accused-appellant of both crimes.[15]

On appeal, the Court of Appeals affirmed[16] the decision of the trial court but modified the penalty imposed for illegal

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[14] *Id.* at 89-91.

[15] Records, pp. 97-103. Decision dated 11 August 2004.

The *fallo* reads:

WHEREFORE, premises considered, accused **FERDINAND CASTRO *y* LAPENA** is hereby found **GUILTY** [b]eyond [r]easonable [d]oubt of the offenses charged and is hereby sentenced, as follows:

1. For Violation of Section 5, Article II of Republic Act 9165 (Criminal Case No. 1272-D), accused is hereby sentenced to Life Imprisonment and to pay a Fine of Five Hundred Thousand Pesos (PHP 500,000.00); and

2. For Violation of Section 11, Article II of Republic Act 9165 (Criminal Case No. 12473-D), applying the Indeterminate Sentence Law, accused is hereby sentenced to Six (6) Years and One (1) Day of *prision mayor* as minimum, to Twelve (12) Years and One (1) Day of *reclusion* [*t*]*emporal*, as maximum provided that accused shall be credited with the full period of his preventive imprisonment.

Pursuant to Section 20 of Republic Act 9165, the amount of One Hundred Pesos (PHP 100.00) recovered from the accused representing the proceeds from the illegal sale of the plastic sachet of *shabu* is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody of the plastic sachets of *shabu*, subject of the instant case, for proper disposition.

Costs against the accused.

[16] CA *rollo*, pp. 83-99. Decision dated 28 May 2010.

The modification reads:

2. For Violation of Section 11, Article II of Republic Act 9165 (Criminal Case No. 12473-D), applying the Indeterminate Sentence Law, appellant is sentenced to imprisonment of *Twelve (12) Years and One (1) Day as*

possession of *shabu* from *six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum* to *imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum, and payment of a fine of three hundred thousand pesos (₱300,000.00)*.

The motion for reconsideration of the decision was likewise denied by the Court of Appeals.[17]

Before this Court, both the prosecution and the defense opted not to file their respective supplemental briefs. We, thus, refer to their briefs and re-examine the position of the accused-appellant that: (1) the equipoise rule should have been applied in his favor inasmuch as the testimonies of the witnesses for the prosecution and the defense are all self-serving; (2) the warrantless arrest is invalid; and (3) the seized item proceeding from such arrest is inadmissible in evidence.

Our Ruling

We sustain the conviction of accused-appellant.

To secure a conviction for illegal sale of *shabu*, the following elements must be present: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing."[18] The prosecution must show that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* as evidence.[19]

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minimum, to Fourteen (14) Years and Eight (8) months as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00) provided that appellant shall be credited with the full period of his preventive imprisonment.

[17] *Id.* at 117-118. Resolution dated 27 August 2010.

[18] *People v. Bautista*, G.R. No. 177320, 22 February 2012, 666 SCRA 518, 529.

[19] *Id.* at 530 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

We find these present in the case at bar.

PO1 Mapula testified that accused-appellant, not being authorized by law, sold a sachet of *shabu* to PO1 Mapula during a buy-bust operation; that he was introduced by the informant as the person who wanted to buy *shabu*; that he told accused-appellant that he wanted to buy a hundred peso-worth of *shabu*; that accused-appellant asked for and received the marked money; that accused-appellant thereafter handed PO1 Mapula the substance, which later tested for *shabu*.[20] The testimony of PO1

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[20] TSN, 8 September 2003, pp. 14-16.

The testimony of PO1 Mapula reads, in part:

Q: And when you reached Kalamansi Street, what happened next, if any?
A: While we were walking, he pointed to me this *alias* "Fredie", who was standing by the side walk, sir.
Q: And after pointing to you Fredie who was standing by the sidewalk, what did you do, if any?
A: When we were already near Fredie, he told me to just wait there and he will be the one to approach Fredie, sir.
Q: Did you in fact, approached Fredie?
A: Yes, sir.
Q: What happened after?
A: I saw them talking and after a while, he waived his hand at me to signal that I should approached them, sir.
Q: And did you approached (sic) them as signaled?
A: Yes, sir.
Q: And when you were already with them, what happened next, if any?
A: I was introduced by the informant as the one who would buy *shabu*, sir.
Q: And after introduction, what happened next?
A: *Alias* "Fredie" asked me how much will I buy, sir.
Q: What was your response?
A: I told him, "*pare, piso lang,*" sir.
Q: What do you mean by "*piso lang*"?
A: One Hundred Peso worth of *shabu*, sir.
Q: And what did Fredie do when you said you are going to buy a *shabu* worth Php 100.00?
A: He asked for the money, sir.
Q: And did you hand it over to him?

Mapula was corroborated on material points by PO1 Familara.[21] Also, the prosecution was able to present in court the item subject of the sale including the marked money tendered to accused-appellant.

The presence of the elements of the crime of illegal possession of *shabu* has likewise been sufficiently established, to wit: "(a) the accused [was] in possession of an item or object that is

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A: Yes, sir, I did.

Q: What happened to the *shabu* that you are going to buy?

A: After he has taken the buy-bust money, he took out from his right pocket the *shabu*, sir.

Q: After taking out from his pocket, what did you do, if any?

A: He handed to me the *shabu*, sir.

[21] TSN, 3 November 2003, pp. 12-15.

The testimony of PO1 Familara reads, in part:

Q: Okay. What happened next?

A: Upon reaching half-way of [K]alamansi [S]treet, we noticed that PO1 Mapula stopped, so I together with my companion PO3 Carlo Luna also stopped, sir.

Q: And when Mapula stopped, what happened next?

A: I looked at PO1 Allan Mapula and the confidential informant and I noticed that the confidential informant went near the parlor, sir.

Q: And when Mapula and the confidential informant went near the parlor, what happened next?

A: After a while, the confidential informant called Mapula and they conversed with *alias* Freddie, sir.

Q: Who conversed with *alias* Freddie?

A: I saw the confidential informant and Freddie talking while PO1 Allan Mapula was at the back, sir.

Q: And what happened next, if any?

A: I saw Allan Mapula handed money, sir.

Q: [T]o whom?

A: To *Alias* Freddie, sir.

Q: And after that, what happened next?

A: In return, something was also handed to PO1 Allan Mapula, sir.

Q: Who handed that something to Mapula?

A: *Alias* Freddie, sir.

identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."[22] When asked to empty his pocket, accused-appellant produced therefrom two (2) more transparent plastic sachets containing white substance, which also tested positive for *shabu*. Such possession was likewise unauthorized by law.

The defense posits that the equipoise rule should have been applied in his favor inasmuch as the testimonies of the witnesses for the prosecution and the defense are all self-serving.

We cannot agree. The equipoise rule does not apply because the testimonies of the prosecution witnesses are, in fact, credible based on settled legal principles and doctrines applicable to the particular factual circumstances of the case.

Thus, we have said, time and again, that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings."[23] Also, "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."[24]

We find nothing in the records that would justify a deviation from the findings of the trial court and the appellate court. Supported by evidence, the arresting officers rendered a straightforward narration of the details of the operation relative

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[22] *People v. Bautista, supra* note 18 at 530 citing *People v. Naquita, supra*.

[23] *People v. Presas*, G.R. No. 182525, 2 March 2011, 644 SCRA 443, 449 citing *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 614 SCRA 202, further citing *People v. Julian-Fernandez*, 423 Phil. 895, 910; 372 SCRA 608, 622 (2001).

[24] *People v. Sabadlab*, G.R. No. 186392, 18 January 2012, 663 SCRA 426, 440-441 citing *People v. Mayingque*, G.R. No. 179709, 6 July 2010, 624 SCRA 123, 140.

to the following: (1) the receipt of an information as to the illegal drugs activity in the area where accused-appellant was apprehended; (2) the organization of the buy-bust team; (3) the preparations made for the purpose; (4) the entrapment itself leading to the arrest of accused-appellant; (5) the marking of the seized items; and (6) the eventual delivery of the specimens to the crime laboratory.

Neither did the defense prove that there was ill-motive or bad faith on the part of the team to falsely impute upon him the commission of these grave offenses.[25] The doctrine of presumption of regularity in the performance of official duty, therefore, applies. As explained in *People v. Tion*:[26]

> x x x Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit. **Settled is the rule 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 or deviation from the**

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[25] TSN, 14 January 2004, p. 20.

The accused testified in the following manner:

COURT –

> By the way, how long have you known [Familara] and Mapula before that incident when you were arrested?

A – I only came to know them at the police station, Your Honor.

COURT –

> So you did not know these two (2) police officers who arrested you before you were arrested?

A – No, Your Honor.

COURT –

> You do not know of any reason why they would arrest you because you are claiming that you did not commit any violation of the drugs act?

A – None, Your Honor.

[26] G.R. No. 172092, 16 December 2009, 608 SCRA 299.

regular performance of their duties. The records do not show any allegation of improper motive on the part of the buy-bust team. Thus, the presumption of regularity in the performance of duties of the police officers must be upheld.[27] *(Citations omitted; emphasis supplied)*

Necessarily, the finding of the credibility of the testimonies of the arresting officers should prevail over the testimonies of the accused-appellant and his friend-witnesses especially so when their respective testimonies were inconsistent on material points.

Witness Millare testified that upon peeping through the window and seeing accused-appellant in handcuffs, he shouted, "*Pare, anong kasalanan mo, bakit ka nakaposas?*"[28] On the other hand, dela Cruz testified that Millare was upstairs when the latter shouted "*Pare, ano ba 'yang nangyayari* ***d'yan sa baba*** *at bakit ka hinuhuli?*"[29]

Even assuming that these were not substantial enough to doubt the credibility of the testimonies of the defense witnesses, we cannot simply disregard the contradicting testimonies of the accused-appellant on one hand and his witnesses on the other as to the place where the arrest was made.

From the context of the testimony of accused-appellant on cross-examination, he was arrested outside his house in front of his drinking buddies Millare and dela Cruz. Pertinent portions of the transcript of stenographic notes read:

Q - What were you exactly doing when the police officers arrived and grabbed you?

A - I was on my way home, I was actually closing the gate, sir.

Q - Do I take it to mean that you were already alone, [M]r. Witness?

A - No, sir **in front of me were my two (2) friends**, sir.

xxx xxx xxx

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[27] *Id.* at 316-317.

[28] TSN, 10 March 2004, p. 8.

[29] TSN, 23 June 2004, p. 11 (Emphasis supplied).

Q - If I remember it clearly, you said that you have a live-in partner?
A - Yes, sir.

Q - **Was she present at the time of the arrest**?
A - **She was inside our house, sir**.

Q - **Did she see what happened?**
A - **When I was already handcuffed, yes, sir**. (Emphasis supplied)[30]

Accused-appellant's two (2) witnesses, on the other hand, implied clearly that the arrest was made inside the house considering that the arresting officers followed accused-appellant inside the house and there they saw, upon peeping through the window, that their friend was already handcuffed.

In *People v. Concepcion*,[31] the Court had the occasion to rule on the credibility of the witnesses with two conflicting statements on the place of arrest. It held:

> The testimony of defense witness Julieta dela Rosa does not convince us. As the wife of appellant Alfredo and sister-in-law of appellant Henry, we find her not to be credible. Her testimony is suspect and unsubstantiated. In her direct testimony, she said her husband, appellant Alfredo, was outside their house with his friends. However, such statement was belied by Alfredo himself who said he was inside his house when he was allegedly arrested by members of the PDEA. Such inconsistency as to where appellant Alfredo was when the alleged unlawful arrest was made, further diminishes the credibility of the defense witnesses.[32]

Further, in *Aurelio v. People*,[33] the Court discussed the weight given to the testimonies of a long-time neighbor and a sister, who rendered contradicting statements, *viz*:

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[30] TSN, 14 January 2004, pp. 15-18.

[31] G.R. No. 178876, 27 June 2008, 556 SCRA 421.

[32] *Id.* at 444.

[33] G.R. No. 174980, 31August 2011, 656 SCRA 464.

The testimonies of the petitioner's witnesses cannot be given more weight than the testimonies of the prosecution witnesses. Teresita is the sister of the petitioner while Julieta has been his neighbor for the past 10 years. Thus, their testimonies are necessarily suspect, considering they are petitioner's sibling and friend respectively. The testimonies of Julieta and Teresita even contradict each other as Teresita declared that five malefactors entered their home while Julieta stated that only two men went with petitioner inside his house. This inconsistency further diminishes the credibility of petitioner's witnesses.[34]

In its Motion for Reconsideration of the Decision of 28 May 2010, the defense further argued that the prosecution failed to prove the unbroken chain of custody of the drugs seized.

We are not convinced. The Court of Appeals correctly ratiocinated, and we quote:

The identity of the sachets of *shabu* confiscated and the continuous chain of custody was established by the prosecution. An adequate foundation establishing a continuous chain of custody is said to have been established if the State accounts for the evidence at each stage from its acquisition to its testing, and to its introduction at trial. In this case, it was shown that after the three sachets of *shabu* were confiscated from appellant, they were marked by PO1 Mapula and PO1 Familara. At the police station, the seized drugs were the subject of a Request for Examination by SPO4 Danilo M. Tuano. Said drugs were then personally delivered by PO1 Mapula to the PNP Crime Laboratory, at the Eastern Police District Crime Laboratory. Subsequently, qualitative tests were conducted and the test results, presented in evidence confirmed that the specimen contained *shabu*. During trial, PO1 Mapula identified the plastic sachet marked with "AVM" as the same sachet containing *shabu* which he bought from appellant. Likewise, PO1 Familara positively identified the two sachets of *shabu* marked with "MRF" and "FLC" as the same ones recovered from appellant's possession.

Moreover, in the Stipulation of Facts by the parties during the Pre-Trial Conference, the genuineness and due execution of *Forensic Chemistry Report No. D-849-03E* and the truth of its contents were

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[34] *Id.* at 482-483 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 444.

admitted by appellant. It was therefore established that the sachets recovered from appellant contained methamphetamine hydrochloride or *shabu*.[35] (Citations omitted)

As to the penalties for the crimes committed, the law provides that the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (₱500,000.00) Pesos to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person found guilty of the crime of illegal sale of *shabu*.[36] The crime of illegal possession of *shabu* weighing less than five (5) grams is punishable by imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).[37]

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[35] CA *rollo*, pp. 93-94. Decision dated 28 May 2010.

[36] **Section 5.** ***Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

xxx xxx xxx.

[37] **Section 11.** ***Possession of Dangerous Drugs.*** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.0) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

3. Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of xxx, methamphetamine hydrochloride or "*shabu*," or x x x.

The Indeterminate Sentence Law,[38] in turn, provides that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same."[39]

Accordingly, with respect to Criminal Case No. 12472-D for illegal sale of *shabu*, the Court of Appeals correctly affirmed the penalty of life imprisonment imposed by the trial court. The fine of Five Hundred Thousand Pesos (₱500,000.00) is also within the range of the fine prescribed under Section 5 of R.A. 9165.[40] The modification of the penalty imposed in Criminal Case No. 12473-D for illegal possession of *shabu* from *six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum* to *imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum, and payment of a fine of three hundred thousand pesos (₱300,000.00)* is likewise in order.[41]

WHEREFORE, the Decision dated 28 May 2010 of the Court of Appeals in CA-G.R. CR-HC No. 00396 is **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[38] Act No. 4103, as amended.

[39] Section 1, Act No. 4103 , as amended.

[40] *People v. Sabadlab*, *supra* note 24 at 441.

[41] *Asiatico v. People*, G.R. No. 195005, 12 September 2011, 657 SCRA 443, 452 citing *Balarbar v. People*, G.R. No. 187483, 14 April 2010, 618 SCRA 283, 288.

SECOND DIVISION

[G.R. No. 201675. June 19, 2013]

JUANITO ANG, for and behalf of SUNRISE MARKETING (BACOLOD), INC.,* *petitioner, vs.* **SPOUSES ROBERTO and RACHEL ANG,** *respondents.*

SYLLABUS

COMMERCIAL LAW; CORPORATION CODE; DERIVATIVE SUIT, NOT A CASE OF; WHERE THE COMPLAINT FAILED TO SATISFY THE REQUIREMENTS FOR A DERIVATIVE SUIT.— [W]e find that the Complaint is not a derivative suit. The Complaint failed to show how the acts of Rachel and Roberto resulted in any detriment to SMBI. The CA-Cebu correctly concluded that the loan was not a corporate obligation, but a personal debt of the Ang brothers and their spouses. x x x SMBI was never a party to the Settlement Agreement or the Mortgage. It was never named as a co-debtor or guarantor of the loan. Both instruments were executed by Juanito and Anecita in their personal capacity, and not in their capacity as directors or officers of SMBI. Thus, SMBI is under no legal obligation to satisfy the obligation. The fact that Juanito and Anecita attempted to constitute a mortgage over "their" share in a corporate asset cannot affect SMBI. The Civil Code provides that in order for a mortgage to be valid, the mortgagor must be the "absolute owner of the thing x x x mortgaged." Corporate assets may be mortgaged by authorized directors or officers on behalf of the corporation as owner, "as the transaction of the lawful business of the corporation may reasonably and necessarily require." However, the wording of the Mortgage reveals that it was signed by Juanito and Anecita in their personal capacity as the "owners" of a pro-indiviso share in SMBI's land and not on behalf of SMB[.] x x x Juanito and Anecita, as stockholders of SMBI, are not co-owners of SMBI assets. They do not own *pro-indiviso* shares, and therefore, cannot

* In the lower courts and in some pleadings filed with this Court, petitioner named itself as "Sunrise Marketing (Bacolod), Inc., represented by Juanito Ang."

> mortgage the same except in their capacity as directors or officers of SMBI. We also find that there is insufficient evidence to suggest that Roberto and Rachel fraudulently and wrongfully removed Nancy as a stockholder in SMBI's reportorial requirements. x x x That it took four years for them to make any attempt to question Nancy's exclusion as stockholder negates their allegation of fraud. Since damage to the corporation was not sufficiently proven by Juanito, the Complaint cannot be considered a *bona fide* derivative suit. A derivative suit is one that seeks redress for injury to the corporation, and not the stockholder. No such injury was proven in this case. The Complaint also failed to allege that all available corporate remedies under the articles of incorporation, by-laws, laws or rules governing the corporation were exhausted, as required under the Interim Rules. x x x Furthermore, there was no allegation that there was an attempt to remove Rachel or Roberto as director or officer of SMBI, as permitted under the Corporation Code and the by-laws of the corporation. Thus, the Complaint failed to satisfy the requirements for a derivative suit under the Interim Rules.

APPEARANCES OF COUNSEL

Lyndon P. Caña for petitioner.
Poblador Bautista & Reyes for Rachel Ang.
Filomeno B. Tan for Roberto Ang.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision[2] of the Court of Appeals-Cebu (CA-Cebu) dated 20 September 2011 in CA-G.R. SP No. 05546. The CA-Cebu reversed and set aside the Order[3] of the Regional Trial Court, Branch 53, Bacolod City

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

[2] *Rollo*, pp. 581-592. Penned by Acting Executive Justice Pampio A. Abarintos, with Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring.

[3] *Id.* at 170-179. Penned by Judge Pepito B. Gellada.

(RTC Bacolod) dated 27 September 2010 in Commercial Court Case No. 09-070 entitled *Sunrise Marketing (Bacolod), Inc., represented by Juanito Ang v. Spouses Roberto and Rachel Ang*.

The Facts

Sunrise Marketing (Bacolod), Inc. (SMBI) is a duly registered corporation owned by the Ang family.[4] Its current stockholders and their respective stockholdings are as follows:[5]

Stockholder	Number of Shares
Juanito Ang	8,750
Anecita Ang	1,250
Jeannevie Ang	2,500
Roberto Ang	8,750
Rachel Ang	3,750
Total	25,000

Juanito Ang (Juanito) and Roberto Ang (Roberto) are siblings. Anecita Limoco-Ang (Anecita) is Juanito's wife and Jeannevie is their daughter. Roberto was elected President of SMBI, while Juanito was elected as its Vice President. Rachel Lu-Ang (Rachel) and Anecita are SMBI's Corporate Secretary and Treasurer, respectively.

On 31 July 1995, Nancy Ang (Nancy), the sister of Juanito and Roberto, and her husband, Theodore Ang (Theodore), agreed to extend a loan to settle the obligations of SMBI and other corporations owned by the Ang family, specifically Bayshore Aqua Culture Corporation, Oceanside Marine Resources and JR Aqua Venture.[6] Nancy and Theodore issued a check in the amount of $1,000,000.00 payable to "Juanito Ang and/or Anecita Ang and/or Roberto Ang and/or Rachel Ang." Nancy was a

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[4] *Id.* at 70.

[5] *Id.* at 239.

[6] TSN, 12 May 2009, p. 28.

former stockholder of SMBI, but she no longer appears in SMBI's General Information Sheets as early as 1996.[7] Nancy and Theodore are now currently residing in the United States. There was no written loan agreement, in view of the close relationship between the parties. Part of the loan was also used to purchase real properties for SMBI, for Juanito, and for Roberto.[8]

On 22 December 2005, SMBI increased its authorized capital stock to ₱10,000,000.00. The Certificate of Increase of Capital Stock was signed by Juanito, Anecita, Roberto, and Rachel as directors of SMBI.[9] Juanito claimed, however, that the increase of SMBI's capital stock was done in contravention of the Corporation Code.[10] According to Juanito, when he and Anecita left for Canada:

> x x x Sps. Roberto and Rachel Ang took over the active management of [SMBI]. Through the employment of sugar coated words[,] they were able to successfully manipulate the stocks sharings between themselves at 50-50 under the condition that the procedures mandated by the Corporation Code on increase of capital stock be strictly observed (valid Board Meeting). No such meeting of the Board to increase capital stock materialized. It was more of an accommodation to buy peace x x x.[11]

Juanito claimed that payments to Nancy and Theodore ceased sometime after 2006. On 24 November 2008, Nancy and Theodore, through their counsel here in the Philippines, sent a demand letter to "Spouses Juanito L. Ang/Anecita L. Ang and Spouses Roberto L. Ang/Rachel L. Ang" for payment of the principal amounting to $1,000,000.00 plus interest at ten percent (10%) per annum, for a total of $2,585,577.37 within ten days from receipt of the letter.[12] Roberto and Rachel then sent a letter

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[7] Securities and Exchange Commission Website, http://www.sec.gov.ph (visited on 13 March 2013).

[8] *Rollo*, p. 19.

[9] *Id.* at 107.

[10] *Id.* at 20.

[11] *Id.* at 54-55.

[12] *Id.* at 86.

to Nancy and Theodore's counsel on 5 January 2009, saying that they are not complying with the demand letter because they have not personally contracted a loan from Nancy and Theodore.

On 8 January 2009, Juanito and Anecita executed a Deed of Acknowledgment and Settlement Agreement (Settlement Agreement) and an Extra-Judicial Real Estate Mortgage (Mortgage). Under the foregoing instruments, Juanito and Anecita admitted that they, together with Roberto and Rachel, obtained a loan from Nancy and Theodore for $1,000,000.00 on 31 July 1995 and such loan shall be secured by:

a) Juanito and Anecita's fifty percent share over a parcel of land registered in the name of SMBI;

b) a parcel of land registered in the name of Juanito Ang;

c) Juanito's fifty percent share in 7 parcels of land registered in his and Roberto's name;

d) a parcel of land registered in the name of Roberto;

e) a parcel of land registered in the name of Rachel; and

f) Roberto and Rachel's fifty percent share in 2 parcels of land registered in the name of their son, Livingstone L. Ang (Livingstone), and in another lot registered in the name of Livingstone and Alvin Limoco Ang.[13]

A certain Kenneth C. Locsin (Locsin) signed on behalf of Nancy and Theodore, under a Special Power of Attorney which was not attached as part of the Settlement Agreement or the Mortgage, nor included in the records of this case.

Thereafter, Juanito filed a "Stockholder Derivative Suit with prayer for an *ex-parte* Writ of Attachment/Receivership" (Complaint) before the RTC Bacolod on 29 January 2009. He alleged that "the intentional and malicious refusal of defendant Sps. Roberto and Rachel Ang to [settle] their 50% share x x x

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[13] *Id.* at 93-103.

[of] the total obligation x x x will definitely affect the financial viability of plaintiff SMBI."[14] Juanito also claimed that he has been "illegally excluded from the management and participation in the business of [SMBI through] force, violence and intimidation" and that Rachel and Roberto have seized and carted away SMBI's records from its office.[15]

The Complaint sought the following reliefs:

a) Issuance of an *ex-parte* Writ of Attachment and/or Garnishment, with a Break Open Order covering the assets of the spouses Roberto and Rachel Ang, or any interest they may have against third parties;

b) Placement of SMBI under Receivership pending resolution of the case;

c) Enforcement of Juanito's right to actively participate in the management of SMBI;

d) Issuance of an Order compelling the Spouses Roberto and Rachel Ang to:

   i. Render an accounting of the utilization of the loan amounting to $2,585,577.37 or ₱120,229,347.26;

   ii. Pay fifty percent of the aforementioned loan, amounting to ₱60,114,673.62;

   iii. Explain why Nancy was removed as a stockholder as far as SMBI's reportorial requirements with the SEC are concerned;

   iv. Restore Juanito's right to actively manage the affairs of the corporation; and

   v. Pay attorney's fees amounting to ₱20,000.00.

On 29 January 2009, the RTC Bacolod issued an Order[16] granting the application for an *ex-parte* writ of attachment and

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[14] *Id.* at 57.

[15] *Id.* at 60.

[16] *Id.* at 119-120. Penned by Judge Pepito B. Gellada.

break open order. Atty. Jerry Basiao, who filed an application for appointment as Receiver of SMBI, was directed by the RTC Bacolod to furnish the required Receivership Bond.[17] On the same date, Roberto and Rachel moved to quash the writ of attachment and set aside the break open order and appointment of receiver.[18] They claimed that these were issued in violation of their right to due process:

> Records of this case would show that the complaint was filed before [the RTC Bacolod] at 2:50 p.m. of January 29, 2009. x x x
>
> xxx xxx xxx
>
> [C]ounsel for the defendant-spouses went to [the RTC Bacolod] at around 3:00 p.m. on January 29, 2009 [to inquire on] the status of the case and was informed that the last pleading on record is his entry of appearance with the conformity of the defendant Rachel Ang. Counsel was however informed by the clerk of court that the Honorable Judge has already issued an order directing the issuance of the writ of preliminary attachment, receivership and break open order but said order was not officially released yet x x x. Due to the undersigned counsel's insistence, however, said clerk of court of this Honorable Court furnished him a copy of said order x x x. [T]he clerk of court and the clerk in charge of civil cases assured [counsel] that no writ of preliminary attachment was prepared or issued x x x. Despite [such] assurance x x x [and counsel's advice that they shall move to quash the order the following morning], that afternoon, the clerk of court x x x clandestinely, hurriedly and surreptitiously, for reasons known only [to] her, x x x prepared the writ of attachment x x x.[19]

In her Verified Answer *Ad Cautelam* which was filed on 10 February 2009, Rachel prayed that the Complaint be dismissed as it was not a *bona fide* derivative suit as defined under the Interim Rules of Procedure for Intra-Corporate Controversies[20] (Interim Rules). According to Rachel, the Complaint, although

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[17] *Id.* at 121-122.

[18] *Id.* at 244-262.

[19] *Id.* at 256-258.

[20] Took effect on 1 April 2001.

labelled as a derivative suit, is actually a collection suit since the real party in interest is not SMBI, but Nancy and Theodore:

> [T]he cause of action does not devolve on the corporation as the alleged harm or wrong pertains to the right of the Sps. Theodore and Nancy Ang, as creditors, to collect the amount allegedly owed to them. x x x
>
> xxx xxx xxx
>
> That the instant suit is for the benefit of a non-stockholder and not the corporation is obvious when the primary relief prayed for in the Complaint which is for the defendants "to pay the amount of Php 60,114,673.62 plus interest which is 50% of the loan obligations of plaintiff [SMBI] to its creditor Sps. Theodore and Nancy Ang." Otherwise stated, the instant suit is nothing but a complaint for sum of money shamelessly masked as a derivative suit.[21]

Rachel also argued that the Complaint failed to allege that Juanito "exerted all reasonable efforts to exhaust all intra-corporate remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation to obtain the relief he desires," as required by the Interim Rules.

During cross-examination, Juanito admitted that there was no prior demand for accounting or liquidation nor any written objection to SMBI's increase of capital stock. He also conceded that the loan was extended by persons who are not stockholders of SMBI. Thus, Rachel filed a Motion for Preliminary Hearing on Affirmative Defenses on 27 November 2009, arguing that in view of Juanito's admissions, the Complaint should be dismissed pursuant to Section 1 of the Interim Rules. Juanito filed his Opposition thereto on 8 January 2010,[22] arguing that applying this Court's ruling in *Hi-Yield Realty, Inc. v. Court of Appeals*,[23] the requirement for exhaustion of intra-corporate remedies is no longer needed when the corporation itself is "under the complete control of the persons against whom the suit is

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[21] *Rollo*, pp. 211-212.

[22] *Id.* at 469.

[23] G.R. No. 168863, 23 June 2009, 590 SCRA 548.

filed." Juanito also alleged that he and Anecita were deceived into signing checks to pay off bogus loans purportedly extended by Rachel's relatives in favor of SMBI. Some of the checks were payable to cash, and were allegedly deposited in Rachel's personal account.[24] He also claimed that Rachel's Motion is disallowed under the Interim Rules.

On 9 February 2009, Juanito moved that Rachel and her daughter, Em Ang (Em), as well as their counsel, Atty. Filomeno Tan, Jr. (Atty. Tan) be held in contempt. Juanito claimed that on the date the writ of attachment and break open order were issued, Atty. Tan, accompanied by Rachel and Em, "arrogantly demanded from the Clerk in charge of Civil Cases that he be furnished a copy of the [said orders] x x x otherwise he will tear the records of the subject commercial case." Juanito also accused Atty. Tan of surreptitiously photocopying the said orders prior to service of the summons, Complaint, Writ of Attachment and Attachment Bond. According to Juanito, the purpose of obtaning a copy of the orders was to thwart its implementation. Thus, when the authorities proceeded to the SMBI premises to enforce the orders, they found that the place was padlocked, and that all corporate documents and records were missing. On 14 December 2010, the Sheriff and other RTC Bacolod employees then filed a Verified Complaint against Atty. Tan before this Court, which also contained the foregoing allegations.[25]

Rachel then filed a Reply on 27 January 2010, claiming that Juanito's reliance on the *Hi-Yield* case is misplaced:

> The facts x x x of this case are strikingly different from that in *Hi-Yield Realty*. In that case, the Supreme Court noted that the complaining stockholder was a minority stockholder. However, in the case at bar, Juanito Ang is one of the biggest stockholders of [SMBI]. x x x [H]e is a member of [SMBI's] Board of Directors and is even the vice-president thereof. Furthermore, in *Hi-Yield Realty,* the Supreme Court noted that the complaining stockholder was excluded from the affairs of the corporation. However, the evidence

[24] *Rollo,* p. 484.

[25] *Id.* at 663.

thus far presented, particularly Juanito Ang's admission, show that he and his wife, Anecita, participate in the disbursement of [SMBI's] funds x x x.[26]

Juanito filed his Rejoinder on 2 March 2010.

The Ruling of the RTC Bacolod

On 27 September 2010, the RTC Bacolod issued an Order which stated that:

> WHEREFORE, premises considered[,] the court hereby rules that the present action is a DERIVATIVE SUIT and [the] Motion to Dismiss based on Affirmative Defenses raised by defendants is DENIED for lack of merit.[27]

The RTC Bacolod found that the issuance of the checks to settle the purported obligations to Rachel's relatives, as well as the removal of Nancy as a stockholder in SMBI's records as filed with the SEC, shows that Rachel and Roberto committed fraud. The Order likewise stated that the requirement of exhaustion of intra-corporate remedies is no longer necessary since Rachel and Roberto exercised complete control over SMBI.

Aggrieved, Rachel filed a Petition for *Certiorari* with the CA-Cebu.

The Ruling of the CA-Cebu

On 20 September 2011, the CA-Cebu promulgated its Decision which reversed and set aside the Order of the RTC Bacolod dated 27 September 2010. According to the CA-Cebu, the Complaint filed by Juanito should be dismissed because it is a harassment suit, and not a valid derivative suit as defined under the Interim Rules. The CA-Cebu also found that Juanito failed to exhaust intra-corporate remedies and that the loan extended by Nancy and Theodore was not SMBI's corporate obligation. There is nothing on record to show that non-payment of the loan will result in any damage or prejudice to SMBI.

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[26] *Id.* at 492.

[27] *Id.* at 179.

Juanito then filed a Motion for Reconsideration with Prayer for Voluntary Inhibition on 28 October 2011. In his Motion, Juanito pointed out that Rachel filed her Petition for *Certiorari* without previously filing a Motion for Reconsideration, warranting the dismissal of the said Petition. The CA-Cebu denied the Motion.

Hence, this petition.

The Issues

The issues raised in the instant petition are:

I. Whether based on the allegations of the complaint, the nature of the case is one of a derivative suit or not.

Corollary to the above, whether the Honorable Court of Appeals erred x x x in ordering the dismissal of the Complaint on the ground that the case is not a derivative suit.

II. Whether the Honorable Court of Appeals x x x seriously erred in considering evidence *aliunde*, that is, other than the four corners of the complaint, in determining the nature of the complaint, in utter violation of the doctrine that the jurisdiction is determined by law and allegations of the complaint alone.

III. Granting *arguendo*, but without necessarily admitting that the complaint is not one of a derivative suit, but only an ordinary civil action, whether the Honorable Court of Appeals x x x gravely erred in dismissing the petition entirely, when the Regional Trial Court *a quo* has jurisdiction also over the case as an ordinary civil action, and can just proceed to hear the same as such.[28]

The Ruling of this Court

The petition has no merit.

We uphold the CA-Cebu's finding that the Complaint is not a derivative suit. A derivative suit is an action brought by a stockholder on behalf of the corporation to enforce corporate rights against the corporation's directors, officers or other

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

insiders.[29] Under Sections 23[30] and 36[31] of the Corporation Code, the directors or officers, as provided under the by-laws,[32] have the right to decide whether or not a corporation should sue. Since these directors or officers will never be willing to sue themselves, or impugn their wrongful or fraudulent decisions, stockholders are permitted by law to bring an action in the name of the corporation to hold these directors and officers accountable.[33] In derivative suits, the real party in interest is the corporation, while the stockholder is a mere nominal party.

This Court, in *Yu v. Yukayguan*,[34] explained:

> The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for **which he is otherwise without redress**. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable

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[29] Jose Campos, Jr. and Ma. Clara L. Campos, *THE CORPORATION CODE, COMMENTS NOTES AND CASES* 819-820 (1990).

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

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

1. To sue and be sued in its corporate name; x x x

[32] Section 25, Corporation Code.

[33] *Yu v. Yukayguan*, G.R. No. 177549, 18 June 2009, 589 SCRA 588.

[34] *Id.* at 618, citing *Bitong v. Court of Appeals*, 354 Phil. 516 (1998).

measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. (Emphasis in the original)

Section 1, Rule 8 of the Interim Rules imposes the following requirements for derivative suits:

(1) [The person filing the suit must be] a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed;

(2) [He must have] exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harrassment suit.

Applying the foregoing, we find that the Complaint is not a derivative suit. The Complaint failed to show how the acts of Rachel and Roberto resulted in any detriment to SMBI. The CA-Cebu correctly concluded that the loan was not a corporate obligation, but a personal debt of the Ang brothers and their spouses. The check was issued to "Juanito Ang and/or Anecita Ang and/or Roberto Ang and/or Rachel Ang" and not SMBI. The proceeds of the loan were used for payment of the obligations of the other corporations owned by the Angs as well as the purchase of real properties for the Ang brothers. SMBI was never a party to the Settlement Agreement or the Mortgage. It was never named as a co-debtor or guarantor of the loan. Both instruments were executed by Juanito and Anecita in their personal capacity, and not in their capacity as directors or officers of SMBI. Thus, SMBI is under no legal obligation to satisfy the obligation.

The fact that Juanito and Anecita attempted to constitute a mortgage over "their" share in a corporate asset cannot affect SMBI. The Civil Code provides that in order for a mortgage to

be valid, the mortgagor must be the "absolute owner of the thing x x x mortgaged."[35] Corporate assets may be mortgaged by authorized directors or officers on behalf of the corporation as owner, "as the transaction of the lawful business of the corporation may reasonably and necessarily require."[36] However, the wording of the Mortgage reveals that it was signed by Juanito and Anecita in their personal capacity as the "owners" of a pro-indiviso share in SMBI's land and not on behalf of SMBI:

> This [Mortgage] is made and executed by and between:
>
> Spouses JUANITO and ANECITA ANG, of legal age, Filipino citizens, resident[s] of Sunrise Marketing Building at Hilado Street, Capitol Shopping Center, Bacolod City, hereinafter referred to as the MORTGAGOR[S];
>
> Spouses THEODORE and NANCY ANG, x x x hereinafter referred to as the MORTGAGEE[S] represented in this instance through their attorney-in-fact, Mr. Kenneth Locsin;
>
> xxx xxx xxx
>
> In order to ensure payment x x x the MORTGAGORS hereby CONVEY unto the MORTGAGEES by way of EXTRA-JUDICIAL REAL ESTATE MORTGAGE **their** 50% rights and interests over the following real properties to wit:
>
> a. Those registered in the name of SUNRISE MARKETING (BACOLOD), INC. x x x
>
> xxx xxx xxx[37] (Emphasis supplied)

Juanito and Anecita, as stockholders of SMBI, are not co-owners of SMBI assets. They do not own pro-indiviso shares, and therefore, cannot mortgage the same except in their capacity as directors or officers of SMBI.

We also find that there is insufficient evidence to suggest that Roberto and Rachel fraudulently and wrongfully removed Nancy as a stockholder in SMBI's reportorial requirements.

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[35] Article 2085.

[36] Section 36, Corporation Code.

[37] *Rollo*, p. 98.

As early as 2005, when SMBI increased its capital stock, Juanito and Anecita already knew that Nancy was not listed as a stockholder of SMBI. However, they attempted to rectify the error only in 2009, when the Complaint was filed. That it took four years for them to make any attempt to question Nancy's exclusion as stockholder negates their allegation of fraud.

Since damage to the corporation was not sufficiently proven by Juanito, the Complaint cannot be considered a *bona fide* derivative suit. A derivative suit is one that seeks redress for injury to the corporation, and not the stockholder. No such injury was proven in this case.

The Complaint also failed to allege that all available corporate remedies under the articles of incorporation, by-laws, laws or rules governing the corporation were exhausted, as required under the Interim Rules. The CA-Cebu, applying our ruling in the *Yu* case, pointed out:

> x x x No written demand was ever made for the board of directors to address private respondent Juanito Ang's concerns.
>
> The fact that [SMBI] is a family corporation does not exempt private respondent Juanito Ang from complying with the [Interim] Rules. In the x x x Yu case, the Supreme Court held that a family corporation is not exempt from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules [which state that there is a] distinction between x x x family corporations x x x [and] other types of corporations in the institution [by] a stockholder of a derivative suit.[38]

Furthermore, there was no allegation that there was an attempt to remove Rachel or Roberto as director or officer of SMBI, as permitted under the Corporation Code and the by-laws of the corporation. Thus, the Complaint failed to satisfy the requirements for a derivative suit under the Interim Rules.

The CA-Cebu correctly ruled that the Complaint should be dismissed since it is a nuisance or harassment suit under Section 1(b) of the Interim Rules. Section 1(b) thereof provides:

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[38] *Id.* at 588.

b) *Prohibition against nuisance and harassment suits.* — Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;

(2) Subject matter of the suit;

(3) Legal and factual basis of the complaint;

(4) Availability of appraisal rights for the act or acts complained of; and

(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

Records show that Juanito, apart from being Vice President, owns the highest number of shares, equal to those owned by Roberto. Also, as explained earlier, there appears to be no damage to SMBI if the loan extended by Nancy and Theodore remains unpaid. The CA-Cebu correctly concluded that "a plain reading of the allegations in the Complaint would readily show that the case x x x was mainly filed [to collect] a debt allegedly extended by the spouses Theodore and Nancy Ang to [SMBI]. Thus, the aggrieved party is not SMBI x x x but the spouses Theodore and Nancy Ang, who are not even x x x stockholders."[39]

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 20 September 2011 Decision of the Court of Appeals-Cebu in CA-G.R. SP No. 05546.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

[39] *Id.* at 590.

SECOND DIVISION

[G.R. No. 202247. June 19, 2013]

SIME DARBY PILIPINAS, INC., *petitioner, vs.* **JESUS B. MENDOZA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— [T]o be entitled to an injunctive writ, Sime Darby has the burden of establishing the following requisites: (1) a right in esse or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.

2. ID.; ID.; ID.; REQUISITES TO BE ENTITLED TO THE RELIEF, SUFFICIENTLY ESTABLISHED.— In the present case, petitioner Sime Darby has sufficiently established its right over the subject club share. Sime Darby presented evidence that it acquired the Class "A" club share of ACC in 1987 through a Deed of Sale. Being a corporation which is expressly disallowed by ACC's By-Laws to acquire and register the club share under its name, Sime Darby had the share registered under the name of respondent Mendoza, Sime Darby's former sales manager, under a trust arrangement. x x x While the share was bought by Sime Darby and placed under the name of Mendoza, his title is only limited to the usufruct, or the use and enjoyment of the club's facilities and privileges while employed with the company. x x x While Sime Darby paid for the purchase price of the club share, Mendoza was given the legal title. Thus, a resulting trust is presumed as a matter of law. The burden then shifts to the transferee to show otherwise. Mendoza, as the transferee, claimed that he only signed the assignment of rights in blank in order to give Sime Darby the right of first refusal in case he decides to sell the share later on. x x x However, Mendoza's contention of the right of first refusal is a self-serving statement. He did not present any document to show that there was such an agreement between him and the company, not even an acknowledgment from Sime

> Darby that it actually intended the club share to be given to him as a reward for his performance and past service. In fact, the circumstances which occurred after the purchase of the club share point to the opposite. x x x It can be gathered then that Sime Darby did not intend to give up its beneficial interest and right over the share. The company merely wanted Mendoza to hold the share in trust since Sime Darby, as a corporation, cannot register a club share in its own name under the rules of the ACC. At the same time, Mendoza, as a senior manager of the company, was extended the privilege of availing a club membership, as generously practiced by Sime Darby. However, Mendoza violated Sime Darby's beneficial interest and right over the club share after he was informed by Atty. Ronald E. Javier of Sime Darby's plan to sell the share to an interested buyer. x x x Despite being informed by Sime Darby to stop using the facilities and privileges of the club share, Mendoza continued to do so. Thus, in order to prevent further damage and prejudice to itself, Sime Darby properly sought injunction in this case.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.

Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a petition for review on *certiorari*[1] assailing the Decision[2] dated 30 March 2012 and Resolution[3] dated 6 June 2012 of the Court of Appeals in CA-G.R. CV No. 89178.

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

[2] *Rollo*, pp. 23-34. Penned by Justice Sesinando E. Villon with Justices Andres B. Reyes, Jr. and Amy C. Lazaro-Javier, concurring.

[3] *Id.* at 58.

The Facts

Petitioner Sime Darby Pilipinas, Inc. (Sime Darby) employed Jesus B. Mendoza (Mendoza) as sales manager to handle sales, marketing, and distribution of the company's tires and rubber products. On 3 July 1987, Sime Darby bought a Class "A" club share[4] in Alabang Country Club (ACC) from Margarita de Araneta as evidenced by a Deed of Absolute Sale.[5] The share, however, was placed under the name of Mendoza in trust for Sime Darby since the By-Laws[6] of ACC state that only natural persons may own a club share.[7] As part of the arrangement, Mendoza endorsed the Club Share Certificate[8] in blank and executed a Deed of Assignment,[9] also in blank, and handed over the documents to Sime Darby. From the time of purchase in 1987, Sime Darby paid for the monthly dues and other assessments on the club share.

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[4] Stock Certificate No. A-1880.

[5] Records, p. 7.

[6] *Id.* at 411.

[7] Article II – CLASSIFICATION OF MEMBERS

SEC. 2. Classification – Members shall consist of Regular, Playing, and Honorary Members.

a. Regular Members shall consist of natural persons who are registered owners of shares of stock and duly designated representatives of juridical entities in whose names stock certificates have been issued.

xxx xxx xxx

b. Playing Members shall consist of natural persons, who, subject to the approval of the Board of Directors, are assignees of the playing rights of Regular Members. x x x

c. Proprietary Members shall consist of stockholders who have assigned their playing rights to a playing member. x x x

d. Honorary Members – Honorary Members shall be limited to the President of the Philippines, the Governor of Metro Manila and the Mayor of the Municipality of Muntinlupa.

[8] Records, p. 9.

[9] *Id.* at 10.

When Mendoza retired in April 1995, Sime Darby fully paid Mendoza his separation pay amounting to more than ₱3,000,000. Nine years later, or sometime in July 2004, Sime Darby found an interested buyer of the club share for ₱1,101,363.64. Before the sale could push through, the broker required Sime Darby to secure an authorization to sell from Mendoza since the club share was still registered in Mendoza's name. However, Mendoza refused to sign the required authority to sell or special power of attorney unless Sime Darby paid him the amount of ₱300,000, claiming that this represented his unpaid separation benefits. As a result, the sale did not push through and Sime Darby was compelled to return the payment to the prospective buyer.

On 13 September 2005, Sime Darby filed a complaint[10] for damages with writ of preliminary injunction against Mendoza with the Regional Trial Court (RTC) of Makati City, Branch 132. Sime Darby claimed that it was the practice of the company to extend to its senior managers and executives the privilege of using and enjoying the facilities of various club memberships, *i.e*. Manila Golf and Country Club, Quezon City Sports Club, Makati Sports Club, Wack Wack Golf Club, and Baguio Golf and Country Club. Sime Darby added that during Mendoza's employment with the company until his retirement in April 1995, Sime Darby regularly paid for the monthly dues and other assessments on the ACC Class "A" club share. Further, Sime Darby alleged that Mendoza sent a letter[11] dated 9 August 2004 to ACC and requested all billings effective September 2004 be sent to his personal address. Despite having retired from Sime Darby for less than 10 years and long after the employment contract of Mendoza with the company has been severed, Mendoza resumed using the facilities and privileges of ACC, to the damage and prejudice of Sime Darby. Thus, Sime Darby prayed that a restraining order be issued, pending the hearing on the issuance of a writ of preliminary injunction, enjoining Mendoza from availing of the club's facilities and privileges as if he is the owner of the club share.

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[10] Docketed as Civil Case No. 05-821.

[11] Records, p. 13.

On 15 November 2005, Mendoza filed an Answer alleging ownership of the club share. Mendoza stated that Sime Darby purchased the Class "A" club share and placed it under his name as part of his employee benefits and bonus for past exemplary service. Mendoza admitted endorsing in blank the stock certificate covering the club share and signing a blank assignment of rights only for the purpose of securing Sime Darby's right of first refusal in case he decides to sell the club share. Mendoza also alleged that when he retired in 1995, Sime Darby failed to give some of his retirement benefits amounting to ₱300,000. Mendoza filed a separate Opposition to Sime Darby's application for restraining order and preliminary injunction stating that there was no showing of grave and irreparable injury warranting the relief demanded.

On 3 January 2006, the RTC denied Sime Darby's prayer for restraining order and preliminary injunction. Sime Darby then filed a Motion for Summary Judgment explaining that a trial was no longer necessary since there was no issue as to any material fact. On 13 March 2006, the trial court denied the motion. Thereafter, trial on the merits ensued.

Sime Darby presented three witnesses: (1) Atty. Ronald E. Javier, Sime Darby's Vice-President for Legal Affairs and Corporate Secretary, who testified that Mendoza refused to give Sime Darby his authorization to sell the club share unless he was paid ₱300,000 as additional retirement benefit and that Sime Darby was compelled to institute the case and incurred legal expenses of ₱200,000; (2) Ranel A. Villar, ACC's Membership Department Supervisor, who testified that the club share was registered under the name of Mendoza since ACC's By-Laws prohibits juridical persons from acquiring a club share and attested that Sime Darby paid for the monthly dues of the share since it was purchased in 1987; and (3) Ira F. Cascon, Sime Darby's Treasurer since 1998, who testified that she asked Mendoza to endorse ACC Stock Certificate No. A-1880 at the back and to sign the assignment of rights, as required by Sime Darby.

On the other hand, Mendoza presented two witnesses: (1) himself; and (2) Ranel Villar, the same employee of ACC who also testified for Sime Darby, who confirmed that the club share could not be sold to a corporation like Sime Darby. In his testimony, Mendoza testified that (1) he owns the disputed club share; (2) Sime Darby allowed him to personally choose the share that he liked as part of his benefits; (3) as a condition for membership in ACC, he had to personally undergo an interview with regard to his background and not the company's; (4) though he retired in 1995, he only started paying the club share dues in 2004 because after his retirement, he migrated to the United States until he came back in 1999 and since then he had been going back and forth to the United States; (5) in May 2004, he met with Atty. Ronald E. Javier, Sime Darby's representative, to discuss the supposed selling of the club share which he refused since there were still unpaid retirement benefits due him; and (6) ACC recognizes him as the owner of the club share.

On 30 April 2007, the trial court rendered a Decision in favor of Sime Darby. The dispositive portion states:

> WHEREFORE, premises considered, judgment is hereby rendered enjoining defendant Jesus B. Mendoza, from making use of Stock Certificate No. 1880 of the Alabang Golf and Country Club, Inc., and ordering defendant Jesus B. Mendoza to pay the plaintiff ₱100,000.00 as temperate damages, and ₱250,000.00 as attorney's fees and litigation expenses.
>
> SO ORDERED.[12]

Mendoza filed an appeal with the Court of Appeals. On 30 March 2012, the appellate court reversed the ruling of the trial court.[13] The appellate court ruled that Sime Darby failed to prove that it has a clear and unmistakable right over the club share of ACC. The dispositive portion of the Decision states:

> WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court is REVERSED and SET ASIDE.

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[12] *Rollo*, p. 29.

[13] *Id.* at 23-34.

Resultantly, the Complaint in Civil Case No. 05-821, is hereby DISMISSED.

SO ORDERED.[14]

Sime Darby filed a Motion for Reconsideration which the Court of Appeals denied in a Resolution[15] dated 6 June 2012.

Hence, the instant petition.

The Issues

The issues for our resolution are: (1) whether Sime Darby is entitled to damages and injunctive relief against Mendoza, its former employee; and (2) whether the appellate court erred in declaring that Mendoza is the owner of the club share.

The Court's Ruling

The petition has merit.

Section 3, Rule 58 of the Rules of Court, which provides for the grounds for the issuance of a preliminary injunction, states:

SEC. 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

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[14] *Id.* at 33-34.

[15] *Id.* at 58.

In *Medina v. Greenfield Development Corp.*,[16] we held that the purpose of a preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the status quo until the merits of the case can be heard fully. Thus, to be entitled to an injunctive writ, Sime Darby has the burden of establishing the following requisites:

(1) a right in *esse* or a clear and unmistakable right to be protected;

(2) a violation of that right;

(3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.

In the present case, petitioner Sime Darby has sufficiently established its right over the subject club share. Sime Darby presented evidence that it acquired the Class "A" club share of ACC in 1987 through a Deed of Sale. Being a corporation which is expressly disallowed by ACC's By-Laws to acquire and register the club share under its name, Sime Darby had the share registered under the name of respondent Mendoza, Sime Darby's former sales manager, under a trust arrangement. Such fact was clearly proved when in the application form[17] dated 17 July 1987 of the ACC for the purchase of the club share, Sime Darby placed its name in full as the owner of the share and Mendoza as the assignee of the club share. Also, in connection with the application for membership, Sime Darby sent a letter[18] dated 17 September 1987 addressed to ACC confirming that "Mendoza, as Sime Darby's Sales Manager, is entitled to club membership benefit of the Company."

Even during the trial, at Mendoza's cross-examination, Mendoza identified his signature over the printed words "name of assignee" as his own and when confronted with his Reply-

[16] 485 Phil. 533, 542 (2004).

[17] Records, p. 531.

[18] *Id.* at 532.

Affidavit, he did not refute Sime Darby's ownership of the club share as well as Sime Darby's payment of the monthly billings from the time the share was purchased.[19] Further, Mendoza admitted signing the club share certificate and the assignment of rights, both in blank, and turning it over to Sime Darby. Clearly, these circumstances show that there existed a trust relationship between the parties.

While the share was bought by Sime Darby and placed under the name of Mendoza, his title is only limited to the usufruct, or the use and enjoyment of the club's facilities and privileges while employed with the company. In *Thomson v. Court of Appeals*,[20] we held that a trust arises in favor of one who pays the purchase price of a property in the name of another, because of the presumption that he who pays for a thing intends a beneficial interest for himself. While Sime Darby paid for the purchase price of the club share, Mendoza was given the legal title. Thus, a resulting trust is presumed as a matter of law. The burden then shifts to the transferee to show otherwise.

Mendoza, as the transferee, claimed that he only signed the assignment of rights in blank in order to give Sime Darby the right of first refusal in case he decides to sell the share later on. A right of first refusal, in this case, would mean that Sime Darby has a right to match the purchase price offer of Mendoza's prospective buyer of the club share and Sime Darby may buy back the share at that price. However, Mendoza's contention of the right of first refusal is a self-serving statement. He did not present any document to show that there was such an agreement between him and the company, not even an acknowledgment from Sime Darby that it actually intended the club share to be given to him as a reward for his performance and past service.

In fact, the circumstances which occurred after the purchase of the club share point to the opposite. *First*, Mendoza signed the share certificate and assignment of rights both in blank.

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[19] RTC Decision dated 30 April 2007. Records, p. 606.

[20] 358 Phil. 761, 775-776 (1998).

Second, Mendoza turned over possession of the documents to Sime Darby. *Third*, from the time the share was purchased in 1987 until 1995, Sime Darby paid for the monthly bills pertaining to the share. *Last*, since 1987, the monthly bills were regularly sent to Sime Darby's business address until Mendoza requested in August 2004, long after he retired from the employ of the company, that such bills be forwarded to his personal address starting September 2004.

It can be gathered then that Sime Darby did not intend to give up its beneficial interest and right over the share. The company merely wanted Mendoza to hold the share in trust since Sime Darby, as a corporation, cannot register a club share in its own name under the rules of the ACC. At the same time, Mendoza, as a senior manager of the company, was extended the privilege of availing a club membership, as generously practiced by Sime Darby.

However, Mendoza violated Sime Darby's beneficial interest and right over the club share after he was informed by Atty. Ronald E. Javier of Sime Darby's plan to sell the share to an interested buyer. Mendoza refused to give an authorization to sell the club share unless he was paid ₱300,000 allegedly representing his unpaid retirement benefit. In August 2004, Mendoza tried to appropriate the club share and demanded from ACC that he be recognized as the true owner of the share as the named member in the stock certificate as well as in the annual report issued by ACC. Despite being informed by Sime Darby to stop using the facilities and privileges of the club share, Mendoza continued to do so. Thus, in order to prevent further damage and prejudice to itself, Sime Darby properly sought injunction in this case.

As correctly observed by the RTC in its Decision dated 30 April 2007:

> In order for a writ of preliminary injunction to issue, the following requisites must be present: (a) invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable, and (c) there is an urgent and paramount

necessity for the writ to prevent serious damage. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations.

All the elements are present in the instant case. Plaintiff bought the subject share in 1987. As the purchaser of the share, it has interest and right over it. There is a presumption that the share was bought for the use of the defendant while the latter is still connected with the plaintiff. This is because when the share was registered under the name of defendant, the latter signed the stock certificate in blank as well as the deed of assignment and placed the certificate under the possession of the plaintiff. Hence, plaintiff did not intend to relinquish its interest and right over the subject, rather it intended to have the share held in trust by defendant, until a new grantee is named. This can be inferred from plaintiff's witness' testimony that plaintiff required the defendant to sign the said documents so that the plaintiff can be assured that its ownership of the property is properly documented. Thirdly, plaintiff's payments of monthly billings of the subject share bolster defendant possession in trust rather than his ownership over the share. With this, the right of plaintiff over the share is clear and unmistakable. With defendant's continued use of the subject share despite that he is not anymore connected with plaintiff, and with plaintiff's demand upon the defendant to desist from making use of the club facilities having [been] ignored, clearly defendant violated plaintiff's right over the use and enjoyment thereof. Hence, plaintiff is entitled to its prayer for injunction.

xxx xxx xxx

As to [the] second issue, plaintiff claimed for temperate or moderate damages.

xxx xxx xxx

In the present case, it was established that sometime in July 2004, plaintiff tried to sell the share but defendant refused to give the authority. Thus, plaintiff was forced to return the amount of ₱1,100,000 to the buyer. Additionally, plaintiff cannot make use of the facilities of the club because defendant insists on enjoying it despite the fact that he is no longer connected with the plaintiff. With this, the Court deems it proper to impose upon the defendant ₱100,000 as temperate damages.

Further, plaintiff having established its right to the relief being claimed and inasmuch as it was constrained to litigate in order to

protect its interest as well as incurred litigation expenses, attorney's fees are hereby awarded in the amount of ₱250,000.[21]

In sum, we grant the damages and injunctive relief sought by Sime Darby, as the true owner of the ACC Class "A" club share. Sime Darby has the right to be protected from Mendoza's act of using the facilities and privileges of ACC. Since the records show that Sime Darby was dissolved on 31 December 2011, it has three years to convey its property and close its affairs as a body corporate under the Corporation Code.[22] Thus, Sime Darby may choose to dispose of the club share in any manner it sees fit without undue interference from Mendoza, who lost his right to use the club share when he retired from the company.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the 30 March 2012 Decision and 6 June 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 89178. We **REINSTATE** the 30 April 2007 Decision of the Regional Trial Court of Makati City, Branch 132 in Civil Case No. 05-821.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[21] Records, pp. 608-609.

[22] Sec. 122. Corporate Liquidation.— Every corporation whose charter expire by its own limitation or is annulled by forfeiture or otherwise, or 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 protecting 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. x x x.

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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. (Ramos *vs*. People of the Phils., G.R. No. 194384, June 13, 2013) p. 197

Ordinary appeal under Rule 41 and petition for review under Rule 42 — Distinguished. (Maslag *vs*. Monzon, G.R. No. 174908, June 17, 2013) p. 274

Petition for review on certiorari to the Supreme Court under Rule 45 — As a general rule, only questions of law may be raised in a petition for review on certiorari because the court is not a trier of facts; when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court; exceptions: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is a grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of fact are conflicting; 6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7) when the findings are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the findings set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and 10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record. (Almagro *vs*. Sps. Amaya, Sr., G.R. No. 179685, June 19, 2013) p. 493

(Phil. Amusement and Gaming Corp. [PAGCOR] *vs.* Marquez, G.R. No. 191877, June 18, 2013) p. 385

— Distinguished with petition for certiorari under Rule 65. (Century Iron Works, Inc. *vs.* Bañas, G.R. No. 184116, June 19, 2013) p. 576

Points of law, theories, issues and arguments — A party cannot change the legal theory of this case under which the controversy was heard and decided in the trial court; it should be the same theory under which the review on appeal is conducted; points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal; this will be offensive to the basic rules of fair play, justice, and due process. (Domingo *vs.* Colina, G.R. No. 173330, June 17, 2013) p. 264

Question of law distinguished from question of fact — The test for determining whether the supposed error was one of law or fact is not the appelation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. (Bases Conversion Dev't. Authority *vs.* Reyes, G.R. No. 194247, June 19, 2013) p. 631

ARREST

Arrest in flagrante delicto — For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. (People of the Phils. *vs.* Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

Legality of — Any objections on the legality of arrest which are not raised before arraignment are deemed waived. (People of the Phils. *vs.* Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

ATTORNEYS

Code of Professional Responsibility — A lawyer's compliance with and observance of Rules 1.01 and 1.03, Canon 1, and Rule 6.02, Canon 6 of the Code of Professional Responsibility should be taken into consideration in determining his moral fitness to continue in the practice of law. (Abella *vs*. Barrios, Jr., Adm. Case No. 7332, June 18, 2013) p. 363

Immoral conduct and gross misconduct — A lawyer may be suspended or disbarred if found guilty of immoral conduct. (Abella *vs*. Barrios, Jr., Adm. Case No. 7332, June 18, 2013) p. 363

— Immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community while gross misconduct constitutes improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment. *(Id.)*

Practice of law — Regarded as a privilege accorded only to those who continue to meet its exacting qualifications. (Abella *vs*. Barrios, Jr., A.C. No. 7332, June 18, 2013) p. 363

— The possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession. *(Id.)*

BILL OF RIGHTS

Due process — Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process. (Domingo *vs*. Colina, G.R. No. 173330, June 17, 2013) p. 264

Right against unreasonable searches and seizures — A search and consequent seizure must be carried out with a judicial warrant except in a warrantless search incidental to a lawful arrest under Section 13, Rule 126 of the Rules of Court. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

Right to information — Cannot be used to merit both an explanation of the indicative price and an automatic award of the bid. (Privatization and Mgm't. Office *vs*. Strategic Alliance Dev't. Corp., and/or Phil. Estate Corp., G.R. No. 200402, June 13, 2013) p. 209

— Does not extend to causing the award of the sale of government assets in failed public biddings. *(Id.)*

CENTRAL BANK ACT, NEW (R.A. NO. 7653)

Liquidation — Only a final tax return is required to satisfy the interest of the Bureau of Internal Revenue in the liquidation of a closed bank. (Phil. Deposit Ins. Corp. *vs*. BIR, G.R. No. 172892, June 13, 2013) p. 17

— The debts and liabilities of the bank under liquidation are to be paid in accordance with the rules on concurrence and preference of credits under the Civil Code. *(Id.)*

CERTIORARI

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. Gas Corp. *vs*. Petron Corp., G.R. No. 194062, June 17, 2013) p. 348

— Not the proper remedy to assail the denial by the trial court of a motion to dismiss. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

COMMISSION ON AUDIT (COA)

COA decisions and resolutions — Decisions and resolutions of the COA are reviewable by this Court, not via an appeal by certiorari under Rule 45, as is the present petition, but thru a special civil action of certiorari under Rule 64 in relation to Rule 65 of the Rules of Court. (Reblora *vs*. Armed Forces of the Phils., G.R. No. 195842, June 18, 2013) p. 401

COMMISSION ON ELECTIONS (COMELEC)

Administrative functions — The denial of due course to and/or cancellation of one's certificate of candidacy on grounds rendered conclusive on account of final and executory judgments is an exercise of the COMELEC's administrative functions. (Jalosjos *vs*. COMELEC, G.R. No. 205033, June 18, 2013) p. 414

COMELEC en banc — The constitutional provision requiring a motion for reconsideration before the COMELEC en banc may take action is confined only to cases where the COMELEC exercises its quasi-judicial power, not in matters concerning its administrative functions. (Jalosjos *vs*. COMELEC, G.R. No. 205033, June 18, 2013) p. 414

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Agrarian dispute — Defined as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. (Dept. of Agrarian Reform *vs*. Paramount Holdings Equities, Inc., G.R. No. 176838, June 13, 2013) p. 30

Coverage — Principal basis of the computation for just compensation; special agrarian courts cannot disregard the formula provided by the Department of Agrarian Reform for the determination of just compensation. (Land Bank of the Phils. *vs*. Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

— Sale of properties already reclassified from "agricultural" to "industrial" before the effectivity of the Comprehensive Agrarian Reform Law is not covered by the Comprehensive Agrarian Reform Program and the requirement for a clearance. (Dept. of Agrarian Reform *vs*. Paramount Holdings Equities, Inc., G.R. No. 176838, June 13, 2013) p. 30

— The devaluation of the Philippine currency is not among those factors enumerated in Section 17 of R.A. No. 6657, which the trial court is required to consider in determining the amount of just compensation, namely: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any. (Land Bank of the Phils. *vs*. Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

— The "double take up" of market value as a valuation factor completely destroys the basic principle of affordability in the valuation formula for agrarian reform. (Land Bank of the Phils. *vs*. Palmares, G.R. No. 192890, June 17, 2013) p. 336

— The principal basis of the computation for just compensation is Section 17 of R.A. No. 6657, which enumerates the following factors to guide the special agrarian courts in the determination thereof: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land. *(Id.)*

— While the determination of just compensation is essentially a judicial function vested in the RTC acting as a special agrarian court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. *(Id.)*

Just compensation — Principal basis of the computation for just compensation; special agrarian courts cannot disregard the formula provided by the Department of Agrarian Reform for the determination of just compensation. (Land Bank of the Phils. *vs*. Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

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COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operations — The absence of prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case; the immediate conduct of the buy-bust routine is within the discretion of the police officers, especially when accompanied by the informant in the conduct of the operation; no rigid or textbook method of conducting buy-bust operations. (People of the Phils. *vs*. Homaky Lucio, G.R. No. 191391, June 19, 2013) p. 591

Chain of custody rule — Covers 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. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

— Failure of the police officers to make an inventory report and to photograph the drugs seized from the accused are not automatically fatal to the prosecution's case as long as the integrity and evidentiary value of seized items are properly preserved. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

(People of the Phils. *vs*. Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

— Non-presentation as witnesses of other persons who had custody of the illegal drugs is not required. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

— The failure to strictly follow the directives of Section 21 of R.A. No. 9165 is not fatal and will not necessarily render the items confiscated from an accused inadmissible; what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused; in the present case, the integrity and evidentiary value of the drugs seized from the petitioner were duly proven not to have been compromised; the police officers explained during trial the reason for their failure to strictly comply with Section 21 of R.A. No. 9165; jurisprudence holds that the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. (People of the Phils. *vs*. Homaky Lucio, G.R. No. 191391, June 19, 2013) p. 591

(People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

Illegal possession of dangerous drugs — Elements are: 1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People of the Phils. *vs*. Castro *y* Lapena, G.R. No. 195777, June 19, 2013) p. 662

(People of the Phils. *vs*. Homaky Lucio, G.R. No. 191391, June 19, 2013) p. 591

(People of the Phils. *vs*. Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

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*. Castro *y* Lapena, G.R. No. 195777, June 19, 2013) p. 662

(People of the Phils. *vs*. Homaky Lucio, G.R. No. 191391, June 19, 2013) p. 591

(People of the Phils. *vs*. Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

Section 14 thereof — Regarded as a crime of *mala prohibita* where the degree of participation of the offenders is not considered. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

COMPROMISES

Compromise agreements — Deemed valid and binding among the parties once executed by the workers and their employers in good faith to settle their differences. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

CONSPIRACY

Existence of — Mere presence at the *locus criminis* cannot by itself be a valid basis for conviction, and mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

— 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. (People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

CORPORATIONS

Derivative suit — Complaint failed to satisfy the requirements for a derivative suit. (Ang *vs*. Sps. Ang, G.R. No. 201675, June 19, 2013) p. 680

Doctrine of separate juridical personality — Corporate officers and directors cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. (Rep. Gas Corp. *vs*. Petron Corp., G.R. No. 194062, June 17, 2013) p. 348

COURT PERSONNEL

Dishonesty — Representation that employee himself took the Civil Service Examination when someone else took it for him constitutes dishonesty punishable by dismissal that carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1)] and disqualification from re-employment in the government service. (CSC *vs*. Hadji Ali, A.M. No. SCC-08-11-P, June 18, 2013) p. 376

DAMAGES

Award of — When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

Moral damages — Moral damages in the amount of ₱75,000.00 must be awarded as it is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. (People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

Temperate damages — Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty; even if the pecuniary loss suffered by the claimant is capable of proof, an award of temperate damages is not precluded; the grant thereof is drawn from equity to provide relief to those definitely injured. (People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

DANGEROUS DRUGS ACT (R.A. NO. 6425)

Illegal sale of dangerous drugs — Marked money used in the buy bust operation is not required to be presented in court. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

DENIAL AND ALIBI

Defenses of — Cannot prevail over the accused's positive identification by the victim. (People of the Phils. *vs*. Diaz, G.R. No. 200882, June 13, 2013) p. 227

DENIAL AND FRAME-UP

Defenses of — Testimonies of police officers who conducted the buy-bust are given more weight and usually prevail over an unsubstantiated denial or claim of frame-up. (People of the Phils. *vs.* Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

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*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

— Intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. *(Id.)*

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction — Limited to the adjudication of agrarian reform cases. (Dept. of Agrarian Reform *vs*. Paramount Holdings Equities, Inc., G.R. No. 176838, June 13, 2013) p. 30

EMPLOYEES, KINDS OF

Pakyaw workers — Considered regular employees when their employers exercise control over them. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

Project employees — The length of service of a project employee is not the controlling test of employment tenure but whether or not the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee. (Concrete Solutions, Inc./Primary Structures Corp. *vs*. Cabusas, G.R. No. 177812, June 19, 2013) p. 477

— Where a project employee is illegally dismissed prior to the expiration of his employment contract, he is entitled to his salary corresponding to the unexpired portion. *(Id.)*

Regular employee — Employer's failure to specify the reasonable standards by which employee's alleged poor performance was evaluated as well as to prove that such standards were make known to him at the start of his employment, makes the latter a regular employee from the day he was hired. (Univac Dev't., Inc. *vs*. Soriano, G.R. No. 182072, June 19, 2013) p. 516

— To be considered regular employees, the primary standard used is the reasonable connection between the particular activity they perform and the usual trade or business of the employer. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

Regular seasonal employees — Farm workers are considered regular seasonal employees except when they have worked for one season only or when they are free to contract their services with other farm owners. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

Types of employees — Jurisprudence has identified the three types of employees mentioned in Article 280 of the Labor Code: (1) regular employees or those who have been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement, or those whose work or service is seasonal in nature and is performed for the duration of the season; and (3) casual employees or those who are neither regular nor project employees. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — The right of an employee to be covered by the Social Security Act is premised on the existence of an employer-employee relationship. (Gapayao *vs*. Fulo, G.R. No. 193493, June 13, 2013) p. 179

Limitations on the power of the employer to dismiss a probationary employee — The power of the employer to terminate a probationary employee is subject to three limitations, namely: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no unlawful discrimination in the dismissal. (Univac Dev't., Inc. *vs*. Soriano, G.R. No. 182072, June 19, 2013) p. 516

Management prerogatives — Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business; contracting out of services is an exercise of business judgment or management prerogative. (Concrete Solutions, Inc./Primary Structures Corp. *vs*. Cabusas, G.R. No. 177812, June 19, 2013) p. 477

EMPLOYMENT, TERMINATION OF

Abandonment — Failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment absent any showing of employee's intent to sever the employer-employee relationship. (Concrete Solutions, Inc./Primary Structures Corp. *vs*. Cabusas, G.R. No. 177812, June 19, 2013) p. 477

— For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts; mere absence of an employee is not sufficient to constitute abandonment; the employer has

the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning. *(Id.)*

Dismissal of employees — Employer must comply with both substantive and procedural due process requirements for a dismissal to be valid. (Alps Transportation *vs.* Rodriguez, G.R. No. 186732, June 13, 2013) p. 122

— Employer must establish by substantial evidence that dismissal was for a valid cause. *(Id.)*

Failure to meet probationary standards — Proof required to show that probationary employee was apprised of regularization standards and how these standards have been applied to him to justify his dismissal. (Univac Dev't., Inc. *vs.* Soriano, G.R. No. 182072, June 19, 2013) p. 516

Financial assistance — Granted to legally dismissed employees so long as the dismissal was not due to any serious misconduct reflecting their moral character. (St. Joseph Academy of Valenzuela Faculty Assn. [SJAVFA]-Fur Chapter-TUCP *vs.* St. Joseph Academy of Valenzuela, G.R. No. 182957, June 13, 2013) p. 46

Gross and habitual neglect of duties — Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. (Century Iron Works, Inc. *vs.* Bañas, G.R. No. 184116, June 19, 2013) p. 576

— Numerous infractions in his one year and eleven-month stay with the employer, including unauthorized absences and tardiness, as well as gross inefficiency, negligence and carelessness merits employee's dismissal. *(Id.)*

Illegal dismissal — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other

benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. (Alps Transportation *vs*. Rodriguez, G.R. No. 186732, June 13, 2013) p. 122

(St. Joseph Academy of Valenzuela Faculty Assn. (SJAVFA)-Fur Chapter-TUCP *vs*. St. Joseph Academy of Valenzuela, G.R. No. 182957, June 13, 2013) p. 46

— An illegally dismissed probationary employee is entitled to reinstatement and backwages or separation pay considering the strained relations between employer and employee computed from the time of employment or engagement up to the finality of the decision and payment of attorney's fees equivalent to 10% of his monetary award plus legal interest at the rate of 6% per annum from date of termination until full payment. (Univac Dev't., Inc. *vs*. Soriano, G.R. No. 182072, June 19, 2013) p. 516

— In a sole proprietorship, a decision of illegal dismissal is to be enforced against the owner. (Alps Transportation *vs*. Rodriguez, G.R. No. 186732, June 13, 2013) p. 122

Loss of trust and confidence as a ground — Applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees. (Century Iron Works, Inc. *vs*. Bañas, G.R. No. 184116, June 19, 2013) p. 576

Procedural due process — 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. (Alps Transportation *vs*. Rodriguez, G.R. No. 186732, June 13, 2013) p. 122

ENTRAPMENT

Buy-bust operations — A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense, and must be undertaken with due regard for constitutional and legal safeguards. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

— Remains legal despite the lack of coordination with the Philippine Drug Enforcement Agency as long as the requirements of the law have been complied with. *(Id.)*

ESTAFA

Misappropriation or conversion — Failure to account, upon demand, the funds held in trust is circumstantial evidence of misappropriation. (Jandusay *vs*. People of the Phils., G.R No. 185129, June 17, 2013) p. 305

ESTAFA WITH ABUSE OF CONFIDENCE

Elements — Under Article 315, paragraph 1(b) of the RPC, the elements of estafa with abuse of confidence are as follows: (1) that the money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender. (Jandusay *vs*. People of the Phils., G.R No. 185129, June 17, 2013) p. 305

ESTOPPEL

Doctrine of estoppel by laches — Finds no application when the question of jurisdiction over the person of the party is in issue. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

EVIDENCE

Circumstantial evidence — May be resorted to establish the complicity of the perpetrator's crime when these are credible and sufficient, and could lead to the inescapable conclusion that the accused committed the complex crime of rape with homicide. (People of the Phils. *vs*. De La Cruz @ Berning, G.R. No. 183091, June 19, 2013) p. 566

EXPROPRIATION

Commissioner's fees — The award of commissioner's fees is warranted when both parties did not object to the appointment of commissioners. (Land Bank of the Phils. *vs.* Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

Damages — Interest is imposed in the nature of damages for the delay in payment of just compensation, which in effect makes the obligation on the part of the government one of forbearance. (Land Bank of the Phils. *vs*. Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

EXTORTION AND/OR FRAME-UP

Defense of — Must be supported by clear and convincing evidence and a showing that the police officers were inspired by improper motive. (People of the Phils. *vs*. Collado *y* Cunanan, G.R. No. 185719, June 17, 2013) p. 313

FORUM SHOPPING

Existence of — Can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia or res judicata*). (Heirs of Marcelo Sotto *vs*. Palicte, G.R. No. 159691, June 13, 2013) p. 1

GRAVE ABUSE OF DISCRETION

Existence of — There is grave abuse of discretion in finding probable cause for the crime of forcible abduction with rape in the absence of the elements of the crime. (Balois Alberto *vs*. CA, G.R. No. 182130, June 19, 2013) p. 530

— There is grave abuse of discretion in finding the existence of probable cause for the crime of illegal detention absent a clear showing thereof. *(Id.)*

INJUNCTION

Preliminary injunction — To be entitled to an injunctive writ, petitioner has the burden of establishing the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. (Sime Darby Pilipinas, Inc. *vs*. Mendoza, G.R. No. 202247, June 19, 2013) p. 696

INSURANCE

Collateral source rule — If an injured person receives compensation for his injuries from a source wholly independent of the tort feasor, the payment should not be deducted from the damages which he would otherwise collect from the tortfeasor except in cases involving no-fault insurances under which the insured is indemnified for losses by insurance companies, regardless of who was at fault in the incident generating the losses. (Mitsubishi Motors Phils. Salaried Employees Union [MMPSEU] *vs*. Mitsubishi Motors Phils. Corp., G.R. No. 175773, June 17, 2013) p. 286

Non-life insurance contracts — Must be consistent with the principle of indemnity which proscribes the insured from recovering greater than the loss. (Mitsubishi Motors Phils. Salaried Employees Union [MMPSEU] *vs*. Mitsubishi Motors Phils. Corp., G.R. No. 175773, June 17, 2013) p. 286

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Trademark infringement — Mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers or consumers. (Rep. Gas Corp. *vs.* Petron Corp., G.R. No. 194062, June 17, 2013) p. 348

Unfair competition — The passing off or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. (Rep. Gas Corp. *vs.* Petron Corp., G.R. No. 194062, June 17, 2013) p. 348

INTERVENTION

Allowance or disallowance thereof — The allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. (Rodriguez *vs*. CA, G.R. No. 184589, June 13, 2013) p. 56

JUDGMENTS

Immutability of final judgments — May be relaxed only to serve the ends of substantial justice in order to consider certain circumstances like: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) the cause not being entirely attributable to the fault or negligence of the party favored by the suspension of the doctrine; (e) the lack of any showing that the review sought is merely frivolous and dilatory; or (f) the other party will not be unjustly prejudiced by the suspension. (Abrigo *vs*. Flores, G.R. No. 160786, June 17, 2013) p. 251

Law of the case and res judicata — Distinguished. (Sps. Sy vs. Young, G.R. No. 169214, June 19, 2013) p. 444

Law of the case, rationale — There would be endless litigation if a question, once considered and decided by an appellate court, were to be litigated anew in the same case and upon every subsequent appeal. (Sps. Sy *vs*. Young, G.R. No. 169214, June 19, 2013) p. 444

JUDGMENTS, EXECUTION OF

Special order of demolition — The issuance of the special order of demolition would be the necessary and logical consequence of the execution of the final and immutable decision. (Abrigo *vs.* Flores, G.R. No. 160786, June 17, 2013) p. 251

Supervening event — An exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable. (Abrigo *vs*. Flores, G.R. No. 160786, June 17, 2013) p. 251

JURISDICTION

Aspects of — The concept of jurisdiction has several aspects, namely: (1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction over the res or the thing which is the subject of the litigation; the aspect of jurisdiction over the subject matter may be barred as a result of estoppel by laches. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

Concept — The jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a complaint is determined by the material allegations therein and the character of the relief prayed for irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. (Dept. of Agrarian Reform *vs.* Paramount Holdings Equities, Inc., G.R. No. 176838, June 13, 2013) p. 30

Jurisdiction over cases involving title to real property — Original and exclusive jurisdiction of cases involving title to real property belongs to either the Regional Trial Court or Municipal Trial Court, depending on the assessed value of the subject property. (Maslag *vs*. Monzon, G.R. No. 174908, June 17, 2013) p. 274

Jurisdiction over the person of the defendant — Jurisdiction over the person of the defendant was never acquired by the trial court since there was no valid service of summons upon him because he was already dead even before the complaint was filed. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

— Objection to the jurisdiction over the person of the defendant is deemed waived if not raised either in a motion to dismiss or in the answer. *(Id.)*

— The principle of estoppel by laches finds no application when the question of jurisdiction over the person of the party is in issue. *(Id.)*

Jurisdiction over the subject matter of a case — Conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action; once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. (Maslag *vs*. Monzon, G.R. No. 174908, June 17, 2013) p. 274

Original and exclusive jurisdiction — An order issued by a court declaring that it has original and exclusive jurisdiction over the subject matter of the case when under the law it has none cannot be given effect. (Maslag *vs*. Monzon, G.R. No. 174908, June 17, 2013) p. 274

LABOR-ONLY CONTRACTING

Labor-only contractor — A labor-only contractor is deemed to be an agent of the employer who is responsible to the employees in the same manner and extent as if they were

directly employed by him. (Alps Transportation *vs*. Rodriguez, G.R. No. 186732, June 13, 2013) p. 122

LABOR RELATIONS

Collective bargaining agreement — Constitutes a contract between the parties and should be strictly construed for the purposes of limiting the amount of the employer's liability. (Mitsubishi Motors Phils. Salaried Employees Union [MMPSEU] *vs*. Mitsubishi Motors Phils. Corp., G.R. No. 175773, June 17, 2013) p. 286

LAND REGISTRATION

Torrens certificate of title — Generally a conclusive evidence of the ownership of the land referred therein. (Rodriguez *vs*. CA, et al., G.R. No. 184589, June 13, 2013) p. 56

LAND REGISTRATION AUTHORITY

Duty of — Tasked to extend assistance to courts in ordinary and cadastral land registration proceedings. (Rodriguez *vs*. CA, et al., G.R. No. 184589, June 13, 2013) p. 56

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Section 40 (a) thereof — Does not apply to cases wherein a penal provision directly and specifically prohibits the convict from running for elective office. (Jalosjos *vs*. COMELEC, G.R. No. 205033, June 18, 2013) p. 414

MANDAMUS

Petition for — Will not be issued to review an exercise of discretion or in a case where the right is doubtful. (Privatization and Mgm't. Office *vs*. Strategic Alliance Dev't. Corp., and/or Phil. Estate Corp., G.R. No. 200402, June 13, 2013) p. 209

MOTION TO DISMISS

Denial of — Filing of motion to dismiss six years and five months after filing of answer warranted its outright dismissal not only for having been filed out of time but also for being improper and dilatory. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

OBLIGATIONS

*Offer and acceptance of bid*s — An advertiser is not bound to accept the highest bidder unless the contrary appears. (Privatization and Mgm't. Office *vs*. Strategic Alliance Dev't. Corp., and/or Phil. Estate Corp., G.R. No. 200402, June 13, 2013) p. 209

OMNIBUS ELECTION CODE (B.P. BLG. 881)

Certificate of candidacy — Perpetual absolute disqualification is an improper ground for the cancellation thereof. (Jalosjos *vs*. COMELEC, G.R. No. 205033, June 18, 2013; *Brion, J., separate opinion*) p. 414

PARTIES TO CIVIL ACTIONS

Indispensable parties — He or she is a party who has not only an interest in the subject matter of the controversy, but "an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

— Where the obligation entered into by the spouses is solidary, the estate of the deceased spouse is not an indispensable party to the collection case. *(Id.)*

Misjoinder and non-joinder of parties — Inclusion of the deceased spouse as a party defendant is not a misjoinder of a party; the proper recourse is dismissal of the case against deceased. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

Substitution of parties — Proper only if the party to be substituted died during the pendency of the case. (Boston Equity Resources, Inc. *vs*. CA, G.R. No. 173946, June 19, 2013) p. 451

PLEADINGS

A.M. 00-2-14-SC — When the due date of the extended period for filing a pleading falls on a Saturday, Sunday, or legal holiday, the pleading may be filed on the next working day. (Reinier Pacific International Shippine, Inc. *vs*. Capt. Francisco B. Guevarra, G.R. No. 157020, June 19, 2013) p. 438

PRELIMINARY INVESTIGATION

Probable cause — Courts are precluded from disturbing the findings of public prosecutors in the determination of probable cause unless tainted with grave abuse of discretion. (Balois Alberto *vs*. CA, G.R. No. 182130, June 19, 2013) p. 530

— In the context of filing criminal charges, grave abuse of discretion exists in cases where the determination of probable cause is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. *(Id.)*

PRESUMPTIONS

Disputable presumptions — Under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract, which must be overcome by clear and convincing evidence, otherwise, the presumption prevails. (Rosaroso. *vs*. Laborte Soria, G.R. No. 194846, June 19, 2013) p. 644

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Section 48 thereof — A certificate of title shall not be subject to collateral attack. (Rodriguez *vs*. CA, et al., G.R. No. 184589, June 13, 2013) p. 56

Section 110 thereof, as amended by R.A. No. 6732 — Allows the reconstitution of lost or destroyed original Torrens title either judicially, in accordance with the special

procedure laid down in R.A. No. 26, or administratively, in accordance with the provisions of R.A. No. 6732. (Rep. of the Phils. *vs*. Camacho, G.R. No. 185604, June 13, 2013) p. 80

PUBLIC BIDDINGS

Government as owner of the property — The government, which is the owner of the property to be auctioned, enjoys a wide latitude of discretion and autonomy in choosing the terms of the agreement. (Privatization and Mgm't. Office *vs*. Strategic Alliance Dev't. Corp., and/or Phil. Estate Corp., G.R. No. 200402, June 13, 2013) p. 209

PUBLIC OFFICIALS AND EMPLOYEES

Dishonesty — The concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty; punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service. (Phil. Amusement and Gaming Corp. [PAGCOR] *vs*. Marquez, G.R. No. 191877, June 18, 2013) p. 385

RAPE

Civil indemnity — ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 exemplary damages should be awarded to the victim. (People of the Phils. *vs*. Diaz, G.R. No. 200882, June 13, 2013) p. 227

Commission of — Precise duration of the rape is not material to and does not negate the commission of the felony. (People of the Phils. *vs*. Diaz, G.R. No. 200882, June 13, 2013) p. 227

— Under Article 266-A (1) (a) of the Revised Penal Code, rape is committed by a man who shall have carnal knowledge of a woman through force, threat, or intimidation. *(Id.)*

Force or intimidation — The repeated threats of being stabbed coupled with the blows already inflicted on her, certainly intimidated the victim and created a numbing fear in her mind that her assailant was capable of hurting her more and carrying out accused's threats. (People of the Phils. *vs*. Diaz, G.R. No. 200882, June 13, 2013) p. 227

RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED, AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE (R.A. NO. 26)

Jurisdiction — The court has sufficient authority to pass upon and resolve issues affecting jurisdiction despite the failure of a party to incorporate in his petition the jurisdictional infirmities. (Rep. of the Phils. *vs*. Camacho, G.R. No. 185604, June 13, 2013) p. 80

Owner's duplicate copy as source for reconstitution — Publication, posting and notice requirements are governed by Section 10 in relation to Section 9 of R.A. No. 26. (Rep. of the Phils. *vs*. Camacho, G.R. No. 185604, June 13, 2013) p. 80

Reconstitution of title — The nature of the proceeding for reconstitution of a certificate of title denotes a restoration of the instrument, which is supposed to have been lost or destroyed, in its original form and condition. (Rep. of the Phils. *vs*. Camacho, G.R. No. 185604, June 13, 2013) p. 80

RES JUDICATA

Doctrine — Exists when as between the action sought to be dismissed and the other action, these elements are present, namely; (1) the former judgment must be final; (2) the former judgment must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) the former judgment must be a judgment on the merits; and (4) there must be between the first and subsequent actions (i) identity of parties or at least such as representing the same interest in both actions; (ii) identity of subject matter, or of the rights asserted and relief prayed for, the relief being founded on the same facts; and (iii) identity

of causes of action in both actions such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. (Heirs of Marcelo Sotto *vs.* Palicte, G.R. No. 159691, June 13, 2013) p. 1

Grounds — Put upon two grounds: one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation; the other, the hardship on the individual that he should be vexed twice for one and the same cause. (Heirs of Marcelo Sotto *vs.* Palicte, G.R. No. 159691, June 13, 2013) p. 1

Identity of parties — Mere substantial identity of parties or even community of interests between parties in the prior and subsequent cases is sufficient. (Heirs of Marcelo Sotto *vs.* Palicte, G.R. No. 159691, June 13, 2013) p. 1

Nature — A final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive about the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. (Heirs of Marcelo Sotto *vs.* Palicte, G.R. No. 159691, June 13, 2013) p. 1

RULES OF COURT

Costs of suit — The Land Bank of the Philippines is exempt from the payment of costs of suit as it performs a governmental function in an agrarian reform proceeding as provided under Rule 142, Section 1 of the Rules of Court. (Land Bank of the Phils. *vs.* Atty. Ricardo D. Gonzalez, G.R. No. 185821, June 13, 2013) p. 98

RULES OF PROCEDURE

Relaxation of — Relaxation of the rules of procedure and remanding the case to the RTC in order to re-evaluate, on trial, the proper amount of just compensation on two (2) reasons impel this course of action: (1) petitioner's appeal – at least as to the first issue – would have been granted due to its merit were it not for the erroneous appeal and

(2) expropriation cases involve the expenditure of public funds and thus, are matters of public interest. (Bases Conversion Dev't. Authority *vs*. Reyes, G.R. No. 194247, June 19, 2013) p. 631

SALES

Buyer in good faith — A buyer who failed to inquire and investigate as to the rights of those in possession of the land subject of the sale cannot claim that he is a buyer in good faith. (Rosaroso *vs*. Laborte Soria, G.R. No. 194846, June 19, 2013) p. 644

Contract of — Non-delivery of the consideration would not entitle the seller to sell again the property; the remedy is to rescind the sale for buyer's failure to perform his obligation. (Rosaroso *vs*. Laborte Soria, G.R. No. 194846, June 19, 2013) p. 644

Double sales — Ownership of an immovable property which is the subject of a double sale shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. (Rosaroso *vs*. Laborte Soria, G.R. No. 194846, June 19, 2013) p. 644

SEAFARERS, CONTRACT OF EMPLOYMENT

Temporary total disability benefits — A seafarer is not entitled to permanent total disability benefits when his claim was filed while he was still undergoing treatment and the 240-day period has not yet lapsed but only to income benefit for temporary total disability. (Magsaysay Maritime Corp. and/or Westfal-Larsen and Co., A/S *vs*. NLRC, G.R. No. 191903, June 19, 2013) p. 614

Work-related injury or work-related illness — "Spinal stenosis, cervical" is a work-related injury. (Magsaysay Maritime Corp. and/or Westfal-Larsen and Co., A/S *vs*. NLRC, G.R. No. 191903, June 19, 2013) p. 614

SEARCH AND SEIZURE

Search incidental to a lawful arrest — Seizure made during a legitimate buy-bust operation falls under a search incidental to a lawful arrest under Rule 126, Section 13 of the Rules of Court which does not require a warrant to conduct it. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

STATUTES

Interpretation of — Where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail. (Jalosjos *vs*. COMELEC, G.R. No. 205033, June 18, 2013) p. 414

TAX REFORM ACT OF 1997 (R.A. NO. 8424)

Section 52(C) thereof — Not applicable to banks ordered placed under liquidation by the Monetary Board, and a tax clearance is not a prerequisite to the approval of the project of distribution of the assets of a bank under liquidation by the Philippine Deposit Insurance Corporation (PDIC). (Phil. Deposit Ins. Corp. *vs*. BIR, G.R. No. 172892, June 13, 2013) p. 17

— Pertains only to a regulation of the relationship between the Securities and Exchange Commission and the Bureau of Internal Revenue with respect to corporations contemplating dissolution or reorganization. *(Id.)*

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Application for inclusion in the list of agrarian reform beneficiaries — Lands which are primarily devoted to vegetable production cannot be placed under the coverage of P.D. No. 27. (Almagro *vs*. Sps. Amaya, Sr., G.R. No. 179685, June 19, 2013) p. 493

— Material misrepresentation and fraud, explained. *(Id.)*

DAR A.O. NO. O2, series of 1994, in relation to — Applicant's assertion that the land was primarily devoted to corn production when they are in fact not constitutes material misrepresentation which is a ground for cancellation of registered Emancipation Patents (EPs) or Certificates of Land Ownership Award (CLOAs). (Almagro *vs.* Sps. Amaya, Sr., G.R. No. 179685, June 19, 2013) p. 493

TREACHERY

As a qualifying circumstance — An offender acts with treachery when he commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

UNJUST ENRICHMENT

Concept of — A claim for unjust enrichment fails when the person who will benefit has a valid claim to such benefit. (Mitsubishi Motors Phils. Salaried Employees Union (MMPSEU) *vs*. Mitsubishi Motors Phils. Corp., G.R. No. 175773, June 17, 2013) p. 286

WITNESSES

Credibility of — Credence is usually 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. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

— 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*. Castro *y* Lapena, G.R. No. 195777, June 19, 2013) p. 662

(People of the Phils. *vs*. De La Cruz @ Berning, G.R. No. 183091, June 19, 2013) p. 566

(People of the Phils. *vs*. Dela Rosa *y* Bayer, G.R. No. 201723, June 13, 2013) p. 239

(People of the Phils. *vs*. Diaz, G.R. No. 200882, June 13, 2013) p. 227

— Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. (People of the Phils. *vs*. Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

— Minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable; inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. (People of the Phils. *vs*. Rebotazo *y* Alejandria, G.R. No. 192913, June 13, 2013) p. 150

— Testimonies of the prosecution witnesses are entitled to full faith and credit in the absence of evidence of improper motive in testifying against the accused. (Ramos *vs*. People of the Phils., G.R. No. 194384, June 13, 2013) p. 197

— The weight and credence accorded by the trial court to witnesses' testimonies are generally not disturbed, especially when affirmed by the Court of Appeals. (People of the Phils. *vs*. Resurreccion, G.R. No. 188310, June 13, 2012) p. 135

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