PHILIPPINE REPORTS

VOL. 712

JUNE 25, 2013 TO JUNE 26, 2013

VOLUME 712

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 25, 2013 TO JUNE 26, 2013

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-01-1448. June 25, 2013]
(Formerly OCA IPI No. 99-664-P)

RODOLFO C. SABIDONG, *complainant, vs.* **NICOLASITO S. SOLAS (Clerk of Court IV),** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ARE PROHIBITED FROM ACQUIRING PROPERTY INVOLVED IN THE LITIGATION; RATIONALE.—** Article 1491, paragraph 5 of the Civil Code prohibits court officers such as clerks of court from acquiring property involved in litigation within the jurisdiction or territory of their courts. x x x The rationale advanced for the prohibition is that public policy disallows the transactions in view of the fiduciary relationship involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons. "In so providing, the Code tends to prevent fraud, or more precisely, tends not to give occasion for fraud, which is what can and must be done."

2. **ID.; ID.; ID.; ID.; WHEN APPLICABLE.—** For the prohibition to apply, the sale or assignment of the property must take place during the pendency of the litigation involving the property. Where the property is acquired after the termination of the case, no violation of paragraph 5, Article 1491 of the Civil Code attaches.

3. **ID.; ID.; ID.; ID.; WHEN IS THE PROPERTY CONSIDERED UNDER LITIGATION.—** A thing is said to be in litigation not only if there is some contest or litigation over it in court, but also from the moment that it becomes subject to the judicial action of the judge. A property forming part of the estate under judicial settlement continues to be subject of litigation until the probate court issues an order declaring the estate proceedings closed and terminated. The rule is that as long as the order for the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated. The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. Since there is no evidence to show that Sp. Proc. No. 1672 in the RTC of Iloilo, Branch 27, had already been closed and terminated at the time of the execution of the Deed of Sale With Mortgage dated November 21, 1994, Lot 11 is still deemed to be "in litigation" subject to the operation of Article 1491 (5) of the Civil Code.

4. **ID.; ID.; ID.; ID.; DISQUALIFICATION TO ACQUIRE PROPERTY, NOT APPLICABLE IN CASE AT BAR.—** [W]e hold that the sale of Lot 11 in favor of respondent did not violate the rule on disqualification to purchase property because Sp. Proc. No. 1672 was then pending before another court (RTC) and not MTCC where he was Clerk of Court.

5. **ID.; ID.; ID.; MISCONDUCT AND DISHONESTY, DEFINED AND EXPLAINED.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior as well as gross negligence by a public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. Dishonesty is the "disposition to lie, cheat, deceive, defraud or betray; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness."

6. **ID.; ID.; ID.; CIRCUMSTANCES CONSTITUTING DECEPTION AND GRAVE MISCONDUCT, PRESENT IN CASE AT BAR.—** The evidence on record clearly established that by misrepresenting himself as the estate's representative and as a court officer having the power to protect complainant's family from eviction, respondent was able to collect sums totaling ₱20,000 from complainant's family. Even after the latter realized they were duped since respondent was already the owner of Lot 11, they still offered to buy the property from him. Respondent, however, changed his mind and no longer wanted to sell the property after nothing happened to the loan applications of complainant and Saplagio. This subsequent unilateral cancellation by respondent of the contract to sell with complainant may have been an afterthought, and plainly unjustified, based merely on his own assumption that complainant could not make full payment. But it did not negate the deception and fraudulent acts perpetrated against complainant's family who were forced into submission by the constant threat of eviction. Such acts constitute grave misconduct for which respondent should be held answerable.

7. **ID.; ID.; ID.; ID.; PROPER PENALTY FOR DISHONESTY AND GRAVE MISCONDUCT.—** Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and grave misconduct are classified as grave offenses with the corresponding penalty of dismissal for the first offense. Section 58(a) states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

8. **ID.; ID.; ID.; ID.; FINE EQUIVALENT TO SIX MONTHS SALARY IMPOSED IN VIEW OF RESPONDENT'S RETIREMENT.—** Since respondent had compulsorily retired from service on September 10, 2007, for this additional administrative case he should be fined in an amount equivalent to his salary for six months which shall likewise be deducted from his retirement benefits.

DECISION

VILLARAMA, JR., *J*.:

The present administrative case stemmed from a sworn letter-complaint[1] dated May 29, 1999 filed before this Court by Rodolfo C. Sabidong (complainant) charging respondent Nicolasito S. Solas, Clerk of Court IV, Municipal Trial Court in Cities (MTCC), Iloilo City with grave and serious misconduct, dishonesty, oppression and abuse of authority.

The Facts

Trinidad Sabidong, complainant's mother, is one of the longtime occupants of a parcel of land, designated as Lot 11 (Lot 1280-D-4-11 of consolidation-subdivision plan [LRC] Pcs-483) originally registered in the name of C. N. Hodges and situated at Barangay San Vicente, Jaro, Iloilo City.[2] The Sabidongs are in possession of one-half portion of Lot 11 of the said Estate (Hodges Estate), as the other half-portion was occupied by Priscila Saplagio. Lot 11 was the subject of an ejectment suit filed by the Hodges Estate, docketed as Civil Case No. 14706 of the MTCC Iloilo City, Branch 4 (*"Rosita R. Natividad in her capacity as Administratrix of C.N. Hodges Estate, plaintiff vs. Priscila Saplagio, defendant"*). On May 31, 1983, a decision was rendered in said case ordering the defendant to immediately vacate the portion of Lot 11 leased to her and to pay the plaintiff rentals due, attorney's fees, expenses and costs.[3] At the time, respondent was the Clerk of Court III of MTCC, Branch 3, Iloilo City.

Sometime in October 1984, respondent submitted an Offer to Purchase on installment Lots 11 and 12. In a letter dated January 7, 1986, the Administratrix of the Hodges Estate rejected respondent's offer in view of an application to purchase already

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

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

[3] *Id.* at 14-15.

filed by the actual occupant of Lot 12, "in line with the policy of the Probate Court to give priority to the actual occupants in awarding approval of Offers". While the check for initial down payment tendered by respondent was returned to him, he was nevertheless informed that he may file an offer to purchase Lot 11 and that if he could put up a sufficient down payment, the Estate could immediately endorse it for approval of the Probate Court so that the property can be awarded to him "should the occupant fail to avail of the priority given to them."[4]

The following day, January 8, 1986, respondent again submitted an Offer to Purchase Lot 11 with an area of 234 square meters for the amount of ₱35,100. Under the Order dated November 18, 1986 issued by the probate court (Regional Trial Court of Iloilo, Branch 27) in Special Proceedings No. 1672 (*"Testate Estate of the Late Charles Newton Hodges, Rosita R. Natividad, Administratrix*"), respondent's Offer to Purchase Lot 11 was approved upon the court's observation that the occupants of the subject lots "have not manifested their desire to purchase the lots they are occupying up to this date and considering time restraint and considering further, that the sales in favor of the x x x offerors are most beneficial to the estate x x x". On January 21, 1987, the probate court issued another Order granting respondent's motion for issuance of a writ of possession in his favor. The writ of possession over Lot 11 was eventually issued on June 27, 1989.[5]

On November 21, 1994, a Deed of Sale With Mortgage covering Lot 11 was executed between respondent and the Hodges Estate represented by its Administratrix, Mrs. Ruth R. Diocares. Lot 11 was thereby conveyed to respondent on installment for the total purchase price of ₱50,000. Consequently, Transfer Certificate of Title (TCT) No. T-11836 in the name of C. N. Hodges was cancelled and a new certificate of title, TCT No. T-107519 in the name of respondent was issued on December 5, 1994.

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

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

Lot 11 was later subdivided into two lots, Lots 11-A and 11-B for which the corresponding titles (TCT Nos. T-116467 and T-116468), also in the name of respondent, were issued on February 28, 1997.[6]

On motion of Ernesto Pe Benito, Administrator of the Hodges Estate, a writ of demolition was issued on March 3, 1998 by the probate court in favor of respondent and against all adverse occupants of Lot 11.[7]

On June 14, 1999, this Court received the sworn letter-complaint asserting that as court employee respondent cannot buy property in litigation (consequently he is not a buyer in good faith), commit deception, dishonesty, oppression and grave abuse of authority. Complainant specifically alleged the following:

> 3. Complainant and his siblings, are possessors and occupants of a parcel of land situated at Brgy. San Vicente, Jaro, Iloilo City, then identified as Lot No. 1280-D-4-11, later consolidated and subdivided and became known as Lot 11, then registered and titled in the name of Charles Newton Hodges. The Sabidong family started occupying this lot in 1948 and paid their monthly rentals until sometime in 1979 when the Estate of Hodges stopped accepting rentals. x x x
>
> 4. Upon knowing sometime in 1987 that the property over which their house is standing, was being offered for sale by the Estate, the mother of complainant, TRINIDAD CLAVERIO SABIDONG (now deceased), took interest in buying said property, Lot 11;
>
> 5. TRINIDAD CLAVERIO SABIDONG, was then an ordinary housekeeper and a laundrywoman, who never received any formal education, and did not even know how to read and write. When Trinidad Claverio Sabidong, together with her children and the complainant in this case, tried to negotiate with the Estate for the sale of the subject property, they were informed that all papers for transaction must pass through the respondent in this case, Nicolasito Solas. This is unusual, so they made inquiries and they learned that, Nicolasito

[6] *Id.* at 23-28.

[7] *Id.* at 31-32.

Solas was then the Clerk of Court 111, Branch 3, Municipal Trial Court in Cities, Iloilo City and presently, the City Sheriff of Iloilo City;

6. The respondent Nicolasito Solas, then Clerk of Court III, MTCC, Iloilo City, has knowledge, by reason of his position that in 1983 Hodges Estate was ejecting occupants of its land. x x x Taking advantage of this inside information that the land subject of an ejectment case in the Municipal Trial Court in Cities, Iloilo City, whom respondent is a Clerk of Court III, the respondent surreptitiously offered to buy the said lot in litigation. x x x

7. Complainant nor any member of his family did not know that as early as 1984, the respondent had offered to purchase the subject lot from the estate x x x. After receiving the notice of denial of his offer to purchase, dated January 7, 1986, respondent made a second offer to purchase the subject property the following day, January 8, 1986, knowing fully well that the subject property was being occupied. x x x

8. Because of this denial, respondent met with the family of the complainant and negotiated for the sale of the property and transfer of the title in favor of the latter. Respondent made the complainant and his family believed that he is the representative of the estate and that he needed a downpayment right away. All the while, the Sabidong family (who were carpenters, laundrywomen, a janitor, persons who belong to the underprivileged) relied on the representations of the respondent that he was authorized to facilitate the sale, with more reason that respondent represented himself as the City Sheriff;

9. That between 1992-1993, a sister of the complainant who was fortunate to have worked abroad, sent the amount of Ten Thousand (₱10,000.00) Pesos to complainant's mother, to be given to respondent Nicolasito Solas. x x x After receiving the money, respondent assured the Sabidong family that they will not be ejected from the lot, he being the City Sheriff will take care of everything, and taking advantage of the illiteracy of Trinidad Claverio Sabidong, he did not issue any receipt;

10. True enough, they were not ejected instead it took the respondent some time to see them again and demanded additional payment. In the meanwhile, the complainant waited for the papers

of the supposed sale and transfer of title, which respondent had promised after receiving the downpayment of ₱10,000.00;

11. That sometime again in 1995, respondent again received from the mother of complainant the amount of Two Thousand (₱2,000.00) Pesos, allegedly for the expenses of the documentation of sale and transfer of title, and again respondent promised that the Sabidong family will not be ejected;

12. To the prejudice and surprise of the complainant and his family, respondent was able to secure an order for the approval of his offer to purchase x x x in Special Proceedings No. 1672 x x x;

13. Worse, respondent moved for the issuance of a Writ of Possession in his favor, which the probate court acted favorably x x x. A writ of possession was issued on June 27, 1989 x x x;

14. x x x respondent took advantage of the trust and confidence which the Sabidong family has shown, considering that respondent was an officer of the court and a City Sheriff at that. The complainant and his family thought that respondent, being a City Sheriff, could help them in the transfer of the title in their favor. Never had they ever imagined that while respondent had been receiving from them hard-earned monies purportedly for the sale of the subject property, respondent was also exercising acts of ownership adverse to the interest of the complainant and his family;

15. Being an officer of the court and supposed to be an embodiment of fairness and justice, respondent acted with malice, with grave abuse of confidence and deceit when he represented that he can facilitate the sale and titling of the subject property in favor of the complainant and his family;

16. That when several thousands of pesos were given to the respondent as payment for the same and incidental expenses relative thereto, he was able to cause the transfer of the title in his favor. x x x;

17. After the death of Trinidad Claverio Sabidong x x x the respondent received from the complainant the amount of Five Thousand (₱5,000.00) Pesos x x x When a receipt was demanded, respondent refused to issue one, and instead promised and assured the complainant that they will not be ejected;

x x x x x x x x x

19. The complainant again, through his sister-in-law, Socorro Sabidong, delivered and gave to the respondent the amount of Three Thousand (₱3,000.00) Pesos as expenses for the subdivision of the subject lot. The respondent facilitated the subdivision and after the same was approved, the complainant did not know that two (2) titles were issued in the name of the respondent. x x x;

20. Meanwhile, respondent prepared a Contract to Sell, for the complainant and his neighbor Norberto Saplagio to affix their signatures, pursuant to their previous agreement for the buyers to avail of a housing loan with the Home Development Mutual Fund (PAG-IBIG). Complainant attended the seminar of the HDMF for seven (7) times, in his desire to consummate the sale. However, when the complainant affixed his signature in the contract, he was surprised that the owner of the subject property was the respondent. When complainant raised a question about this, respondent assured complainant that everything was alright and that sooner complainant will be the owner of the property. Complainant and his family, all these years, had believed and continued to believe that the owner was the estate of Hodges and that respondent was only the representative of the estate;

21. The Contract to Sell, appeared to have been notarized on June 3, 1996, however, no copy thereof was given to the complainant by the respondent. Respondent then, took the papers and documents required by the HDMF to be completed, from the complainant allegedly for the purpose of personally filing the same with the HDMF. Complainant freely and voluntarily delivered all pertinent documents to the respondent, thinking that respondent was helping in the fast and easy release of the loan. While the said documents were in the possession of the respondent, he never made any transaction with the HDMF, worse, when complainant tried to secure a copy of the Contract to Sell, the copy given was not signed by the Notary Public, x x x;

22. The complainant [was] shocked to learn that respondent had canceled the sale and that respondent refused to return the documents required by the HDMF. Respondent claimed that as Sheriff, he can cause the demolition of the house of the complainant and of his family. Respondent threatened the complainant and he is capable of pursuing a demolition order and serve the same with the assistance of the military. x x x;

23. After learning of the demolition [order], complainant attempted to settle the matter with the respondent, however, the same proved futile as respondent boasted that the property would now cost at Four Thousand Five Hundred (₱4,500.00) Pesos;

24. The threats of demolition is imminent. Clearly, complainant and his family were duped by the respondent and are helpless victims of an officer of the court who took advantage of their good faith and trust. Complainant later was informed that the subject property was awarded to the respondent as his Sheriff's Fees, considering that respondent executed the decisions in ejectment cases filed by the Hodges estate against the adverse occupants of its vast properties;

25. A civil case for the Annulment of Title of the respondent over the subject property is pending before the Regional Trial Court of Iloilo, Branch 37 and a criminal complaint for Estafa is also pending preliminary investigation before the Office of the City Prosecutor of Iloilo City, known as I.S. No. 1559-99, both filed [by] the complainant against the respondent.[8]

Acting on the complaint, Court Administrator Alfredo L. Benipayo issued a 1st Indorsement[9] dated July 8, 1999, requiring respondent to file his comment on the Complaint dated May 29, 1999. On October 21, 1999, respondent submitted his Comment.[10]

In a Resolution[11] dated July 19, 1999, Public Prosecutor Constantino C. Tubilleja dismissed the Estafa charge against respondent for insufficiency of evidence.

On November 29, 2000, Court Administrator Benipayo issued an Evaluation and Recommendation[12] finding respondent guilty of violating Article 1491[13] of the Civil Code. Said rule prohibits

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[8] *Id.* at 2-8.

[9] *Id.* at 39.

[10] *Id.* at 40-47.

[11] *Id.* at 54-56-A.

[12] *Id.* at 57-61.

[13] Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

the purchase by certain court officers of property and rights in litigation within their jurisdiction. Court Administrator Benipayo recommended that:

1. this administrative complaint be treated as an administrative matter;

2. respondent Nicolasito S. Solas, Clerk of Court IV, OCC, MTCC, Iloilo City be SUSPENDED for six (6) months, with warning that a repetition of the same offense in the future will be dealt with more severely;

3. inasmuch as there are factual issues regarding the delivery of substantial amounts which complainant alleged and which defendant denied, this issue should be investigated and the Executive Judge of the Regional Trial Court of Iloilo City should be designated to hear the evidence and to make a report and recommendation within sixty (60) days from receipt.[14]

In a Resolution[15] dated January 22, 2001, this Court adopted the recommendation of the Court Administrator to treat the present administrative action as a regular administrative matter and to designate the Executive Judge of the RTC of Iloilo City to hear the evidence of the parties. The Court, however, noted without action the Court Administrator's recommendation to suspend respondent for six months.

On March 13, 2001, Acting Court Administrator Zenaida N. Elepaño forwarded the records of this case to Executive Judge

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x x x x x x x x x

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

x x x x x x x x x.

[14] *Rollo*, p. 61.

[15] *Id.* at 64-65.

Tito G. Gustilo of the Iloilo City RTC.[16] In a Resolution[17] dated July 18, 2001, the Court referred this case to the Executive Judge of the RTC of Iloilo City for investigation, report and recommendation within 60 days from notice. By Order[18] dated August 30, 2001, Executive Judge Gustilo set the case for reception of evidence.

On March 19, 2004, the RTC of Iloilo, Branch 37, dismissed the case for annulment of title, damages and injunction against respondent for lack of merit.[19]

In a Resolution[20] dated June 15, 2005, the Court resolved to reassign the instant administrative case to Executive Judge Rene S. Hortillo for investigation, report and recommendation within 60 days from notice. In a Letter[21] dated September 15, 2005, Executive Judge Hortillo informed the Court that per the records, the parties have presented their testimonial and documentary evidence before retired Executive Judge Tito G. Gustilo.

On September 12, 2005, Executive Judge Hortillo required the parties to file their respective memoranda within 60 days from notice, upon submission of which the case shall be deemed submitted for resolution.[22]

In his Memorandum,[23] respondent maintained that his purchase of the subject land is not covered by the prohibition in paragraph 5, Article 1491 of the Civil Code. He pointed out that he bought Lot 11-A a decade after the MTCC of Iloilo, Branch 3, had ordered the ejectment of Priscila Saplagio and

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[16] *Id.* at 70.

[17] *Id.* at 72.

[18] *Id.* at 66.

[19] *Id.* at 83-91.

[20] *Id.* at 100.

[21] *Id.* at 97.

[22] *Id.* at 99.

[23] *Id.* at 73-76.

Trinidad Sabidong from the subject lot. He insisted that public trust was observed when complainant was accorded his right of first refusal in the purchase of Lot 11-A, albeit the latter failed to avail said right. Asserting that he is a buyer in good faith and for value, respondent cited the dismissal of the cases for Estafa and annulment of title and damages which complainant filed against him.

On September 10, 2007, respondent compulsorily retired from service. Prior to this, he wrote then Senior Deputy Court Administrator Zenaida N. Elepaño, requesting for the release of his retirement benefits pending resolution of the administrative cases against him.[24] In a Memorandum[25] dated September 24, 2007, Senior Deputy Court Administrator Elepaño made the following recommendations:

> a) The request of Nicolasito S. Solas, former Clerk of Court, MTCC, Iloilo City for partial release of his retirement benefits be **GRANTED**; and
>
> b) Atty. Lilian Barribal Co, Chief, Financial Management Office, Office of the Court Administrator be **DIRECTED** to (1) **WITHHOLD** the amount of Two Hundred Thousand Pesos (₱200,000.00) from the retirement benefits of Nicolasito S. Solas to answer for any administrative liability that the Court may find against him in A.M. No. P-01-1448 (Formerly Administrative Matter OCA IPI No. 99-664-P); OCA IPI No. 99-659-P; OCA IPI No. 99-670-P; and OCA IPI No. 99-753-P; and (2) **RELEASE** the balance of his retirement benefits.[26]

Eventually, the case was assigned to Judge Roger B. Patricio, the new Executive Judge of the Iloilo City RTC for investigation, report and recommendation.

On June 2, 2008, Judge Patricio submitted his final Report and Recommendation[27] finding respondent liable for grave

[24] *Id.* at 213.

[25] *Id.* at 210-212.

[26] *Id.* at 211-212.

[27] *Id.* at 194-205.

misconduct and dishonesty under A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel. Based on the evidence presented, Judge Patricio concluded that respondent misappropriated the money which he received for the filing of complainant's loan application. Such money could not have been used for the partition of Lot No. 1280-D-4-11 since the same was already subdivided into Lots 11-A and 11-B when respondent presented the Contract to Sell to complainant. And despite respondent's promise to keep complainant and his family in peaceful possession of the subject property, respondent caused the issuance of a writ of demolition against them. Thus, Judge Patricio recommended the forfeiture of respondent's salary for six months to be deducted from his retirement benefits.

In a Resolution[28] dated September 29, 2008, the Court noted Judge Patricio's Investigation Report and referred the same to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

Findings and Recommendation of the OCA

In a Memorandum[29] dated January 16, 2009, then Court Administrator Jose P. Perez found respondent liable for serious and grave misconduct and dishonesty and recommended the forfeiture of respondent's salary for six months, which shall be deducted from his retirement benefits.

The Court Administrator held that by his unilateral acts of extinguishing the contract to sell and forfeiting the amounts he received from complainant and Saplagio without due notice, respondent failed to act with justice and equity. He found respondent's denial to be anchored merely on the fact that he had not issued receipts which was belied by his admission that he had asked money for the expenses of partitioning Lot 11 from complainant and Saplagio. Since their PAG-IBIG loan

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[28] *Id.* at 231.

[29] *Id.* at 232-247.

applications did not materialize, complainant should have returned the amounts given to him by complainant and Saplagio.

On February 11, 2009, the Court issued a Resolution[30] requiring the parties to manifest whether they are willing to submit the case for decision on the basis of the pleadings and records already filed with the Court. However, the copy of the Resolution dated February 11, 2009 which was sent to complainant was returned unserved with the postal carrier's notation "RTS-Deceased." Meanwhile, in a Compliance[31] dated August 24, 2009, respondent expressed his willingness to submit the case for decision and prayed for an early resolution of the case.

Our Ruling

Article 1491, paragraph 5 of the Civil Code prohibits court officers such as clerks of court from acquiring property involved in litigation within the jurisdiction or territory of their courts. Said provision reads:

> Article 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:
>
> x x x x x x x x x
>
> (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the **property and rights in litigation** or levied upon an execution **before the court within whose jurisdiction or territory they exercise their respective functions**; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.
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> x x x x x x x x x (Emphasis supplied.)

The rationale advanced for the prohibition is that public policy disallows the transactions in view of the fiduciary relationship

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[30] *Id.* at 248.

[31] *Id.* at 253.

involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons.[32] "In so providing, the Code tends to prevent fraud, or more precisely, tends not to give occasion for fraud, which is what can and must be done."[33]

For the prohibition to apply, the sale or assignment of the property must take place during the pendency of the litigation involving the property.[34] Where the property is acquired after the termination of the case, no violation of paragraph 5, Article 1491 of the Civil Code attaches.[35]

In the case at bar, when respondent purchased Lot 11-A on November 21, 1994, the Decision in Civil Case No. 14706 which was promulgated on May 31, 1983 had long become final. Be that as it may, it can not be said that the property is no longer "in litigation" at that time considering that it was part of the Hodges Estate then under settlement proceedings (Sp. Proc. No. 1672).

A thing is said to be in litigation not only if there is some contest or litigation over it in court, but also from the moment that it becomes subject to the judicial action of the judge.[36] A property forming part of the estate under judicial settlement continues to be subject of litigation until the probate court issues an order declaring the estate proceedings closed and terminated. The rule is that as long as the order for the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated.[37] The probate court

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[32] *Ramos v. Atty. Ngaseo,* 487 Phil. 40, 47 (2004).

[33] *Maharlika Publishing Corporation v. Sps. Tagle,* 226 Phil. 456, 465 (1986).

[34] *Macariola v. Hon. Asuncion, etc.*, 199 Phil. 295, 308 (1982).

[35] *Ramos v. Atty. Ngaseo, supra* note 32, at 48.

[36] *Vda. de Gurrea v. Suplico,* 522 Phil. 295, 308-309 (2006), citing *Valencia v. Cabanting,* A.C. Nos. 1302, 1391 and 1543, April 26, 1991, 196 SCRA 302, 307.

[37] *Id.* at 309, citing *Portugal v. Portugal-Beltran,* G.R. No. 155555, August 16, 2005, 467 SCRA 184, 197.

loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same.[38] Since there is no evidence to show that Sp. Proc. No. 1672 in the RTC of Iloilo, Branch 27, had already been closed and terminated at the time of the execution of the Deed of Sale With Mortgage dated November 21, 1994, Lot 11 is still deemed to be "in litigation" subject to the operation of Article 1491 (5) of the Civil Code.

This notwithstanding, we hold that the sale of Lot 11 in favor of respondent did not violate the rule on disqualification to purchase property because Sp. Proc. No. 1672 was then pending before another court (RTC) and not MTCC where he was Clerk of Court.

On the charges against the respondent, we find him liable for dishonesty and grave misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior as well as gross negligence by a public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.[39]

Dishonesty is the "disposition to lie, cheat, deceive, defraud or betray; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness."[40]

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[38] *Id.*, citing *Guilas v. Judge of the Court of First Instance of Pampanga, et al.,* 150 Phil. 138, 144-145 (1972).

[39] *Office of the Court Administrator v. Musngi*, A.M. No. P-00-3024, July 17, 2012, 676 SCRA 525, 530, citing *Alenio v. Cunting,* A.M. No. P-05-1975, July 26, 2007, 528 SCRA 159, 169.

[40] *Id.*

In this case, respondent deceived complainant's family who were led to believe that he is the legal representative of the Hodges Estate, or at least possessed of such power to intercede for overstaying occupants of the estate's properties like complainant. Boasting of his position as a court officer, a City Sheriff at that, complainant's family completely relied on his repeated assurance that they will not be ejected from the premises. Upon learning that the lot they were occupying was for sale and that they had to negotiate for it through respondent, complainant's family readily gave the amounts he demanded and, along with Saplagio, complied with the requirements for a loan application with PAG-IBIG. All the while and unknown to complainant's family, respondent was actually working to acquire Lot 11 for himself.

Thus, while respondent was negotiating with the Hodges Estate for the sale of the property to him, he collected as down payment ₱5,000 from complainant's family in July 1986. Four months later, on November 18, 1986, the probate court approved respondent's offer to purchase Lot 11. The latter received further down payment from complainant in the amount of ₱10,000 between 1992 and 1993, or before the Deed of Sale with Mortgage[41] dated November 21, 1994 could be executed in respondent's favor.

Thereafter, respondent demanded ₱3,000 from complainant supposedly for the subdivision of Lot 11 between the latter and the Saplagios. Yet, it was not until respondent obtained title over said lot that the same was subdivided into Lots 11-A and 11-B. The records[42] of the case show that the Subdivision Plan dated April 25, 1996, duly approved by the Land Management Services (DENR) subdividing Lot 11 into sublots 11-A and 11-B, was inscribed on February 28, 1997 — two years after TCT No. T-107519 covering Lot 11 was issued in respondent's name on December 5, 1994.

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[41] *Rollo*, pp. 24-26.

[42] *Id.* at 13.

Finally, in 1995, respondent received the amount of ₱2,000 to defray the expenses for documentation and transfer of title in complainant's name. In the latter instance, while it may be argued that respondent already had the capacity to sell the subject property, the sum of all the circumstances belie an honest intention on his part to convey Lot 11-A to complainant. We note the inscription in TCT No. T-11836[43] in the name of C.N. Hodges that respondent executed a Request dated February 19, 1997 "for the issuance of separate titles in the name of the registered owner."[44] Soon after, TCT No. T-116467[45] covering Lot 11-A and TCT No. T-116468[46] covering Lot 11-B were issued in the name of respondent on February 28, 1997 – only eight months after he executed the Contract to Sell[47] in favor of complainant on June 3, 1996.

Respondent's bare denials were correctly disregarded by the Court Administrator in the light of his own admission that he indeed asked money from both complainant and Saplagio. The evidence on record clearly established that by misrepresenting himself as the estate's representative and as a court officer having the power to protect complainant's family from eviction, respondent was able to collect sums totaling ₱20,000 from complainant's family. Even after the latter realized they were duped since respondent was already the owner of Lot 11, they still offered to buy the property from him. Respondent, however, changed his mind and no longer wanted to sell the property after nothing happened to the loan applications of complainant and Saplagio. This subsequent unilateral cancellation by respondent of the contract to sell with complainant may have been an afterthought, and plainly unjustified, based merely on his own assumption that complainant could not make full payment. But

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

[44] *Id.* at 13.

[45] *Id.* at 27.

[46] *Id.* at 28.

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

it did not negate the deception and fraudulent acts perpetrated against complainant's family who were forced into submission by the constant threat of eviction. Such acts constitute grave misconduct for which respondent should be held answerable.

In *Re: Complaint Filed by Paz De Vera Lazaro Against Edna Magallanes, Court Stenographer III, RTC Br. 28 and Bonifacio G. Magallanes, Process Server, RTC Br. 30, Bayombong, Nueva Vizcaya*,[48] the Court stressed that to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. In that case, we said that court employees are expected to be paragons of uprightness, fairness and honesty not only in their official conduct but also in their personal dealings, including business and commercial transactions to avoid becoming the court's albatross of infamy.[49]

More importantly, Section 4(c) of Republic Act No. 6713[50] or the Code of Conduct and Ethical Standards for Public Officials and Employees mandates that public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.

Under Section 52,[51] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and grave

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[48] A.M. No. P-11-3003 (Formerly A.M. I.P.I. No. 08-2970-P), April 25, 2012, 671 SCRA 1.

[49] *Id.* at 5.

[50] AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

[51] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service reads:

misconduct are classified as grave offenses with the corresponding penalty of dismissal for the first offense. Section 58(a) states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

Section 53 further provides that mitigating circumstances attendant to the commission of the offense should be considered in the determination of the penalty to be imposed on the erring government employee. However, no such mitigating circumstance had been shown. On the contrary, respondent had been previously held administratively liable for irregularities in the performance of his duties as Clerk of Court. In A.M. No. P-01-1484,[52] this Court imposed on respondent a fine of ₱5,000 for acting imprudently in notarizing documents and administering oath on matters alien to his official duties. And in A.M. Nos. P-08-2567 (formerly OCA IPI No. 99-670-P) and P-08-2568 (formerly OCA IPI No. 99-753-P),[53] respondent was found liable for simple misconduct and ordered to pay a fine equivalent to his three (3) months salary to be deducted from his retirement benefits.

Since respondent had compulsorily retired from service on September 10, 2007, for this additional administrative case he should be fined in an amount equivalent to his salary for six months which shall likewise be deducted from his retirement benefits.

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

A. The following are *grave offenses* with their corresponding penalties:

1. Dishonesty — 1st Offense — Dismissal

x x x x x x x x x

3. Grave Misconduct — 1st Offense — Dismissal

x x x x x x x x x

[52] *Exec. Judge Astorga v. Solas*, 413 Phil. 558, 561 & 563 (2001).

[53] *Leyrit v. Solas*, October 30, 2009, 604 SCRA 668, 684.

WHEREFORE, the Court finds respondent Nicolasito S. Solas, retired Clerk of Court IV, Municipal Trial Court in Cities, Iloilo City, **LIABLE FOR GRAVE MISCONDUCT AND DISHONESTY**. Respondent is **FINED** in an amount equivalent to his salary for six (6) months to be deducted from his retirement benefits.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Peralta, J., on official leave.

Perez, J., no part.

EN BANC

[A.M. No. P-08-2439. June 25, 2013]
(Formerly OCA IPI No. 08-2733-P)

JUDGE MA. MONINA S. MISAJON, Municipal Trial Court (MTC), San Jose, Antique, *complainant, vs.* **JERENCE P. HIPONIA, Clerk II, ELIZABETH B. ESCANILLAS, Stenographer I, WILLIAM M. YGLESIAS, Process Server, and CONRADO A. RAFOLS, JR., Utility Aide, all of the same court,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; HABITUAL ABSENTEEISM; DISMISSAL FROM THE SERVICE IS THE IMPOSABLE PENALTY IF COMMITTED FOR THE SECOND TIME.— [W]e agree with the Investigating Judge and the OCA that Yglesias was

habitually absent. He incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit for 4 months in the first semester of 2007: 6 days in January, 10 days in February, 10 days in April, and 13 days in May. Under Administrative Circular No. 14-2002, an officer or employee shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least 3 months in a semester[.] x x x This is the second time that Yglesias committed habitual absenteeism. In *Judge Misajon v. Clerk of Court Feranil*, Yglesias was fined ₱15,000 for absenteeism, inefficiency and insubordination. Thus, under the aforesaid administrative circular and Section 52 (A) (17), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the imposable penalty for Yglesias's second offense of habitual absenteeism is dismissal from service.

2. **ID.; ID.; ID.; ID.; CIRCUMSTANCES CONSIDERED TO MITIGATE THE PENALTY; SUSPENSION IMPOSED INSTEAD OF DISMISSAL.—** In this case, Yglesias admitted his absences in his comment. He pleads for some consideration, however, in view of what he says was the close-to-unbearable working conditions under Judge Misajon. Yglesias's comment, which had been considered as his testimony on direct examination, is uncontested. This is not the first time that aforesaid working conditions had been brought to our attention. x x x We also take note that in June 2007, Yglesias indeed had perfect attendance. He also submitted proof that he was already allowed to do his job, to serve court processes, after Judge Misajon retired. These constitute substantial evidence that he has reformed. He also says that he has 7 children to feed and send to school and his wife is jobless — family considerations which provide strong motivation for him to improve his work performance. Under the circumstances, we find it proper not to dismiss him from service for his second offense of habitual absenteeism, and instead the lower penalty of suspension of 1 year and 1 month to give him one last chance.

APPEARANCES OF COUNSEL

Arturo F. Pacificador for complainant.
Bonifacio A. Alentajan for respondents.

D E C I S I O N

VILLARAMA, JR., ***J.:***

We resolve the complaint[1] for dishonesty and habitual absenteeism filed by Judge Ma. Monina S. Misajon, now retired, against respondent Process Server William M. Yglesias.

Records show that Yglesias was absent for 6.5 days in January 2007,[2] 10.5 days in February 2007,[3] 3.5 days in March 2007,[4] 10 days in April 2007,[5] and 13 days in May 2007.[6] Judge Misajon recommended that Yglesias's sick leave application for his successive 6-day absence in January 2007 be disapproved on the ground that he consulted a doctor only after his illness. As regards his absences in February and March 2007, Judge Misajon pointed out that Yglesias failed to file an application for sick or vacation leave. Judge Misajon also recommended that Yglesias's applications for sick leave in April and May 2007 be respectively disapproved for late filing and lack of a supporting medical certificate.

In his comment,[7] Yglesias claims that he is not a tardy or lazy person. He points out that his attendance in June 2007 was already perfect after Judge Misajon retired on June 12, 2007. He claims that for years, he suffered Judge Misajon's wrath due to his blood relation to retired Clerk of Court Lagrimas Feranil who was also charged by Judge Misajon. He suffered

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[1] *Rollo*, pp. 5-7. Per Resolution dated October 22, 2012, the Court adopted the recommendation of the Office of the Court Administrator in its evaluation report dated August 24, 2012 that the complaint be dismissed insofar as the three other respondents are concerned. *Id.* at 294.

[2] *Id.* at 132-133.

[3] *Id.* at 134.

[4] *Id.* at 135.

[5] *Id.* at 137, 139.

[6] *Id.* at 138, 140.

[7] *Id.* at 35-36.

depression and erratic blood pressure due to the constant pressure, stress and tension at the office. This is the main reason why he was sometimes late and absent in the office. Judge Misajon also refused to approve his leave application forms. While he wanted to perform his duties, he preferred to suffer in silence to avoid conflict with Judge Misajon who called him incompetent, untrustworthy and lazy and who gave him unsatisfactory performance rating for more than 10 years. He adds that Judge Misajon did not allow him to serve court processes alleging that he cannot be trusted. Indeed, Judge Misajon even allowed the police to serve court processes, leaving him with nothing to do. Judge Misajon's persecution made him lose self-esteem and lowered his morale that he no longer wanted to go to the office because Judge Misajon made him feel so inept. But now, with Judge Emilio Rodolfo Y. Legaspi as their Acting Judge, he was given a chance to prove his worth. Judge Legaspi allowed him to serve court processes. After long years of oppression, he now feels confident and "in positive spirits." He thus prays that his comment be given consideration and the complaint against him be dismissed for lack of merit.

The Investigating Judge designated by the Court found that Yglesias is guilty of habitual absenteeism and that he deserves the penalty of dismissal for having committed the offense for the second time. In its evaluation report, the Office of the Court Administrator (OCA) agreed with the Investigating Judge. The OCA found as follows:

> Respondent Yglesias's applications for sick leave for the months of January and April 2007 exceeded [5] days and said leave applications were not accompanied by any medical certificate to prove that he was indeed sick during those days. Also, the leave application for the month of April 2007 was filed only on May 21, 2007, or [21] days after the last day of the sick leave already taken in violation of the x x x rule that the leave application should be filed "immediately upon employee's return from sick leave." It is noted that a Medical Certificate issued by Dr. Lino S. Hernaez was attached to the May 2007 sick leave application xxx. However, despite being absent for 13 days, respondent Yglesias failed to notify [Judge Misajon] or his immediate supervisor of such illness x x x.

In addition, the absences of respondent Yglesias for [10.5] days in February 2007 x x x and x x x [3.5] days in March 2007 x x x may be considered "unauthorized absences" as the record does not disclose that respondent Yglesias applied for sick leave or for vacation leave.

x x x [I]t is clear that Yglesias incurred unauthorized absences for more than the allowable [2.5] days monthly leave credit for [5] months which is characterized under the Leave Law as habitual absenteeism.

Respondent Yglesias did not refute these findings in his Comment and during the investigation. His only explanation was that he was sometimes late and absent because he was suffering from depression and erratic blood pressure brought on by constant pressure, stress and tension at the office for more than [10] years and that [Judge Misajon's] persecutions, calling him as incompetent, untrustworthy or lazy has made him lose his self-esteem. These reasons hardly justify said absences because he cannot put the blame on [Judge Misajon].[8]

After our own review of the records, we find Yglesias guilty of habitual absenteeism. He incurred the following unauthorized absences: 6 days in January, 10 days in February, 10 days in April, and 13 days in May, all in the first semester of the year 2007.

Yglesias's sick leave application for 6 successive days of absence on January 2, 3, 4, 5, 8 and 9, 2007 must be denied, not on the ground that he consulted a doctor only after his illness, but for lack of the required proof — a medical certificate — attesting that he was suffering from an illness. Sick leave is granted only on account of sickness or disability on the part of the employee concerned or any member of his immediately family. And an application for sick leave in excess of 5 successive days must be accompanied by a proper medical certificate. These rules are clearly provided for under Sections 53 and 54 of the Omnibus Rules on Leave, issued by the Civil Service Commission (CSC), as follows:

SEC. 53. *Application for sick leave*. — All applications for sick leave of absence for one full day or more shall be made on the

[8] *Id.* at 291-292.

prescribed form and shall be filed immediately upon employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the agency head. **Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate**.

Sick leave may be applied for in advance in cases where the official or employee will undergo medical examination or operation or advised to rest in view of ill health duly supported by a medical certificate.

In ordinary application for sick leave already taken not exceeding five days, the head of department or agency concerned may duly determine whether or not granting of sick leave is proper under the circumstances. In case of doubt, a medical certificate may be required.

SEC. 54. *Approval of sick leave*. – **Sick leave shall be granted only on account of sickness or disability** on the part of the employee concerned or of any member of his immediately family.

Approval of sick leave, whether with pay or without pay, is mandatory provided proof of sickness or disability is attached to the application in accordance with the requirements prescribed under the preceding section. Unreasonable delay in the approval thereof or non-approval without justifiable reason shall be a ground for appropriate sanction against the official concerned. (Emphasis and underscoring supplied.)

Thus, Yglesias's absences for 6 successive days in January 2007 are unauthorized. Regarding his half-day "absence" one morning, he was not required to file a sick or vacation leave application form therefor since it was less than 1 full day. Indeed, all applications for sick leave of absence for 1 full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Section 51 of the Omnibus Rules on Leave also requires that all applications for vacation leave of absence for 1 full day or more shall be submitted on the prescribed form for action by the proper head of agency 5 days in advance, whenever possible, of the effective date of such leave. Now, under Memorandum Circular No. 17, series of 2010, issued by the CSC, an employee is considered tardy for his absence in the morning.

Yglesias's absences for 10 full days in February 2007 are likewise unauthorized since he did not file an application for sick or vacation leave. Regarding his half-day "absence" one afternoon, he was not required to file a sick or vacation leave application form therefor. Now, under Memorandum Circular No. 17, series of 2010, issued by the CSC, such half-day absence is considered undertime.

In March 2007, Yglesias had 2 full-day absences and 3 half-day "absences." Since he failed to file an application for sick or vacation leave for his 2 full-day absences, these are deemed unauthorized. Regarding his 3 half-day "absences" in the afternoon, he was not required to file a sick or vacation leave application form therefor. These are now considered undertime.

Yglesias was absent also for 10 days on April 4, 10, 13, 17, 19, 20, 23, 24, 25, and 30, 2007. He filed his sick leave application for said absences on May 21, 2007. Clearly, he failed to file immediately his sick leave application for his absence on April 4 and 10 when he reported on April 11, failed to file immediately his application for his absence on April 13 when he reported on April 16, failed also to file immediately his application for his absence on April 17 when he reported on April 18, and likewise failed to file immediately for his absence on April 19 to 25 when he reported on April 26. As already mentioned, all applications for sick leave of absence for 1 full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Thus, Yglesias's application for sick leave was filed late insofar as his absences on April 4, 10, 13, 17, 19 to 25, 2007 (9 days) are concerned. But said application was timely filed with respect to his absence on April 30, 2007 since he was absent for 13 consecutive working days from May 2 to 21, 2007.

In addition, the OCA noted that there was no medical certificate to support his application for sick leave. As stated, Yglesias should have filed such application on April 11, 16, 18 and 26, 2007. If he did, no period covered by those applications exceeded 5 successive days and supporting medical certificates would not have been a mandatory requirement. But since he filed a

single application for his 10-day absence in April 2007, a period exceeding his successive 5-day absence on April 19 to 25, 2007, he needed to attach a medical certificate to his application. It cannot be overemphasized that the proper procedure is to file a sick leave application immediately upon the employee's return from such leave.

Accordingly, Yglesias incurred 10 days of unauthorized absences in April 2007 as his sick leave application must be denied for lack of a supporting medical certificate. The application was also filed late with respect to his absence for 9 days on April 4, 10, 13, 17, 19 to 25, 2007.

Regarding his absences in May 2007, Yglesias attached a proper medical certificate[9] to his sick leave application. Judge Misajon erred that the application was filed late since it was filed immediately upon Yglesias's return on May 22, 2007. What Yglesias failed to do, the OCA noted, is to inform Judge Misajon or his immediate supervisor of his illness. Indeed, the notice requirement is a very simple rule which Yglesias failed to follow. Given his 13-day absence in May 2007, Yglesias's failure to inform Judge Misajon or his supervisor of his illness is a valid ground to deny his sick leave application.

With the foregoing clarification, we agree with the Investigating Judge and the OCA that Yglesias was habitually absent. He incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit for 4 months in the first semester of 2007: 6 days in January, 10 days in February, 10 days in April, and 13 days in May. Under Administrative Circular No. 14-2002,[10] an officer or employee shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least 3 months in a semester, to wit:

A. HABITUAL ABSENTEEISM

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[9] *Id.* at 141.

[10] Reiterating the Civil Service Commission's Policy on Habitual Absenteeism, issued on March 18, 2002 and took effect on April 1, 2002.

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least [3] months in a semester or at least [3] consecutive months during the year;

x x x x x x x x x

B. SANCTIONS

x x x x x x x x x

1st offense – Suspension for [6] months and [1] day to [1] year

2nd offense – Dismissal from the service

This is the second time that Yglesias committed habitual absenteeism. In *Judge Misajon v. Clerk of Court Feranil*,[11] Yglesias was fined ₱15,000 for absenteeism, inefficiency and insubordination. Thus, under the aforesaid administrative circular and Section 52 (A) (17), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the imposable penalty for Yglesias's second offense of habitual absenteeism is dismissal from service.

Nonetheless, in several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating facts. We have considered the employee's length of service, acknowledgment of his or her infractions and feelings of remorse, advanced age, family circumstances and other humanitarian and equitable considerations in determining the appropriate penalty. We also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows to those dependent on the wage earners. The compassion we extended in these cases was not without legal basis. Section 53, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service grants the disciplinary authority the

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[11] 483 Phil. 340, 357 (2004).

discretion to consider mitigating circumstances in the imposition of the proper penalty.[12]

In *Office of the Court Administrator v. Araya, Jr.*,[13] we considered the respondent's humility, remorse and willingness to admit his culpability. He incurred absences during the time when he had to take care of his ailing father, who was then sick of prostate cancer. He has been also in government service for about 20 years. In that case, we said that the respondent deserves some degree of leniency. We suspended him for 6 months without pay for dishonesty which is punishable by dismissal even for the first offense and although he was reprimanded earlier in another case. In *Dayaon v. De Leon*,[14] we considered De Leon's length of service, acknowledgment of her infraction and apology and suspended her for 1 month without pay for habitual absenteeism. In *Cabato v. Centino*,[15] we said that the OCA aptly considered Centino's act to reform as a mitigating circumstance. We also considered Centino's length of service, acknowledgment of his infraction, and apology in suspending him for 3 months without pay for his habitual absenteeism.

In this case, Yglesias admitted his absences in his comment. He pleads for some consideration, however, in view of what he says was the close-to-unbearable working conditions under Judge Misajon. Yglesias's comment, which had been considered as his testimony on direct examination, is uncontested. This is not the first time that aforesaid working conditions had been brought to our attention. In *Judge Misajon v. Clerk of Court Feranil*, we already noted that - -

> Undeniably, the bitterness of the dispute between the feuding parties left bruised egos and wounded feelings in its wake. Still, the escalation of such a conflict could have been avoided had Judge

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[12] *Office of the Court Administrator v. Araya, Jr.,* A.M. No. P-12-3053, April 11, 2012, 669 SCRA 124, 133.

[13] *Id.* at 132-134.

[14] A.M. No. P-11-2926, February 1, 2012, 664 SCRA 513, 518.

[15] A.M. No. P-08-2572, November 19, 2008, 571 SCRA 390, 396-397.

Misajon acted with that degree of equanimity demanded of her stature. As a member of the Bench, she should have adhered to the standard of behavior expected of being a "cerebral" individual who deliberately holds in check the tug and pull of purely personal preferences and prejudices which she shares with the rest of her fellow mortals.

Judge Misajon humiliated complainant [Feranil] in the presence of other court personnel, the parties or the public. All judges should always observe courtesy and civility. They should be temperate, patient and courteous, both in conduct and in language. Indeed, Judge Misajon can hold her colleagues in the Bench and her staff to the efficient performance of their duties without being offensive in her speech, remembering always that courtesy begets courtesy.[16]

We also take note that in June 2007, Yglesias indeed had perfect attendance.[17] He also submitted proof[18] that he was already allowed to do his job, to serve court processes, after Judge Misajon retired. These constitute substantial evidence that he has reformed. He also says that he has 7 children to feed and send to school and his wife is jobless — family considerations which provide strong motivation for him to improve his work performance. Under the circumstances, we find it proper not to dismiss him from service for his second offense of habitual absenteeism, and instead the lower penalty of suspension of 1 year and 1 month to give him one last chance.

As to the charge of dishonesty, nothing supports the same in Judge Misajon's complaint, which had been considered as her testimony on direct examination, in her testimony on cross-examination,[19] in her answers to the questions of the Investigating Judge,[20] and in her affidavit.[21] Thus, we dismiss the charge of dishonesty for lack of factual basis.

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[16] *Supra* note 11, at 348.

[17] *Rollo*, p. 38.

[18] *Id.* at 39-42.

[19] *Id.* at 247-255.

[20] *Id.* at 223-227.

[21] *Id.* at 114-116.

WHEREFORE, we **FIND** respondent William M. Yglesias, Process Server, Municipal Trial Court, San Jose, Antique, **GUILTY** of habitual absenteeism and **SUSPEND** him for 1 year and 1 month, with **STERN WARNING** that commission of the same or similar offense in the future will be dealt with more severely. The charge of dishonesty is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Peralta, J., on official leave.

EN BANC

[A.M. No. RTJ-09-2181. June 25, 2013]
(Formerly A.M. No. 09-4-174-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **RETIRED JUDGE GUILLERMO R. ANDAYA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; DUTY TO PROMPTLY DECIDE OR RESOLVE CASES, EXPLAINED; PENALTY FOR VIOLATION.—** Section 15(1), Article VIII of the Constitution mandates lower courts to decide or resolve cases or matters for decision or resolution within three (3) months from date of submission. Section 5 of Canon 6 of the New Code of Judicial Conduct provides that judges should perform all judicial duties efficiently, fairly and with reasonable promptness. The same principle is embodied in Canon 3,

Rule 3.05 of the Code of Judicial Conduct which states that a judge should dispose of the court's business promptly and decide cases within the required periods. Judges are to be held at a higher standard in the performance of their duties, and the failure to fulfill this duty would not only violate every litigant's constitutional right to the speedy disposition of cases, but will also hold the erring judge administratively liable for the offense. Under Section 9(1), Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is a less serious charge punishable by either suspension from office without salary or benefits, or a fine.

2. **ID.; ID.; ID.; THE COMPLAINT MUST BE FILED DURING THE INCUMBENCY OF THE JUDGE; THE JUDGE MAY NO LONGER BE MADE LIABLE IF THE COMPLAINT WAS FILED AFTER HIS RETIREMENT.—** A review of the records shows that the judicial audit was conducted on January 19, 20, and 21, 2009 *during* the respondent Judge's incumbency. However, the administrative complaint was docketed only on April 29, 2009 *after his compulsory retirement* on March 27, 2009. x x x In light of [the] pronouncements in *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte* [and] *Office of the Court Administrator v. Jesus L. Grageda,* the Court has lost jurisdiction to find him liable for the cases and motions left unresolved prior to his retirement.

R E S O L U T I O N

LEONEN, *J.*:

Before the Court is an administrative case for gross incompetence, inefficiency, negligence, and dereliction of duty against Judge Guillermo R. Andaya, of the Regional Trial Court, Branch 53, Lucena City, Quezon, who retired on March 27, 2009.

On January 19, 20, and 21, 2009, a judicial audit docketed as A.M. No. 09-4-174-RTC was conducted on the Regional Trial Court, Branch 53, Lucena City, Quezon, then presided by the respondent Judge Guillermo R. Andaya. In a Memorandum[1]

[1] *Rollo* (A.M. No. RTJ-09-2181), pp. 1-41.

dated April 14, 2009, then Court Administrator and now Hon. Associate Justice Jose P. Perez recommended that a fine be imposed on respondent Judge in the amount of Eighty Thousand Pesos (₱80,000.00). The fine, which was to be deducted from his retirement or terminal leave benefits was recommended based on the findings that respondent Judge:

i) Failed to take action on the following Civil Cases from the time of their filing: 94-122, SP-00-87, 01-47, 99-122, SP No. 03-54, 05-96, SCA 05-19, 07-45, 07-161, 08-93;

ii) Failed to take appropriate action on Criminal Cases Nos. 01-294, 96-343, 96-344, 96-345, 96-346, 02-998, 03-1378, 02-673, 03-1235, 99-1097, 02-365, 05-232 and 07-01-A and Civil Cases Nos. 89-38, 96-78, 94-180, SP 01-40, 99-135, 01-96, MC-0196, MC 03-107, 05-41, SCA-06-31, 04-82, SP 07-43 and 06-201;

iii) Failed to resolve the pending motions in Criminal Cases Nos. 08-1031, 01-503, 02-837, 02-838, 93-336, 98-92, 04-154, 04-1206, 95-327, 04-1068, 03-654, 06-342, 05-296, 05-1129, 05-1130, 05-797, 07-460, 05-270 and in Civil Cases Nos. 94-04, 98-177, 99-158, 93-145, 99-13, 02-13, 97-86, 93-41, 01-11, 02-149, 03-97, 02-05, 03-1, 03-143,03-156, 04-40, 03-89, 04-73, 04-108, MC 02-77, 04-131, 03-19, 02-41, 05-72, 03-148, 98-149, 06-39, 96-60, 94-144, 92-81, 03-115, SCA 06-34, SCA 06-36, 05-28, SCA 06-32, 07-03, 07-08, 08-05, 00-84, 07-62, 08-34, 89-79, 90-124, MC 06-192, 07-68, 7677, 06-80, 06-102, 08-54, 96-159 and 89-02; and

iv) Failed to decide Criminal Cases Nos. 99-1058, 97-284, 97-285, 98-734, 01-897, 02-1250, 93-982, 02-730, 02-555, 04-296, 04-297, 03-1225, 02-987, 03-418, 01-775, 02-330, 03-602, 04-1114, 03-404, 05-322, 04-483, 01-578, 01-579, 05-181, 02-382, 04-612, 05-894, 01-6 and 01-659 and Civil Cases Nos. 90-76, 91-141, 95-09, 98-122, 91-48, 93-103, 0537-M, 01-8, 00-171,

94-107, SP 02-14, 01-3, MC 02-126, MC 02-127, 01-138, 91-132, 99-122, 01-136, 00-13, 04-131, 04-08, LRC-01-1, 04-20, 05-176, 06-09, 04-84, SCA 06-21, 00-84, MC 06-144, 98-167, MC-07-85, MC 08-26, SCA-08-09-A, SCA 08-02-A and MC 08-157.

In a Resolution[2] dated April 29, 2009, the Second Division of this Court resolved to docket the judicial audit report as an administrative complaint against respondent for gross incompetence, inefficiency, negligence, and dereliction of duty. Respondent Judge was required to manifest his willingness to submit the matter for resolution on the basis of the pleadings filed. Respondent Judge sent a letter[3] dated June 24, 2009 manifesting his willingness to do so, and sought the compassion of the Court in the resolution of his administrative case. He asked the Court to consider his deteriorating health condition which included a heart problem and cataracts in both eyes. The latter adversely affected his work efficiency despite an operation on his right eye. Respondent also asked the Court to consider his thirty-four (34) years of government service, twenty-two (22) of which were in the judiciary.

Meanwhile, another administrative case, docketed as A.M. No. 09-11-477-RTC, arose in relation to the Certificate of Clearance that the respondent Judge filed in relation to his application for Compulsory Retirement Benefits. In a Memorandum[4] dated November 9, 2009, then Court Administrator and now Hon. Associate Justice Jose P. Perez recommended the imposition of a fine, to be deducted from his retirement/gratuity benefits, in the amount of Fifty Thousand Pesos (₱50,000.00). The recommendation was made upon the finding that the respondent Judge had failed to decide forty-five (45) cases submitted for decision beyond the reglementary period

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[2] *Id.* at 45-46.

[3] *Id.* at 378-380.

[4] *Rollo* (A.M. No. RTJ-09-2208), pp. 1-2.

of three (3) months as per the March 2009 Monthly Report of Cases.[5]

In a Resolution[6] dated November 24, 2009, the Court resolved to re-docket A.M. No. 09-11-477-RTC as A.M. No. RTJ-09-2208 and impose a fine of Fifty Thousand Pesos (₱50,000.00) on the respondent Judge for his failure to decide forty-five (45) cases submitted for decision, with the amount to be deducted from his retirement/gratuity benefits. A subsequent Resolution[7] dated January 26, 2010 was issued by the Court, directing Acting Presiding Judge Rodolfo D. Obnamia, Jr. to decide with dispatch the forty-five (45) cases.

The respondent Judge sent a letter[8] dated March 4, 2010 addressed to then Chief Justice Reynato S. Puno , manifesting that: (a) both A.M. No. RTJ-09-2208 and A.M. No. RTJ-09-2181 involves the charge of gross inefficiency; and (b) that "the Court had not been given the opportunity to appreciate his explanation regarding his health conditions"[9] since he did not know about A.M. No. RTJ-09-2208 until he received a copy of the Resolution of this Court dated November 24, 2009. Respondent prayed for the Court to take cognizance of: (a) his health problems; (b) the fact that he had already been fined Fifty Thousand Pesos (₱50,000.00) for gross inefficiency in A.M. No. RTJ-09-2208; (c) that he has not received any benefit since he retired on March 27, 2009; and (d) that he had served the government for thirty-four (34) years, twenty-two (22) of which were in the judiciary.

In a letter[10] dated March 27, 2010 addressed to Court Administrator Jose Midas P. Marquez, respondent Judge claimed

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[5] *Id.* at 9-14.

[6] *Id.* at 4.

[7] *Id.* at 15.

[8] *Rollo* (A.M. No. RTJ-09-2181), pp. 395-397.

[9] *Id.* at 397.

[10] *Id.* at 429-430.

that he should not be penalized for gross inefficiency in A.M. No. RTJ-09-2181 because it would be akin to splitting the complaints against him. Attached to the letter was the March 4, 2010 letter addressed to then Chief Justice Puno.

On April 27, 2010, a Resolution[11] was issued by the Court in A.M. No. RTJ-09-2208 noting the Certification[12] of the SC Chief Judicial Staff Officer Cleofe R. Norberte that respondent Judge had paid the amount of Fifty Thousand Pesos (₱50,000.00) as court fine, which was deducted from his terminal leave benefits, and duly receipted under O.R. No. 6066167.

In a Memorandum[13] dated June 11, 2010 signed by Court Administrator Marquez, the Office of the Court Administrator ("OCA" for brevity) noted that the respondent Judge paid the Fifty Thousand Pesos (₱50,000.00) fine in the other complaint on April 14, 2010. The OCA also noted that twenty-three (23) criminal cases and nine (9) civil cases included in the March 2009 Monthly Report of Cases[14] in A.M. No. RTJ-09-2208 were included in the present complaint. The OCA then reiterated its recommendation that respondent Judge be fined, but that the amount be reduced from Eighty Thousand Pesos (₱80,000.00) to Fifty Thousand Pesos (₱50,000.00).

Respondent then sent a letter[15] dated August 17, 2010 reiterating his manifestations in the letter dated March 4, 2010. Respondent prayed for the dismissal of the present case for the sake of justice tempered by leniency on the following grounds: (a) his serious health problems that affected his work efficiency in the last months of his service; (b) the penalty in A.M. No. RTJ-09-2208 was imposed without him being given a chance to explain; and (c) he has served twelve (12) years as an assistant city

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[11] *Rollo* (A.M. No. RTJ-09-2208), p. 20.

[12] *Id.* at 16.

[13] *Rollo* (A.M. No. RTJ-09-2181), pp. 416-418.

[14] *Id.* at 421-422.

[15] *Id.* at 454-457.

prosecutor, three (3) years as a Municipal Trial Court judge, and nineteen (19) years as a Regional Trial Court judge.

In a subsequent letter[16] dated February 7, 2011, respondent Judge pointed out an apparent overlap between A.M. No. RTJ-09-2208 and the present complaint and prayed that the two not be considered as separate complaints because to do so would be akin to splitting the causes of a complaint. Respondent also prayed for the early resolution of the present case.

In response to the letter, the OCA sent a Memorandum[17] dated February 16, 2011, bringing to the attention of the Court what respondent claimed as a similarity in the offenses involved in A.M. No.RTJ-09-2208 and A.M. No. RTJ-09-2181 and the possibility that he may be penalized twice for the same offense. The OCA noted that it was not accurate for respondent Judge to conclude that he stands to be penalized twice for the same lapses since the judicial audit in the present complaint was more comprehensive in scope than the Monthly Report of Cases submitted in A.M. No. RTJ-09-2208. They further noted that the Monthly Report of Cases only covered forty-five (45) cases for the month of March, and despite the overlap of the cases, there were still numerous decisions and motions left unresolved that respondent Judge should be held accountable for. Nevertheless, the OCA reiterated its recommendation that the penalty imposed be reduced from Eighty Thousand Pesos (₱80,000.00) to Fifty Thousand Pesos (₱50,000.00) in view of the previous penalty imposed on him.

In a Resolution[18] dated January 17, 2012, the Court resolved to approve the release of respondent's retirement benefits subject to the retention of Fifty Thousand Pesos (₱50,000.00) and pending the resolution of the present case. On January 24, 2012, the Court issued a Resolution[19] in A.M. No. RTJ-09-2208 considering the case as closed and terminated.

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[16] *Id.* at 470-474.

[17] *Id.* at 475-477.

[18] *Id.* at 549.

[19] *Rollo* (A.M. No. RTJ-09-2208), p. 334.

The Court takes note of the findings of the OCA.

Section 15(1), Article VIII of the Constitution mandates lower courts to decide or resolve cases or matters for decision or resolution within three (3) months from date of submission. Section 5 of Canon 6 of the New Code of Judicial Conduct provides that judges should perform all judicial duties efficiently, fairly and with reasonable promptness. The same principle is embodied in Canon 3, Rule 3.05 of the Code of Judicial Conduct which states that a judge should dispose of the court's business promptly and decide cases within the required periods. Judges are to be held at a higher standard in the performance of their duties, and the failure to fulfill this duty would not only violate every litigant's constitutional right to the speedy disposition of cases, but will also hold the erring judge administratively liable for the offense. Under Section 9(1), Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is a less serious charge punishable by either suspension from office without salary or benefits, or a fine.

After an extensive judicial audit conducted by the OCA on Branch 53 of the Regional Trial Court in Lucena City, Quezon, it was found that while respondent Judge exerted efforts to take appropriate action on the cases subject to the audit, he still:

i) failed to take action on ten (10) civil cases from the time of filing;

ii) failed to take appropriate action on thirteen (13) criminal cases and thirteen (13) civil cases for a considerable length of time;

iii) failed to resolve pending motions in eighteen (18) criminal cases and fifty-one (51) civil cases; and

iv) failed to decide twenty-nine (29) criminal cases and thirty-five (35) civil cases.

A comparison of the cases involved in the March 2009 Monthly Report of Cases, which was used as the basis for the findings

in A.M. No. No. RTJ-09-2208, and the cases involved in the judicial audit report of the present complaint yields the finding that, indeed, twenty-three (23) criminal cases and nine (9) civil cases are included in both reports.[20] However, it must be noted that the March 2009 Monthly Report of Cases only covered forty-five (45) cases, while there were forty-three (43) criminal cases and forty-six (46) civil cases that were the subject of the judicial audit report of the present complaint. This means that despite the overlap, there are still twenty (20) unresolved criminal cases and thirty-seven (37) unresolved civil cases for which the respondent Judge might be held accountable for. The other complaint also does not include the unresolved motions in twenty-nine (29) criminal cases and fifty-three (53) civil cases,[21] which are included in the judicial audit report in the present complaint.

Be that as it may, the respondent Judge could no longer be made liable for these infractions.

A review of the records shows that the judicial audit was conducted on January 19, 20, and 21, 2009 *during* the respondent Judge's incumbency. However, the administrative complaint was docketed only on April 29, 2009 *after his compulsory retirement* on March 27, 2009.

In the case of *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte,*[22] a Memorandum recommending that court's presiding Judge, Jesus L. Grageda, who compulsorily retired on November 25, 2009, be held liable for not ordering a prompt investigation as to missing court exhibits and properties and be made to pay

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[20] The overlapping cases were: Criminal Cases Nos. 97-285, 02-1250, 02-284, 93-982, 02-730, 02-555, 04-296, 03-1225, 02-987, 03-418, 01-775, 02-330, 03-602, 04-1114, 03-404, 05-322, 04-483, 01-578, 01-579, 05-181, 02-382, 04-612, and 05-894; Civil Cases Nos. 90-76, 91-141, 95-09, 91-48, 94-107, SP 02-14, 91-132, 00-13 and 98-167.

[21] *Rollo* (A.M. No. RTJ-09-2181) p. 418. As per OCA Memorandum dated June 11, 2010.

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

a fine of Twenty Thousand Pesos (₱20,000.00) was submitted by the OCA to the Court on July 10, 2012, or more than two (2) years after he retired. In dismissing the complaint against him, We ruled that:

> In order for the Court to acquire jurisdiction over an administrative case, **the complaint must be filed during the incumbency of the respondent**. Once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office. In *Office of the Court Administrator v. Judge Hamoy*, the Court held that:
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>> Respondent's cessation from office x x x does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The Court's jurisdiction at the time of the filing of the administrative complaint is not lost by the mere fact that the respondent had ceased in office during the pendency of the case.
>
> In the present case, Judge Grageda's compulsory retirement divested the OCA of its right to institute a new administrative case against him **after** his compulsory retirement. **The Court can no longer acquire administrative jurisdiction over Judge Grageda by filing a new administrative case against him after he has ceased to be a public official**. The remedy, if necessary, is to file the appropriate civil or criminal case against Judge Grageda for the alleged transgression. (emphasis provided)

Similarly, in the case *of Office of the Court Administrator v. Jesus L. Grageda,*[23] the Court dismissed another pending administrative case against him, thus:

> Records show that Judge Grageda compulsorily retired on November 25, 2009 while the judicial audit was conducted at RTC, Br. 4, Panabo City from November 17 to November 26, 2009. The OCA then submitted its report only on March 24, 2010, which was re-docketed as a regular administrative matter on April 28, 2010, or months after Judge Grageda retired from the judiciary. Consequently, his retirement effectively barred the Court from pursuing the instant administrative proceeding that was instituted

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[23] A.M. No. RTJ-10-2235, March 11, 2013.

after his tenure in office, and divested the Court, much less the OCA, of any jurisdiction to still subject him to the rules and regulations of the judiciary and/or to penalize him for the infractions committed while he was still in the service. As held in the case of *OCA v. Judge Celso L. Mantua* [A.M. No. RTJ-11-2291, February 8, 2012]:

> This Court concedes that there are no promulgated rules on the conduct of judicial audit. However, the absence of such rules should not serve as license to recommend the imposition of penalties to retired judges who, during their incumbency, were never given a chance to explain the circumstances behind the results of the judicial audit.

In light of these pronouncements, the Court has lost jurisdiction to find him liable for the cases and motions left unresolved prior to his retirement.

WHEREFORE, above premises considered, the complaint against respondent Judge **GUILLERMO R. ANDAYA**, formerly of the Regional Trial Court, Branch 53, Lucena City, Quezon, is **DISMISSED**. The Financial Management Office of the Office of the Court Administrator is **DIRECTED** to release the Fifty Thousand Pesos (₱50,000.00) retained from his retirement pay unless withheld for some other lawful cause.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, Del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., no part — related to party.

Peralta, J., on official leave.

Perez, J., no part, acted on matter as Court Administrator.

EN BANC

[G.R. No. 179267. June 25, 2013]

JESUS C. GARCIA, *petitioner, vs.* **THE HONORABLE RAY ALAN T. DRILON, Presiding Judge, Regional Trial Court-Branch 41, Bacolod City, and ROSALIE JAYPE-GARCIA, for herself and in behalf of minor children, namely: JO-ANN, JOSEPH EDUARD, JESSE ANTHONE, all surnamed GARCIA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262); FAMILY COURTS HAVE JURISDICTION TO PASS UPON THE CONSTITUTIONALITY OF R.A. 9262.—** [I]t must be stressed that Family Courts are special courts, of the same level as Regional Trial Courts. Under R.A. 8369, otherwise known as the "Family Courts Act of 1997," family courts have exclusive original jurisdiction to hear and decide cases of domestic violence against women and children. In accordance with said law, the Supreme Court designated from among the branches of the Regional Trial Courts at least one Family Court in each of several key cities identified. To achieve harmony with the first mentioned law, Section 7 of R.A. 9262 now provides that Regional Trial Courts designated as Family Courts shall have original and exclusive jurisdiction over cases of VAWC defined under the latter law[.] x x x Inspite of its designation as a family court, the RTC of Bacolod City remains possessed of authority as a court of general original jurisdiction to pass upon all kinds of cases whether civil, criminal, special proceedings, land registration, guardianship, naturalization, admiralty or insolvency. It is settled that RTCs have jurisdiction to resolve the constitutionality of a statute, "this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or

executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs.

2. **ID.; ID.; ID.; THE CONSTITUTIONALITY OF R.A. 9262 MAY BE RAISED IN AN OPPOSITION TO THE PETITION FOR PROTECTION ORDER.—** [C]ontrary to the posturing of petitioner, the issue of constitutionality of R.A. 9262 could have been raised at the earliest opportunity in his Opposition to the petition for protection order before the RTC of Bacolod City, which had jurisdiction to determine the same, subject to the review of this Court. Section 20 of A.M. No. 04-10-11-SC, the Rule on Violence Against Women and Their Children, lays down a new kind of procedure requiring the respondent to file an opposition to the petition and not an answer. x x x We cannot subscribe to the theory espoused by petitioner that, since a counterclaim, cross-claim and third-party complaint are to be excluded from the opposition, the issue of constitutionality cannot likewise be raised therein. A **counterclaim** is defined as any claim for money or other relief which a defending party may have against an opposing party. A **cross-claim**, on the other hand, is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Finally, a **third-party complaint** is a claim that a defending party may, with leave of court, file against a person not a party to the action for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. As pointed out by Justice Teresita J. Leonardo-De Castro, the unconstitutionality of a statute is not a cause of action that could be the subject of a counterclaim, cross-claim or a third-party complaint. Therefore, it is not prohibited from being raised in the opposition in view of the familiar maxim *expressio unius est exclusio alterius.*

3. **REMEDIAL LAW; RULE ON R.A. 9262 (A.M. NO. 04-10-11-SC); A TEMPORARY PROTECTION ORDER (TPO) MAY NOT BE ENJOINED; TO ISSUE AN INJUNCTION AGAINST TPO WILL DEFEAT THE VERY PURPOSE OF THE LAW.—** [The] appellate court correctly dismissed the petition for prohibition with prayer for injunction and temporary restraining order (CA -G.R. CEB - SP. No. 01698). Petitioner may have proceeded upon an honest belief that if he finds succor in a superior court, he could be granted an injunctive relief.

However, Section 22(j) of A.M. No. 04-10-11-SC expressly disallows the filing of a petition for *certiorari*, *mandamus* or prohibition **against any interlocutory order** issued by the trial court. Hence, the 60-day TRO issued by the appellate court in this case against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto was improper, and it effectively hindered the case from taking its normal course in an expeditious and summary manner. As the rules stand, a review of the case by appeal or *certiorari* before judgment is prohibited. Moreover, if the appeal of a judgment granting permanent protection shall not stay its enforcement, with more reason that a TPO, which is valid only for thirty (30) days at a time, should not be enjoined. The mere fact that a statute is alleged to be unconstitutional or invalid, does not of itself entitle a litigant to have the same enjoined. x x x The sole objective of injunctions is to preserve the status quo until the trial court hears fully the merits of the case. It bears stressing, however, that protection orders are granted *ex parte* so as to protect women and their children from acts of violence. To issue an injunction against such orders will defeat the very purpose of the law against VAWC.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF R.A. 9262; THE LAW DOES NOT VIOLATE THE GUARANTY OF EQUAL PROTECTION CLAUSE; IT RESTS ON SUBSTANTIAL DISTINCTION SPECIFICALLY POINTING TO THE UNEQUAL POWER RELATIONSHIP BETWEEN MEN AND WOMEN.—** The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for **real differences** justifying the classification under the law. x x x According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the **unequal power relationship between women and men** otherwise known as "gender-based violence". Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power

over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power. The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993 stating that "violence against women is a manifestation of **historically unequal power relations between men and women**, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men."

5. **ID.; ID.; ID.; ID.; THE CLASSIFICATION IS GERMANE TO THE PURPOSE OF THE LAW.—** The distinction between men and women is germane to the purpose of R.A . 9262, which is to address violence committed against women and children, spelled out in its *Declaration of Policy*[.] x x x In 1979, the U.N. General Assembly adopted the CEDAW, which the Philippines ratified on August 5, 1981. Subsequently, the Optional Protocol to the CEDAW was also ratified by the Philippines on October 6, 2003. This Convention mandates that State parties shall accord to women equality with men before the law and shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women. The Philippines likewise ratified the Convention on the Rights of the Child and its two protocols. It is, thus, bound by said Conventions and their respective protocols.

6. **ID.; ID.; ID.; ID.; THE CLASSIFICATION IS NOT LIMITED TO EXISTING CONDITIONS ONLY AND APPLIES EQUALLY TO ALL MEMBERS.—** [T]he application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of men and their children are threatened by violence and abuse. R.A. 9262 applies **equally** to all women and children who suffer violence and abuse.

7. **ID.; ID.; ID.; R.A. 9262 IS NOT VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION.—** The grant

of a TPO *ex parte* cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is protection of women and children from violence and threats to their personal safety and security. It should be pointed out that when the TPO is issued *ex parte*, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent. Where no TPO is issued *ex parte*, the court will nonetheless order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice. The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued. It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. Thus, the fear of petitioner of being "stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened" is a mere product of an overactive imagination. 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. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

8. REMEDIAL LAW; RULE ON R.A. 9262; REFERRAL OF THE CASE TO A MEDIATOR IS NOT ALLOWED; REASON.— Under Section 23(c) of A.M. No. 04-10-11-SC, the court shall not refer the case or any issue thereof to a mediator. The reason behind this provision is well-explained by the Commentary on Section 311 of the Model Code on Domestic and Family Violence as follows: This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issue at hand. **Violence, however, is not a subject for compromise**. A process which involves parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order of protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought.

9. ID.; ID.; THE BARANGAY PROTECTION ORDER (BPO) ISSUED BY THE BARANGAY OFFICIAL IS PURELY EXECUTIVE IN NATURE; THERE IS NO UNDUE DELEGATION OF JUDICIAL POWER.— As clearly delimited by the x x x the BPO issued by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad,* merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the *barangay*." We have held that "(t)he mere fact that an officer is required by law to inquire into the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private rights do not constitute an exercise of judicial powers." In the same manner as the public prosecutor ascertains through a preliminary inquiry or proceeding "whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof," the *Punong Barangay* must determine reasonable ground to believe that an imminent danger of violence against the woman and her children exists or is about to recur that would necessitate the

issuance of a BPO. The preliminary investigation conducted by the prosecutor is, concededly, an executive, not a judicial, function. The same holds true with the issuance of a BPO.

LEONARDO-DE CASTRO, *J.*: *concurring opinion:*

1. **REMEDIAL LAW; THE RULES ON VIOLENCE AGAINST WOMEN AND CHILDREN (A.M. NO. 04-10-11-SC); DOES NOT PROHIBIT THE RESPONDENT TO QUESTION THE CONSTITUTIONALITY OF REPUBLIC ACT 9262 (R.A. 9262) IN HIS OPPOSITION TO THE PETITION FOR PROTECTION ORDER.—** Petitioner cites the [Section 20 of A.M. No. 04-10-11-SC, the Rule on Republic Act No. 9262] particularly paragraph (b) thereof, as one of his grounds for not challenging the constitutionality of Republic Act No. 9262 in his Opposition. The error of such reasoning is that it treats "any cause of action" mentioned in Section 20(b) as distinct from the "counterclaim, cross-claim or third-party complaint" referred to in the said Section 20(b). On the contrary, the language of said section clearly refers to a cause of action that is the "**subject**" **of the counterclaim, cross-claim, or third-party complaint**, which is barred and which may be litigated in a separate civil action. The issue of constitutionality is not a "cause of action" that is a subject of the aforementioned prohibited pleadings. In fact, petitioner admitted that such prohibited pleadings would allege "claims which are **personal** to him." Hence, Section 20(b) cannot even be invoked as a basis for filing the separate special civil action of Petition for Prohibition before the Court of Appeals to question the constitutionality of Republic Act No. 9262. What obviously escapes petitioner's understanding is that the contents of the Opposition are not limited to mere refutations of the allegations in the petition for temporary and permanent protection order. While it is true that A.M. No. 04-10-11-SC requires the respondent to file an *Opposition* and not an *Answer*, it does not prevent petitioner from challenging the constitutionality of Republic Act No. 9262 in such Opposition. In fact, Section 20(a) directs petitioner to state in his Opposition why a temporary or permanent protection order should not be issued against him. This means that petitioner should have raised in his Opposition all defenses available to him, which may be either negative or affirmative. x x x [T]he alleged

unconstitutionality of Republic A ct No. 9262 is a matter that would have prevented the trial court from granting the petition for protection order against the petitioner. Thus, petitioner should have raised it in his Opposition as a defense against the issuance of a protection order against him.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE ANTI-VIOLENCE AGAINST WOMEN AND CHILDREN ACT OF 2004 (R.A. 9262); THE EARLIEST OPPORTUNITY TO CHALLENGE THE CONSTITUTIONALITY OF R.A. 9262 IS TO RAISE IT AS AN AFFIRMATIVE DEFENSE IN AN OPPOSITION TO A PETITION FOR PROTECTION ORDER; IT CANNOT BE QUESTIONED BY FILING A SEPARATE ACTION BEFORE THE TRIAL COURT.—** [T]he challenge to the constitutionality of the law must be raised at the earliest opportunity. x x x This Court held that such opportunity is in the pleadings before a competent court that can resolve it, such that "if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal." The decision upon the constitutional question is necessary to determine whether the TPO should be issued against petitioner. Such question should have been raised at the earliest opportunity as an affirmative defense in the Opposition filed with the RTC handling the protection order proceedings, which was the competent court to pass upon the constitutional issue. x x x [T]he filing of a separate action before the Court of Appeals or the RTC for the declaration of unconstitutionality of Republic Act No. 9262 would result to multiplicity of suits. It is clear that the issues of constitutionality and propriety of issuing a protection order raised by petitioner are inextricably intertwined. Another court, whether it is an appellate court or a trial court, cannot resolve the constitutionality question in the separate action without affecting the petition for the issuance of a TPO. Bringing a separate action for the resolution of the issue of constitutionality will result in an unresolved prejudicial question to the validity of issuing a protection order. If the proceedings for the protection order is not suspended, it does create the danger of having inconsistent and conflicting judgments between the two separate courts, whether of the same or different levels in the judicial hierarchy. These two

judgments would eventually be the subject of separate motions for reconsideration, separate appeals, and separate petitions for review before this Court – the exact scenario the policy against multiplicity of suits is avoiding. As we previously held, "the law and the courts frown upon split jurisdiction and the resultant multiplicity of actions." x x x In this case, the petitioner's challenge on the constitutionality of Republic Act No. 9262 was on the basis of the protection order issued against him. Verily, the controversy became ripe only when he was in danger of or was directly adversely affected by the statute mandating the issuance of a protection order against him. He derives his standing to challenge the statute from the direct injury he would sustain if and when the law is enforced against him. Therefore, it is clear that the proper forum to challenge the constitutionality of the law was before the RTC handling the protection order proceedings. The filing of a separate action to question the constitutionality of the law amounts to splitting a cause of action that runs counter to the policy against multiplicity of suits. x x x [T]here is no statutory, reglementary, or practical basis to disallow the constitutional challenge to a law, which is sought to be enforced, in a summary proceeding. This is particularly true considering that the issue of a statute's constitutionality is a question of law which may be resolved without the reception of evidence or a full-blown trial. Hence, said issue should have been raised at the earliest opportunity in the proceedings before the RTC, Bacolod City and for failure of the petitioner to do so, it cannot be raised in the separate Petition for Prohibition before the Court of Appeals, as correctly ruled by the latter, nor in a separate action before the RTC.

3. **ID.; ID.; ID.; THE APPROPRIATE TEST TO DETERMINE WHETHER THE CLASSIFICATION UNDER R.A. 9262 VIOLATES EQUAL PROTECTION CLAUSE IS THE *MIDDLE-TIER SCRUTINY OR THE INTERMEDIATE STANDARD OF JUDICIAL REVIEW*.—** This case presents us with the most opportune time to adopt the appropriate scrutiny in deciding cases where the issue of discrimination based on sex or gender is raised. x x x Petitioner questions the constitutionality of Republic Act No. 9262 which denies the same protection orders to husbands who are victims of wife-abuse. It should be stressed that under aforecited section of

said law violence may not only be physical or sexual but also psychological and economic in nature. x x x Since statutory remedies accorded to women are not made available to men, when the reality is that there are men, regardless of their number, who are also suffering from domestic violence, the rational basis test may be too wide and liberal to justify the statutory classification which in effect allows different treatment of men who are similarly situated. In the context of the constitutional policy to "ensure the fundamental equality before the law of women and men" the level of scrutiny applicable, to test whether or not the classification in Republic Act No. 9262 violates the equal protection clause, is the **middle-tier scrutiny or the intermediate standard of judicial review.**

4. **ID.; ID.; ID.; ID.; TWO REQUISITES TO SURVIVE INTERMEDIATE REVIEW; THE ESSENTIAL GOVERNMENTAL OBJECTIVES OF SAFEGUARDING HUMAN RIGHTS, ENSURE GENDER EQUALITYAND EMPOWER WOMEN ARE BEING SERVED BY R.A. 9262.—** To survive intermediate review, the classification in the challenged law must (1) serve **important** governmental objectives, and (2) be **substantially related** to the achievement of those objectives. x x x The Declaration of Policy in Republic Act No. 9262 enunciates the purpose of the said law, which is to fulfill the government's obligation to safeguard the dignity and human rights of women and children by providing effective remedies against domestic violence or physical, psychological, and other forms of abuse perpetuated by the husband, partner, or father of the victim. The said law is also viewed within the context of the constitutional mandate to ensure gender equality[.] x x x It has been acknowledged that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." Republic Act No. 9262 can be viewed therefore as the Philippines' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is committed to condemn discrimination against women and directs its members to undertake, without delay, all appropriate means to eliminate discrimination against women in all forms both in law and in practice. Known as the International Bill of Rights of Women, the CEDAW is the central and most

comprehensive document for the advancement of the welfare of women. It brings the women into the focus of human rights concerns, and its spirit is rooted in the goals of the UN: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The CEDAW, in its preamble, explicitly acknowledges **the existence of extensive discrimination against women, and emphasized that such is a violation of the principles of equality of rights and respect for human dignity.** x x x The Philippines' accession to various international instruments requires it to promote and ensure the observance of human rights and "continually affirm its commitment to ensure that it pursues gender equality in all aspects of the development process to eventually make real, a gender-responsive society." Thus, the governmental objectives of **protecting human rights and fundamental freedoms, which includes promoting gender equality** and **empowering women**, as mandated not only by our Constitution, but also by commitments we have made in the international sphere, are undeniably **important and essential**.

5. ID.; ID.; ID.; ID.; THE GENDER-BASED CLASSIFICATION IN R.A. 9262 IS SUBSTANTIALLY RELATED TO THE ACHIEVEMENT OF GOVERNMENTAL OBJECTIVES; THE CLASSIFICATION THEREFORE IS NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.— Preventing violence against women and children through their availment of special legal remedies, serves the governmental objectives of protecting the dignity and human rights of every person, preserving the sanctity of family life, and promoting gender equality and empowering women. Although there exists other laws on violence against women in the Philippines, Republic Act No. 9262 deals with the problem of violence within the family and intimate relationships, which deserves special attention because it occurs in situations or places where women and children should feel most safe and secure but are actually not. The law provides the widest range of reliefs for women and children who are victims of violence, which are often reported to have been committed not by strangers, but by a father or a husband or a person with whom the victim has or had a sexual or dating relationship. Aside from filing a criminal case in court, the law provides potent legal remedies to the

victims that theretofore were not available. The law recognizes, with valid factual support based on statistics that women and children are the most vulnerable victims of violence, and therefore need legal intervention. On the other hand, there is a dearth of empirical basis to anchor a conclusion that men need legal protection from violence perpetuated by women. x x x In furtherance of the governmental objectives, especially that of protecting human rights, violence against women and children under this Act has been classified as a public offense, making its prosecution independent of the victim's initial participation. **Verily, the classification made in Republic Act No. 9262 is substantially related to the important governmental objectives of valuing every person's dignity, respecting human rights, safeguarding family life, protecting children, promoting gender equality, and empowering women.** The persistent and existing biological, social, and cultural differences between women and men prescribe that they be treated differently under particular conditions in order to achieve **substantive equality** for women. x x x The equal protection clause in our Constitution does not guarantee an absolute prohibition against classification. The non-identical treatment of women and men under Republic Act No. 9262 is justified to put them on equal footing and to give substance to the policy and aim of the state to ensure the equality of women and men in light of the biological, historical, social, and culturally endowed differences between men and women. Republic Act No. 9262, by affording special and exclusive protection to women and children, who are vulnerable victims of domestic violence, undoubtedly serves the important governmental objectives of protecting human rights, insuring gender equality, and empowering women. The gender-based classification and the special remedies prescribed by said law in favor of women and children are substantially related, in fact essentially necessary, to achieve such objectives. Hence, said Act survives the **intermediate review** or **middle-tier judicial scrutiny**. The gender-based classification therein is therefore not violative of the equal protection clause embodied in the 1987 Constitution.

6. **ID.; ID.; ID.; ID.; THE ISSUANCE OF TEMPORARY PROTECTION ORDER *EX PARTE* DOES NOT VIOLATE DUE PROCESS OF LAW.—** A protection order is issued

under Republic Act No. 9262 for the purpose of preventing further acts of violence against a woman or her child. The circumstances surrounding the availment thereof are often attended by urgency; thus, women and child victims must have immediate and uncomplicated access to the same. x x x The *ex parte* issuance of the TPO does not make it unconstitutional. Procedural due process refers to the method or manner by which the law is enforced. It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. However, it is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those involved herein. Republic Act No. 9262 and its implementing regulations were enacted and promulgated in the exercise of that pervasive, sovereign power of the State to protect the safety, health, and general welfare and comfort of the public (in this case, a particular sector thereof), as well as the protection of human life, commonly designated as the police power. x x x [T]he urgent need for a TPO is inherent in its nature and purpose, which is to immediately provide protection to the woman and/or child victim/s against further violent acts. Any delay in the issuance of a protective order may possibly result in loss of life and limb of the victim. The issuing judge does not arbitrarily issue the TPO as he can only do so if there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur based on the verified allegations in the petition of the victim/s. Since the TPO is effective for only thirty (30) days, any inconvenience, deprivation, or prejudice the person enjoined — such as the petitioner herein — may suffer, is generally limited and temporary. Petitioner is also not completely precluded from enjoying the right to notice and hearing at a later time. Following the issuance of the TPO, the law and rules require that petitioner be personally served with notice of the preliminary conference and hearing on private respondent's petition for a Permanent Protection Order (PPO) and that petitioner submit his opposition to private respondent's petition for protections orders. In fact, it was petitioner's choice not to file an opposition, averring that it would only be an "exercise in futility." Thus, the twin rights of notice and hearing were subsequently afforded to petitioner but he chose not to take advantage of

them. Petitioner cannot now claim that the *ex parte* issuance of the TPO was in violation of his right to due process.

7. **ID.; ID.; ID.; THE GRANT OF AUTHORITY TO *BARANGAY* OFFICIALS TO ISSUE PROTECTION ORDER DOES NOT AMOUNT TO UNDUE DELEGATION OF JUDICIAL POWER.—** [T]he urgency of the purpose for which protection orders under Republic Act No. 9262 are issued justifies the grant of authority to *barangay* officials to issue BPOs. *Barangay* officials live and interact closely with their constituents and are presumably easier to approach and more readily available than any other government official. Their issuance of the BPO is but part of their official executive function of enforcing all laws and ordinances within their *barangay* and maintaining public order in the *barangay*. It is true that the *barangay* officials' issuance of a BPO under Republic Act No. 9262 necessarily involves the determination of some questions of fact, but this function, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law. x x x In the case of a BPO, it is a mere provisional remedy under Republic Act No. 9262, meant to address the pressing need of the victims for instant protection. However, it does not take the place of appropriate judicial proceedings and remedies that provide a more effective and comprehensive protection to the victim. In fact, under the Implementing Rules of Republic Act No. 9262, the issuance of a BPO or the pendency of an application for a BPO shall not preclude the victim from applying for, or the court from granting, a TPO or PPO. Where a TPO has already been granted by any court, the *barangay* official may no longer issue a BPO. The same Implementing Rules also require that within twenty-four (24) hours after the issuance of a BPO, the *barangay* official shall assist the victim in filing an application for a TPO or PPO with the nearest court in the victim's place of residence. If there is no Family Court or RTC, the application may be filed in the Municipal Trial Court, the Municipal Circuit Trial Court or the Metropolitan Trial Court.

BRION, *J.*: *concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE ANTI-VIOLENCE**

AGAINST WOMEN AND THEIR CHILDREN ACT of 2004 (R.A. 9262) ; THE CLASSIFICATION UNDER R.A. 9262 IS VALID AND THE LOWEST LEVEL OF SCRUTINY OF REVIEW UNDER THE REASONABLESS TEST SHOULD BE APPLIED.— [T]he statutory classification under R.A . No. 9262 to be valid, and that the ***lowest level of scrutiny of review*** should be applied in determining if the law has established a valid classification germane to the Constitution's objective to protect the family by protecting its women and children members. x x x My serious reservation on the use of an expanded equal protection clause and in applying a strict scrutiny standard is, among others, based on lack of necessity; we do not need these measures when we can fully examine R.A. No. 9262's constitutionality using the reasonableness test. x x x The reasonableness test x x x has been consistently applied to allow the courts to uphold State action as long as the action is found to be germane to the purpose of the law, in this case to support the unity and development of the family. ***If we are to deviate from or to modify this established standard of scrutiny, we must do so carefully and for strong justifiable reasons.***

2. ID.; ID.; ID.; ID.; THE CLASSIFICATION UNDER R.A. 9262 IS NOT A "SUSPECT CLASSIFICATION" THAT REQUIRES STRICT SCRUTINY STANDARD REVIEW; THE CLASSIFICATION IN THE LAW WAS NOT BROUGHT ON BY CONSIDERATION OF GENDER OR SEX BUT BY THE REALITY IN PHILIPPINE SOCIETY.— When the court uses a strict standard for review to evaluate the constitutionality of a law, it proceeds from the premise that the law established a "suspect classification." A suspect classification is one where distinctions are made based on the ***most invidious*** bases for classification that violate the most basic human rights, i.e., on the basis of race, national origin, alien status, religious affiliation and, to a certain extent, sex and sexual orientation. With a suspect classification, the most stringent scrutiny of the classification is applied: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving the statute's constitutionality. This approach is unlike the lowest level of scrutiny (reasonableness test) that the Court has applied in the past where the classification is scrutinized and constitutionally upheld

if found to be germane to the purpose of the law. Under a reasonableness test, there is a presumption of constitutionality and that the laws enacted by Congress are presumed to fall within its constitutional powers. To pass strict scrutiny, the government must actively show that the classification established in the law is justified by a compelling governmental interest and the means chosen by the State to effectuate its purpose must be narrowly tailored to the achievement of that goal. In the context of the present case, is the resulting classification in the present law so outstandingly harmful to men in general so that a strict scrutiny is called for? I do not really see any indication that Congress actually intended to classify women and children as a group against men, under the terms of R.A. No. 9262. Rather than a clear intent at classification, the **overriding intent of the law is indisputably to harmonize family relations and protect the family as a basic social institution.** x x x Even granting that a classification resulted in the law, I do not consider the classification of women and children to be within the "suspect classification" that jurisprudence has established. As I mentioned earlier, suspect classifications are distinctions based on the most invidious bases for classification that violate the most basic human rights. Some criteria used in determining suspect classifications are: (1) the group possesses an immutable and/or highly visible trait; and (2) they are powerless to protect themselves via the political process. The group is a "discrete" and "insular" minority. Women and children, to my mind, simply do not fall within these criteria. x x x I believe that **the classification in the law was not immediately brought on by considerations of gender or sex; it was simply a reality as unavoidable as the reality that in Philippine society, a marriage is composed of a man, a woman and their children.** An obvious reason, of course, why the classification did not solely depend on gender is because the law also covers children, without regard to their sex or their sexual orientation. x x x [*W*]*ith the objective of promoting solidarity and the development of the family,* R.A. No. 9262 provides the legal redress for domestic violence that particularly affects women and their children. ***Significantly, the law does not deny, restrict or curtail civil and human rights of other persons falling outside the classification, particularly of the men members of the family who can avail of remedies provided by other laws to ensure the protection***

of their own rights and interests. Consequently, the resulting classification under R.A. No. 9262 is not wholly intended and does not work an injustice by removing remedies that are available to men in violence committed against them. The law furthermore does not target men against women and children and is there simply to achieve a legitimate constitutional objective, and it does not achieve this by a particularly harmful classification that can be labeled "suspect" in the sense already established by jurisprudence. Under the circumstances, the use and application of strict scrutiny review, or even the use of an expanded equal protection perspective, strike me as both unnecessary and disproportionate.

ABAD, *J.*: ***separate concurring opinion:***

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262); EXPANDED EQUAL PROTECTION CLAUSE, CONCEPT OF.—** I agree with [Justice Perlas-Bernabe] but would like to hinge my separate concurring opinion on the concept of an Expanded Equal Protection Clause that former Chief Justice Reynato S. Puno espouses in his book: *Equal Dignity and Respect: The Substance of Equal Protection and Social Justice*. Chief Justice Puno's thesis is that the right to equal protection casts another shadow when the issue raised under it involves persons protected by the social justice provision of the Constitution, specifically, Section 1, Article XIII. The equal protection clause can no longer be interpreted as only a guarantee of formal equality but of substantive equality. "It ought to be construed," said the Chief Justice, "in consonance with social justice as 'the heart' particularly of the 1987 Constitution—a transformative covenant in which the Filipino people agreed to enshrine asymmetrical equality to uplift disadvantaged groups and build a genuinely egalitarian democracy." This means that the weak, including women in relation to men, can be treated with a measure of bias that they may cease to be weak. Chief Justice Puno goes on: "The Expanded Equal Protection Clause, anchored on the human rights rationale, is designed as a weapon against the indignity of discrimination so that in the patently unequal Philippine society, each person may be restored to his or her rightful position as

a person with equal moral status." Specifically, the expanded equal protection clause should be understood as meant to "reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good." x x x Chief Justice Puno points out that the equal protection clause must be interpreted in connection with the social justice provisions of the Constitution "so as not to frustrate or water down the constitutional commitment to promote substantive equality and build the genuinely "just and humane society" that Filipinos aspire for, as stated in the Preamble of the 1987 Constitution." But the expanded concept of equal protection, said Chief Justice Puno, only applies to the government's ameliorative action or discriminatory actions intended to improve the lot of the disadvantaged. Laws challenged for invalid classification because of being unreasonable or arbitrary, but not discriminatory, are outside the scope of the expanded equal protection clause. Such cases fall under the traditional equal protection clause which protects the right to formal equality and determines the validity of classifications through the well established reasonableness test.

2. **ID.; ID.; ID.; EXPANDED CONCEPT OF EQUAL PROTECTION APPLIED TO DETERMINE WHETHER THE CLASSIFICATION UNDER R.A. 9262 IS VALID; R.A. 9262 IS AN AMELIORATIVE ACTION TAKEN BY CONGRESS TO ADDRESS THE EVIL EFFECTS OF PATRIARCHAL SOCIAL MODEL ON FILIPINO WOMEN AND CHILDREN AND ELEVATE THEIR STATUS AS HUMAN BEINGS ON THE SAME LEVEL AS THE FATHER.—** The [Article XIII, Section 1] of the Constitution abundantly authorize Congress or the government to actively undertake ameliorative action that would remedy existing inequalities and inequities experienced by women and children brought about by years of discrimination. The equal protection clause when juxtaposed to this provision provides a stronger mandate for the government to combat such discrimination. Indeed, these provisions order Congress to "*give highest priority* to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities." No doubt, historically, the Philippine tribal and family model hews

close to patriarchy, a pattern that is deeply embedded in the society's subconscious. Consequently, it can be said that in enacting R.A. 9262, Congress has taken an ameliorative action that would address the evil effects of such social model on Filipino women and children and elevate their status as human beings on the same level as the father or the husband. What remedies does R.A. 9262 especially provide women and children? The law is gender-specific as only they may file the prescribed actions against offenders, whether men or women, with whom the victims are or were in lesbian relationships. The definition includes past or present marital, live-in, sexual or dating relationships. This law also provides for the remedy of a protection order in a civil action or in a criminal action, aside from the criminal action for its violation. It makes the process of securing a restraining order against perpetrators easier and more immediate by providing for the legal remedy of protection orders from both the courts and barangay officials. R.A. 9262 aims to put a stop to the cycle of male abuses borne of discrimination against women. It is an ameliorative measure, not a form of "reverse discrimination" against men as Garcia would have it. Ameliorative action "*is not, as Hogg remarked, an exception to equality, but an expression and attainment of de facto equality, the genuine and substantive equality which the Filipino people themselves enshrined as a goal of the 1987 Constitution*" Ameliorative measures are necessary as a distributive mechanism in an unequal society to achieve substantive equality.

3. **ID.; ID.; ID.; ID.; HAVING BEEN INSPIRED BY THE WOMEN'S STRUGGLE FOR SUBSTANTIVE EQUALITY WITH MEN, R.A. 9262 WAS ENACTED TO ADDRESS THE SERIOUS PROBLEM OF VIOLENCE AGAINST WOMEN IN THE CONTEXT OF INTIMATE RELATIONSHIP AND TO PROVIDE RELIEF THEREFOR.—** Clearly, the substantive equality model inspired R.A. 9262. For one thing, Congress enacted it because of compelling interest in preventing and addressing the serious problem of violence against women in the context of intimate relationships— recognized all over the world as one of the most insidious forms of gender discrimination. For another, R.A. 9262 is based on the experiences of women who have been victims of domestic violence. The list of acts regarded as forms of violence come

from true-to-life stories of women who have suffered abuses from their male partners. Finally, R.A. 9262 seeks women's full participation in society. Hence, the law grants them needed relief to ensure equality, protection, and personal safety, enabling them to enjoy their civil, political, social, and economic rights. The provision on protection orders, for instance, precisely aims to safeguard "the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."

LEONEN, *J.*: *concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF STATUTES; REQUISITES THAT MUST CONCUR BEFORE THE COURT CAN RULE ON CONSTITUTIONAL ISSUES.—** For us to proceed to rule on Constitutional issues, we have required that: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very lis mota of the case.

2. **ID.; ID.; ID.; ID.; LEGAL STANDING IN CASES THAT RAISE CONSTITUTIONAL ISSUES, EXPLAINED.—** Legal standing in cases that raise constitutional issues is essential. *Locus standi* is defined as "a right of appearance in a court of justice on a given question." The fundamental question is "whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. In private suits, standing is governed by the "real-parties-in-interest" rule under Section 2, Rule 3 of the 1997 Rules of Civil Procedure in that "every action must be prosecuted or defended in the name of the real party-in-interest." "Interest" means material interest or an interest in issue to be affected by the judgment of the case, as distinguished from mere curiosity about the

question involved. Thus, there must be a present substantial interest as distinguished from a mere inchoate expectancy or a future, contingent, subordinate, or consequential interest. Standing is based on one's own right to the relief sought. The doctrine of *locus standi* in cases raising constitutional issues frames the power of judicial review that we wield. This is the power "to settle actual controversies involving rights which are legally demandable and enforceable" as well as "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government."

3. **ID.; ID.; CONSTITUTIONALITY OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262); PETITIONER HAS NO LEGAL STANDING TO QUESTION THE CONSTITUTIONALITY OF R.A. 9262.—** The petitioner is not the victim in this case. He does not have legal standing to raise the constitutional issue. x x x, [P]etitioner's belated challenge to the law is nothing but a cheap attempt to raise cherished fundamental constitutional principles to escape legal responsibility for causing indignities in another human being. There is enough in our legal order to prevent the abuse of legal principles to condone immoral acts.

4. **ID.; ID.; ID.; ABSENCE OF NECESSITY TO RESOLVE THE CONSTITUTIONALITY OF R.A. 9262.—** The presence of an "actual case" prevents this Court from providing advisory opinions or using its immense power of judicial review absent the presence of a party with real and substantial interests to clarify the issues based upon his/her experience and standpoint. It prevents this Court from speculating and rendering rulings on the basis of pure theory. Our doctrines on justiciability are self-imposed applications of a fundamental view that we accord a presumption of constitutionality to acts done by the other constitutional organs and departments of government. Generally, we do not strike down acts done by co-equal departments until their repugnancy to the Constitution can be shown clearly and materially. I am aware of our precedents where this Court has waived questions relating to the justiciability of the constitutional issues raised when they have "transcendental importance" to the public. In my view, this accommodates our power to promulgate guidance "concerning the protection and enforcement of constitutional rights." We choose to rule

squarely on the constitutional issues in a petition wanting all or some of the technical requisites to meet our general doctrines on justiciability but raising clear conditions showing imminent threat to fundamental rights. The imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. In a sense, our exceptional doctrine relating to constitutional issues of "transcendental importance" prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection. That necessity is wanting in this case.

APPEARANCES OF COUNSEL

Roland G. Ravina for petitioner.

Ma. Rowena Amelia V. Guanzon, *Mae Niña Reyes-Gallos* and *Claire Angeline P. Luczon* for private respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Hailed as the bastion of Christianity in Asia, the Philippines boasts of 86.8 million Filipinos – or 93 percent of a total population of 93.3 million — adhering to the teachings of Jesus Christ.[1] Yet, the admonition for *husbands to love their wives as their own bodies just as Christ loved the church and gave himself up for her*[2] failed to prevent, or even to curb, the pervasiveness of violence against Filipino women. The National Commission on the Role of Filipino Women (NCRFW) reported that, for the years 2000-2003, "female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners."[3]

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[1] "Philippines still top Christian country in Asia, 5th in world," *Philippine Daily Inquirer*, December 21, 2011.

[2] Ephesians 5:25-28.

[3] RATIONALE OF THE PROPOSED RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, citing statistics furnished by the National Commission on the Role of Filipino Women.

Thus, on March 8, 2004, after nine (9) years of spirited advocacy by women's groups, Congress enacted **Republic Act (R.A.) No. 9262**, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes." It took effect on March 27, 2004.[4]

R.A. 9262 is a landmark legislation that *defines* and *criminalizes* acts of violence against women and their children (VAWC) perpetrated by women's intimate partners, *i.e*, *husband; former husband; or any person who has or had a sexual or dating relationship, or with whom the woman has a common child*.[5] The law provides for *protection orders* from the barangay and the courts to prevent the commission of further acts of VAWC; and outlines the duties and responsibilities of barangay officials, law enforcers, prosecutors and court personnel, social workers, health care providers, and other local government officials in responding to complaints of VAWC or requests for assistance.

A **husband** is now before the Court assailing the constitutionality of R.A. 9262 as being violative of the equal protection and due process clauses, and an undue delegation of judicial power to barangay officials.

The Factual Antecedents

On March 23, 2006, Rosalie Jaype-Garcia (private respondent) filed, for herself and in behalf of her minor children, a verified petition[6] (Civil Case No. 06-797) before the Regional Trial Court (RTC) of Bacolod City for the issuance of a Temporary Protection Order (TPO) against her husband, Jesus C. Garcia (petitioner), pursuant to R.A. 9262. She claimed to be a victim of physical abuse; emotional, psychological, and economic violence as a result of marital infidelity on the part of petitioner, with threats of deprivation of custody of her children and of financial support.[7]

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[4] *Id.*

[5] Section 3(a), R.A. 9262.

[6] *Rollo*, pp. 63-83.

[7] *Id.* at 66-67.

Private respondent's claims

Private respondent married petitioner in 2002 when she was 34 years old and the former was eleven years her senior. They have three (3) children, namely: *Jo-Ann J. Garcia*, 17 years old, who is the natural child of petitioner but whom private respondent adopted; *Jessie Anthone J. Garcia*, 6 years old; and *Joseph Eduard J. Garcia*, 3 years old.[8]

Private respondent described herself as a dutiful and faithful wife, whose life revolved around her husband. On the other hand, petitioner, who is of Filipino-Chinese descent, is dominant, controlling, and demands absolute obedience from his wife and children. He forbade private respondent to pray, and deliberately isolated her from her friends. When she took up law, and even when she was already working part time at a law office, petitioner trivialized her ambitions and prevailed upon her to just stay at home. He was often jealous of the fact that his attractive wife still catches the eye of some men, at one point threatening that he would have any man eyeing her killed.[9]

Things turned for the worse when petitioner took up an affair with a bank manager of Robinson's Bank, Bacolod City, who is the godmother of one of their sons. Petitioner admitted to the affair when private respondent confronted him about it in 2004. He even boasted to the household help about his sexual relations with said bank manager. Petitioner told private respondent, though, that he was just using the woman because of their accounts with the bank.[10]

Petitioner's infidelity spawned a series of fights that left private respondent physically and emotionally wounded. In one of their quarrels, petitioner grabbed private respondent on both arms and shook her with such force that caused bruises and hematoma. At another time, petitioner hit private respondent forcefully on

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[8] *Id.* at 64.

[9] *Id.* at 67-68.

[10] *Id.* at 68-70.

the lips that caused some bleeding. Petitioner sometimes turned his ire on their daughter, Jo-Ann, who had seen the text messages he sent to his paramour and whom he blamed for squealing on him. He beat Jo-Ann on the chest and slapped her many times. When private respondent decided to leave petitioner, Jo-Ann begged her mother to stay for fear that if the latter leaves, petitioner would beat her up. Even the small boys are aware of private respondent's sufferings. Their 6-year-old son said that when he grows up, he would beat up his father because of his cruelty to private respondent.[11]

All the emotional and psychological turmoil drove private respondent to the brink of despair. On December 17, 2005, while at home, she attempted suicide by cutting her wrist. She was found by her son bleeding on the floor. Petitioner simply fled the house instead of taking her to the hospital. Private respondent was hospitalized for about seven (7) days in which time petitioner never bothered to visit, nor apologized or showed pity on her. Since then, private respondent has been undergoing therapy almost every week and is taking anti-depressant medications.[12]

When private respondent informed the management of Robinson's Bank that she intends to file charges against the bank manager, petitioner got angry with her for jeopardizing the manager's job. He then packed his things and told private respondent that he was leaving her for good. He even told private respondent's mother, who lives with them in the family home, that private respondent should just accept his extramarital affair since he is not cohabiting with his paramour and has not sired a child with her.[13]

Private respondent is determined to separate from petitioner but she is afraid that he would take her children from her and deprive her of financial support. Petitioner had previously warned

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[11] *Id.* at 70-71.

[12] *Id.* at 72.

[13] *Id.* at 73.

her that if she goes on a legal battle with him, she would not get a single centavo.[14]

Petitioner controls the family businesses involving mostly the construction of deep wells. He is the President of three corporations — 326 Realty Holdings, Inc., Negros Rotadrill Corporation, and J-Bros Trading Corporation — of which he and private respondent are both stockholders. In contrast to the absolute control of petitioner over said corporations, private respondent merely draws a monthly salary of ₱20,000.00 from *one* corporation only, the Negros Rotadrill Corporation. Household expenses amounting to not less than ₱200,000.00 a month are paid for by private respondent through the use of credit cards, which, in turn, are paid by the same corporation together with the bills for utilities.[15]

On the other hand, petitioner receives a monthly salary of ₱60,000.00 from Negros Rotadrill Corporation, and enjoys unlimited cash advances and other benefits in hundreds of thousands of pesos from the corporations.[16] After private respondent confronted him about the affair, petitioner forbade her to hold office at JBTC Building, Mandalagan, where all the businesses of the corporations are conducted, thereby depriving her of access to full information about said businesses. Until the filing of the petition *a quo*, petitioner has not given private respondent an accounting of the businesses the value of which she had helped raise to millions of pesos.[17]

Action of the RTC of Bacolod City

Finding reasonable ground to believe that an imminent danger of violence against the private respondent and her children exists or is about to recur, the RTC issued a TPO[18] on March 24, 2006 effective for thirty (30) days, which is quoted hereunder:

[14] *Id.* at 74.

[15] *Id.* at 65-66.

[16] *Id.* at 66.

[17] *Id.* at 70.

[18] *Id.* at 84-87.

Respondent (petitioner herein), Jesus Chua Garcia, is hereby:

a) Ordered to remove all his personal belongings from the conjugal dwelling or family home within 24 hours from receipt of the Temporary Restraining Order and if he refuses, ordering that he be removed by police officers from the conjugal dwelling; this order is enforceable notwithstanding that the house is under the name of 236 Realty Holdings Inc. (Republic Act No. 9262 states "regardless of ownership"), this is to allow the Petitioner (private respondent herein) to enter the conjugal dwelling without any danger from the Respondent.

After the Respondent leaves or is removed from the conjugal dwelling, or anytime the Petitioner decides to return to the conjugal dwelling to remove things, the Petitioner shall be assisted by police officers when re-entering the family home.

The Chief of Police shall also give the Petitioner police assistance on Sunday, 26 March 2006 because of the danger that the Respondent will attempt to take her children from her when he arrives from Manila and finds out about this suit.

b) To stay away from the petitioner and her children, mother and all her household help and driver from a distance of 1,000 meters, and shall not enter the gate of the subdivision where the Petitioner may be temporarily residing.

c) Not to harass, annoy, telephone, contact or otherwise communicate with the Petitioner, directly or indirectly, or through other persons, or contact directly or indirectly her children, mother and household help, nor send gifts, cards, flowers, letters and the like. Visitation rights to the children may be subject of a modified TPO in the future.

d) To surrender all his firearms including a .9MM caliber firearm and a Walther PPK and ordering the Philippine National Police Firearms and Explosives Unit and the Provincial Director of the PNP to cancel all the Respondent's firearm licenses. He should also be ordered to surrender any unlicensed firearms in his possession or control.

e) To pay full financial support for the Petitioner and the children, including rental of a house for them, and educational and medical expenses.

f) Not to dissipate the conjugal business.

g) To render an accounting of all advances, benefits, bonuses and other cash he received from all the corporations from 1 January 2006 up to 31 March 2006, which himself and as President of the corporations and his Comptroller, must submit to the Court not later than 2 April 2006. Thereafter, an accounting of all these funds shall be reported to the court by the Comptroller, copy furnished to the Petitioner, every 15 days of the month, under pain of Indirect Contempt of Court.

h) To ensure compliance especially with the order granting support pendente lite, and considering the financial resources of the Respondent and his threat that if the Petitioner sues she will not get a single centavo, the Respondent is ordered to put up a BOND TO KEEP THE PEACE in the amount of FIVE MILLION PESOS, in two sufficient sureties.

On April 24, 2006, upon motion[19] of private respondent, the trial court issued an amended TPO,[20] effective for thirty (30) days, which included the following additional provisions:

i) The petitioners (private respondents herein) are given the continued use of the Nissan Patrol and the Starex Van which they are using in Negros Occidental.

j) The petitioners are given the continued use and occupation of the house in Parañaque, the continued use of the Starex van in Metro Manila, whenever they go to Manila.

k) Respondent is ordered to immediately post a bond to keep the peace, in two sufficient sureties.

l) To give monthly support to the petitioner provisionally fixed in the sum of One Hundred Fifty Thousand Pesos (Php 150,000.00) per month plus rental expenses of Fifty Thousand Pesos (Php 50,000.00) per month until the matter of support could be finally resolved.

Two days later, or on April 26, 2006, petitioner filed an Opposition to the Urgent Ex-Parte Motion for Renewal of the

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[19] Urgent Ex-Parte Motion for Renewal of Temporary Protection Order (TPO) or Issuance of Modified TPO. *Id.* at 90-93.

[20] *Id.* at 94-97.

TPO[21] seeking the denial of the renewal of the TPO on the grounds that it did not (1) comply with the three-day notice rule, and (2) contain a notice of hearing. He further asked that the TPO be modified by (1) removing one vehicle used by private respondent and returning the same to its rightful owner, the J-Bros Trading Corporation, and (2) cancelling or reducing the amount of the bond from ₱5,000,000.00 to a more manageable level at ₱100,000.00.

Subsequently, on May 23, 2006, petitioner moved[22] for the modification of the TPO to allow him visitation rights to his children.

On May 24, 2006, the TPO was renewed and extended yet again, but subject only to the following modifications prayed for by private respondent:

a) That respondent (petitioner herein) return the clothes and other personal belongings of Rosalie and her children to Judge Jesus Ramos, co-counsel for Petitioner, within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in Indirect Contempt of Court;

b) Respondent shall make an accounting or list of furniture and equipment in the conjugal house in Pitimini St., Capitolville Subdivision, Bacolod City within 24 hours from receipt of the Temporary Protection Order by his counsel;

c) Ordering the Chief of the Women's Desk of the Bacolod City Police Headquarters to remove Respondent from the conjugal dwelling within eight (8) hours from receipt of the Temporary Protection Order by his counsel, and that he cannot return until 48 hours after the petitioners have left, so that the petitioner Rosalie and her representatives can remove things from the conjugal home and make an inventory of the household furniture, equipment and other things in the conjugal home, which shall be submitted to the Court.

d) Deliver full financial support of Php200,000.00 and Php50,000.00 for rental and Php25,000.00 for clothes of the three petitioners

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[21] *Id.* at 98-103.

[22] *Id.* at 138-140.

(*sic*) children within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in indirect contempt of Court;

e) That respondent surrender his two firearms and all unlicensed firearms to the Clerk of Court within 24 hours from receipt of the Temporary Protection Order by his counsel;

f) That respondent shall pay petitioner educational expenses of the children upon presentation of proof of payment of such expenses.[23]

Claiming that petitioner continued to deprive them of financial support; failed to faithfully comply with the TPO; and committed new acts of harassment against her and their children, private respondent filed another application[24] for the issuance of a TPO *ex parte*. She alleged *inter alia* that petitioner contrived a replevin suit against himself by J-Bros Trading, Inc., of which the latter was purportedly no longer president, with the end in view of recovering the Nissan Patrol and Starex Van used by private respondent and the children. A writ of replevin was served upon private respondent by a group of six or seven policemen with long firearms that scared the two small boys, Jessie Anthone and Joseph Eduard.[25]

While Joseph Eduard, then three years old, was driven to school, two men allegedly attempted to kidnap him, which incident traumatized the boy resulting in his refusal to go back to school. On another occasion, petitioner allegedly grabbed their daughter, Jo-Ann, by the arm and threatened her.[26] The incident was reported to the police, and Jo-Ann subsequently filed a criminal complaint against her father for violation of R.A. 7610, also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

Aside from the replevin suit, petitioner's lawyers initiated the filing by the housemaids working at the conjugal home of

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[23] Order dated May 24, 2006. *Id.* at 148-149.

[24] *Id.* at 154-166.

[25] *Id.* at 156.

[26] *Id.* at 157.

a complaint for kidnapping and illegal detention against private respondent. This came about after private respondent, armed with a TPO, went to said home to get her and her children's belongings. Finding some of her things inside a housemaid's (Sheryl Jamola) bag in the maids' room, private respondent filed a case for qualified theft against Jamola.[27]

On August 23, 2006, the RTC issued a TPO,[28] effective for thirty (30) days, which reads as follows:

Respondent (petitioner herein), Jesus Chua Garcia, is hereby:

1) Prohibited from threatening to commit or committing, personally or through another, acts of violence against the offended party;

2) Prohibited from harassing, annoying, telephoning, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;

3) Required to stay away, personally or through his friends, relatives, employees or agents, from all the Petitioners Rosalie J. Garcia and her children, Rosalie J. Garcia's three brothers, her mother Primitiva Jaype, cook Novelita Caranzo, driver Romeo Hontiveros, laundrywoman Mercedita Bornales, security guard Darwin Gayona and the petitioner's other household helpers from a distance of 1,000 meters, and shall not enter the gate of the subdivision where the Petitioners are temporarily residing, as well as from the schools of the three children; Furthermore, that respondent shall not contact the schools of the children directly or indirectly in any manner including, ostensibly to pay for their tuition or other fees directly, otherwise he will have access to the children through the schools and the TPO will be rendered nugatory;

4) Directed to surrender all his firearms including .9MM caliber firearm and a Walther PPK to the Court;

5) Directed to deliver in full financial support of Php200,000.00 a month and Php50,000.00 for rental for the period from August 6 to September 6, 2006; and support in arrears from March 2006 to August 2006 the total amount of Php1,312,000.00;

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[27] *Id.* at 158-159.

[28] *Id.* at 167-174.

6) Directed to deliver educational expenses for 2006-2007 the amount of Php75,000.00 and Php25,000.00;

7) Directed to allow the continued use of a Nissan Patrol with Plate No. FEW 508 and a Starex van with Plate No. FFD 991 and should the respondent fail to deliver said vehicles, respondent is ordered to provide the petitioner another vehicle which is the one taken by J Bros Tading;

8) Ordered not to dissipate, encumber, alienate, sell, lease or otherwise dispose of the conjugal assets, or those real properties in the name of Jesus Chua Garcia only and those in which the conjugal partnership of gains of the Petitioner Rosalie J. Garcia and respondent have an interest in, especially the conjugal home located in No. 14, Pitimini St., Capitolville Subdivision, Bacolod City, and other properties which are conjugal assets or those in which the conjugal partnership of gains of Petitioner Rosalie J. Garcia and the respondent have an interest in and listed in Annexes "I," "I-1," and "I-2," including properties covered by TCT Nos. T-186325 and T-168814;

9) Ordered that the Register of Deeds of Bacolod City and E.B. Magalona shall be served a copy of this TEMPORARY PROTECTION ORDER and are ordered not to allow the transfer, sale, encumbrance or disposition of these above-cited properties to any person, entity or corporation without the personal presence of petitioner Rosalie J. Garcia, who shall affix her signature in the presence of the Register of Deeds, due to the fear of petitioner Rosalie that her signature will be forged in order to effect the encumbrance or sale of these properties to defraud her or the conjugal partnership of gains.

In its Order[29] dated September 26, 2006, the trial court extended the aforequoted TPO for another ten (10) days, and gave petitioner a period of five (5) days within which to show cause why the TPO should not be renewed, extended, or modified. Upon petitioner's manifestation,[30] however, that he has not received a copy of private respondent's motion to modify/renew the TPO, the trial court directed in its Order[31] dated October 6,

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[29] *Id.* at 182.

[30] *Id.* at 183-184.

[31] *Id.* at 185.

2006 that petitioner be furnished a copy of said motion. Nonetheless, an Order[32] dated a day earlier, October 5, had already been issued renewing the TPO dated August 23, 2006. The pertinent portion is quoted hereunder:

x x x x x x x x x

x x x it appearing further that the hearing could not yet be finally terminated, the Temporary Protection Order issued on August 23, 2006 is hereby renewed and extended for thirty (30) days and continuously extended and renewed for thirty (30) days, after each expiration, until further orders, and subject to such modifications as may be ordered by the court.

After having received a copy of the foregoing Order, petitioner no longer submitted the required comment to private respondent's motion for renewal of the TPO arguing that it would only be an "exercise in futility."[33]

Proceedings before the CA

During the pendency of Civil Case No. 06-797, petitioner filed before the Court of Appeals (CA) a petition[34] for prohibition (CA-G.R. CEB- SP. No. 01698), with prayer for injunction and temporary restraining order, challenging (1) the constitutionality of R.A. 9262 for being violative of the due process and the equal protection clauses, and (2) the validity of the modified TPO issued in the civil case for being "an unwanted product of an invalid law."

On May 26, 2006, the appellate court issued a 60-day Temporary Restraining Order[35] (TRO) against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto.

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

[33] See Manifestation dated October 10, 2006. *Id.* at 188-189.

[34] *Id.* at 104-137.

[35] *Id.* at 151-152.

Subsequently, however, on January 24, 2007, the appellate court dismissed[36] the petition for failure of petitioner to raise the constitutional issue in his pleadings before the trial court in the civil case, which is clothed with jurisdiction to resolve the same. Secondly, the challenge to the validity of R.A. 9262 through a petition for prohibition seeking to annul the protection orders issued by the trial court constituted a collateral attack on said law.

His motion for reconsideration of the foregoing Decision having been denied in the Resolution[37] dated August 14, 2007, petitioner is now before us alleging that —

The Issues

I.

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE THEORY THAT THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED AT THE EARLIEST OPPORTUNITY AND THAT, THE PETITION CONSTITUTES A COLLATERAL ATTACK ON THE VALIDITY OF THE LAW.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO CONCLUDE THAT R.A. 9262 IS DISCRIMINATORY, UNJUST, AND VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

III.

THE COURT OF APPEALS COMMITTED GRAVE MISTAKE IN NOT FINDING THAT R.A. 9262 RUNS COUNTER TO THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

IV.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE LAW DOES VIOLENCE TO THE POLICY OF THE STATE TO PROTECT THE FAMILY AS A BASIC SOCIAL INSTITUTION.

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[36] Decision dated January 24, 2007. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Arsenio J. Magpale and Romeo F. Barza, concurring. *Id.* at 47-57.

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

V.

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT DECLARING R.A. No. 9262 AS INVALID AND UNCONSTITUTIONAL BECAUSE IT ALLOWS AN UNDUE DELEGATION OF JUDICIAL POWER TO THE BARANGAY OFFICIALS.[38]

The Ruling of the Court

Before delving into the arguments propounded by petitioner against the constitutionality of R.A. 9262, we shall first tackle the propriety of the dismissal by the appellate court of the petition for prohibition (CA-G.R. CEB-SP. No. 01698) filed by petitioner.

As a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal.[39] Courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.[40]

In defending his failure to attack the constitutionality of R.A. 9262 before the RTC of Bacolod City, petitioner argues that the Family Court has limited authority and jurisdiction that is "inadequate to tackle the complex issue of constitutionality."[41]

We disagree.

Family Courts have authority and jurisdiction to consider the constitutionality of a statute.

At the outset, it must be stressed that Family Courts are special courts, of the same level as Regional Trial Courts. Under

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[38] Petition, *id.* at 22.

[39] *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc.*, G.R. Nos. 175769-70, January 19, 2009, 576 SCRA 262, 289.

[40] *Philippine National Bank v. Palma*, 503 Phil. 917, 932 (2005).

[41] Petition, *rollo*, p. 24.

R.A. 8369, otherwise known as the "Family Courts Act of 1997," family courts have exclusive original jurisdiction to hear and decide cases of domestic violence against women and children.[42] In accordance with said law, the Supreme Court designated from among the branches of the Regional Trial Courts at least one Family Court in each of several key cities identified.[43] To achieve harmony with the first mentioned law, Section 7 of R.A. 9262 now provides that Regional Trial Courts designated as Family Courts shall have original and exclusive jurisdiction over cases of VAWC defined under the latter law, *viz*:

SEC. 7. *Venue*. – The **Regional Trial Court designated as a Family Court** shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant. (Emphasis supplied)

Inspite of its designation as a family court, the RTC of Bacolod City remains possessed of authority as a court of general original jurisdiction to pass upon all kinds of cases whether civil, criminal, special proceedings, land registration, guardianship, naturalization, admiralty or insolvency.[44] It is settled that RTCs have jurisdiction

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[42] SEC. 5. *Jurisdiction of Family Courts*. - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

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k) Cases of domestic violence against:

1) Women - which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement; and

2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

[43] Sec. 17, R.A. 8369.

[44] *Manalo v. Mariano*, 161 Phil. 108, 120 (1976).

to resolve the constitutionality of a statute,[45] "this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law."[46] The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs.[47] We said in *J.M. Tuason and Co., Inc. v. CA*[48] that, "[p]lainly the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of *final judgments of inferior courts* in cases where such constitutionality happens to be in issue." Section 5, Article VIII of the 1987 Constitution reads in part as follows:

> SEC. 5. The Supreme Court shall have the following powers:
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> x x x x x x x x x
>
> 2. Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
>   a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> x x x x x x x x x

Thus, contrary to the posturing of petitioner, the issue of constitutionality of R.A. 9262 could have been raised at the

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[45] *Planters Products, Inc. v. Fertiphil Corporation,* G.R. No. 166006, March 14, 2008, 548 SCRA 485, 504.

[46] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

[47] *Planters Products, Inc. v. Fertiphil Corporation, supra* note 45, at 505, citing *Mirasol v. CA*, 403 Phil. 760 (2001).

[48] G.R. Nos. L-18128 & L-18672, December 26, 1961, 3 SCRA 696, 703-704.

earliest opportunity in his Opposition to the petition for protection order before the RTC of Bacolod City, which had jurisdiction to determine the same, subject to the review of this Court.

Section 20 of A.M. No. 04-10-11-SC, the Rule on Violence Against Women and Their Children, lays down a new kind of procedure requiring the respondent to file an opposition to the petition and not an answer.[49] Thus:

SEC. 20. *Opposition to petition*. – (a) The respondent may file an opposition to the petition which he himself shall verify. It must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.

(b) Respondent shall **not include in the opposition any counterclaim, cross-claim or third-party complaint**, but any cause of action which could be the subject thereof may be litigated in a separate civil action. (Emphasis supplied)

We cannot subscribe to the theory espoused by petitioner that, since a counterclaim, cross-claim and third-party complaint are to be excluded from the opposition, the issue of constitutionality cannot likewise be raised therein. A **counterclaim** is defined as any claim for money or other relief which a defending party may have against an opposing party.[50] A **cross-claim**, on the other hand, is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein.[51] Finally, a **third-party complaint** is a claim that a defending party may, with leave of court, file against a person not a party to the action for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.[52] As pointed out by

[49] RATIONALE OF THE PROPOSED RULES ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN.

[50] *Korea Exchange Bank v. Hon. Rogelio C. Gonzales*, 496 Phil. 127, 143-144 (2005); *Spouses Sapugay v. CA,* 262 Phil. 506, 513 (1990).

[51] Sec. 8, Rule 6, 1997 Rules of Civil Procedure.

[52] Sec. 11, Rule 6, 1997 Rules of Civil Procedure.

Justice Teresita J. Leonardo-De Castro, the unconstitutionality of a statute is not a cause of action that could be the subject of a counterclaim, cross-claim or a third-party complaint. Therefore, it is not prohibited from being raised in the opposition in view of the familiar maxim *expressio unius est exclusio alterius*.

Moreover, it cannot be denied that this issue affects the resolution of the case *a quo* because the right of private respondent to a protection order is founded solely on the very statute the validity of which is being attacked[53] by petitioner who has sustained, or will sustain, direct injury as a result of its enforcement. The alleged unconstitutionality of R.A. 9262 is, for all intents and purposes, a valid cause for the non-issuance of a protection order.

That the proceedings in Civil Case No. 06-797 are summary in nature should not have deterred petitioner from raising the same in his Opposition. The question relative to the constitutionality of a statute is one of law which does not need to be supported by evidence.[54] Be that as it may, Section 25 of A.M. No. 04-10-11-SC nonetheless allows the conduct of a hearing to determine legal issues, among others, *viz*:

SEC. 25. ***Order for further hearing*. -** In case the court determines the need for further hearing, it may issue an order containing the following:

(a) Facts undisputed and admitted;

(b) Factual and **legal issues** to be resolved;

(c) Evidence, including objects and documents that have been marked and will be presented;

(d) Names of witnesses who will be ordered to present their direct testimonies in the form of affidavits; and

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[53] See *People of the Philippine Islands and Hongkong & Shanghai Banking Corporation v. Vera*, 65 Phil 199 (1937); *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*, G.R. Nos. 177857-58, January 24, 2012, 663 SCRA 514, 594.

[54] *Recreation and Amusement Association of the Philippines v. City of Manila*, 100 Phil 950, 956 (1957).

(e) Schedule of the presentation of evidence by both parties which shall be done in one day, to the extent possible, within the 30-day period of the effectivity of the temporary protection order issued. (Emphasis supplied)

To obviate potential dangers that may arise concomitant to the conduct of a hearing when necessary, Section 26 (b) of A.M. No. 04-10-11-SC provides that if a temporary protection order issued is due to expire, the trial court may extend or renew the said order for a period of thirty (30) days each time until final judgment is rendered. It may likewise modify the extended or renewed temporary protection order as may be necessary to meet the needs of the parties. With the private respondent given ample protection, petitioner could proceed to litigate the constitutional issues, without necessarily running afoul of the very purpose for the adoption of the rules on summary procedure.

In view of all the foregoing, the appellate court correctly dismissed the petition for prohibition with prayer for injunction and temporary restraining order (CA-G.R. CEB - SP. No. 01698). Petitioner may have proceeded upon an honest belief that if he finds succor in a superior court, he could be granted an injunctive relief. However, Section 22(j) of A.M. No. 04-10-11-SC expressly disallows the filing of a petition for *certiorari*, *mandamus* or prohibition **against any interlocutory order** issued by the trial court. Hence, the 60-day TRO issued by the appellate court in this case against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto was improper, and it effectively hindered the case from taking its normal course in an expeditious and summary manner.

As the rules stand, a review of the case by appeal or *certiorari* before judgment is prohibited. Moreover, if the appeal of a judgment granting permanent protection shall not stay its enforcement,[55] with more reason that a TPO, which is valid only for thirty (30) days at a time,[56] should not be enjoined.

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[55] Secs. 22 and 31, A.M. No. 04-10-11-SC.

[56] Sec. 26 (b), A.M. No. 04-10-11-SC.

The mere fact that a statute is alleged to be unconstitutional or invalid, does not of itself entitle a litigant to have the same enjoined.[57] In *Younger v. Harris, Jr.,*[58] the Supreme Court of the United States declared, thus:

> Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. (Citations omitted)

The sole objective of injunctions is to preserve the *status quo* until the trial court hears fully the merits of the case. It bears stressing, however, that protection orders are granted *ex parte* so as to protect women and their children from acts of violence. To issue an injunction against such orders will defeat the very purpose of the law against VAWC.

Notwithstanding all these procedural flaws, we shall not shirk from our obligation to determine novel issues, or issues of first impression, with far-reaching implications. We have, time and again, discharged our solemn duty as final arbiter of constitutional issues, and with more reason now, in view of private respondent's plea in her Comment[59] to the instant Petition that we should put the challenge to the constitutionality of R.A. 9262 to rest. And so we shall.

Intent of Congress in enacting R.A. 9262.

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[57] *Sto. Domingo v. De Los Angeles*, 185 Phil. 94, 102 (1980).

[58] 27 L.Ed.2d 669 (1971), cited in *The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 56-57 (2004).

[59] *Rollo*, pp. 214-240, 237.

Petitioner claims that since R.A. 9262 is intended to prevent and criminalize spousal and child abuse, which could very well be committed by either the husband or the wife, gender alone is not enough basis to deprive the husband/father of the remedies under the law.[60]

A perusal of the deliberations of Congress on Senate Bill No. 2723,[61] which became R.A. 9262, reveals that while the sponsor, Senator Luisa Pimentel-Ejercito (better known as Senator Loi Estrada), had originally proposed what she called a "synthesized measure"[62] — an amalgamation of two measures, namely, the "Anti-Domestic Violence Act" and the "Anti-Abuse of Women in Intimate Relationships Act"[63] — providing protection to "all family members, leaving no one in isolation" but at the same time giving special attention to women as the "usual victims" of violence and abuse,[64] nonetheless, it was eventually agreed that men be denied protection under the same measure. We quote pertinent portions of the deliberations:

Wednesday, December 10, 2003

Senator Pangilinan. I just wanted to place this on record, Mr. President. Some women's groups have expressed concerns and relayed these concerns to me that if we are to include domestic violence apart from against women as well as other members of the household, including children or the husband, they fear that this would weaken the efforts to address domestic violence of which the main victims or the bulk of the victims really are the wives, the spouses or the female partners in a relationship. We would like to place that on record. How does the good Senator respond to this kind of observation?

Senator Estrada. Yes, Mr. President, there is this group of women who call themselves "WIIR" Women in Intimate Relationship. They

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[60] Petition, *id.* at 26-27.

[61] An Act Defining Violence Against Women and Members of the Family, Prescribing Penalties Therefor, Providing for Protective Measures for Victims and for Other Purposes.

[62] Congressional Records, Vol. III, No. 45, December 10, 2003, p. 27.

[63] *Id.* at 25.

[64] *Id.* at 27.

do not want to include men in this domestic violence. But plenty of men are also being abused by women. I am playing safe so I placed here members of the family, prescribing penalties therefor and providing protective measures for victims. This includes the men, children, live-in, common-law wives, and those related with the family.[65]

x x x x x x x x x

Wednesday, January 14, 2004

x x x x

The President Pro Tempore. x x x

Also, may the Chair remind the group that there was the discussion whether to limit this to women and not to families which was the issue of the AWIR group. The understanding that I have is that we would be having a broader scope rather than just women, if I remember correctly, Madam sponsor.

Senator Estrada. Yes, Mr. President.

As a matter of fact, that was brought up by Senator Pangilinan during the interpellation period.

I think Senator Sotto has something to say to that.

Senator Legarda. Mr. President, the reason I am in support of the measure. Do not get me wrong. However, I believe that there is a need to protect women's rights especially in the domestic environment.

As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade, of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women, Mr. President.

I think that the sponsor, based on our earlier conversations, concurs with this position. I am sure that the men in this Chamber who love their women in their lives so dearly will agree with this representation. Whether we like it or not, it is an unequal world. Whether we like

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

it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.

x x x x x x x x x

The President Pro Tempore. What does the sponsor say?

Senator Estrada. Mr. President, before accepting this, the committee came up with this bill because the family members have been included in this proposed measure since the other members of the family other than women are also possible victims of violence. While women are most likely the intended victims, one reason incidentally why the measure focuses on women, the fact remains that in some relatively few cases, men also stand to be victimized and that children are almost always the helpless victims of violence. I am worried that there may not be enough protection extended to other family members particularly children who are excluded. Although Republic Act No. 7610, for instance, more or less, addresses the special needs of abused children. The same law is inadequate. Protection orders for one are not available in said law.

I am aware that some groups are apprehensive about granting the same protection to men, fearing that they may use this law to justify their abusive behavior against women. However, we should also recognize that there are established procedures and standards in our courts which give credence to evidentiary support and cannot just arbitrarily and whimsically entertain baseless complaints.

Mr. President, this measure is intended to harmonize family relations and to protect the family as the basic social institution. Though I recognize the unequal power relations between men and women in our society, I believe we have an obligation to uphold inherent rights and dignity of both husband and wife and their immediate family members, particularly children.

While I prefer to focus mainly on women, I was compelled to include other family members as a critical input arrived at after a series of consultations/meetings with various NGOs, experts, sports groups and other affected sectors, Mr. President.

Senator Sotto. Mr. President.

The President Pro Tempore. Yes, with the permission of the other senators.

Senator Sotto. Yes, with the permission of the two ladies on the Floor.

The President Pro Tempore. Yes, Sen. Vicente C. Sotto III is recognized.

Senator Sotto. I presume that the effect of the proposed amendment of Senator Legarda would be removing the "men and children" in this particular bill and focus specifically on women alone. That will be the net effect of that proposed amendment. Hearing the rationale mentioned by the distinguished sponsor, Sen. Luisa "Loi" Ejercito Estrada, I am not sure now whether she is inclined to accept the proposed amendment of Senator Legarda.

I am willing to wait whether she is accepting this or not because if she is going to accept this, I will propose an amendment to the amendment rather than object to the amendment, Mr. President.

x x x x x x x x x

Senator Estrada. The amendment is accepted, Mr. President.

The President Pro Tempore. Is there any objection?

x x x x x x x x x

Senator Sotto. x x x May I propose an amendment to the amendment.

The President Pro Tempore. Before we act on the amendment?

Senator Sotto. Yes, Mr. President.

The President Pro Tempore. Yes, please proceed.

Senator Sotto. Mr. President, I am inclined to believe the rationale used by the distinguished proponent of the amendment. As a matter of fact, I tend to agree. Kung may maaabuso, mas malamang iyong babae kaysa sa lalake. At saka iyong mga lalake, puwede na talagang magulpi iyan. Okey lang iyan. But I cannot agree that we remove the children from this particular measure.

So, if I may propose an amendment —

The President Pro Tempore. To the amendment.

Senator Sotto. – more than the women, the children are very much abused. As a matter of fact, it is not limited to minors. The abuse is not limited to seven, six, 5-year-old children. I have seen 14, 15-

year-old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things.

Because of the inadequate existing law on abuse of children, this particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women.

SOTTO-LEGARDA AMENDMENTS

Therefore, may I propose an amendment that, yes, we remove the aspect of the men in the bill but not the children.

Senator Legarda. I agree, Mr. President, with the Minority Leader.

The President Pro Tempore. Effectively then, it will be women AND CHILDREN.

Senator Sotto. Yes, Mr. President.

Senator Estrada. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment, as amended, is approved.[66]

It is settled that courts are not concerned with the wisdom, justice, policy, or expediency of a statute.[67] Hence, we dare not venture into the real motivations and wisdom of the members of Congress in limiting the protection against violence and abuse under R.A. 9262 to women and children only. No proper challenge on said grounds may be entertained in this proceeding. Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law.[68] We only step in when there is a

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[66] Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147.

[67] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 391.

[68] *Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 113-114.

violation of the Constitution. However, none was sufficiently shown in this case.

R.A. 9262 does not violate the guaranty of equal protection of the laws.

Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. The oft-repeated disquisition in the early case of *Victoriano v. Elizalde Rope Workers' Union*[69] is instructive:

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.
>
> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be **germane to the purpose of the law**; that it must **not be limited to existing conditions only**; and that it must **apply**

[69] 158 Phil. 60, 86-87 (1974).

equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary. (Emphasis supplied)

Measured against the foregoing jurisprudential yardstick, we find that R.A. 9262 is based on a valid classification as shall hereinafter be discussed and, as such, did not violate the equal protection clause by favoring women over men as victims of violence and abuse to whom the State extends its protection.

I. R.A. 9262 rests on substantial distinctions.

The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for **real differences** justifying the classification under the law. As Justice McIntyre succinctly states, *"the accommodation of differences ... is the essence of true equality."*[70]

A. Unequal power relationship between men and women

According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the **unequal power relationship between women and men** otherwise known as "gender-based violence". Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And

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[70] *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, p. 169.

VAW is a form of men's expression of controlling women to retain power.[71]

The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993 stating that "violence against women is a manifestation of **historically unequal power relations between men and women**, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men."[72]

Then Chief Justice Reynato S. Puno traced the historical and social context of gender-based violence and developments in advocacies to eradicate VAW, in his remarks delivered during the Joint Launching of R.A. 9262 and its Implementing Rules last October 27, 2004, the pertinent portions of which are quoted hereunder:

> History reveals that most societies sanctioned the use of violence against women. The patriarch of a family was accorded the right to use force on members of the family under his control. I quote the early studies:
>
> > Traditions subordinating women have a long history rooted in patriarchy — the institutional rule of men. Women were seen in virtually all societies to be naturally inferior both physically and intellectually. In ancient Western societies, women whether slave, concubine or wife, were under the authority of men. In law, they were treated as property.
>
> The Roman concept of *patria potestas* allowed the husband to beat, or even kill, his wife if she endangered his property right over

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[71] Philippine Commission on Women, National Machinery for Gender Equality and Women's Empowerment, "Violence Against Women (VAW)," <http://www.pcw.gov.ph> (visited November 16, 2012).

[72] <http://www.lawphil.net/international/treaties/dec_dec_1993.html> (visited November 16, 2012).

her. Judaism, Christianity and other religions oriented towards the patriarchal family strengthened the male dominated structure of society.

English feudal law reinforced the tradition of male control over women. Even the eminent Blackstone has been quoted in his commentaries as saying husband and wife were one and that one was the husband. However, in the late 1500s and through the entire 1600s, English common law began to limit the right of husbands to chastise their wives. Thus, common law developed the rule of thumb, which allowed husbands to beat their wives with a rod or stick no thicker than their thumb.

In the later part of the 19th century, legal recognition of these rights to chastise wives or inflict corporeal punishment ceased. Even then, the preservation of the family was given more importance than preventing violence to women.

The metamorphosis of the law on violence in the United States followed that of the English common law. In 1871, the Supreme Court of Alabama became the first appellate court to strike down the common law right of a husband to beat his wife:

> The privilege, ancient though it may be, to beat one's wife with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law... In person, the wife is entitled to the same protection of the law that the husband can invoke for himself.

As time marched on, the women's advocacy movement became more organized. The temperance leagues initiated it. These leagues had a simple focus. They considered the evils of alcoholism as the root cause of wife abuse. Hence, they demonstrated and picketed saloons, bars and their husbands' other watering holes. Soon, however, their crusade was joined by suffragette movements, expanding the liberation movement's agenda. They fought for women's right to vote, to own property, and more.

Since then, the feminist movement was on the roll.

The feminist movement exposed the private invisibility of the domestic violence to the public gaze. They succeeded in transforming the issue into an important public concern. No less than the United

States Supreme Court, in 1992 case *Planned Parenthood v. Casey*, noted:

> In an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male partners. In a 1985 survey, women reported that nearly one of every eight husbands had assaulted their wives during the past year. The [American Medical Association] views these figures as "marked underestimates," because the nature of these incidents discourages women from reporting them, and because surveys typically exclude the very poor, those who do not speak English well, and women who are homeless or in institutions or hospitals when the survey is conducted. According to the AMA, "researchers on family violence agree that the true incidence of partner violence is probably *double* the above estimates; or four million severely assaulted women per year."
>
> Studies on prevalence suggest that from one-fifth to one-third of all women will be physically assaulted by a partner or ex-partner during their lifetime... Thus on an average day in the United States, nearly 11,000 women are severely assaulted by their male partners. Many of these incidents involve sexual assault... In families where wife beating takes place, moreover, child abuse is often present as well.
>
> Other studies fill in the rest of this troubling picture. Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.
>
> Many victims of domestic violence remain with their abusers, perhaps because they perceive no superior alternative...Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income... Returning to one's abuser can be dangerous. Recent Federal Bureau of Investigation statistics disclose that 8.8 percent of all homicide victims in the United States are killed by their spouses...Thirty percent of female homicide victims are killed by their male partners.

Finally in 1994, the United States Congress enacted the Violence Against Women Act.

In the International front, the women's struggle for equality was no less successful. The United States Charter and the Universal

Declaration of Human Rights affirmed the equality of all human beings. In 1979, the UN General Assembly adopted the landmark Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In 1993, the UN General Assembly also adopted the Declaration on the Elimination of Violence Against Women. World conferences on the role and rights of women have been regularly held in Mexico City, Copenhagen, Nairobi and Beijing. The UN itself established a Commission on the Status of Women.

The Philippines has been in cadence with the half — and full — steps of all these women's movements. No less than Section 14, Article II of our 1987 Constitution mandates the State to recognize the role of women in nation building and to ensure the fundamental equality before the law of women and men. Our Senate has ratified the CEDAW as well as the Convention on the Rights of the Child and its two protocols. To cap it all, Congress, on March 8, 2004, enacted Rep. Act No. 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefor and for other Purposes." (Citations omitted)

B. Women are the "usual" and "most likely" victims of violence.

At the time of the presentation of Senate Bill No. 2723, official statistics on violence against women and children show that —

x x x physical injuries had the highest number of cases at 5,058 in 2002 representing 55.63% of total cases reported (9,903). And for the first semester of 2003, there were 2,381 reported cases out of 4,354 cases which represent 54.31%. xxx (T)he total number of women in especially difficult circumstances served by the Department of Social Welfare and Development (DSWD) for the year 2002, there are 1,417 physically abused/maltreated cases out of the total of 5,608 cases. xxx (T)here are 1,091 DSWD cases out of a total number of 3,471 cases for the first semester of 2003. Female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners.[73]

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[73] As reported by Senator Loi Estrada in her Sponsorship Speech, Congressional Records, Vol. III, No. 45, December 10, 2003, p. 22.

Recently, the Philippine Commission on Women presented comparative statistics on violence against women across an eight-year period from 2004 to August of 2011 with violations under R.A. 9262 ranking first among the different VAW categories since its implementation in 2004,[74] thus:

Table 1. Annual Comparative Statistics on Violence Against Women, 2004 - 2011*

Reported Cases	2004	2005	2006	2007	2008	2009	2010	2011
Rape	997	927	659	837	811	770	1,042	832
Incestuous Rape	38	46	26	22	28	27	19	23
Attempted Rape	194	148	185	147	204	167	268	201
Acts of Lasciviousness	580	536	382	358	445	485	745	625
Physical Injuries	3,553	2,335	1,892	1,505	1,307	1,498	2,018	1,588
Sexual Harassment	53	37	38	46	18	54	83	63
RA 9262	**218**	**924**	**1,269**	**2,387**	**3,599**	**5,285**	**9,974**	**9,021**
Threats	319	223	199	182	220	208	374	213
Seduction	62	19	29	30	19	19	25	15
Concubinage	121	102	93	109	109	99	158	128
RA 9208	17	11	16	24	34	152	190	62
Abduction/ Kidnapping	29	16	34	23	28	18	25	22
Unjust Vexation	90	50	59	59	83	703	183	155
Total	**6,271**	**5,374**	**4,881**	**5,729**	**6,905**	**9,485**	**15,104**	**12,948**

*2011 report covers only from January to August

Source: Philippine National Police – Women and Children Protection Center (WCPC)

[74] Philippine Commission on Women, "Statistics on Violence Against Filipino Women," <http://pcw.gov.ph/statistics/201210/statistics-violence-against-filipino-women> (visited October 12, 2012).

On the other hand, no reliable estimates may be obtained on domestic abuse and violence against men in the Philippines because incidents thereof are relatively low and, perhaps, because many men will not even attempt to report the situation. In the United Kingdom, 32% of women who had ever experienced domestic violence did so four or five (or more) times, compared with 11% of the smaller number of men who had ever experienced domestic violence; and women constituted 89% of all those who had experienced 4 or more incidents of domestic violence.[75] Statistics in Canada show that spousal violence by a woman against a man is less likely to cause injury than the other way around (18 percent versus 44 percent). Men, who experience violence from their spouses are much less likely to live in fear of violence at the hands of their spouses, and much less likely to experience sexual assault. In fact, many cases of physical violence by a woman against a spouse are in self-defense or the result of many years of physical or emotional abuse.[76]

While there are, indeed, relatively few cases of violence and abuse perpetrated against men in the Philippines, the same cannot render R.A. 9262 invalid.

In a 1960 case involving the violation of a city ordinance requiring drivers of animal-drawn vehicles to pick up, gather and deposit in receptacles the manure emitted or discharged by their vehicle-drawing animals in any public highways, streets, plazas, parks or alleys, said ordinance was challenged as violative of the guaranty of equal protection of laws as its application is limited to owners and drivers of vehicle-drawing animals and not to those animals, although not utilized, but similarly pass through the same streets.

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[75] Women's Aid, "*Who are the victims of domestic violence*?," citing Walby and Allen, 2004, <www.womens*aid*.org.uk/domestic-violence-articles.asp?section=00010001002200410001&itemid=1273 (visited November 16, 2012).

[76] Toronto District School Board, *Facts and Statistics* <www.tdsb.on.ca/site/viewitem.asp?siteid=15& menuid=23082&pageid=20007> (visited November 16, 2012).

The ordinance was upheld as a valid classification for the reason that, while there may be non-vehicle-drawing animals that also traverse the city roads, "**but their number must be negligible and their appearance therein merely occasional**, compared to the rig-drawing ones, as not to constitute a menace to the health of the community."[77] The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid.[78]

C. Gender bias and prejudices

From the initial report to the police through prosecution, trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes. This was argued by then United States Senator Joseph R. Biden, Jr., now Vice President, chief sponsor of the Violence Against Women Act (VAWA), in defending the civil rights remedy as a valid exercise of the U.S. Congress' authority under the Commerce and Equal Protection Clauses. He stressed that the **widespread gender bias** in the U.S. has institutionalized historic prejudices against victims of rape or domestic violence, subjecting them to "**double victimization**" — first at the hands of the offender and then of the legal system.[79]

Our own Senator Loi Estrada lamented in her Sponsorship Speech for Senate Bill No. 2723 that "(w)henever violence occurs in the family, the police treat it as a private matter and advise the parties to settle the conflict themselves. Once the complainant brings the case to the prosecutor, the latter is hesitant to file the complaint for fear that it might later be withdrawn. This lack of response or reluctance to be involved by the police and

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[77] *People v. Solon*, 110 Phil. 39, 41 (1960).

[78] *Victoriano v. Elizalde Rope Workers' Union, supra* note 69, 90.

[79] Biden, Jr., Joseph R., "*The Civil Rights Remedy of the Violence Against Women Act: A Defense,*" 37 Harvard Journal on Legislation 1 (Winter, 2000).

prosecution reinforces the escalating, recurring and often serious nature of domestic violence."[80]

Sadly, our own courts, as well, have exhibited prejudices and biases against our women.

In a recent case resolved on March 9, 2011, we fined RTC Judge Venancio J. Amila for *Conduct Unbecoming of a Judge*. He used derogatory and irreverent language in reference to the complainant in a petition for TPO and PPO under R.A. 9262, calling her as "only a live-in partner" and presenting her as an "opportunist" and a "mistress" in an "illegitimate relationship." Judge Amila even called her a "prostitute," and accused her of being motivated by "insatiable greed" and of absconding with the contested property.[81] Such remarks betrayed Judge Amila's prejudices and lack of gender sensitivity.

The enactment of R.A. 9262 aims to address the discrimination brought about by biases and prejudices against women. As emphasized by the CEDAW Committee on the Elimination of Discrimination against Women, addressing or correcting discrimination through specific measures focused on women does **not** discriminate against men.[82] Petitioner's contention,[83] therefore, that R.A. 9262 is discriminatory and that it is an "anti-male," "husband-bashing," and "hate-men" law deserves scant consideration. As a State Party to the CEDAW, the Philippines bound itself to take all appropriate measures "*to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices*

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[80] Congressional Records, Vol. III, No. 45, December 10, 2003, pp. 22-23.

[81] *Benancillo v. Amila*, A.M. No. RTJ-08-2149, March 9, 2011, 645 SCRA 1, 8.

[82] "General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures" <www.un.org/womenwatch/.../recommendation> (visited January 4, 2013).

[83] Petition, *rollo*, p. 27.

and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."[84] Justice Puno correctly pointed out that "(t)he paradigm shift changing the character of domestic violence from a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges."[85]

II. The classification is germane to the purpose of the law.

The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children, spelled out in its *Declaration of Policy*, as follows:

SEC. 2. *Declaration of Policy*. — It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

In 1979, the U.N. General Assembly adopted the CEDAW, which the Philippines ratified on August 5, 1981. Subsequently, the Optional Protocol to the CEDAW was also ratified by the Philippines on October 6, 2003.[86] This Convention mandates

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[84] Article 5(a), CEDAW.

[85] "*The Rule on Violence Against Women and Their Children,*" Remarks delivered during the Joint Launching of R.A. 9262 and its Implementing Rules last October 27, 2004 at the Session Hall of the Supreme Court.

[86] *Supra* note 49.

that State parties shall accord to women equality with men before the law[87] and shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women.[88] The Philippines likewise ratified the Convention on the Rights of the Child and its two protocols.[89] It is, thus, bound by said Conventions and their respective protocols.

III. The classification is not limited to existing conditions only, and apply equally to all members

Moreover, the application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse.

R.A. 9262 applies **equally** to all women and children who suffer violence and abuse. Section 3 thereof defines VAWC as:

x x x any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. "*Physical Violence*" refers to acts that include bodily or physical harm;

B. "*Sexual violence*" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning

[87] Article 15.

[88] Article 16.

[89] *Supra* note 49.

and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or child.

C. "*Psychological violence*" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. "*Economic abuse*" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victims' own money or properties or solely controlling the conjugal money or properties.

It should be stressed that the acts enumerated in the aforequoted provision are attributable to research that has exposed the dimensions and dynamics of battery. The acts described here are also found in the U.N. Declaration on the Elimination of Violence Against Women.[90] Hence, the argument advanced by petitioner that the definition of what constitutes abuse removes the difference between violent action and simple marital tiffs is tenuous.

There is nothing in the definition of VAWC that is vague and ambiguous that will confuse petitioner in his defense. The acts enumerated above are easily understood and provide adequate contrast between the innocent and the prohibited acts. They are worded with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited, and need not guess at its meaning nor differ in its application.[91] Yet, petitioner insists[92] that phrases like "depriving or threatening to deprive the woman or her child of a legal right," "solely controlling the conjugal or common money or properties," "marital infidelity," and "causing mental or emotional anguish" are so vague that they make every quarrel a case of spousal abuse. However, we have stressed that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld — not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions.[93]

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman

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[90] *Supra* note 49.

[91] *Estrada v. Sandiganbayan*, 421 Phil 290, 351-352 (2001).

[92] Petition, *rollo*, p. 35.

[93] *Estrada v. Sandiganbayan* , *supra* note 91, at 352-353.

with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the **principle of conspiracy** under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan*,[94] the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.

R.A. 9262 is not violative of the due process clause of the Constitution.

Petitioner bewails the disregard of R.A. 9262, specifically in the issuance of POs, of all protections afforded by the due process clause of the Constitution. Says he: "On the basis of unsubstantiated allegations, and practically no opportunity to respond, the husband is stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened."[95]

A **protection order** is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.[96]

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[94] G.R. No. 168852, September 30, 2008, 567 SCRA 231.

[95] Petition, *rollo*, p. 31.

[96] Sec. 4 (o), A.M. No. 04-10-11-SC.

"The scope of reliefs in protection orders is broadened to ensure that the victim or offended party is afforded all the remedies necessary to curtail access by a perpetrator to the victim. This serves to safeguard the victim from greater risk of violence; to accord the victim and any designated family or household member safety in the family residence, and to prevent the perpetrator from committing acts that jeopardize the employment and support of the victim. It also enables the court to award temporary custody of minor children to protect the children from violence, to prevent their abduction by the perpetrator and to ensure their financial support."[97]

The rules require that petitions for protection order be in writing, signed and verified by the petitioner[98] thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since "time is of the essence in cases of VAWC if further violence is to be prevented,"[99] the court is authorized to issue *ex parte* a TPO after raffle but before notice and hearing when the life, limb or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of VAWC or to prevent such violence, which is about to recur.[100]

There need not be any fear that the judge may have no rational basis to issue an *ex parte* order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition.[101]

The grant of a TPO *ex parte* cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough

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[97] *Supra* note 49.

[98] Sec. 7, A.M. No. 04-10-11-SC.

[99] *Supra* note 49.

[100] *Id.*

[101] *Supra* note 85.

to enable the defendant to abscond or dispose of his property,[102] in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests,[103] among which is protection of women and children from violence and threats to their personal safety and security.

It should be pointed out that when the TPO is issued *ex parte*, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent.[104]

Where no TPO is issued *ex parte*, the court will nonetheless order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice.[105]

The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.[106]

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[102] *Cuartero v. CA*, G.R. No. 102448, August 5, 1992, 212 SCRA 260, 265.

[103] *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292, 307, citing *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, March 11, 1991, 195 SCRA 112.

[104] Sec. 15, A.M. No. 04-10-11-SC.

[105] Sec. 16, A.M. No. 04-10-11-SC.

[106] Sec. 20, A.M. No. 04-10-11-SC.

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. Thus, the fear of petitioner of being "stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened" is a mere product of an overactive imagination. 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. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[107]

It should be recalled that petitioner filed on April 26, 2006 an Opposition to the Urgent Ex-Parte Motion for Renewal of the TPO that was granted only two days earlier on April 24, 2006. Likewise, on May 23, 2006, petitioner filed a motion for the modification of the TPO to allow him visitation rights to his children. Still, the trial court in its Order dated September 26, 2006, gave him five days (5) within which to show cause why the TPO should not be renewed or extended. Yet, he chose not to file the required comment arguing that it would just be an "exercise in futility," conveniently forgetting that the renewal of the questioned TPO was only for a limited period (30 days) each time, and that he could prevent the continued renewal of said order if he can show sufficient cause therefor. Having failed to do so, petitioner may not now be heard to complain that he was denied due process of law.

Petitioner next laments that the removal and exclusion of the respondent in the VAWC case from the residence of the victim, regardless of ownership of the residence, is virtually a "blank check" issued to the wife to claim any property as her conjugal home.[108]

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[107] *Esperida v. Jurado, Jr.*, G.R. No. 172538, April 25, 2012, 671 SCRA 66, 74.

[108] Petition, *rollo*, pp. 30-31.

The wording of the pertinent rule, however, does not by any stretch of the imagination suggest that this is so. It states:

SEC. 11. *Reliefs available to the offended party.* -- The protection order shall include any, some or all of the following reliefs:

x x x x

(c) Removing and excluding the respondent from the residence of the offended party, regardless of ownership of the residence, either temporarily for the purpose of protecting the offended party, or permanently where no property rights are violated. If the respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until the respondent has gathered his things and escort him from the residence;

x x x x

Indubitably, petitioner may be removed and excluded from private respondent's residence, regardless of ownership, *only temporarily* for the purpose of protecting the latter. Such removal and exclusion may be permanent only *where no property rights are violated*. How then can the private respondent just claim any property and appropriate it for herself, as petitioner seems to suggest?

The non-referral of a VAWC case to a mediator is justified.

Petitioner argues that "by criminalizing run-of-the-mill arguments, instead of encouraging mediation and counseling, the law has done violence to the avowed policy of the State to "protect and strengthen the family as a basic autonomous social institution."[109]

Under Section 23(c) of A.M. No. 04-10-11-SC, the court shall not refer the case or any issue thereof to a mediator. The reason behind this provision is well-explained by the Commentary

[109] *Id.* at 36.

on Section 311 of the Model Code on Domestic and Family Violence as follows:[110]

This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issue at hand. **Violence, however, is not a subject for compromise**. A process which involves parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order of protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought. (Emphasis supplied)

There is no undue delegation of judicial power to barangay officials.

Petitioner contends that protection orders involve the exercise of judicial power which, under the Constitution, is placed upon the "Supreme Court and such other lower courts as may be established by law" and, thus, protests the delegation of power to barangay officials to issue protection orders.[111] The pertinent provision reads, as follows:

SEC. 14. *Barangay Protection Orders (BPOs); Who May Issue and How*. — Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A *Punong Barangay* who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after *ex parte* determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. If the BPO is issued by a *Barangay Kagawad,* the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time of the issuance of

[110] *Supra* note 49.

[111] Petition, *rollo*, pp. 130-131.

the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.[112] On the other hand, executive power "is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance."[113]

As clearly delimited by the aforequoted provision, the BPO issued by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad*, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the barangay."[114]

We have held that "(t)he mere fact that an officer is required by law to inquire into the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private rights do not constitute an exercise of judicial powers."[115]

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[112] Sec. 1, Article VIII, 1987 Constitution.

[113] *Laurel v. Desierto*, 430 Phil. 658 (2002).

[114] *People v. Tomaquin*, 478 Phil. 885, 899 (2004), citing Section 389, Chapter 3, Title One, Book III, Local Government Code of 1991, as amended.

[115] *Lovina and Montilla v. Moreno and Yonzon*, 118 Phil 1401, 1406 (1963).

In the same manner as the public prosecutor ascertains through a preliminary inquiry or proceeding "whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof," the *Punong Barangay* must determine reasonable ground to believe that an imminent danger of violence against the woman and her children exists or is about to recur that would necessitate the issuance of a BPO. The preliminary investigation conducted by the prosecutor is, concededly, an executive, not a judicial, function. The same holds true with the issuance of a BPO.

We need not even belabor the issue raised by petitioner that since barangay officials and other law enforcement agencies are required to extend assistance to victims of violence and abuse, it would be very unlikely that they would remain objective and impartial, and that the chances of acquittal are nil. As already stated, assistance by barangay officials and other law enforcement agencies is consistent with their duty to enforce the law and to maintain peace and order.

Conclusion

Before a statute or its provisions duly challenged are voided, an unequivocal breach of, or a clear conflict with the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court. In other words, the grounds for nullity must be beyond reasonable doubt.[116] In the instant case, however, no concrete evidence and convincing arguments were presented by petitioner to warrant a declaration of the unconstitutionality of R.A. 9262, which is an act of Congress and signed into law by the highest officer of the co-equal executive department. As we said in *Estrada v. Sandiganbayan*,[117] courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers,

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[116] *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 2011, 653 SCRA 154, 258.

[117] *Supra* note 91.

and passed laws with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority.

We reiterate here Justice Puno's observation that "the history of the women's movement against domestic violence shows that one of its most difficult struggles was the fight against the violence of law itself. If we keep that in mind, law will not again be a hindrance to the struggle of women for equality but will be its fulfillment."[118] Accordingly, the constitutionality of R.A. 9262 is, as it should be, sustained.

WHEREFORE, the instant petition for review on *certiorari* is hereby **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.,* concur.

Leonardo-de Castro, Abad and *Leonen, JJ.,* see separate concurring opinion.

Brion, J., see concurring opinion.

Peralta, J., on official leave.

LEONARDO-DE CASTRO, *J.*: *concurring opinion*

I concur with the conclusion reached in the *ponencia* ably written by the Honorable Estela Perlas-Bernabe. With due respect, however, I submit that the test to determine an equal protection challenge against the law, denying statutory remedies to men who are similarly situated as the women who are given differential treatment in the law, on the basis of sex or gender, should be at the **level of intermediate scrutiny or middle-tier judicial scrutiny** rather than the rational basis test used in the *ponencia* of Justice Bernabe.

This Petition for Review on *Certiorari* assails: (1) the Decision dated January 24, 2007 of the Court of Appeals in CA-G.R.

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[118] *Supra* note 85.

CEB-SP No. 01698 dismissing the Petition for Prohibition with Injunction and Temporary Restraining Order (Petition for Prohibition) which questioned the constitutionality of Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and sought a temporary restraining order and/or injunction to prevent the implementation of the Temporary Protection Order (TPO) and criminal prosecution of herein petitioner Jesus A. Garcia under the law; and (2) the Resolution dated August 14, 2007, denying petitioner's Motion for Reconsideration of the said Decision.

At the outset, it should be stressed that the Court of Appeals, in its assailed Decision and Resolution, did not pass upon the issue of constitutionality of Republic Act No. 9262 and instead dismissed the Petition for Prohibition on technical grounds, as follows:

1. The constitutional issue was raised for the first time on appeal before the Court of Appeals by petitioner and not at the earliest opportunity, which should be before the Regional Trial Court (RTC), Branch 41, Bacolod City, acting as a Family Court, where private respondent Rosalie Garcia, wife of petitioner, instituted a Petition for Temporary and Permanent Protection Order[s][1] under Republic Act No. 9262, against her husband, petitioner Jesus C. Garcia; and

2. The constitutionality of Republic Act No. 9262 can only be questioned in a direct action and it cannot be the subject of a collateral attack in a petition for prohibition, as the inferior court having jurisdiction on the action may itself determine the constitutionality of the statute, and the latter's decision on the matter may be reviewed on appeal and not by a writ of prohibition, as it was held in *People v. Vera*.[2]

Hence, the Court of Appeals Decision and Resolution denied due course to the Petition for Prohibition "for being fraught with fatal technical infirmities" and for not being ripe for judicial

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[1] *Rollo*, pp. 63-83.

[2] 65 Phil. 56 (1937).

review. Nevertheless, four out of the five issues raised by the petitioner here dealt with the alleged unconstitutionality of Republic Act No. 9262. More accurately put, however, the Court of Appeals refrained from touching at all those four substantive issues of constitutionality. The Court of Appeals cannot therefore be faulted for any erroneous ruling on the aforesaid substantive constitutional issues.

In this instant Petition for Review, the only issue directly in point that can be raised against the Court of Appeals Decision and Resolution is the first one cited as a ground for the appeal, which I quote:

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE THEORY THAT THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED AT THE FIRST OPPORTUNITY AND THAT, THE PETITION WAS A COLLATERAL ATTACK ON THE VALIDITY OF THE LAW.[3]

Under the circumstances, whether this Court should consider this Petition for Review as a proper occasion to pass upon the constitutionality of Republic Act No. 9262 shall be a separate subject matter that is tackled below after the above-quoted first issue is disposed of.

On the Propriety of Raising the Issue of Constitutionality in a Summary Proceeding Before the RTC Designated as a Family Court

Petitioner assails the Court of Appeals ruling that he should have raised the issue of constitutionality in his Opposition[4] to private respondent's petition for protective orders pending before the RTC for the following reasons:

1. The Rules on Violence Against Women and Children (A.M. No. 04-10-11-SC), particularly Section 20 thereof, expressly

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[3] *Rollo*, p. 22.

[4] *Id.* at 98-103.

prohibit him from alleging any counterclaim, cross-claim or third party claim, all of which are personal to him and therefore with more reason, he cannot impugn the constitutionality of the law by way of affirmative defense.[5]

2. Since the proceedings before the Family Court are summary in nature, its limited jurisdiction is inadequate to tackle the complex issue of constitutionality.[6]

I agree with Justice Bernabe that the RTC, designated as a Family Court, is vested with jurisdiction to decide issues of constitutionality of a law, and that the constitutionality of Republic Act No. 9262 can be resolved in a summary proceeding, in accordance with the rule that the question of constitutionality must be raised at the earliest opportunity, otherwise it may not be considered on appeal.

Section 20 of A.M. No. 04-10-11-SC, the Rule on Republic Act No. 9262 provides:

> Sec. 20. *Opposition to Petition*. — (a) The respondent may file an opposition to the petition which he himself shall verify. It must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.
>
> (b) Respondent shall not include in the opposition any counterclaim, cross-claim or third-party complaint, **but any cause of action which could be the subject thereof may be litigated in a separate civil action**. (Emphasis supplied.)

Petitioner cites the above provision, particularly paragraph (b) thereof, as one of his grounds for not challenging the constitutionality of Republic Act No. 9262 in his Opposition. The error of such reasoning is that it treats "any cause of action" mentioned in Section 20(b) as distinct from the "counterclaim, cross-claim or third-party complaint" referred to in the said Section 20(b). On the contrary, the language of said section clearly refers to a cause of action that is the "**subject" of the**

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[5] *Id.* at 23.

[6] *Id.* at 24.

counterclaim, cross-claim, or third-party complaint, which is barred and which may be litigated in a separate civil action. The issue of constitutionality is not a "cause of action" that is a subject of the aforementioned prohibited pleadings. In fact, petitioner admitted that such prohibited pleadings would allege "claims which are **personal** to him."[7] Hence, Section 20(b) cannot even be invoked as a basis for filing the separate special civil action of Petition for Prohibition before the Court of Appeals to question the constitutionality of Republic Act No. 9262.

What obviously escapes petitioner's understanding is that the contents of the Opposition are not limited to mere refutations of the allegations in the petition for temporary and permanent protection order. While it is true that A.M. No. 04-10-11-SC requires the respondent to file an *Opposition* and not an *Answer*,[8] it does not prevent petitioner from challenging the constitutionality of Republic Act No. 9262 in such Opposition. In fact, Section 20(a) directs petitioner to state in his Opposition why a temporary or permanent protection order should not be issued against him. This means that petitioner should have raised in his Opposition all defenses available to him, which may be either negative or affirmative. Section 5(b), Rule 6 of the Rules of Court define negative and affirmative defenses as follows:

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

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[7] *Id.* at 309, Petitioner's Memorandum.

[8] Rationale of the Proposed Rule on Violence against Women and their Children, 15th Salient Feature.

In *Bayog v. Hon. Natino*,[9] the respondent, in a complaint for ejectment before the Municipal Circuit Trial Court (MCTC), raised as one of his defenses, the MCTC's lack of jurisdiction over the case in light of the agricultural tenancy relationship between him and the petitioner. The MCTC applied the Rule on Summary Procedure and issued an Order stating that it could not take cognizance of the Answer, for being filed belatedly. This Court ruled that while the MCTC was correct in applying the Rule on Summary Procedure as the complaint was one for ejectment, it should have met and ruled squarely on the issue of jurisdiction, as there was nothing in the rules that barred it from admitting the Answer. Hence, the MCTC should have heard and received evidence for the precise purpose of determining whether or not it possessed jurisdiction over the case.[10]

Similarly, the alleged unconstitutionality of Republic Act No. 9262 is a matter that would have prevented the trial court from granting the petition for protection order against the petitioner. Thus, petitioner should have raised it in his Opposition as a defense against the issuance of a protection order against him.

For all intents and purposes, the Petition for Prohibition filed before the Court of Appeals was precipitated by and was ultimately directed against the issuance of the TPO, an interlocutory order, which under Section 22(j) of A.M. No. 04-10-11-SC is a prohibited pleading. An action questioning the constitutionality of the law also cannot be filed separately even with another branch of the RTC. This is not technically feasible because there will be no justiciable controversy or an independent cause of action that can be the subject of such separate action if it were not for the issuance of the TPO against the petitioner. Thus, the controversy, subject of a separate action, whether before the Court of Appeals or the RTC, would still have to be the issuance of the TPO, which is the subject of another case in the RTC.

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[9] 327 Phil. 1019 (1996).

[10] *Id.* at 1036-1037.

Moreover, the challenge to the constitutionality of the law must be raised at the earliest opportunity. In *Dasmariñas Water District v. Monterey Foods Corporation*,[11] we said:

A law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. x x x. The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it. (Citation omitted.)

This Court held that such opportunity is in the pleadings before a competent court that can resolve it, such that "if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal."[12] The decision upon the constitutional question is necessary to determine whether the TPO should be issued against petitioner. Such question should have been raised at the earliest opportunity as an affirmative defense in the Opposition filed with the RTC handling the protection order proceedings, which was the competent court to pass upon the constitutional issue. This Court, in *Drilon v. Lim*,[13] held:

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, BP 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, **even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights.** Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all

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[11] G.R. No. 175550, September 17, 2008, 565 SCRA 624, 637.

[12] *Matibag v. Benipayo*, 429 Phil. 554, 578 (2002).

[13] G.R. No. 112497, August 4, 1994, 235 SCRA 135, 139-140.

cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Citation omitted, emphases ours.)

Furthermore, the filing of a separate action before the Court of Appeals or the RTC for the declaration of unconstitutionality of Republic Act No. 9262 would result to multiplicity of suits. It is clear that the issues of constitutionality and propriety of issuing a protection order raised by petitioner are inextricably intertwined. Another court, whether it is an appellate court or a trial court, cannot resolve the constitutionality question in the separate action without affecting the petition for the issuance of a TPO. Bringing a separate action for the resolution of the issue of constitutionality will result in an unresolved prejudicial question to the validity of issuing a protection order. If the proceedings for the protection order is not suspended, it does create the danger of having inconsistent and conflicting judgments between the two separate courts, whether of the same or different levels in the judicial hierarchy. These two judgments would eventually be the subject of separate motions for reconsideration, separate appeals, and separate petitions for review before this Court — the exact scenario the policy against multiplicity of suits is avoiding. As we previously held, "the law and the courts frown upon split jurisdiction and the resultant multiplicity of actions."[14]

It must be remembered that aside from the "earliest opportunity" requirement, the court's power of judicial review is subject to other limitations. Two of which are the existence of an actual case or controversy and standing. An aspect of the actual case or controversy requirement is the requisite of "ripeness." This is generally treated in terms of actual injury to the plaintiff. Thus, a question is ripe for adjudication when the act being challenged had a direct adverse effect on the individual challenging it. This direct adverse effect on the individual will also be the

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[14] *Presidential Commission on Good Government v. Peña*, 243 Phil. 93, 106 (1988).

basis of his standing as it is necessary that the person challenging the law must have a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result of its enforcement.[15]

In this case, the petitioner's challenge on the constitutionality of Republic Act No. 9262 was on the basis of the protection order issued against him. Verily, the controversy became ripe only when he was in danger of or was directly adversely affected by the statute mandating the issuance of a protection order against him. He derives his standing to challenge the statute from the direct injury he would sustain if and when the law is enforced against him. Therefore, it is clear that the proper forum to challenge the constitutionality of the law was before the RTC handling the protection order proceedings. The filing of a separate action to question the constitutionality of the law amounts to splitting a cause of action that runs counter to the policy against multiplicity of suits.

Moreover, the filing of the Petition for Prohibition with the Court of Appeals countenanced the evil that the law and the rules sought to avoid. It caused the delay in the proceedings and inconvenience, hardship and expense on the part of the parties due to the multiplicity of suits between them at different court levels. The RTC where the petition for protection orders is filed should be trusted, instead of being doubted, to be able to exercise its jurisdiction to pass upon the issue of constitutionality within the mandatory period set by the rules.

In gist, there is no statutory, reglementary, or practical basis to disallow the constitutional challenge to a law, which is sought to be enforced, in a summary proceeding. This is particularly true considering that the issue of a statute's constitutionality is a question of law which may be resolved without the reception of evidence or a full-blown trial. Hence, said issue should have been raised at the earliest opportunity in the proceedings before

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[15] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 383-384.

the RTC, Bacolod City and for failure of the petitioner to do so, it cannot be raised in the separate Petition for Prohibition before the Court of Appeals, as correctly ruled by the latter, nor in a separate action before the RTC.

On the Court Resolving the Issue of Constitutionality of Republic Act No. 9262

Notwithstanding my position that the Court of Appeals properly dismissed the Petition for Prohibition because of petitioner's failure to raise the issue of constitutionality of Republic Act No. 9262 at the earliest opportunity, I concur that the Court, in the exercise of its sound discretion,[16] should still pass upon the said issue in the present Petition. Notable is the fact that not only the petitioner, but the private respondent as well,[17] pray that the Court resolve the constitutional issue considering its novelty and paramount importance. Indeed, when public interest requires the resolution of the constitutional issue raised, and in keeping with this Court's duty of determining whether other agencies or even co-equal branches of government have remained within the limits of the Constitution and have not abused the discretion given them, the Court may brush aside technicalities of procedure and resolve the constitutional issue.[18]

Aside from the technical ground raised by petitioner in his first assignment of error, petitioner questions the constitutionality of Republic Act No. 9262 on the following grounds:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO CONCLUDE THAT R.A. NO. 9262 IS DISCRIMINATORY, UNJUST, AND VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

THE COURT OF APPEALS COMMITTED GRAVE MISTAKE IN NOT FINDING THAT R.A. NO. 9262 RUNS

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[16] *People v. Vera*, *supra* note 2.

[17] *Rollo*, p. 237, Private Respondents' Comment.

[18] *Matibag v. Benipayo*, *supra* note 12 at 579.

COUNTER TO THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE LAW DOES VIOLENCE TO THE POLICY OF THE STATE TO PROTECT THE FAMILY AS A BASIC SOCIAL INSTITUTION.

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT DECLARING R.A. NO. 9262 AS INVALID AND UNCONSTITUTIONAL BECAUSE IT ALLOWS AN UNDUE DELEGATION OF JUDICIAL POWER TO THE BARANGAY OFFICIALS.[19]

On the Constitutional Right to Equal Protection of the Laws

Petitioner challenges the constitutionality of Republic Act No. 9262 for making a gender-based classification, thus, providing remedies only to wives/women and not to husbands/men. He claims that even the title of the law, "An Act Defining Violence Against Women and Their Children" is already pejorative and sex-discriminatory because it means violence by men against women.[20] The law also does not include violence committed by women against children and other women. He adds that gender alone is not enough basis to deprive the husband/father of the remedies under it because its avowed purpose is to curb and punish spousal violence. The said remedies are discriminatory against the husband/male gender. There being no reasonable difference between an abused husband and an abused wife, the equal protection guarantee is violated.

Pertinently, Section 1, Article III of the 1987 Constitution states:

> No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws**. (Emphasis supplied.)

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[19] *Rollo*, p. 22.

[20] *Id.* at 26.

The above provision was lifted verbatim from the 1935 and 1973 Constitutions, which in turn was a slightly modified version of the equal protection clause in Section 1, Amendment 14[21] of the United States Constitution.

In 1937, the Court established in *People v. Vera*[22] the four-fold test to measure the reasonableness of a classification under the equal protection clause, to wit:

> This basic individual right sheltered by the Constitution is a restraint on all the three grand departments of our government and on the subordinate instrumentalities and subdivisions thereof, and on many constitutional powers, like the police power, taxation and eminent domain. The equal protection of the laws, sententiously observes the Supreme Court of the United States, "is a pledge of the protection of equal laws." Of course, what may be regarded as a denial of the equal protection of the laws is a question not always easily determined. No rule that will cover every case can be formulated. Class legislation discriminating against some and favoring others is prohibited. **But classification on a reasonable basis, and not made arbitrarily or capriciously, is permitted. The classification, however, to be reasonable must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class.** (Citations omitted, emphasis supplied.)

In our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the foregoing "*rational basis*" test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[23]

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[21] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws**.

[22] *Supra* note 2 at 125-126.

[23] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 583-584 (2004).

However, over time, three levels of tests were developed, which are to be applied in equal protection cases, depending on the subject matter[24] involved:

1. **Rational Basis Scrutiny** — the traditional test, which requires "only that government must not impose differences in treatment except upon some reasonable differentiation fairly related to the object of regulation." Simply put, it merely demands that the classification in the statute **reasonably relates** to the legislative purpose.[25]

2. **Intermediate Scrutiny** — requires that the classification (means) must serve an **important governmental objective** (ends) and is **substantially related** to the achievement of such objective. A classification based on sex is the best-established example of an intermediate level of review.[26]

3. **Strict Scrutiny** — requires that the classification serve a **compelling state interest** and is **necessary** to achieve such interest. This level is used when suspect classifications or fundamental rights are involved.[27]

Recent Philippine jurisprudence has recognized the need to apply different standards of scrutiny in testing the constitutionality of classifications. In *British American Tobacco v. Camacho,*[28] this Court held that since the case therein neither involved a suspect classification nor impinged on a fundamental right, then "the rational basis test was properly applied to gauge the constitutionality of the assailed law in the face of an equal protection challenge."[29] We added:

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[24] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32, citing BERNAS, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY, pp. 139-140 (2009).

[25] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, *supra* note 23.

[26] *Id.*

[27] *Id.*

[28] G.R. No. 163583, April 15, 2009, 585 SCRA 36.

[29] *Id.* at 40.

It has been held that "in the areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest. x x x.[30] (Citations omitted.)

Echoing the same principle, this Court, speaking through then Chief Justice Puno in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[31] stated:

Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. **The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.** When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, **and require a stricter and more exacting adherence to constitutional limitations.** Rational basis should not suffice.

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Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the

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[30] *Id.* at 40-41.

[31] *Supra* note 23 at 597-600.

unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor. (Citations omitted.)

This was reiterated in *League of Cities of the Philippines v. Commission on Elections*,[32] and *Ang Ladlad LGBT Party v. Commission on Elections,*[33] wherein the Court, although applying the rational basis test, noted that there are tests, which are more appropriate in other cases, especially those involving suspect classes and fundamental rights. In fact, Chief Justice Puno expounded on this in his Separate Concurring Opinion in the *Ang Ladlad* case. He said that although the assailed resolutions therein were correctly struck down, **since the classification was based on gender or sexual orientation, a quasi-suspect classification, a heightened level of review should have been applied and not just the rational basis test, which is the most liberal basis of judicial scrutiny.** Citing American authority, Chief Justice Puno continued to elucidate on the three levels of scrutiny and the classes falling within each level, to wit:

If a legislative classification disadvantages a "suspect class" or impinges upon the exercise of a "fundamental right," then the courts will employ **strict scrutiny** and the statute must fall unless the government can demonstrate that the classification has been precisely tailored to serve a compelling governmental interest. Over the years, the United States Supreme Court has determined that suspect classes for equal protection purposes include classifications based on race, religion, alienage, national origin, and ancestry. The underlying rationale of this theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down. In such a case, the State bears a heavy burden of justification, and the government action will be closely scrutinized in light of its asserted purpose.

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[32] G.R. Nos. 176951, 177499, and 178056, November 18, 2008, 571 SCRA 263.

[33] *Supra* note 24.

On the other hand, **if the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class," it will be treated under intermediate or heightened review.** To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations. Noteworthy, and of special interest to us in this case, **quasi-suspect classes include classifications based on gender** or illegitimacy.

If neither strict nor intermediate scrutiny is appropriate, then the statute will be tested for mere **rationality**. This is a **relatively relaxed standard** reflecting the Court's awareness that the drawing of lines which creates distinctions is peculiarly a legislative task and an unavoidable one. The presumption is in favor of the classification, of the reasonableness and fairness of state action, and of legitimate grounds of distinction, if any such grounds exist, on which the State acted.[34] (Citations omitted, emphases supplied.)

This case presents us with the most opportune time to adopt the appropriate scrutiny in deciding cases where the issue of discrimination based on sex or gender is raised. The assailed Section 3, among other provisions, of Republic Act No. 9262 provides:

SEC. 3. *Definition of Terms.* – As used in this Act:

(a) "Violence against women **and** their children" refers to any act or a series of acts committed by any person against a woman who is **his wife, former wife**, or **against a woman** with whom the person has or had a sexual or dating relationship, or with whom **he** has a common child, or **against her child** whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. x x x. (Emphases supplied.)

The aforesaid law also institutionalized remedies such as the issuance of protection orders in favor of women and children

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[34] *Id.* at 93-95.

who are victims of violence and prescribed public penalties for violation of the said law.

Petitioner questions the constitutionality of Republic Act No. 9262 which denies the same protection orders to husbands who are victims of wife-abuse. It should be stressed that under aforecited section of said law violence may not only be physical or sexual but also psychological and economic in nature.

The Honorable Justice Marvic Mario Victor F. Leonen in his concurring opinion notes that "Husband abuse maybe an under reported form of family violence." While concurring with the majority opinion, he opines as follows:

> Nevertheless, in a future case more deserving of our attention, we should be open to realities which may challenge the dominant conception that violence in intimate relationships only happens to women and children. This may be predominantly true, but even those in marginal cases deserve fundamental constitutional and statutory protection. We should be careful that in correcting historical and cultural injustices, we may typecast all women as victims, stereotype all men as tormentors or make invisible the possibility that in some intimate relationships, men may also want to seek succor against acts defined in Section 5 of Republic Act No. 9262 in an expeditious manner.

Since statutory remedies accorded to women are not made available to men, when the reality is that there are men, regardless of their number, who are also suffering from domestic violence, the rational basis test may be too wide and liberal to justify the statutory classification which in effect allows different treatment of men who are similarly situated. In the context of the constitutional policy to "ensure the fundamental equality before the law of women and men"[35] the level of scrutiny applicable, to test whether or not the classification in Republic Act No. 9262 violates the equal protection clause, is the **middle-tier scrutiny or the intermediate standard of judicial review.**

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[35] 1987 Constitution, Article II, Section 14.

To survive intermediate review, the classification in the challenged law must (1) serve **important** governmental objectives, and (2) be **substantially related** to the achievement of those objectives.[36]

Important and Essential Governmental Objectives: Safeguard Human Rights, Ensure Gender Equality and Empower Women

Republic Act No. 9262 is a legislation that furthers important, in fact essential, governmental objectives as enunciated in the law's Declaration of Policy, as quoted below:

SEC. 2. *Declaration of Policy*.- It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

This policy is in consonance with the constitutional provisions,[37] which state:

SEC. 11. The State values the dignity of every human person and guarantees full respect for human rights.

SEC. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x.

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[36] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, *supra* note 23 at 586, citing Justice Marshall's dissent in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

[37] 1987 Constitution, Article II.

By constitutional mandate, the Philippines is committed to ensure that human rights and fundamental freedoms are fully enjoyed by everyone. It was one of the countries that voted in favor of the Universal Declaration of Human Rights (UDHR), which was a mere two years after it gained independence from the United States of America. In addition, the Philippines is a signatory to many United Nations human rights treaties such as the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child, among others.

As a signatory to the UDHR, the Philippines pledged itself to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms,[38] keeping in mind the standards under the Declaration. Among the standards under the UDHR are the following:

> Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> x x x x x x x x x
>
> Article 7. **All are equal before the law and are entitled without any discrimination to equal protection of the law.** All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
>
> Article 8. Everyone has the right to an **effective remedy** by the competent national tribunals **for acts violating the fundamental rights** granted him by the constitution or by law. (Emphasis ours.)

The Declaration of Policy in Republic Act No. 9262 enunciates the purpose of the said law, which is to fulfill the government's obligation to safeguard the dignity and human rights of women and children by providing effective remedies against domestic violence or physical, psychological, and other forms of abuse perpetuated by the husband, partner, or father of the victim.

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[38] Universal Declaration of Human Rights.

The said law is also viewed within the context of the constitutional mandate to ensure gender equality, which is quoted as follows:

> Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.[39]

It has been acknowledged that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."[40] Republic Act No. 9262 can be viewed therefore as the Philippines' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is committed to condemn discrimination against women and directs its members to undertake, without delay, all appropriate means to eliminate discrimination against women in all forms both in law and in practice.[41] Known as the International Bill of Rights of Women,[42] the CEDAW is the central and most comprehensive document for the advancement of the welfare of women.[43] It brings the women into the focus of human rights concerns, and its spirit is rooted in the goals of the UN: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.[44] The CEDAW, in its preamble, explicitly acknowledges **the existence of extensive discrimination against women, and emphasized that such is a violation of the principles of equality of rights and respect for human dignity.**

In addition, as a state party to the CEDAW, the Philippines is under legal obligation to to ensure their development and

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[39] 1987 Constitution, Article II.

[40] General Recommendation No. 19, CEDAW/par. 1 (1992).

[41] CEDAW, Article 2.

[42] http://pcw.gov.ph/international-commitments/cedaw last visited on April 9, 2013.

[43] CEDAW, Introduction.

[44] *Id.*

advancement for the improvement of their position from one of ***de jure*** as well as ***de facto*** equality with men.[45] The CEDAW, going beyond the concept of discrimination used in many legal standards and norms, focuses on discrimination against women, with the emphasis that women have suffered and are continuing to suffer from various forms of discrimination on account of their biological sex.[46]

The Philippines' accession to various international instruments requires it to promote and ensure the observance of human rights and "continually affirm its commitment to ensure that it pursues gender equality in all aspects of the development process to eventually make real, a gender-responsive society."[47] Thus, the governmental objectives of **protecting human rights and fundamental freedoms, which includes promoting gender equality** and **empowering women**, as mandated not only by our Constitution, but also by commitments we have made in the international sphere, are undeniably **important and essential**.

The Gender-Based Classification in Republic Act No. 9262 is Substantially Related to the Achievement of Governmental Objectives

As one of the country's pervasive social problems, violence against women is deemed to be closely linked with the unequal power relationship between women and men and is otherwise known as "gender-based violence."[48] Violent acts towards women has been the subject of an examination on a historic world-wide perspective.[49] The exhaustive study of a foreign history

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[45] General Recommendation No. 25, CEDAW/par. 4 (2004).

[46] *Id.*, par. 5 (2004).

[47] http://pcw.gov.ph/international-commitments last visited on April 9, 2013.

[48] http://pcw.gov.ph/focus-areas/violence-against-women last visited on April 10, 2013.

[49] Historical Perspectives on Violence Against Women. November 2002.

professor noted that "[f]rom the earliest civilizations on, the subjugation of women, in the form of violence, were facts of life,"[50] as three great bodies of thought, namely: Judeo-Christian religious ideas; Greek philosophy; and the Common Law Legal Code, which have influenced western society's views and treatment of women, all "assumed patriarchy as natural; that is, male domination stemming from the view of male superiority."[51] It cited 18th century legal expert William Blackstone, who explained that the common law doctrine of *coverture* reflected the theological assumption that husband and wife were 'one body' before God; thus "they were 'one person' under the law, and that one person was the husband,"[52] a concept that evidently found its way in some of our Civil Code provisions prior to the enactment of the Family Code.

Society and tradition dictate that the culture of patriarchy continue. Men are expected to take on the dominant roles both in the community and in the family. This perception naturally leads to men gaining more power over women — power, which must necessarily be controlled and maintained. Violence against women is one of the ways men control women to retain such power.[53]

The enactment of Republic Act No. 9262 was in response to the undeniable numerous cases involving violence committed against women in the Philippines. In 2012, the Philippine National Police (PNP) reported[54] that 65% or 11,531 out of 15,969 cases involving violence against women were filed under Republic Act No. 9262. From 2004 to 2012, violations of Republic Act

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[50] Vivian C. Fox, Ph.D. Journal of International Women's Studies Vol. 4 #1, Historical Perspectives on Violence Against Women. November 2002. p. 20.

[51] *Id.* at 15.

[52] *Id.* at 19.

[53] http://pcw.gov.ph/focus-areas/violence-against-women last visited on April 10, 2013.

[54] As Submitted by the Philippine Commission on Women.

No. 9262 ranked first among the different categories of violence committed against women. The number of reported cases showed an increasing trend from 2004 to 2012, although the numbers might not exactly represent the real incidence of violence against women in the country, as the data is based only on what was reported to the PNP. Moreover, the increasing trend may have been caused by the continuous information campaign on the law and its strict implementation.[55] Nonetheless, statistics show that cases involving violence against women are prevalent, while there is a dearth of reported cases involving violence committed by women against men, that will require legislature intervention or solicitous treatment of men.

Preventing violence against women and children through their availment of special legal remedies, serves the governmental objectives of protecting the dignity and human rights of every person, preserving the sanctity of family life, and promoting gender equality and empowering women. Although there exists other laws on violence against women[56] in the Philippines, Republic Act No. 9262 deals with the problem of violence within the family and intimate relationships, which deserves special attention because it occurs in situations or places where women and children should feel most safe and secure but are actually not. The law provides the widest range of reliefs for women and children who are victims of violence, which are often reported to have been committed not by strangers, but by a father or a husband or a person with whom the victim has or had a sexual or dating relationship. Aside from filing a criminal case in court, the law provides potent legal remedies to the victims that theretofore

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[55] http://pcw.gov.ph/statistics/201210/statistics-violence-against-filipino-women, last visited on March 18, 2013.

[56] Republic Act No. 3815, The Revised Penal Code; Republic Act No. 7877, The Anti-Sexual Harassment Act of 1995; Republic Act No. 8353, The Anti-Rape Law of 1997; Republic Act No. 8505, The Rape Victims Assistance Act of 1998; Republic Act No. 6955; Republic Act No. 9208, The Anti-Trafficking in Persons Act of 2003; Republic Act No. 8369: The Family Courts Act of 1997; and Republic Act No. 9710, The Magna Carta of Women of 2009.

were not available. The law recognizes, with valid factual support based on statistics that women and children are the most vulnerable victims of violence, and therefore need legal intervention. On the other hand, there is a dearth of empirical basis to anchor a conclusion that men need legal protection from violence perpetuated by women.

The law takes into account the pervasive vulnerability of women and children, and the seriousness and urgency of the situation, which, in the language of the law result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.[57] Hence, the law permits the issuance of protection orders and the granting of certain reliefs to women victims, even without a hearing. The law has granted authority for *barangay* officials to issue a protection order against the offender, based on the victim's application. The RTC may likewise grant an application for a temporary protection order (TPO) and provide other reliefs, also on the mere basis of the application. Despite the *ex parte* issuance of these protection orders, the temporary nature of these remedies allow them to be availed of by the victim without violating the offender's right to due process as it is only when a full-blown hearing has been done that a permanent protection order may be issued. Thus, these remedies are suitable, reasonable, and justified. More importantly, they serve the objectives of the law by providing the victims necessary immediate protection from the violence they perceive as threats to their personal safety and security. This translates to the fulfillment of other governmental objectives as well. By assuring the victims instant relief from their situation, they are consequently empowered and restored to a place of dignity and equality. Such is embodied in the purpose to be served by a protection order, to wit:

SEC. 8. *Protection Orders*.- A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and

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[57] Republic Act No. 9262, Section 3.

granting other necessary relief. **The relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.** x x x. (Emphasis supplied.)

In furtherance of the governmental objectives, especially that of protecting human rights, violence against women and children under this Act has been classified as a public offense,[58] making its prosecution independent of the victim's initial participation.

Verily, the classification made in Republic Act No. 9262 is substantially related to the important governmental objectives of valuing every person's dignity, respecting human rights, safeguarding family life, protecting children, promoting gender equality, and empowering women.

The persistent and existing biological, social, and cultural differences between women and men prescribe that they be treated differently under particular conditions in order to achieve **substantive equality** for women. Thus, the disadvantaged position of a woman as compared to a man requires the special protection of the law, as gleaned from the following recommendations of the CEDAW Committee:

8. [T]he Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. **Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.** Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. **Equality of results is the logical corollary of *de facto* or substantive equality.** These results may be quantitative and/or

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[58] *Id.*, Section 25.

qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and **women enjoying freedom from violence.**[59] (Emphases supplied.)

The government's commitment to ensure that the status of a woman in all spheres of her life are parallel to that of a man, requires the adoption and implementation of ameliorative measures, such as Republic Act No. 9262. Unless the woman is guaranteed that the violence that she endures in her private affairs will not be ignored by the government, which is committed to uplift her to her rightful place as a human being, then she can neither achieve substantive equality nor be empowered.

The equal protection clause in our Constitution does not guarantee an absolute prohibition against classification. The non-identical treatment of women and men under Republic Act No. 9262 is justified to put them on equal footing and to give substance to the policy and aim of the state to ensure the equality of women and men in light of the biological, historical, social, and culturally endowed differences between men and women.

Republic Act No. 9262, by affording special and exclusive protection to women and children, who are vulnerable victims of domestic violence, undoubtedly serves the important governmental objectives of protecting human rights, insuring gender equality, and empowering women. The gender-based classification and the special remedies prescribed by said law in favor of women and children are substantially related, in fact essentially necessary, to achieve such objectives. Hence, said Act survives the **intermediate review** or **middle-tier judicial scrutiny**. The gender-based classification therein is therefore not violative of the equal protection clause embodied in the 1987 Constitution.

The Issuance of the TPO did not Violate Petitioner's Right to Due Process

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[59] General Recommendation No. 25, CEDAW/pars. 8-9 (2004).

A protection order is issued under Republic Act No. 9262 for the purpose of preventing further acts of violence against a woman or her child.[60] The circumstances surrounding the availment thereof are often attended by urgency; thus, women and child victims must have immediate and uncomplicated access to the same. Hence, Republic Act No. 9262 provides for the issuance of a TPO:

SEC. 15. *Temporary Protection Orders.* — Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

The *ex parte* issuance of the TPO does not make it unconstitutional. Procedural due process refers to the method or manner by which the law is enforced. It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.[61] However, it is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those involved herein. Republic Act No. 9262 and its implementing regulations were enacted and promulgated in the exercise of that pervasive, sovereign power of the State to protect the safety, health, and general welfare and comfort of the public (in this case, a particular sector thereof), as well as the protection of human life, commonly designated as the police power.[62]

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[60] Section 8.

[61] *China Banking Corporation v. Lozada*, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 193.

[62] *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, March 11, 1991, 195 SCRA 112, 123.

In *Secretary of Justice v. Lantion*,[63] the Court enumerated three instances when notice and/or hearing may be dispensed with in administrative proceedings:

These twin rights may, however, be considered dispensable in certain instances, such as:

1. In proceedings where there is an urgent need for immediate action, like the summary abatement of a nuisance *per se* (Article 704, Civil Code), the preventive suspension of a public servant facing administrative charges (Section 63, Local Government Code, B. P. Blg. 337), the padlocking of filthy restaurants or theaters showing obscene movies or like establishments which are immediate threats to public health and decency, and the cancellation of a passport of a person sought for criminal prosecution;
2. Where there is tentativeness of administrative action, that is, where the respondent is not precluded from enjoying the right to notice and hearing at a later time without prejudice to the person affected, such as the summary distraint and levy of the property of a delinquent taxpayer, and the replacement of a temporary appointee; and
3. Where the twin rights have previously been offered but the right to exercise them had not been claimed.

The principles behind the aforementioned exceptions may also apply in the case of the *ex parte* issuance of the TPO, although it is a judicial proceeding. As mentioned previously, the urgent need for a TPO is inherent in its nature and purpose, which is to immediately provide protection to the woman and/or child victim/s against further violent acts. Any delay in the issuance of a protective order may possibly result in loss of life and limb of the victim. The issuing judge does not arbitrarily issue the TPO as he can only do so if there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur based on the verified allegations in the petition of the victim/s.[64] Since the TPO is

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[63] 379 Phil. 165, 203-204 (2000).

[64] A.M. No. 04-10-11-SC, Section 15(a).

effective for only thirty (30) days,[65] any inconvenience, deprivation, or prejudice the person enjoined — such as the petitioner herein — may suffer, is generally limited and temporary. Petitioner is also not completely precluded from enjoying the right to notice and hearing at a later time. Following the issuance of the TPO, the law and rules require that petitioner be personally served with notice of the preliminary conference and hearing on private respondent's petition for a Permanent Protection Order (PPO)[66] and that petitioner submit his opposition to private respondent's petition for protections orders.[67] In fact, it was petitioner's choice not to file an opposition, averring that it would only be an "exercise in futility." Thus, the twin rights of notice and hearing were subsequently afforded to petitioner but he chose not to take advantage of them. Petitioner cannot now claim that the *ex parte* issuance of the TPO was in violation of his right to due process.

There is No Undue Delegation of Judicial Power to Barangay Officials

A *Barangay* Protection Order (BPO) refers to the protection order issued by the *Punong Barangay*, or in his absence the *Barangay Kagawad*, ordering the perpetrator to desist from committing acts of violence against the family or household members particularly women and their children.[68] The authority of *barangay* officials to issue a BPO is conferred under Section 14 of Republic Act No. 9262:

> SEC. 14. *Barangay Protection Orders (BPOs); Who May Issue and How*. — Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A *Punong Barangay* who receives applications for

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[65] *Id.*

[66] *Id.*, Section 15(b).

[67] *Id.*, Section 15(c).

[68] *Id.*, Section 4(p).

a BPO shall issue the protection order to the applicant on the date of filing after *ex parte* determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad.* If the BPO is issued by a *Barangay Kagawad* the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay or Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect is personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

Once more, the urgency of the purpose for which protection orders under Republic Act No. 9262 are issued justifies the grant of authority to *barangay* officials to issue BPOs. *Barangay* officials live and interact closely with their constituents and are presumably easier to approach and more readily available than any other government official. Their issuance of the BPO is but part of their official executive function of enforcing all laws and ordinances within their *barangay*[69] and maintaining public order in the *barangay*.[70] It is true that the *barangay* officials' issuance of a BPO under Republic Act No. 9262 necessarily involves the determination of some questions of fact, but this function, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law.[71] The Court has clarified that:

"The mere fact that an officer is required by law to inquire the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these

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[69] Section 389(b)(1), Chapter III, Title I, Book III of Republic Act No. 7160, otherwise known as The Local Government Code of 1991.

[70] Section 389(b)(3), Chapter III, Title I, Book III of The Local Government Code of 1991.

[71] *Lovina v. Moreno*, 118 Phil. 1401, 1405 (1963).

acts may affect private rights do not constitute an exercise of judicial powers. Accordingly, a statute may give to non-judicial officers the power to declare the existence of facts which call into operation its provisions, and similarly may grant to commissioners and other subordinate officers power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws." (11 Am. Jur., Const. Law, p. 950, sec. 235)[72]

Furthermore, while judicial power rests exclusively in the judiciary, it may be conceded that the legislature may confer on administrative boards or bodies, or even particular government officials, quasi-judicial power involving the exercise of judgment and discretion, as incident to the performance of administrative functions. But in so doing, the legislature must state its intention in express terms that would leave no doubt, as even such quasi-judicial prerogatives must be limited, if they are to be valid, only to those incidental to or in connection with the performance of administrative duties, which do not amount to conferment of jurisdiction over a matter exclusively vested in the courts.[73] In the case of a BPO, it is a mere provisional remedy under Republic Act No. 9262, meant to address the pressing need of the victims for instant protection. However, it does not take the place of appropriate judicial proceedings and remedies that provide a more effective and comprehensive protection to the victim. In fact, under the Implementing Rules of Republic Act No. 9262, the issuance of a BPO or the pendency of an application for a BPO shall not preclude the victim from applying for, or the court from granting, a TPO or PPO. Where a TPO has already been granted by any court, the *barangay* official may no longer issue a BPO.[74] The same Implementing Rules also require that within twenty-four (24) hours after the issuance of a BPO, the *barangay* official shall assist the victim in filing an application for a TPO or PPO with the nearest court in the victim's place of residence. If there is no Family Court or RTC,

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[72] *Id.* at 1406.

[73] *Miller v. Mardo*, 112 Phil. 792, 802 (1961).

[74] Section 14(g).

the application may be filed in the Municipal Trial Court, the Municipal Circuit Trial Court or the Metropolitan Trial Court.[75]

All things considered, there is no ground to declare Republic Act No. 9262 constitutionally infirm.

BRION, *J., concurring*:

I concur with the *ponencia's* conclusion that Republic Act (*R.A.*) No. 9262 (*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore and for Other Purposes*) is **constitutional** and **does not violate the equal protection clause**. As traditionally viewed, the constitutional provision of equal protection simply requires that similarly situated persons be treated in the same way. It does not connote identity of rights among individuals, nor does it require that every person is treated identically in all circumstances. It acts as a safeguard to ensure that State-drawn distinctions among persons are based on reasonable classifications and made pursuant to a proper governmental purpose. In short, statutory classifications are not unconstitutional when shown to be reasonable and made pursuant to a legitimate government objective.

In my view, Congress has presented a reasonable classification that focuses on women and children based on protective provisions that the Constitution itself provides. Section 11, Article II of the Constitution declares it a state policy to value the dignity of every human person and guarantees full respect for human rights. Further, under Section 14, Article II of the Constitution, the State recognizes the role of women in nation-building and ensures fundamental equality before the law of women and men. These policies are given purposeful meaning under Article XV of the Constitution on family, which states:

> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

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[75] Section 14(d).

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend —

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development[.]

From the terms of the law, I find it plain that Congress enacted R.A. No. 9262 as a measure intended to strengthen the family. Congress found that domestic and other forms of violence against women and children contribute to the failure to unify and strengthen family ties, thereby impeding the State's mandate to actively promote the family's total development. Congress also found, as a reality, that women and children are more susceptible to domestic and other forms of violence due to, among others, the pervasive bias and prejudice against women and the stereotyping of roles within the family environment that traditionally exist in Philippine society. On this basis, Congress found it necessary to recognize the substantial distinction within the family between men, on the one hand, and women and children, on the other hand. ***This recognition, incidentally, is not the first to be made in the laws as our law on persons and family under the Civil Code also recognize, in various ways, the distinctions between men and women in the context of the family.***[1]

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[1] Examples of this distinction are found in the following provisions of the Family Code, as amended:

On the Ownership, Administrative, Enjoyment and Disposition of the Community Property:

"Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, **the husband's decision shall prevail,** subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision."

To be sure, Congress has not been alone in addressing violence committed against women and children as this move is "in keeping

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On the Liquidation of the Absolute Community Assets and Liabilities:

"Art. 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

x x x x x x x x x

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. **Children below the age of seven years are deemed to have chosen the mother,** unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration **the best interests of said children.**" (emphases ours)

On the Administration of the Conjugal Partnership Property:

"Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, **the husband's decision shall prevail,** subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision." (emphasis ours)

On the Liquidation of the Conjugal Partnership Assets and Liabilities:

"Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

x x x x x x x x x

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. **Children below the age of seven years are deemed to have chosen the mother,** unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration **the best interests of said children**." (emphases ours)

On Parental Authority:

"Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

x x x x x x x x x

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. **In case of disagreement, the father's decision shall prevail,** unless there is a judicial order to the contrary." (emphasis ours)

with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party."[2] The only question perhaps is whether the considerations made in these international instruments have reason or basis for recognition and active application in the Philippines.

I believe that the policy consideration Congress made in this regard is not without basis in history and in contemporary

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On the Effect of Parental Authority Upon the Persons of the Children:

"Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(5) To represent them in all matters affecting their interests;

(6) To demand from them respect and obedience;

(7) To impose discipline on them as may be required under the circumstances; and

(8) To perform such other duties as are imposed by law upon parents and guardians.

On the Effect of Parental Authority Upon the Property of the Children:

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, **the father's decision shall prevail,** unless there is a judicial order to the contrary."

[2] R.A. No. 9262, Section 2.

Philippine society so that Congress was acting well within its prerogative when it enacted R.A. No. 9262 "to protect *the family and its members* particularly women and children, from violence and threats to their personal safety and security."[3]

I consider, too, the statutory classification under R.A. No. 9262 to be valid, and that the ***lowest level of scrutiny of review*** should be applied in determining if the law has established a valid classification germane to the Constitution's objective to protect the family by protecting its women and children members. In my view, no need exists to further test the law's validity from the perspective of an ***expanded equal protection based on social justice.*** The Constitution itself has made special mention of women and their role in society (Article II) and the assistance and protection that must be given to children irrespective of sex. It appears highly inconsistent to me under this situation if the Court would impose a strict level of scrutiny on government — the primary implementor of constitutional policies — and lay on it the burden of establishing the validity of an Act directly addressing violence against women and children.

My serious reservation on the use of an expanded equal protection clause and in applying a strict scrutiny standard is, among others, based on lack of necessity; we do not need these measures when we can fully examine R.A. No. 9262's constitutionality using the reasonableness test. The family is a unit, in fact a very basic one, and it cannot operate on an uneven standard where measures beyond what is necessary are extended to women and children as against the man — the head of the family and the family provider. The use of an expanded equal protection clause only stresses the concept of an uneven equality that cannot long stand in a unit living at close quarters in a situation of mutual dependency on one another. The reasonableness test, on the other hand, has been consistently applied to allow the courts to uphold State action as long as the action is found to be germane to the purpose of the law, in this case to support the unity and development of the family. ***If we***

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[3] *Ibid.*; italics ours.

are to deviate from or to modify this established standard of scrutiny, we must do so carefully and for strong justifiable reasons.

If we are to use a strict level of scrutiny of government action, we must be aware of the risks that this system of review may open. A very real risk is ***to open the possibility that our social legislations will always be subject to heightened scrutiny.*** Are we sure of what this approach entails for the government and for our society in the long run? How will this approach affect the social legislation that our society, particularly the most vulnerable members, need? What other effects will a system of review — that regards governmental action as illegal unless the government can actively justify the classifications it has made in the course of pursuing its actions — have? ***These are the questions that, in the long run, we have to contend with, and I hate to provide an answer through a case that is not, on its face and even in deeper reality, representative of the questions we are asking or need to ask.***

The cases of *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*[4] and *Serrano v. Gallant Maritime Services, Inc.*[5] demonstrate the Court's application of a heightened sense of scrutiny on social legislations. In *Central Bank* and *Serrano*, we held that classifications in the law that result in prejudice to persons accorded special protection by the Constitution require a stricter judicial scrutiny.[6] In both cases, the question may well be asked: was there an absolute necessity for a strict scrutiny approach when, as in *Serrano*, the same result emerges when using the lowest level of scrutiny? In short, I ask if a strict scrutiny is needed under the circumstances of the present case as the Concurring Opinion of J. Roberto Abad suggests.

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[4] 487 Phil. 531 (2004).

[5] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[6] See note 4. In Central Bank, the classification was based on salary grade or officer-employee status. In the words of the decision, "It is akin to a distinction based on economic class and status, with higher grades as recipients of a benefit specifically withheld from the lower grades" (p. 391).

Not to be forgotten or glossed over in answering this question is the need to consider what a strict scrutiny requires, as well as the consequences of an expanded concept of equal protection clause and the accompanying use of a strict scrutiny standard. Among others, this approach affects the application of constitutional principles that we vigilantly adhere to in this jurisdiction.

I outline below what a strict scrutiny approach entails.

First, the use of strict scrutiny only applies when the challenged law or clause results in a "suspect classification";

Second, the use of a strict scrutiny standard of review creates a reverse *onus*: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving that the challenged law or clause is constitutional;

And third, the reverse *onus* in a strict scrutiny standard of review directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government.

When the court uses a strict standard for review to evaluate the constitutionality of a law, it proceeds from the premise that the law established a "suspect classification." A suspect classification is one where distinctions are made based on the *most invidious* bases for classification that violate the most basic human rights, *i.e.*, on the basis of race, national origin, alien status, religious affiliation and, to a certain extent, sex and sexual orientation.[7] With a suspect classification, the most stringent scrutiny of the classification is applied: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving the statute's constitutionality. This approach is unlike the lowest level of scrutiny (reasonableness test) that the Court has applied in the past where the classification is scrutinized and constitutionally upheld if found to be germane to the purpose of the law. Under a reasonableness test, there is

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[7] See note 5, at 321. Citing *City of Cleburn, Texas v. Cleburne Living Center,* 413 U.S. 432 (1985); *Loving v. Commonwealth of Virginia*, 388 U. S. 1 (1967).

a presumption of constitutionality and that the laws enacted by Congress are presumed to fall within its constitutional powers.

To pass strict scrutiny, the government must actively show that the classification established in the law is justified by a compelling governmental interest and the means chosen by the State to effectuate its purpose must be narrowly tailored to the achievement of that goal.[8] In the context of the present case, is the resulting classification in the present law so outstandingly harmful to men in general so that a strict scrutiny is called for?

I do not really see any indication that Congress actually intended to classify women and children as a group against men, under the terms of R.A. No. 9262. Rather than a clear intent at classification, the **overriding intent of the law is indisputably to harmonize family relations and protect the family as a basic social institution.**[9] After sifting through the comprehensive information gathered, Congress found that domestic and other forms of violence against women and children impedes the harmony of the family and the personal growth and development of family members. In the process, Congress found that these types of violence must pointedly be addressed as they are more commonly experienced by women and children due to the unequal power relations of men and women in our society; Congress had removed these types of violence as they are impediments that block the harmonious development that it envisions for the family, of which men are important component members.

Even granting that a classification resulted in the law, I do not consider the classification of women and children to be within the "suspect classification" that jurisprudence has established. As I mentioned earlier, suspect classifications are distinctions based on the most invidious bases for classification that violate the most basic human rights. Some criteria used in

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[8] *Grutter v. Bollinger*, 539 U.S. 306 (2003). See *Pamore v. Sidoti*, 466 U.S. 429, 432 (1984); *Loving v. Commonwealth of Virginia, supra* note 7; and *Graham v. Richardson*, 403 U.S. 365, 375 (1971).

[9] Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147. See p. 25 of the *ponencia*.

determining suspect classifications are: (1) the group possesses an immutable and/or highly visible trait;[10] and (2) they are powerless to protect themselves *via* the political process.[11] The group is a "discrete" and "insular" minority.[12] Women and children, to my mind, simply do not fall within these criteria.

In my view, a suspect classification and the accompanying strict scrutiny should depend on the circumstances of the case, on the impact of the illegal differential treatment on the group involved, on the needed protection and the impact of recognizing a suspect classification on future classification.[13] A suspect classification label cannot solely and automatically be triggered by the circumstance that women and children are accorded special protection by the Constitution. In fact, there is no place for a strict level of scrutiny when the Constitution itself has recognized the need for special protection; where such recognition has been made, congressional action should carry the presumption of validity.

Similarly, a suspect classification and the accompanying strict scrutiny standard cannot be solely based on the circumstance that the law has the effect of being "gender-specific." I believe that **the classification in the law was not immediately brought on by considerations of gender or sex; it was simply a reality as unavoidable as the reality that in Philippine society, a marriage is composed of a man, a woman and their children.** An obvious reason, of course, why the classification did not solely depend on gender is because the law also covers children, without regard to their sex or their sexual orientation.

Congress was sensitive to these realities and had to address the problem as it existed in order to pinpoint and remove the obstacles that lay along the way. With this appreciation of reality,

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[10] 477 U.S. 635 (1986).

[11] *United States v. Carolene Products Company*, 304 U.S. 144 (1938).

[12] *Frontiero v. Richardson*, 411 U.S. 677 (1973).

[13] Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc., supra* note 5, at 322.

Congress had no recourse but to identify domestic and other forms of violence committed on women and their children as among the obstacles that intrude on the development, peace and harmony of the family. From this perspective, the objective of the law — the productive development of the family as a whole and the Congress' view of what may be done in the area of violence — stand out.

Thus, *with the objective of promoting solidarity and the development of the family*, R.A. No. 9262 provides the legal redress for domestic violence that particularly affects women and their children. ***Significantly, the law does not deny, restrict or curtail civil and human rights of other persons falling outside the classification, particularly of the men members of the family who can avail of remedies provided by other laws to ensure the protection of their own rights and interests.*** Consequently, the resulting classification under R.A. No. 9262 is not wholly intended and does not work an injustice by removing remedies that are available to men in violence committed against them. The law furthermore does not target men against women and children and is there simply to achieve a legitimate constitutional objective, and it does not achieve this by a particularly harmful classification that can be labeled "suspect" in the sense already established by jurisprudence. Under the circumstances, the use and application of strict scrutiny review, or even the use of an expanded equal protection perspective, strike me as both unnecessary and disproportionate.

As my final point, the level of review that the Court chooses to apply is crucial as it determines both the process and the outcome of a given case. The reverse *onus* that a strict scrutiny brings ignores the most basic presumption of constitutionality that the courts consistently adhere to when resolving issues of constitutionality. It also infringes on the regularity of performance of functions of co-equal branches of government. As the Court pronounced in *Drilon v. Lim*: [14]

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[14] G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140; citation omitted.

In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.

It is also emphasized that every court, including this Court, is charged with the duty of a purposeful hesitation before declaring a law unconstitutional, on the theory that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved. To doubt is to sustain. The presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

Inter-government harmony and courtesy demand that we reserve the strict scrutiny standard of review to the worst possible cases of unacceptable classification, abject forms of discrimination, and the worst violations of the Constitution. 15 R.A. No. 9262 does not present such a case.

In these lights, I conclude that a valid classification exists to justify whatever differential treatment may exist in the law. **I vote to deny the petition and uphold the constitutionality of R.A. No. 9262 using the lowest level of scrutiny under the reasonableness test.**

ABAD, *J.*: *separate concurring opinion:*

Republic Act 9262 (R.A. 9262) or the Anti-Violence against Women and their Children Act is a historic step in the Filipino

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[15] Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc., supra* note 5, at 322.

women's long struggle to be freed from a long-held belief that men are entitled, when displeased or minded, to hit their wives or partners and their children. This law institutionalizes prompt community response to this violent behavior through *barangay* officials who can command the man to immediately desist from harming his home partner and their children. It also establishes domestic violence as a crime, not only against its victims but against society as well. No longer is domestic violence lightly dismissed as a case of marital dispute that law enforcers ought not to get into.[1]

Almost eight years after the passage of this landmark legislation, petitioner Jesus C. Garcia, a husband charged with the offense, claims before the Court that R.A. 9262 violates his constitutional rights to due process and equal protection and that it constitutes an undue delegation of judicial power to *barangay* officials with respect to the Temporary Protection Order (TPO) that the latter could issue against him for his alleged maltreatment of his wife and children.

This separate concurring opinion will address the issue of equal protection since it presents the more serious challenge to the constitutionality of the law. Men and women are supposed to be equal yet this particular law provides immediate relief to complaining women and harsh consequences to their men even before the matter reaches the courtroom, a relief not available to the latter. The law, Garcia says, violates his right to equal protection because it is gender-specific, favoring only women when men could also be victims of domestic violence.

Justice Estela Perlas-Bernabe ran the issue of equal protection in her *ponencia* through the litmus test for holding a law valid even when it affects only a particular class, a test that the Court laid down in *People v. Vera*.[2] A legislative classification, according to *Vera*, is reasonable as long as: 1) it rests on substantial

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[1] SALIGAN Women's Unit, "Strengthening Responses to Violence against Women: Overcoming Legal Challenges in the Anti-Violence Against Women and their Children Act" (March 2008), Ateneo Law Journal.

[2] 65 Phil. 56 (1937).

distinctions which make real differences; 2) it is germane to the purpose of the law; 3) it is not limited to existing conditions but applies as well to future identical conditions; and 4) it applies equally to all members of the same class.[3] I dare not improve on Justice Bernabe's persuasive reasoning and conclusions.

I agree with her but would like to hinge my separate concurring opinion on the concept of an Expanded Equal Protection Clause that former Chief Justice Reynato S. Puno espouses in his book: *Equal Dignity and Respect: The Substance of Equal Protection and Social Justice.*

Chief Justice Puno's thesis is that the right to equal protection casts another shadow when the issue raised under it involves persons protected by the social justice provision of the Constitution, specifically, Section 1, Article XIII. The equal protection clause can no longer be interpreted as only a guarantee of formal equality[4] but of substantive equality. "It ought to be construed," said the Chief Justice, "in consonance with social justice as 'the heart' particularly of the 1987 Constitution—a transformative covenant in which the Filipino people agreed to enshrine asymmetrical equality to uplift disadvantaged groups and build a genuinely egalitarian democracy."[5]

This means that the weak, including women in relation to men, can be treated with a measure of bias that they may cease to be weak.

Chief Justice Puno goes on: "The Expanded Equal Protection Clause, anchored on the human rights rationale, is designed as a weapon against the indignity of discrimination so that in the patently unequal Philippine society, each person may be restored to his or her rightful position as a person with equal moral

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[3] *Id.* at 126.

[4] It holds that two persons with equal status in at least one normatively relevant respect must be treated equally with regard to this respect.

[5] Chief Justice Reynato S. Puno (ret.), "Equal Dignity and Respect: The Substance of Equal Protection and Social Justice," (2012), p. 546.

status."[6] Specifically, the expanded equal protection clause should be understood as meant to "reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."[7] Borrowing the language of *Law v. Canada*[8] case and adding his own thoughts, the Chief Justice said:

> The purpose of the Expanded Equal Protection Clause is to protect and enhance the right to dignity by: 1) preventing the imposition, perpetuation and aggravation "of disadvantage, stereotyping, or political [,economic, cultural,] or social prejudice;" and 2) promo[ting a Philippine] society in which all persons enjoy equal recognition at law as human beings.[9]

Chief Justice Puno points out that the equal protection clause must be interpreted in connection with the social justice provisions of the Constitution "so as not to frustrate or water down the constitutional commitment to promote substantive equality and build the genuinely "just and humane society" that Filipinos aspire for, as stated in the Preamble of the 1987 Constitution."

But the expanded concept of equal protection, said Chief Justice Puno, only applies to the government's ameliorative action or discriminatory actions intended to improve the lot of the disadvantaged. Laws challenged for invalid classification because of being unreasonable or arbitrary, but not discriminatory, are outside the scope of the expanded equal protection clause. Such cases fall under the traditional equal protection clause which protects the right to formal equality and determines the validity of classifications through the well established reasonableness test.[10]

Here, petitioner Garcia argues that R.A. 9262 violates the guarantee of equal protection because the remedies against

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[6] *Id.* at 523.

[7] 1987 Philippine Constitution, Art. XIII, Section 1.

[8] 1 S.C.R. 497 (1999).

[9] *Supra* note 5, at 512-513.

[10] *Id.* at 543-544.

personal violence that it provides may be invoked only by the wives or women partners but not by the husbands or male partners even if the latter could possibly be victims of violence by their women partners. Women, he claims, are also capable of committing physical, psychological, emotional, and even sexual abuse against their husbands and children.

Garcia further assails the title of the law—"An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"—as pejorative and sex-discriminatory. R.A. 9262 is an "anti-male," "husband-bashing," and "hate-men" law. It establishes a special category of domestic violence offenses which is akin to legislating hate crimes and imposes penalties based solely on gender; it singles out the husband or father as the culprit, a clear form of "class legislation."

But the Constitution requires the State to *"ensure the fundamental equality before the law of men and women."* Further, it commands Congress to "*give highest priority to the enactment of measures that protect and enhance the rights of all the people to human dignity x x x."* and this includes women. In his speech during the joint launching on October 27, 2004 of R.A. 9262 and its Implementing Rules, Chief Justice Puno recalled the historical and social context of gender-based violence that underpin its enactment. Thus:

> History reveals that most societies sanctioned the use of violence against women. The patriarch of a family was accorded the right to use force on members of the family under his control. I quote the early studies:
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>> Traditions subordinating women have a long history rooted in patriarchy—the institutional rule of men. Women were seen in virtually all societies to be naturally inferior both physically and intellectually. In ancient western societies, women whether slave, concubine or wife, were under the authority of men. In law, they were treated as property.
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> The Roman concept of *patria potestas* allowed the husband to beat, or even kill, his wife if she endangered his property right over her. Judaism, Christianity and other religions oriented towards the

patriarchal family strengthened the male dominated structure of society.

English feudal law reinforced the tradition of male control over women. Even the eminent Blackstone has been quoted in his commentaries as saying husband and wife were one and that one was the husband. However, in the late 1500s and through the entire 1600s, English common law began to limit the right of husbands to chastise their wives. Thus, common law developed the rule of thumb, which allowed husbands to beat their wives with a rod or stick no thicker than their thumb.

Article II, Section 14 of the 1987 Constitution states:

The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

Also, Article XIII, Section 1 of the 1987 Constitution further states:

The Congress shall give highest priority to the enactment of measures that protect and enhance the rights of all the people to human dignity, reduce social , economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

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The above provisions of the Constitution abundantly authorize Congress or the government to actively undertake ameliorative action that would remedy existing inequalities and inequities experienced by women and children brought about by years of discrimination. The equal protection clause when juxtaposed to this provision provides a stronger mandate for the government to combat such discrimination. Indeed, these provisions order Congress to "*give highest priority* to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities."

No doubt, historically, the Philippine tribal and family model hews close to patriarchy, a pattern that is deeply embedded in

the society's subconscious. Consequently, it can be said that in enacting R.A. 9262, Congress has taken an ameliorative action that would address the evil effects of such social model on Filipino women and children and elevate their status as human beings on the same level as the father or the husband.

What remedies does R.A. 9262 especially provide women and children? The law is gender-specific as only they may file the prescribed actions against offenders, whether men or women, with whom the victims are or were in lesbian relationships.[11] The definition includes past or present marital, live-in, sexual or dating relationships.

This law also provides for the remedy of a protection order in a civil action or in a criminal action, aside from the criminal action for its violation. It makes the process of securing a restraining order against perpetrators easier and more immediate by providing for the legal remedy of protection orders from both the courts and *barangay* officials.

R.A. 9262 aims to put a stop to the cycle of male abuses borne of discrimination against women. It is an ameliorative measure, not a form of "reverse discrimination" against men as Garcia would have it. Ameliorative action *"is not, as Hogg remarked, an exception to equality, but an expression and attainment of de facto equality, the genuine and substantive equality which the Filipino people themselves enshrined as a goal of the 1987 Constitution."*[12] Ameliorative measures are necessary as a redistributive mechanism in an unequal society to achieve substantive equality.[13]

In the context of women's rights, substantive equality has been defined by the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) as equality which

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[11] Maria Rowena Amelia V. Guanzon, "The Anti-Violence Against Women and Their Children Act of 2004 (Republic Act No. 9262)," 2009.

[12] *Supra* note 5 at 527.

[13] *Id.* at 497.

requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.

Women's struggle for equality with men has evolved under three models:

1. Formal equality — women and men are to be regarded and treated as the same. But this model does not take into account biological and socially constructed differences between women and men.[14] It uses male standards and assumes that women have equal access to such standards.[15] By failing to take into account these differences, a formal equality approach may in fact perpetuate discrimination and disadvantage.[16]

2. Protectionist model — this recognizes differences between women and men but considers women's weakness as the rationale for different treatment.[17] This approach reinforces the inferior status of women and does not address the issue of discrimination of women on account of their gender.[18]

3. Substantive equality model — this assumes that women are "not vulnerable by nature, but suffer from imposed disadvantage" and that "if these imposed disadvantages were eliminated, there was no further need for protection."[19] Thus,

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[14] IWRAW Asia Pacific Manual on CEDAW: Building Capacity for Change

[15] *Id.*

[16] *Supra* note 11, at 42, citing Fredman, S. and Spencer, S., *"Beyond Discrimination: It's Time for Enforceable Duties on Public Bodies to promote Equality of Outcomes",* E.H.R.L.R. Issue 6, 601 (2006)"

[17] *Supra* note 14.

[18] *Supra* note 11, at 43.

[19] *Id.* at 43-44, citing Goonesekere.

the substantive equality model gives prime importance to women's contexts, realities, and experiences, and the outcomes or results of acts and measures directed, at or affecting them, with a view to eliminating the disadvantages they experience as women.[20]

Clearly, the substantive equality model inspired R.A. 9262. For one thing, Congress enacted it because of compelling interest in preventing and addressing the serious problem of violence against women in the context of intimate relationships—recognized all over the world as one of the most insidious forms of gender discrimination.[21] For another, R.A. 9262 is based on the experiences of women who have been victims of domestic violence. The list of acts regarded as forms of violence[22] come from true-to-life stories of women who have suffered abuses from their male partners. Finally, R.A. 9262 seeks women's full participation in society. Hence, the law grants them needed relief to ensure equality, protection, and personal safety, enabling them to enjoy their civil, political, social, and economic rights. The provision on protection orders, for instance, precisely aims to safeguard "the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."[23]

For the above reasons, I vote to dismiss the petition for lack of merit.

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[20] *Id.* at 44.

[21] *Id.* at 45.

[22] SEC. 3. *Definition of Terms.*- As used in this Act.

(a) "**Violence against women and their children**" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in **physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty**. (Emphasis supplied)

[23] REPUBLIC ACT 9262, Sec. 8.

LEONEN, *J.*: *concurring opinion:*

I join the *ponencia* in denying the challenge to the constitutionality of Republic Act No. 9262 otherwise known as the "Anti-Violence against Women and their Children Act of 2004" at least for this case. I write separately to clarify the basis of my agreement.

The petitioner is not the victim in this case. He does not have legal standing to raise the constitutional issue.

He appears to have inflicted violence against private respondents. Petitioner admitted having an affair with a bank manager. He callously boasted about their sexual relations to the household help. His infidelity emotionally wounded private respondent. Their quarrels left her with bruises and hematoma. Petitioner also unconscionably beat up their daughter, Jo-ann, whom he blamed for squealing on him.

All these drove respondent to despair causing her to attempt suicide on December 17, 2005 by slitting her wrist. Instead of taking her to the hospital, petitioner left the house. He never visited her when she was confined for seven (7) days. He even told his mother-in-law that respondent should just accept his extramarital affair since he is not cohabiting with his paramour and has not sired a child with her.

The private respondent was determined to separate from petitioner. But she was afraid he would take away their children and deprive her of financial support. He warned her that if she pursued legal battle, she would not get a single centavo from him. After she confronted him of his affair, he forbade her to hold office at JBTC Building. This deprived her of access to full information about their businesses.

Thus, the Regional Trial Court found reasonable ground to believe there was imminent danger of violence against respondent and her children and issued a series of Temporary Protection Orders (TPO) ordering petitioner, among other things, to surrender all his firearms including a .9MM caliber firearm and a Walther PPK.

This is the quintessential case where the full effects of Republic Act No. 9262 or the "VAWC" should take effect.

Seen in this light, petitioner's belated challenge to the law is nothing but a cheap attempt to raise cherished fundamental constitutional principles to escape legal responsibility for causing indignities in another human being. There is enough in our legal order to prevent the abuse of legal principles to condone immoral acts.

For us to proceed to rule on Constitutional issues, we have required that: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[1]

Legal standing in cases that raise constitutional issues is essential. *Locus standi* is defined as "a right of appearance in a court of justice on a given question."[2] The fundamental question is "whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[3]

In private suits, standing is governed by the "real-parties-in-interest" rule under Section 2, Rule 3 of the 1997 Rules of Civil Procedure in that "every action must be prosecuted or

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[1] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936), *People v. Vera,* 65 Phil. 56 (1937). See also *Mariano Jr. v. Commission on Elections*, 312 Phil. 259, 270 (1995); *Funa v. Executive Secretary Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 317.

[2] *David v. Macapagal-Arroyo,* 522 Phil. 705, 755 (2006) *citing* Black's LAW DICTIONARY 941 (Sixth Edition, 1991).

[3] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

defended in the name of the real party-in-interest."[4] "Interest" means material interest or an interest in issue to be affected by the judgment of the case, as distinguished from mere curiosity about the question involved.[5]

Thus, there must be a present substantial interest as distinguished from a mere inchoate expectancy or a future, contingent, subordinate, or consequential interest.[6] Standing is based on one's own right to the relief sought.

The doctrine of *locus standi* in cases raising constitutional issues frames the power of judicial review that we wield. This is the power "to settle actual controversies involving rights which are legally demandable and enforceable" as well as "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government."[7]

The presence of an "actual case" prevents this Court from providing advisory opinions or using its immense power of judicial review absent the presence of a party with real and substantial interests to clarify the issues based upon his/her experience and standpoint. It prevents this Court from speculating and rendering rulings on the basis of pure theory. Our doctrines on justiciability are self-imposed applications of a fundamental view that we accord a presumption of constitutionality to acts done by the other constitutional organs and departments of government. Generally, we do not strike down acts done by co-equal departments until their repugnancy to the Constitution can be shown clearly and materially.

I am aware of our precedents where this Court has waived questions relating to the justiciability of the constitutional issues

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[4] *Baltazar v. Ombudsman*, 539 Phil. 131, 139 (2006).

[5] *Goco, et al. v. Court of Appeals*, G.R. No. 157449, April 6, 2010, 617 SCRA 397, 405. *See also IBP v. Zamora*, 392 Phil. 618, 633 (2000).

[6] *Galicto v. Aquino III*, *supra.*

[7] CONSTITUTION, Art. VIII, Sec. 1, par. (2).

raised when they have "transcendental importance" to the public.[8] In my view, this accommodates our power to promulgate guidance "concerning the protection and enforcement of constitutional rights".[9] We choose to rule squarely on the constitutional issues in a petition wanting all or some of the technical requisites to meet our general doctrines on justiciability but raising clear conditions showing imminent threat to fundamental rights. The imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. In a sense, our exceptional doctrine relating to constitutional issues of "transcendental importance" prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

That necessity is wanting in this case.

The extraordinary discretion to move beyond the well established doctrines on justiciability must be carefully exercised in cases involving social legislation that seeks to rectify historical and cultural injustices present in our communities and societies. As carefully pointed out in the erudite *ponencia* of Justice Perlas-Bernabe, Republic Act No. 9262 was borne out of the struggles of countless women who suffered indignities. It cannot be undone by a petition filed by someone who cannot, by any stretch of the most fertile imagination, be considered the victim.

Nevertheless, in a future case more deserving of our attention, we should be open to realities which may challenge the dominant conception that violence in intimate relationships only happens to women and children. This may be predominantly true, but even those in marginal cases deserve fundamental constitutional

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[8] *Kilosbayan, Incorporated v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 139. *See also Francisco v. House of Representatives*, 460 Phil. 830, 899 (2003), *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 595.

[9] CONSTITUTION, Art. VIII, Sec. 5, par. (5) relates to the power of the Court to promulgate rules concerning the protection and enforcement of constitutional rights. It was introduced only in the 1987 Constitution borne of historical experiences where judicial succor was wanting.

and statutory protection. We should be careful that in correcting historical and cultural injustices, we may typecast all women as victims, stereotype all men as tormentors or make invisible the possibility that in some intimate relationships, men may also want to seek succor against acts defined in Section 5 of Republic Act No. 9262[10] in an expeditious manner.

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[10] Section 5. *Acts of Violence Against Women and Their Children*.- The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

Husband abuse may be an underreported form of family violence.[11] According to a Quezon City Police District Crime Laboratory chief, in his 10 years as medico-legal officer, he had only received three cases of men complaining of spousal abuse.[12]

Another recent study found the same underreporting but explored the experiences of abuse in intimate relationships of six Filipino husbands.[13] Their experiences were described as follows:

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

[11] T. Lewin, *Battered Men Sounding Equal-Rights Battle Cry*, THE NEW YORK TIMES NATIONAL (April 20, 1992) <http://www.nytimes.com/1992/04/20/us/battered-men-sounding-equal-rights-battle-cry.html?pagewanted=all&src=pm> (visited May 27, 2013). *See also* C. M. RENZETTI AND D. J. CURRAN, WOMEN, MEN AND SOCIETY 164 (Second Edition, 1992) citing Steinmetz, 1978.

[12] C. Delfin, *Ever Heard of Battered Husbands?* GMA NEWS ONLINE (February 13, 2008) <http://www.gmanetwork.com/news/story/80412/lifestyle/ever-heard-of-battered-husbands> (visited May 27, 2013). *See also* ATTY. A. ORDOÑEZ SISON, ABUSED AND THE BATTERED MAN (2009).

[13] J. J. Jurisprudencia, *Coming out of the Shadows: Husbands Speak About Their Experience of Abuse in Intimate Relationships*, 40 PHILIPPINE JOURNAL OF PSYCHOLOGY NO. 2 (2007). In the study, JL was a teacher in

All the participants acknowledged that they experienced abuse, but the forms differed from one husband to another. Four out of the six participants admitted that their spouses' abusive behavior would initially start with verbal attacks and put-downs then would shift to physical abuse as their verbal tussle intensified. Most of the abuses cited by the participants happened in the confines of their home, but could also happen in public places.

The constant threats, in the long term, affected the emotional and psychological well being of the participants. Four of the husbands felt that their spouses were capable of carrying out their threats. The frequent and long fights could be emotionally draining. Throughout the duration of marriage, EC suffered emotionally from the "weird" marital set-up. For TG, emotional abuse was associated with shattered trust.

The physical abuse for some participants became life-threatening to the extent that the injury incurred needed medical attention. Their spouses could use weapons against them. Four participants described the incidents that led to their injuries. Coming home one night, RE saw "*this mono block chair flying…hit me…right on the nose*." DL narrated "*…pumunta ako ng doctor on my own para ipalinis yung sugat ko."* According to HM, his wound from a knife attack was wide and deep and needed "*…some stiches*." JL had to contend with the long scratches in his chest and back. RE almost lost an eye when he was hit with a straight punch of the spouse. JL, RE, and DL would lie to colleagues to avoid being laughed at. DL had to be absent from his work after being hit by a flying *de lata* (canned good) thrown at him during a fight.

Emotional abuse co-existed with verbal and/or physical abuse. The participants who were recipients of physical abuse were also emotionally abused when they became susceptible to stress and threats of the abuser. JL felt guilty when the spouse carried out her threat of killing herself by intentionally taking an overdose of pills in the middle of an intense disagreement.

Emotional abuse could occur without physical abuse and yet its effects were still devastating. For instance, EC and TG were devastated

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one of the schools in Metro Manila. RE was a university teacher. HM is a medical doctor. DL was a Physics and Engineering graduate. EC was a teacher. TG finished his MBA as well as his Bachelor of Laws at a reputable institution but did not take the bar.

by the lies and deceit of their spouses. The spouse's threats of suicide (JL), abandonment (RE), or taking their children away after a fight (DL) were as distressing as the other forms of abuse experienced by the participants.[14]

Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse.[15] This leads to latent depression among boys and men.[16] In a sense, patriarchy while privileging men also victimizes them.

It is true that numerous literature relate violence against women with the historically unequal power relations between men and

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

[15] K. F. Hogan, J. R. Hegarty, T. Ward, and L. J. Dodd, *Counsellors' Experiences of Working with Male Victims of Female-Perpetrated Domestic Abuse*, *Counselling and Psychotherapy Research* (2011).

[16] *See* S. V. Cochran and F. E. Rabinowitz, *Men and Depression: Clinical and Empirical Perspectives* (2000).<http://books.google.com.ph/books?id=bOVTz8HgDoC&pg=PR12&lpg=PR12&1dq=Early+workers+in+the+field+including+Pleck+and+Sawyer&source=bl&ots=G8bTheyAtB&sig=86y6WVG36VuTj3Lh6w585N2qM&hl=en&sa=X&ei=yizKUYzZEMeZiAe6y4CwCw&redir esc=y#v=onepage&q=Early%20workers%20in%20the%20field%20including%20Pleck%20and%20Sawyer&f=false > (visited March 7, 2013).

> Early workers in the field including Pleck and Sawyer (1974), Farrell (1975), Fasteau (1974) and Goldberg (1976) took up the challenge to traditional masculine values that feminists had made and began to examine the negative and oppressive aspects of traditionally constructed gender roles. These efforts included an examination of the psychologically restrictive nature of most of the cultural conditioning little boys and men experience. Pleck (1981), in his seminal critique of male gender identity ideology, introduced the concept of male gender role strain and conflict.

See also J. H. Pleck, *The Gender Role Strain: An Update* and S. J. Bergman, *Men's Psychological Development: A Relational Perspective,* in R. F. Levant and W. S. Pollack, A New Psychology of Men 11-32 and 68-90 (1995). *Also* T. Real, I Don't Want to Talk About It: Overcoming the Secret Legacy of Male Depression (1997) and How Can I Get Through to You? Closing the Intimacy Gap Between Men and Women (2002).

women, leading to domination over and discrimination against the latter.[17] Sociologists cite the 18th-century English legal tradition on the "rule of thumb" giving husbands the right to beat their wives with a stick no thicker than a thumb.[18] In America, women were regarded as property until the latter half of the 19th century with marital violence considered a husband's privilege and men, as of right, exercised physical domination over women.[19]

The perspective portraying women as victims with a heritage of victimization[20] results in the unintended consequence of permanently perceiving all women as weak. This has not always been accepted by many other strands in the Feminist Movement.

As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified and concentrated attention [while] the women question is vague, abstract, and does not have material base."[21]

In the early 80s, self-identifying feminist groups were formed.[22] The "emancipation theory" posits that female crime has increased

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[17] *Domestic Violence Against Women and Girls*, No. 6, UNICEF Innocenti Digest (2000).

[18] S.D. Amussen, *Being Stirred to Much Unquietness: Violence and Domestic Violence in Early Modern England,* Vol. 6 No. 2 JOURNAL OF WOMEN'S HISTORY, 70-89 (1994).

[19] P. M. Jablow, *Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation,* 28 Hofstra L Rev 1096-1097 (2000).

[20] C. Sorisio, *A Tale of Two Feminism: Power and Victimization in Contemporary Feminist Debate*, 137 in THIRD WAVE AGENDA: BEING FEMINIST, DOING FEMINISM, edited by L. Heywood and J. Drake (1997).

[21] *See* C. I. Sobritchea, *The Second Wave of the Women's Movement in the Philippines and the Evolution of Feminist Politics,* 47, *quoting* A. F. Santos from *The Philippine Women's Movement: Problems of Perception*, GENDER CULTURE AND SOCIETY: SELECTED READINGS IN WOMEN STUDIES IN THE PHILIPPINES (2004).

[22] *Id.* at 44.

and has become more masculine in character as a result of the women's liberation movement.[23]

Feminism also has its variants among Muslims. In 2009, *Musawah* ("equality" in Arabic) was launched as a global movement for equity and justice in the Muslim family. It brought together activists, scholars, legal practitioners, policy makers, and grassroots women and men from all over the world.[24] Their belief is that there cannot be justice without equality, and its holistic framework integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.[25]

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.

In this light, it may be said that violence in the context of intimate relationships should not be seen and encrusted as a gender issue; rather, it is a power issue.[26] Thus, when laws are not gender-neutral, male victims of domestic violence may also suffer from double victimization first by their abusers and second by the judicial system.[27] Incidentally, focusing on women as the victims entrenches some level of heteronormativity.[28] It is

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[23] *See* C. M. Renzetti and D. J. Curran, Chapter 9 on Gender, Crime and Justice, WOMEN, MEN AND SOCIETY 220-249 (Second Edition, 1992).

[24] *See* <http://www.musawah.org/> (visited February 26, 2013). MUSAWAH is considered a movement rather than an organization.

[25] *Id.* Musawa is represented in the Philippines by Nisa Ul Haqq Fi Bangsamoro or "Women for Justice in the Bangsamoro."

[26] A. Detschelt, *Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation,* 12 KAN. J.L. & PUB. POL'Y 249 (2003).

[27] *Id.*

[28] "[H]eteronormativity is defined as the predominance and privileging of a definitively heterosexual-based ideology and social structure that acts as

blind to the possibility that, whatever moral positions are taken by those who are dominant, in reality intimate relationships can also happen between men.[29]

I accept that for purposes of advocacy and for a given historical period, it may be important to highlight abuse of women qua women.[30] This strategy was useful in the passing of Republic Act No. 9262. It was a strategy that assured that the problem of battered women and children in the context of various intimate relationships becomes publicly visible. However, unlike advocacy, laws have the tendency to be resilient and permanent. Its existence may transcend historical periods that dictate effective advocacy. Laws also have a constitutive function - the tendency to create false consciousness when the labels and categories it mandates succeed in reducing past evils but turn a blind eye to other issues.

For instance, one of the first cases that laid down the requisites for determining whether there was a violation of the equal

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the exclusive interpreter of itself and of all other sexualities in relation to it." *Definition found in* A. Ponce, *Shoring up Judicial Awareness: LGBT Refugees and the Recognition of Social Categories*, 18 NEW ENG. J. INT'L & COMP. L. 185 (2012) citing M. Warner, FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY (1993).

[29] For a comparative analysis of lesbian, gay, bisexual and transgender (LGBT) issues and strategies, *see* M. P. Ofreneo and T. Casal de Vela, *Spheres of Lesbian, Gay, Bisexual and Transgender Struggles: A Comparative Feminist Analysis*, 14 GENDER TECHNOLOGY AND DEVELOPMENT No. 2, 197-215 (July 2010). For an understanding, see B. Fone, HOMOPHOBIA: A HISTORY (2000).

[30] x x x essentialism is, among other things, a tool for redressing power imbalances, as when the group under study is seen by the dominant group as illegitimate or trivial, or when a stigmatized group forms an oppositional identity to counter such negative ideologies. Essentialism may therefore be a deliberate move to enable scholarly activity, to forge a political alliance through the creation of a common identity, or to otherwise provide a temporarily stable ground for further social action. Such uses of essentialism have been termed *strategic essentialism* (Spivak 1988) *as discussed in* M. Buchotz, SOCIOLINGUISTIC NOSTALGIA AND THE AUTHENTICATION OF IDENTITY, 401 (2003). *See also* M. Lloyd, BEYOND IDENTITY POLITICS: FEMINISM, POWER AND POLITICS, 64-67 (2005). *Similarly,* D. Fuss, ESSENTIALLY SPEAKING: FEMINISM, NATURE AND DIFFERENCE (1989).

protection of the law clause of the Constitution was the 1939 case of *People v. Cayat.*[31] It laid down the requirements of reasonable classification which requires that it (a) must rest on substantial distinctions, (b) must be germane to the purposes of the law, (c) must not be limited to existing conditions only, and (d) must apply equally to all members of the same class.[32] Even as early as 1919, the Court in *Rubi v. Provincial Board of Mindoro*[33] recognized the concept of reasonable classification holding that "[t]he pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature."[34]

Yet, it is in these two cases that the Court concluded the following:

> As authority of a judicial nature is the decision of the Supreme Court in the case of United States *vs.* Tubban [Kalinga] ([1915], 29, Phil., 434). The question here arose as to the effect of a tribal marriage in connection with article 423 of the Penal Code concerning the husband who surprises his wife in the act of adultery. In discussing the point, the court makes use of the following language:
>
> x x x we are not advised of any provision of law which recognizes as legal a tribal marriage of *so-called non-Christians or members of uncivilized tribes*, celebrated within that province without compliance with the requisites prescribed by General Orders No. 68 x x x. We hold also that the fact that the accused is shown to be *a member of an uncivilized tribe, of a low order of intelligence, uncultured and uneducated*, should be taken into consideration as a second marked extenuating circumstance...[35] (Emphasis supplied)

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[31] 68 Phil. 12 (1939).

[32] *Id.* at 18.

[33] 39 Phil. 660 (1919).

[34] *Id.* at 707.

[35] *Id.* at 686.

The description of the label and the stereotype of "non-Christian tribe" would later on be corrected by the Constitution,[36] law,[37] and jurisprudence.[38]

The description of the label and the stereotype that only women can be considered victims may also evolve in the same way. We should hope that the situation of patriarchy will not be permanent. Better cultural structures more affirming of human dignity should evolve.[39]

In a future case, the fact that there may be battered men should not cause the nullification of protections given to women and children.

The Constitution states that: "[t]he State values the dignity of every human person and guarantees full respect for human rights."[40] The guarantee of full respect should not mean that protections already given to those who suffer historical or cultural prejudices should be automatically rescinded if only the scope of the law is found wanting.

Our Constitution also mandates that the State "shall ensure the fundamental equality before the law of women and men."[41]

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[36] Indigenous Cultural Communities, *See* CONSTITUTION, Art. II, Sec. 22; Art. XII, Sec. 5; Art. XIII, Sec 1.

[37] Republic Act No. 8371; *see also* the Manahan amendments in Com. Act No. 141 sec. 48 (c).

[38] *See for instance Pit-og v. People of the Philippines*, 268 Phil. 413 (1990) and *Cruz v. DENR Secretary, et al.* 400 Phil. 904 (2000).

[39] *See* S. Walby, *The 'Declining Significance' or the 'Changing Forms' of Patriarchy?* in PATRIARCHY AND ECONOMIC DEVELOPMENT: WOMEN'S POSITIONS AT THE END OF THE TWENTIETH CENTURY (1996).

[40] CONSTITUTION, Art. II, Sec.11. *See also* the Universal Declaration of Human Rights which similarly provides that "all human beings are born free and equal in dignity and rights" (Art. 1, UDHR) and "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Art. 2, UDHR)

[41] CONSTITUTION, Art. II, Sec.14.

This is similar to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[42] which requires that the Philippines as state party take all appropriate measures "[to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."[43] The use of affirmative language should imply that in the proper suit, a declaration of unconstitutionality on the ground of the equal protection should not automatically mean that the entire social legislation that provides effective and efficient protection of women be set aside.

We have declared that "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is x x x as inoperative as though it had never been passed."[44] However, the seemingly all-inclusive statement of absolute retroactive invalidity may not always be justified.[45] One established exception is the doctrine of operative fact.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

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[42] The Philippines signed the CEDAW on July 15, 1980 and ratified the same on August 5, 1981. *Available at* <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV 8&chapter=4&lang=en>

[43] Convention on the Elimination of all Forms of Discrimination against Women, Article 5(a).

[44] *Municipality of Malabang, Lanao Del Sur v. Benito, et al.*, 137 Phil. 358, 364 (1969) *citing Norton v. Shelby County*, 118 U.S. 425, 442 (1886).

[45] *Id.*

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[46]

The possibility that the constitutionality of Republic Act No. 9262 may be challenged by male victims of abuse in intimate relationships ventures to carve another exception if this court is to ensure the guarantee of fundamental equality before the law of women and men[47] as well as value the dignity of every human person.[48] Applying the general rule or the existing doctrine of operative facts would mean removing the protection afforded to women. It will thus contradict the very reason it is being assailed and result to an even worse state of laws where none is protected from intimate violence.

But again, it is not in this case that we consider these possibilities.

By concurring with these statements I express a hope: that the normative constitutional requirements of human dignity and fundamental equality can become descriptive reality. The socially constructed distinctions between women and men that have afflicted us and spawned discrimination and violence should be eradicated sooner. Power and intimacy should not co-exist.

The intimate spaces created by our human relationships are our safe havens from the helter skelter of this world. It is in that space where we grow in the safety of the special other who we hope will be there for our entire lifetime. If that is not possible, then for such time as will be sufficient to create cherished memories enough to last for eternity.

I concur in the *ponencia*. Against abominable acts, let this law take its full course.

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[46] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 608 *citing Planter's Products Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 516-517.

[47] CONSTITUTION, Art. II, Sec.14.

[48] CONSTITUTION, Art. II, Sec. 11.

EN BANC

[G.R. No. 193314. June 25, 2013]

SVETLANA P. JALOSJOS, *petitioner, vs.* **COMMISSION ON ELECTIONS, EDWIN ELIM TUPAG and RODOLFO Y. ESTRELLADA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT; ELECTIVE OFFICIALS; QUALIFICATIONS AND ELECTIONS; RESIDENCY REQUIREMENT; MERE PURCHASE OF A PARCEL OF LAND DOES NOT MAKE IT ONE'S RESIDENCE TO BE AN ACTUAL AND PHYSICAL RESIDENCE OF A LOCALITY, ONE MUST HAVE A DWELLING PLACE WHERE ONE RESIDES NO MATTER HOW MODEST AND REGARDLESS OF OWNERSHIP.—** To be an actual and physical resident of a locality, one must have a dwelling place where one resides no matter how modest and regardless of ownership. The mere purchase of a parcel of land does not make it one's residence. The fact that the residential structure where petitioner intends to reside was still under construction on the lot she purchased means that she has not yet established actual and physical residence in the *barangay*, contrary to the declaration of her witnesses that she has been an actual and physical resident of *Brgy.* Tugas since 2008.

2. **ID.; ID.; ID.; ID.; ID.; A TEMPORARY AND INTERMITTENT STAY IN A STRANGER'S HOUSE DOES NOT AMOUNT TO RESIDENCE.—** Petitioner's stay in the house of Mrs. Yap in *Brgy.* Punta Miray, x x x was only a temporary and intermittent stay that does not amount to residence. It was never the intention of petitioner to reside in that *barangay*, as she only stayed there at times when she was in Baliangao while her house was being constructed. Her temporary stay in *Brgy.* Punta Miray cannot be counted as residence in Baliangao. Petitioner failed to show by what right she stayed in Mrs. Yap's house. Except for the declarations of her witnesses that she stayed there while her residential unit in the resort was being

built, she presented no other evidence to show any basis of her right to stay in that particular house as a resident.

3. ID.; ID.; ID.; ID.; ID.; THE APPROVAL OF VOTER REGISTRATION DOES NOT PROVE THAT THE REGISTRANT HAS RESIDED IN THE LOCALITY FOR MORE THAN ONE YEAR PRIOR TO THE ELECTIONS, BUT IT ONLY CARRIES A PRESUMPTION THAT THE REGISTRANT WILL BE ABLE TO MEET THE SIX-MONTH RESIDENCY REQUIREMENT FOR THE ELECTIONS IN WHICH THE REGISTRANT INTENDS TO VOTE.— It appears on record that petitioner, in filing her application for registration as a voter on 7 May 2009, claimed "that she has been a resident of *Brgy.* Tugas, Baliangao, Misamis Occidental for six (6) months prior to the filing of the said registration." For her claim to be true, she must have resided in *Brgy.* Tugas on or before 8 November 2008. The records, however, show that she purchased property in *Brgy.* Tugas only on 9 December 2008. Thus, her claim that she had been a resident of *Brgy.* Tugas for at least six (6) months prior to her application for registration as a voter on 7 May 2009 is an utter falsity. The approval of the registration of petitioner as a voter does not and cannot carry with it an affirmation of the falsehood and misrepresentation as to the period of her residence in *Brgy.* Tugas. At best, the approval of her registration as a voter carries a presumption that the registrant will be able to meet the six-month residency requirement for the elections in which the registrant intends to vote. It does not prove that the registrant has resided in the locality for more than one year prior to the elections.

4. ID.; ID.; ID.; ID.; WHEN THE CANDIDATE'S CLAIM OF ELIGIBILITY IS PROVEN FALSE, AS WHEN THE CANDIDATE FAILED TO SUBSTANTIATE MEETING THE REQUIRED RESIDENCY IN THE LOCALITY, THE REPRESENTATION OF ELIGIBILITY IN THE CERTIFICATE OF CANDIDACY (COC) CONSTITUTES A DELIBERATE ATTEMPT TO MISLEAD, MISINFORM, OR HIDE THE FACT OF INELIGIBILITY.— The finding of the COMELEC that petitioner lacks the one year residency requirement to run for local elective position in the municipality of Baliangao directly contradicts her sworn declaration that she is eligible to run for public office. The fact that petitioner

failed to prove that she has been a resident of the locality for at least one year prior to the elections reveals the falsity of her assertion in her COC that she is qualified to run for a local elective position. This false material representation justifies the cancellation of her COC. When the candidate's claim of eligibility is proven false, as when the candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the COC constitutes a "deliberate attempt to mislead, misinform, or hide the fact" of ineligibility.

5. **ID.; ID.; ID.; ID.; THE COMELEC IS NOT OUSTED OF ITS JURISDICTION TO HEAR AND DECIDE QUESTIONS RELATING TO QUALIFICATIONS OF CANDIDATES THE PETITION FOR THE CANCELLATION OF CERTIFICATE OF CANDIDACY AFTER THE WINNER IS PROCLAIMED.—** The COMELEC, in its Resolution dated 19 August 2010, citing *Aquino v. COMELEC*, has amply discussed x x x: Petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. x x x. Under [Section 6] not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase "when the evidence of guilt is strong" seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, Section 7 of R.A. 6646 allows the application of the provisions of Section 6 to cases involving disqualification based on ineligibility under Section 78 of B.P. 881.

6. **ID.; ID.; ID.; ID.; THE CANCELLATION OF THE CERTIFICATE OF CANDIDACY BASED ON AN INELIGIBILITY THAT EXISTED AT THE TIME OF ITS FILING RENDERS THE INELIGIBLE CANDIDATE, WHO**

WAS SUBSEQUENTLY PROCLAIMED AND ASSUMED OFFICE, *A DE FACTO* OFFICER; WHEN THE *DE FACTO* OFFICER IS OUSTED FROM OFFICE, THERE IS NO VACANCY TO SPEAK OF AS THE DE JURE OFFICER, THE RIGHTFUL WINNER IN THE ELECTIONS, HAS THE LEGAL RIGHT TO ASSUME THE POSITION.— This Court has ruled in *Aratea v. COMELEC* and *Jalosjos, Jr. v. COMELEC* that the cancellation of the COC based on an ineligibility that existed at the time of its filing means that the candidate was never a valid candidate from the very beginning. On the question of who should assume the post vacated by the ineligible candidate, this Court amply explained in *Jalosjos, Jr.* that: Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. x x x. There is another more compelling reason why the eligible candidate who garnered the highest number of votes must assume the office. The ineligible candidate who was proclaimed and who already assumed office is a *de facto* officer by virtue of the ineligibility. The rule on succession in Section 44 of the Local Government Code cannot apply in instances when a *de facto* officer is ousted from office and the *de jure* officer takes over. The ouster of a *de facto* officer cannot create a permanent vacancy as contemplated in the Local Government Code. There is no vacancy to speak of as the *de jure* officer, the rightful winner in the elections, has the legal right to assume the position.

APPEARANCES OF COUNSEL

Romulo B. Macalintal and Edgardo Carlo L. Vistan II for petitioner.

The Solicitor General for public respondent.

Chavez Miranda Aseoche Law Offices for private respondents.

R E S O L U T I O N

SERENO, *C.J.*:

This Resolution resolves the Motion for Partial Reconsideration dated 8 March 2013, filed by Edwin Elim Tumpag and Rodolfo Y. Estrellada (private respondents) and the Motion for Reconsideration dated 27 March 2013, filed by Svetlana P. Jalosjos (petitioner) in connection with the Decision of the Court promulgated on 26 February 2013.

Private respondents come before this Court on the sole issue of who between the vice-mayor and the second placer shall assume office pursuant to the final determination of petitioner's ineligibility to run for office and the lifting of the 07 September 2010 *Status Quo* Order.

Petitioner, on the other hand, questions the Decision, by raising the following arguments:

1. This Court erred in concluding that there are inconsistencies in the Joint Affidavit of the witnesses presented by petitioner.

2. Petitioner's stay in *Brgy*. Punta Miray should be considered in determining the one-year residency requirement in the same municipality.

3. Petitioner's registration as a voter presupposes she has stayed in the municipality at least six months prior to the registration.

4. Petitioner's certificate of candidacy (COC) should not be cancelled, absent any finding of a deliberate attempt to deceive the electorate.
5. COMELEC was ousted of its jurisdiction to decide on the question of the qualification of petitioner after she was proclaimed as winner.

We deny the motion of petitioner and grant the partial motion for reconsideration of private respondents.

The claim of actual and physical residence in Brgy. Tugas since 2008 is contradicted by the statements that petitioner was staying in Mrs. Lourdes Yap's house while her residential unit was being constructed; and that by December 2009, the construction was still ongoing.

Petitioner questions the inconsistencies noted by the court in the affidavit of her witnesses who, while claiming that they personally know her to have been an actual and physical resident of *Brgy.* Tugas since 2008, declared in the same affidavit that while her house was being constructed, she used to stay at the residence of Mrs. Lourdes Yap (Mrs. Yap) in *Brgy.* Punta Miray.

The declaration of petitioner's witnesses that they know petitioner to be "an actual and physical resident of *Brgy.* Tugas since 2008" contradicts their statements that (1) they have "started the construction of the residential house of the owner and other infrastructures of the resort since January 2009"; (2) "until the present (meaning until December 2009 when they executed their affidavit), the construction and development projects are still on-going"; and (3) "at times when Ms. Jalosjos is in Baliangao, she used to stay in the house of Mrs. Lourdes Yap at *Sitio* Balas Diut, *Brgy.* Punta Miray, Baliangao, Misamis Occidental, while her residential house was still [being] constructed."

Petitioner asserts that there are no inconsistencies in the statements of her witnesses, and that the statements are in fact consistent with her claim that she had been residing in Baliangao, Misamis Occidental for at least one year prior to the 10 May 2010 elections. She argues as follows:

x x x the fact that some of these witnesses knew that petitioner lived in the house of Mrs. Lourdes Yap in a different barangay, particularly Brgy. Punta Miray, is not at all inconsistent or contradictory with petitioner's assertion and the witnesses' statements that petitioner resides in Brgy. Tugas, because petitioner obviously needed a place to stay while her residence in Brgy. Tugas was being constructed. This does not negate the fact that petitioner was establishing her residence in Brgy. Tugas since the latter part of 2008, or at the very latest during the first few months (sic) of January 2009.[1]

Her assertion that she "was establishing her residence in *Brgy.* Tugas since the latter part of 2008, or at the very latest during the first few months [sic] of January 2009" shows that she herself cannot pinpoint the particular date when she established her legal residence in *Brgy.* Tugas. This fact is contradictory to the declaration of the witnesses that "we have personal knowledge that Ms. Svetlana P. Jalosjos has been an actual and physical resident of Sunrise Tugas, Baliangao, Misamis Occidental, after she bought the properties thereat from the Heirs of Agapita Yap, Jr. on 9 December 2008."

To be an actual and physical resident of a locality, one must have a dwelling place where one resides no matter how modest and regardless of ownership. The mere purchase of a parcel of land does not make it one's residence. The fact that the residential structure where petitioner intends to reside was still under construction on the lot she purchased means that she has not yet established actual and physical residence in the *barangay*, contrary to the declaration of her witnesses that she has been an actual and physical resident of *Brgy.* Tugas since 2008.

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[1] Motion for Reconsideration, p. 9.

Petitioner wants this Court to believe that the ongoing construction referred to by her witnesses in their joint affidavit does not refer to the residential structure, but to the other structures in the resort that petitioner was then establishing. She does not assert, however, that her residential unit had already been completed by that time. In fact, she has failed to present any proof as to when her claimed residential unit was completed, or when she transferred to the unit.

It must be pointed out that the second statement in paragraph 1 of the Joint Affidavit states: "We have started the construction of the residential house of the owner and the other infrastructures of the resort since January, 2009." This was immediately followed by paragraph 2 which reads:

> 2. Until the present, the construction and development projects are still on-going. To establish the fact of the on-going construction work, we are attaching herewith as part hereof, pictures we have taken on December 20 and 29, 2009 marked Annexes "1", "2", "3", "4", "5", and "6" hereof, respectively.[2]

Without any qualification as to what is being referred to by the construction and development projects in paragraph 2, it follows that it refers to the "construction of the residential house of the owner and the other infrastructures of the resort" found in the prior statement.

In the affidavit, there is no mention whatsoever of completion of the residential house as of 30 December 2009. Neither has any occupancy permit been presented by petitioner to definitely establish the date she started occupying what she claims to be her residential unit in the resort.

Petitioner takes pains to present photographs of other structures in the resort, but fails to present any photograph of a completed residential structure, which is more relevant in proving her claimed residence in *Brgy.* Tugas. If the residential unit was already completed by December 2009, her witnesses could have easily testified to that fact and presented photographs of the structure.

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[2] *Rollo*, p. 221.

This absence of any photograph proving the alleged residence of petitioner in the resort bolsters the court's conclusion that at the time the witnesses signed their affidavits in December 2009, or six months prior to the May 2010 elections, her residential unit had not yet been built.

A temporary stay in a stranger's house cannot amount to residence.

Petitioner wants this Court to credit her stay in Mrs. Yap's house as proof that she had been a resident of the Municipality of Baliangao for more than one year prior to the 10 May 2010 elections. In her words:

> 7. More importantly, if this Honorable Court would consider the circumstance that petitioner was staying in Brgy. Punta Miray as true so as to render the statements of her witnesses inconsistent, then such a consideration should not have led this Honorable Court to the conclusion that petitioner was not a resident of Baliangao, Misamis Occidental since Brgy. Punta Miray is located in the municipality of Baliangao like Brgy. Tugas. **In other words, the fact that petitioner was staying in a house in Brgy. Punta Miray while her residence in Brgy. Tugas was being constructed during the early part of 2009 would STILL LEAD to the conclusion that petitioner has been residing in Baliangao, Misamis Occidental for at least one (1) year prior to the 10 May 2010 elections since Brgy. Punta Miray is a part of Baliangao.**[3] (Emphasis in the original and underscoring omitted)

Petitioner relies on *Mitra v. COMELEC*[4] and *Sabili v. COMELEC*[5] in claiming that "the series of events whereby petitioner first had her residence constructed [...] after she purchased in 2008 the property where her residence was eventually established, and while she lived in another *barangay* of the same municipality, and then eventually moved in to her

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[3] Motion for Reconsideration, p. 9.

[4] G.R. No. 191938, 2 July 2010, 622 SCRA 744.

[5] G.R. No. 193261, 24 April 2012, 670 SCRA 664.

residence in *Brgy.* Tugas amounted to an 'incremental process' of transferring residence."

Petitioner's case must be differentiated from *Mitra* in that petitioner therein presented not only the notarized lease contract over the property where he claimed to be residing, but also "a residence certificate [...] and an identification card of the House of Representatives showing Aborlan as his residence."[6]

In *Sabili*, the Court declared that "the existence of a house and lot apparently owned by petitioner's common-law wife, with whom he has been living for over two decades, makes plausible petitioner's allegation of bodily presence and intent to reside in the area."[7]

Petitioner's stay in the house of Mrs. Yap in *Brgy.* Punta Miray, on the other hand, was only a temporary and intermittent stay that does not amount to residence. It was never the intention of petitioner to reside in that *barangay*, as she only stayed there at times when she was in Baliangao while her house was being constructed.[8] Her temporary stay in *Brgy.* Punta Miray cannot be counted as residence in Baliangao.

Petitioner failed to show by what right she stayed in Mrs. Yap's house. Except for the declarations of her witnesses that she stayed there while her residential unit in the resort was being built, she presented no other evidence to show any basis of her right to stay in that particular house as a resident.

Approval of voter registration does not presuppose six-month residency in the place prior to registration.

It appears on record that petitioner, in filing her application for registration as a voter on 7 May 2009, claimed "that she has been a resident of *Brgy.* Tugas, Baliangao, Misamis Occidental

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[6] *Supra* note 4.

[7] *Supra* note 5.

[8] *Rollo*, p. 222; Joint Affidavit.

for six (6) months prior to the filing of the said registration."[9] For her claim to be true, she must have resided in *Brgy.* Tugas on or before 8 November 2008. The records, however, show that she purchased property in *Brgy.* Tugas only on 9 December 2008. Thus, her claim that she had been a resident of *Brgy.* Tugas for at least six (6) months prior to her application for registration as a voter on 7 May 2009 is an utter falsity.

The approval of the registration of petitioner as a voter does not and cannot carry with it an affirmation of the falsehood and misrepresentation as to the period of her residence in *Brgy.* Tugas. At best, the approval of her registration as a voter carries a presumption that the registrant will be able to meet the six-month residency requirement for the elections in which the registrant intends to vote.[10] It does not prove that the registrant has resided in the locality for more than one year prior to the elections.

Representation that one is qualified to run for public office when proven false constitutes a deliberate attempt to deceive the electorate.

Petitioner contends that the Court erred in upholding the cancellation of her COC despite the glaring absence of any finding made by the respondent COMELEC in its assailed Resolution that petitioner committed a false material representation in said COC.

The finding of the COMELEC that petitioner lacks the one year residency requirement to run for local elective position in the municipality of Baliangao directly contradicts her sworn

[9] Motion for Reconsideration, p. 15.

[10] Batas Pambansa Blg. 881, Omnibus Election Code Sec. 117 reads:

Sec. 117. *Qualifications of a voter.* - Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter.

declaration that she is eligible to run for public office. The fact that petitioner failed to prove that she has been a resident of the locality for at least one year prior to the elections reveals the falsity of her assertion in her COC that she is qualified to run for a local elective position. This false material representation justifies the cancellation of her COC.

When the candidate's claim of eligibility is proven false, as when the candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the COC constitutes a "deliberate attempt to mislead, misinform, or hide the fact"[11] of ineligibility.

COMELEC is not ousted of jurisdiction to decide a petition for cancellation of the certificate of candidacy after the winner is proclaimed.

The COMELEC, in its Resolution dated 19 August 2010, citing *Aquino v. COMELEC*,[12] has amply discussed this matter, thus:

> Petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. Section 6 states:
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> SECTION 6. Effect of Disqualification Case. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number

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[11] *Salcedo v. COMELEC*, 371 Phil. 377 (1999).

[12] 318 Phil. 467 (1995).

of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong.

Under the above-quoted provision, not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase "when the evidence of guilt is strong" seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, Section 7 of R.A. 6646 allows the application of the provisions of Section 6 to cases involving disqualification based on ineligibility under Section 78 of B.P. 881. Section 7 states:

SECTION 7. Petition to Deny Due Course or to Cancel a Certificate of Candidacy. – The procedure hereinabove provided shall apply to petition to deny due course to or cancel a certificate of candidacy based on Sec. 78 of Batas Pambansa 881.[13]

The cancellation of the certificate of candidacy of an ineligible candidate who has assumed office renders the officer a de facto officer.

This Court has ruled in *Aratea v. COMELEC*[14] and *Jalosjos, Jr. v. COMELEC*[15] that the cancellation of the COC based on an ineligibility that existed at the time of its filing means that the candidate was never a valid candidate from the very beginning.[16]

On the question of who should assume the post vacated by the ineligible candidate, this Court amply explained in *Jalosjos, Jr*. that:

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[13] *Id.*

[14] G.R. No. 195229, 09 October 2012, 683 SCRA 105.

[15] G.R. No. 193237, 09 October 2012, 683 SCRA 1.

[16] *Id.* at 31.

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning.[17] x x x. (Citations omitted)

There is another more compelling reason why the eligible candidate who garnered the highest number of votes must assume the office. The ineligible candidate who was proclaimed and who already assumed office is a *de facto* officer by virtue of the ineligibility.

The rule on succession in Section 44 of the Local Government Code[18] cannot apply in instances when a *de facto* officer is

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[17] *Id.* at 31-32.

[18] **Section 44.** *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent

ousted from office and the *de jure* officer takes over. The ouster of a *de facto* officer cannot create a permanent vacancy as contemplated in the Local Government Code. There is no vacancy to speak of as the *de jure* officer, the rightful winner in the elections, has the legal right to assume the position.

WHEREFORE, in view of the foregoing, the Motion for Partial Reconsideration dated 08 March 2013 is hereby **GRANTED**. Petitioner's Motion for Reconsideration dated 27 March 2013 is hereby **DENIED** with **FINALITY**. **AGNE V. YAP, SR.** is hereby declared the duly elected Mayor of the Municipality of Baliangao, Misamis Occidental in the 10 May 2010 elections. This resolution is immediately executory.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Brion, J., no part — on wellness leave in main decision.

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inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

EN BANC

[G.R. No. 207264. June 25, 2013]

REGINA ONGSIAKO REYES, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN,** *respondents.*

SYLLABUS

1. CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); THE JURISDICTION OF THE HRET AS THE SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTIONS, RETURNS AND QUALIFICATIONS OF MEMBERS OF CONGRESS BEGINS ONLY AFTER A CANDIDATE HAS BECOME A MEMBER OF THE HOUSE OF REPRESENTATIVES.— According to petitioner, the COMELEC was ousted of its jurisdiction when she was duly proclaimed because pursuant to Section 17, Article VI of the 1987 Constitution, the HRET has the exclusive jurisdiction to be the "sole judge of all contests relating to the election, returns and qualifications" of the Members of the House of Representatives. Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons: *First*, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action. *Second*, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution x x x. As held in *Marcos v. COMELEC*, the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, to wit: As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives.**

Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.

2. **ID.; ID.; ONCE A WINNING CANDIDATE HAS BEEN PROCLAIMED, TAKEN HIS OATH, AND ASSUMED OFFICE AS A MEMBER OF THE HOUSE OF REPRESENTATIVES, THE COMELEC'S JURISDICTION OVER ELECTION CONTESTS RELATING TO HIS ELECTION, RETURNS AND QUALIFICATIONS ENDS, AND THE HRET'S OWN JURISDICTION BEGINS; TO BE CONSIDERED A MEMBER OF THE HOUSE OF REPRESENTATIVES, THERE MUST BE A VALID PROCLAMATION, A PROPER OATH, AND ASSUMPTION OF OFFICE.—** In *Vinzons-Chato v. COMELEC*, citing *Aggabao v. COMELEC* and *Guerrero v. COMELEC*, the Court ruled that: The Court has invariably held that once a winning candidate has been **proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. This pronouncement was reiterated in the case of *Limkaichong v. COMELEC* x x x. The Court has invariably held that once a winning candidate has **been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. x x x. From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office. x x x. Here, the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*" Thus, until such time, the COMELEC retains jurisdiction.

3. **ID.; ID.; REQUISITES TO BE CONSIDERED A MEMBER OF THE HOUSE OF REPRESENTATIVES; PROPER OATH; BEFORE THERE IS A VALID OR OFFICIAL**

TAKING OF THE OATH, IT MUST BE MADE BEFORE THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND IN OPEN SESSION.— In her attempt to comply with the second requirement, petitioner attached a purported *Oath Of Office* taken before Hon. Feliciano Belmonte Jr. on 5 June 2013. However, this is not the oath of office which confers membership to the House of Representatives. Section 6, Rule II (Membership) of the Rules of the House of Representatives provides: Section 6. Oath or Affirmation of Members. — Members shall take their oath or affirmation either collectively or individually **before the Speaker in open session**. [B]efore there is a valid or official taking of the oath it must be made (1) before the Speaker of the House of Representatives, and (2) in open session. Here, although she made the oath before Speaker Belmonte, there is no indication that it was made during plenary or in open session and, thus, it remains unclear whether the required oath of office was indeed complied with.

4. POLITICAL LAW; ELECTIONS; COMELEC; DECISIONS OF THE COMELEC IN PRE-PROCLAMATION CASES SHALL BECOME FINAL AND EXECUTORY AFTER THE LAPSE OF FIVE DAYS FROM THEIR PROMULGATION UNLESS RESTRAINED BY THE SUPREME COURT VIA PETITION FOR *CERTIORARI* UNDER RULE 37 OF THE COMELEC RULES OF PROCEDURE OR RULE 64 OF THE RULES OF COURT.— [W]e cannot disregard a fact basic in this controversy — that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner's qualifications to run for the position of Member of the House of Representative. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC En Banc decision. The Board of Canvasser which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC *En Banc* which affirmed a decision of the COMELEC First Division. Indeed, the assailed Resolution of the COMELEC First Division which was

promulgated on 27 March 2013, and the assailed Resolution of the COMELEC En Banc which was promulgated on 14 May 2013, became final and executory on 19 May 2013 based on Section 3, Rule 37 of the COMELEC Rules of Procedure x x x. To prevent the assailed Resolution dated 14 May 2013 from becoming final and executory, petitioner should have availed herself of Section 1, Rule 37 of the COMELEC Rules of Procedure or Rule 64 of the Rules of Court by filing a petition before this Court within the 5-day period, but she failed to do so. She would file the present last hour petition on 10 June 2013. Hence, on 5 June 2013, respondent COMELEC rightly issued a Certificate of Finality.

5. **ID.; ID.; ID.; THE COMELEC IS NOT BOUND TO STRICTLY ADHERE TO THE TECHNICAL RULES OF PROCEDURE IN THE PRESENTATION OF EVIDENCE.—** It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order x xx to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

6. **ID.; DUE PROCESS; NO DENIAL OF DUE PROCESS WHERE THE PARTY WAS GIVEN EVERY OPPORTUNITY TO ARGUE HER CASE BUT DID NOT AVAIL THEREOF; IN ADMINISTRATIVE PROCEEDINGS, PROCEDURAL DUE PROCESS ONLY REQUIRES THAT THE PARTY BE GIVEN THE OPPORTUNITY OR RIGHT TO BE HEARD.—** [T]here was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her. Also, in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of *Sahali v. COMELEC*: The petitioners should be reminded that

due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, **deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.**

7. ID.; ELECTIONS; CITIZENSHIP REQUIREMENT; PETITIONER HAS THE DUTY TO PROVE THAT SHE IS A NATURAL-BORN-FILIPINO CITIZEN AND HAS NOT LOST THE SAME, OR THAT SHE HAS REQUIRED SUCH STATUS IN ACCORDANCE WITH THE PROVISIONS OF R.A. NO. 9925 OR THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003.— [I]n moving for the cancellation of petitioner's COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "*balikbayan*." At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her. Notably, in her Motion for Reconsideration before the COMELEC *En Banc*, petitioner admitted that she is a holder of a US passport, but she averred that she is only a dual Filipino-American citizen, thus the requirements of R.A. No. 9225 do not apply to her. Still, attached to the said motion is an Affidavit of Renunciation of Foreign Citizenship dated 24 September 2012. Petitioner explains that she attached said Affidavit "if only to show her desire and zeal to serve the people and to comply with rules, even as a superfluity." We cannot, however, subscribe to petitioner's explanation. If petitioner executed said Affidavit "if only to comply with the rules," then it is an admission that R.A. No. 9225 applies to her. Petitioner cannot claim that she

executed it to address the observations by the COMELEC as the assailed Resolutions were promulgated only in 2013, while the Affidavit was executed in September 2012.

8. **ID.; ID.; ID.; PETITIONER'S OATH OF OFFICE AS PROVINCIAL ADMINISTRATOR CANNOT BE CONSIDERED AS THE OATH OF ALLEGIANCE IN COMPLIANCE WITH THE R.A. NO. 9225.—** To cover-up her apparent lack of an oath of allegiance as required by R.A. No. 9225, petitioner contends that, since she took her oath of allegiance in connection with her appointment as Provincial Administrator of Marinduque, she is deemed to have reacquired her status as a natural-born Filipino citizen. This contention is misplaced. For one, this issue is being presented for the first time before this Court, as it was never raised before the COMELEC. For another, said oath of allegiance cannot be considered compliance with Sec. 3 of R.A. No. 9225 as certain requirements have to be met as prescribed by Memorandum Circular No. AFF-04-01, otherwise known as the Rules Governing Philippine Citizenship under R.A. No. 9225 and Memorandum Circular No. AFF-05-002 (Revised Rules) and Administrative Order No. 91, Series of 2004 issued by the Bureau of Immigration. Thus, petitioner's oath of office as Provincial Administrator cannot be considered as the oath of allegiance in compliance with R.A. No. 9225. These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.

9. **ID.; ELECTIONS COMELEC; PETITION FOR DENIAL AND CANCELLATION OF THE CERTIFICATE OF CANDIDACY (COC) IS SUMMARY IN NATURE, THUS THE COMELEC IS GIVEN MUCH DISCRETION ON THE EVALUATION AND ADMISSION OF EVIDENCE PURSUANT TO ITS PRINCIPAL OBJECTIVE OF DETERMINING WHETHER OR NOT THE COC SHOULD BE CANCELLED.—** [C]onsidering that the petition for denial and cancellation of the COC is summary in nature, the COMELEC is given much discretion in the evaluation and admission of evidence pursuant to its principal objective of determining of whether or not the COC should be cancelled. We held in *Mastura v. COMELEC*: The rule that factual findings of administrative bodies will not be disturbed by courts of justice

except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC — created and explicitly made independent by the Constitution itself — on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.

10. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; A PETITION FOR *CERTIORARI* WILL PROSPER ONLY IF GRAVE ABUSE OF DISCRETION IS ALLEGED AND PROVED TO EXIST.—** Time and again, We emphasize that the "grave abuse of discretion" which warrants this Court's exercise of *certiorari* jurisdiction has a well-defined meaning. Guidance is found in *Beluso v. Commission on Elections* where the Court held: x x x A **petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.** "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. **For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.** Here, this Court finds that petitioner failed to adequately and substantially show that grave abuse of discretion exists.

11. **POLITICAL LAW; ELECTIONS; COMELEC; THE COMELEC DID NOT IMPOSE ADDITIONAL QUALIFICATIONS ON CANDIDATES FOR THE HOUSE OF REPRESENTATIVES WHO HAVE ACQUIRED FOREIGN CITIZENSHIP BUT MERELY APPLIED THE QUALIFICATIONS PRESCRIBED BY THE CONSTITUTION.—** Anent the proposition of petitioner that the act of the COMELEC in enforcing the provisions of R.A. No. 9225, insofar as it adds to the qualifications of Members of the House of Representatives other than those enumerated in the Constitution, is unconstitutional, We find the same

meritless. The COMELEC did not impose additional qualifications on candidates for the House of Representatives who have acquired foreign citizenship. It merely applied the qualifications prescribed by Section 6, Article VI of the 1987 Constitution that the candidate must be a natural-born citizen of the Philippines and must have one-year residency prior to the date of elections. Such being the case, the COMELEC did not err when it inquired into the compliance by petitioner of Sections 3 and 5 of R.A. No. 9225 to determine if she reacquired her status as a natural-born Filipino citizen. It simply applied the constitutional provision and nothing more.

BRION, *J., dissenting opinion*:

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; REVIEW OF RESOLUTIONS OF THE COMMISSION ON ELECTIONS; THE COURT MAY DISMISS THE PETITION OUTRIGHT IF IT WAS FILED MANIFESTLY FOR DELAY OR IF THE QUESTIONS RAISED ARE TOO UNSUBSTANTIAL TO WARRANT FURTHER PROCEEDINGS; ISSUES OF JURISDICTION AND DUE PROCESS CANNOT BE CONSIDERED UNSUBSTANTIAL TO WARRANT OUTRIGHT DISMISSAL OF THE PETITION; THE COURT'S ROLE AS ADJUDICATOR AND THE DEMANDS OF BASIC FAIRNESS REQUIRE THAT WE SHOULD FULLY HEAR THE PARTIES AND RULE BASED ON OUR APPRECIATION OF THE MERITS OF THEIR POSITIONS IN LIGHT OF WHAT THE LAW AND ESTABLISHED JURISPRUDENCE REQUIRE.—** Section 6 of Rule 64 of the Rules of Court merely requires that the petition be sufficient in form and substance to justify an order from the Court to act on the petition and to require the respondents to file their comments. The same rule also provides that the Court may dismiss the petition outright (as the majority did in the present case) if it was filed manifestly **for delay or if the questions raised are too unsubstantial to warrant further proceedings**. In the present case, the petition is indisputably sufficient in form and substance; no issue on this point was even raised. Thus, the question before the Court – if Rule 64, Section 6 were to be followed – is whether the issues raised

by Reyes were too unsubstantial to warrant further proceedings. [T]he issues raised cannot be unsubstantial as they involve crucial **issues of jurisdiction and due process**. The due process issue, of course, pertained to the assailed COMELEC ruling that admittedly can be evaluated based on the records. The matter of evaluation, however, is not simply a matter of doing it; it is the very problem that I raise because it must be a meaningful one that fully appreciates the parties' positions, particularly in a situation where the petition raised arguments that are not without their merits. **In this situation, the Court cannot simply go through the motions of evaluation and then simply strike out the petitioner's positions.** The Court's role as adjudicator and the demands of basic fairness require that we should fully hear the parties and rule based on our appreciation of the merits of their positions in light of what the law and established jurisprudence require.

2. **POLITICAL LAW; DUE PROCESS; AN ARTICLE IN THE INTERNET CANNOT SIMPLY BE TAKEN TO BE EVIDENCE OF THE TRUTH OF WHAT IT SAYS, NOR CAN PHOTOCOPIES OF DOCUMENTS NOT SHOWN TO BE GENUINE BE TAKEN AS PROOF OF THE TRUTH.—** The determination of the merits of the petitioner's claim point us, at the very least, to the need to consider whether evidence attributed to a person who is not before the Court and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case, should be taken as "truth." Even casting technical rules of evidence aside, common sense and the minimum sense of fairness dictate that an article in the internet cannot simply be taken to be evidence of the truth of what it says, nor can photocopies of documents not shown to be genuine be taken as proof of the "truth." To accept these materials as statements of "truth" is to be partisan and to deny the petitioner her right to both procedural and substantive due process. **Again, at the very least, further inquiry should have been made before there was the judgment.**

3. **CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; (HRET); THE PROCLAMATION OF A WINNING CANDIDATE DIVESTS THE COMMISSION ON ELECTIONS (COMELEC) OF ITS JURISDICTION OVER MATTERS PENDING BEFORE**

IT AT THE TIME OF THE PROCLAMATION AND THE PARTY QUESTIONING THE QUALIFICATIONS OF THE WINNING CANDIDATE SHOULD NOW PRESENT HIS CASE IN A PROPER PROCEEDING BEFORE THE HRET WHO, BY CONSTITUTIONAL MANDATE, HAS THE SOLE JURISDICTION TO HEAR AND DECIDE CASES INVOLVING THE ELECTION, RETURNS AND QUALIFICATION OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.— [T]he matter of jurisdiction between the COMELEC and the HRET has always constituted a dichotomy; the relationship between the COMELEC and the HRET in terms of jurisdiction is not an appellate one but is mutually exclusive. This mutually exclusive jurisdictional relationship is, as a rule, sequential. This means that the COMELEC's jurisdiction ends when the HRET's jurisdiction begins. Thus, there is no point in time, when a vacuum in jurisdiction would exist involving congressional candidates. This jurisdiction, of course, refers to **jurisdiction over the subject matter**, which no less than the Philippine Constitution governs. Under Section 17, Article VI, the subject matter of HRET's jurisdiction is the "election, returns, and qualifications of Members of the House of Representatives." Where one jurisdiction ends and the other begins, is a matter that jurisprudence appears to have settled, but is nevertheless an issue that the Court should perhaps continue to examine and re-examine because of the permutation of possible obtaining situations — which, to my mind, translates to the existence of a critical issue that should be ventilated before this Court if it is to make any definitive ruling on any given situation. [T]he **proclamation** of the winning candidate is the **operative fact** that triggers the jurisdiction of the HRET over election contests relating to the winning candidate's election, return and qualifications. In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation and the party questioning the qualifications of the winning candidate should now present his or her case in a proper proceeding (i.e. *quo warranto)* before the HRET who, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualification of members of the House of Representatives. The Court has interestingly rendered various rulings on the points which all point to the statement above.

In *Limkaichong v. Comelec,* the Court pointedly held that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The Court speaking through no less than **Associate Justice Roberto A. Abad** in the recent case of *Jalosjos, Jr. v Commission on Elections* held that the **settled rule is that "the proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET**" x x x. Thus, the Court should now fully hear this matter, instead of dismissively ruling on a new petition where the respondent side has not been fully heard.

4. ID.; ID.; THE PROCLAMATION OF THE WINNER IN THE CONGRESSIONAL ELECTIONS SERVES AS THE RECKONING POINT AS WELL AS THE TRIGGER THAT BRINGS ANY CONSTESTS RELATING TO HIS ELECTION, RETURN AND QUALIFICATIONS WITHIN ITS SOLE AND EXCLUSIVE JURISDICTION.— The view that the proclamation of the winning candidate is the operative fact that triggers the jurisdiction of the HRET is also supported by the HRET Rules. x x x. Based on the [Rules 14, 15, 16, 17] Rules, it appears clear that as far as the HRET is concerned, the **proclamation of the winner** in the congressional elections serves as the **reckoning point** as well as the trigger that brings any contests relating to his or her election, return and qualifications within its sole and exclusive jurisdiction. In the context of the present case, by holding that the COMELEC retained jurisdiction (because Reyes, although a proclaimed winner, has not yet assumed office), the majority effectively emasculates the HRET of its jurisdiction as it allows the filing of an election protest or a petition for *quo warranto* only after the assumption to office by the candidate (*i.e*, on June 30 in the usual case). To illustrate using the dates of the present case, any election protest or a petition for *quo warranto* filed after June 30 or more than fifteen (15) days from Reyes' proclamation on May 18, 2013, shall certainly be dismissed outright by the HRET for having been filed out of time under the HRET rules.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; REVIEW OF RESOLUTIONS OF THE

COMMISSION ON ELECTIONS; THE COURT DOES NOT ORDINARILY REVIEW THE COMELEC'S APPRECIATION AND EVALUATION OF EVIDENCE EXCEPT WHEN THE COMELEC'S APPRECIATION AND EVALUATION OF EVIDENCE ARE SO GROSSLY UNREASONABLE AS TO TURN INTO AN ERROR OF JURISDICTION.— As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions to this rule have been established and consistently recognized, among others, when the COMELEC's appreciation and evaluation of evidence are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.

6. **ID.; EVIDENCE; BURDEN OF PROOF; ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT; IN ADMINISTRATIVE CASES THE QUANTUM OF PROOF IS SUBSTANTIAL EVIDENCE.—** It is also basic in the law of evidence that one who alleges a fact has the burden of proving it. In administrative cases, the quantum of proof required is substantial evidence. In the present case, the majority obviously believed, together with the COMELEC, that Tan did overcome this burden and that his documentary evidence he submitted established that Reyes is not a Filipino citizen. A major clash between the parties exists, of course, on this point as Reyes, as expressed in her petition, is of the completely opposite view. Even a quick look at Tan's evidence, however, indicates that Reyes' view is not without its merits and should not simply be dismissively set aside.

7. **CONSTITUTIONAL LAW; CITIZENSHIP; THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003 (R.A. NO. 9225); THE TWIN REQUIREMENTS OF R.A. 9225 DOES NOT APPLY TO A CANDIDATE WHO IS A NATURAL BORN FILIPINO CITIZEN WHO DID NOT SUBSEQUENTLY BECOME A NATURALIZED CITIZEN OF ANOTHER COUNTRY.—** [The Ruling of the Comelec First Division in its March 27, 2013 Resolution] undeniably, opens for Reyes the argument that in the absence of sufficient proof (*i.e*, other than a photocopy of a "certification") that she is not a natural born Filipino citizen, no burden of evidence

shifts to her to prove anything, particularly the fact that she is not an American citizen. Considering that Tan might have also failed to prove by substantial evidence his allegation that Reyes is an American citizen, the burden of evidence also cannot be shifted to the latter to prove that she had availed of the privileges of RA 9225 in order to re-acquire her status as a natural born Filipino citizen. It ought to be considered, too, that in the absence of sufficient proof that Reyes lost her Filipino citizenship, the twin requirements under RA 9225 for re-acquisition of Filipino citizenship should not apply to her. Of course, Reyes admitted in her MR before the COMELEC that she is married to an American citizen. This admission, however, leads only to further arguments on how her admitted marriage affected her citizenship. Jurisprudence is not lacking on this point as in *Cordora v. Comelec*, the Court held that the twin requirements of RA 9225 does not apply to a candidate who is a natural born Filipino citizen who did not subsequently become a naturalized citizen of another country.

8. **ID.; ID.; ID.; THE FACT THAT THE PETITIONER IS A HOLDER OF A US PASSPORT DOES NOT PORTENT THAT SHE IS NO LONGER A NATURAL BORN FILIPINO CITIZEN OR THAT SHE HAD RENOUNCED HER PHILIPPINE CITIZENSHIP.—** [T]he evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the holder of a US passport. In *Aznar v. Comelec,* the Court ruled that the mere fact that respondent Osmena was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the COMELEC arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices and *Larrazaball Law Office* for petitioner.

The Solicitor General for public respondent.

Herminio F. Valerio and Marcelino Michael I. Atanante for private respondent.

R E S O L U T I O N

PEREZ, *J.*:

Before the Court is a Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Preliminary Injunction and/or Status *Quo Ante* Order dated 7 June 2013 filed by petitioner Regina Ongsiako Reyes, assailing the Resolutions dated 27 March 2013 and 14 May 2013 issued by public respondent Commission on Elections (COMELEC) in SPA No. 13-053. The assailed Resolutions ordered the cancellation of the Certificate of Candidacy of petitioner for the position of Representative of the lone district of Marinduque.

On 31 October 2012, respondent Joseph Socorro Tan, a registered voter and resident of the Municipality of Torrijos, Marinduque, filed before the COMELEC an Amended Petition to Deny Due Course or to Cancel the Certificate of Candidacy (COC) of petitioner on the ground that it contained material misrepresentations, specifically: (1) that she is single when she is married to Congressman Herminaldo I. Mandanas of Batangas;[1] (2) that she is a resident of Brgy. Lupac, Boac, Marinduque when she is a resident of Bauan, Batangas which is the residence of her husband, and at the same time, when she is also a resident of 135 J.P. Rizal, Brgy. Milagrosa, Quezon City as admitted in the Directory of Congressional Spouses of the House of Representatives;[2] (3) that her date of birth is 3 July 1964 when

[1] *Rollo*, p. 70.

[2] *Id.*

other documents show that her birthdate is either 8 July 1959 or 3 July 1960;[3] (4) that she is not a permanent resident of another country when she is a permanent resident or an immigrant[4] of the United States of America;[5] and (5) that she is a Filipino citizen when she is, in fact, an American citizen.[6]

In her Answer, petitioner countered that, while she is publicly known to be the wife of Congressman Herminaldo I. Mandanas (Congressman Mandanas), there is no valid and binding marriage between them. According to petitioner, although her marriage with Congressman Mandanas was solemnized in a religious rite, it did not comply with certain formal requirements prescribed by the Family Code, rendering it void *ab initio*.[7] Consequently, petitioner argues that as she is not duty-bound to live with Congressman Mandanas, then his residence cannot be attributed to her.[8] As to her date of birth, the Certificate of Live Birth issued by the National Statistics Office shows that it was on 3 July 1964.[9] Lastly, petitioner notes that the allegation that she is a permanent resident and/or a citizen of the United States of America is not supported by evidence.[10]

During the course of the proceedings, on 8 February 2013, respondent filed a "Manifestation with Motion to Admit Newly

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[3] *Id.* at 71.

[4] Respondent relies on the following facts: (a) [petitioner] was admitted to the California State Bar on June 12, 1995; (b) [petitioner] maintained a US address and earned her undergraduate studies in Georgetown University, Washington, D.C.; (c) [petitioner] married an American citizen named Saturnino S. Ador Dionisio in 1997, which marriage was subsequently dissolved; and (4) [petitioner] acquired properties and established businesses in the U.S.; COMELEC Resolution dated 27 March 2013. *Id.* at 44.

[5] *Id.* at 71.

[6] *Id.* at 72.

[7] *Id.* at 84.

[8] *Id.* at 87.

[9] *Id.* at 93.

[10] *Id.* at 94.

Discovered Evidence and Amended List of Exhibits"[11] consisting of, among others: (1) a copy of an article published on the internet on 8 January 2013 entitled "Seeking and Finding the Truth about Regina O. Reyes" with an Affidavit of Identification and Authenticity of Document executed by its author Eliseo J. Obligacion, which provides a database record of the Bureau of Immigration indicating that petitioner is an American citizen and a holder of a U.S. passport; (2) a Certification of Travel Records of petitioner, issued by Simeon Sanchez, Acting Chief, Verification and Certification Unit of the Bureau of Immigration which indicates that petitioner used a U.S. Passport in her various travels abroad.

On 27 March 2013, the COMELEC First Division issued a Resolution[12] cancelling petitioner's COC, to wit:

> **WHEREFORE**, in view of the foregoing, the instant Petition is **GRANTED**. Accordingly, the Certificate of Candidacy of respondent REGINA ONGSIAKO REYES is hereby **CANCELLED**.

The COMELEC First Division found that, contrary to the declarations that she made in her COC, petitioner is not a citizen of the Philippines because of her failure to comply with the requirements of Republic Act (R.A.) No. 9225 or the *Citizenship Retention and Re-acquisition Act of 2003*, namely: (1) to take an oath of allegiance to the Republic of the Philippines; and (2) to make a personal and sworn renunciation of her American citizenship before any public officer authorized to administer an oath. In addition, the COMELEC First Division ruled that she did not have the one-year residency requirement under Section 6, Article VI of the 1987 Constitution.[13] Thus, she is

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[11] Id at 127-139.

[12] *Id.* at 40-51.

[13] Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

ineligible to run for the position of Representative for the lone district of Marinduque.

Not agreeing with the Resolution of the COMELEC First Division, petitioner filed a Motion for Reconsideration[14] on 8 April 2013 claiming that she is a natural-born Filipino citizen and that she has not lost such status by simply obtaining and using an American passport. Additionally, petitioner surmised that the COMELEC First Division relied on the fact of her marriage to an American citizen in concluding that she is a naturalized American citizen. Petitioner averred, however, that such marriage only resulted into dual citizenship, thus there is no need for her to fulfill the twin requirements under R.A. No. 9225. Still, petitioner attached an Affidavit of Renunciation of Foreign Citizenship sworn to before a Notary Public on 24 September 2012. As to her alleged lack of the one-year residency requirement prescribed by the Constitution, she averred that, as she never became a naturalized citizen, she never lost her domicile of origin, which is Boac, Marinduque.

On 14 May 2013, the COMELEC *En Banc*, promulgated a Resolution[15] denying petitioner's Motion for Reconsideration for lack of merit.

Four days thereafter or on 18 May 2013, petitioner was proclaimed winner of the 13 May 2013 Elections.

On 5 June 2013, the COMELEC *En Banc* issued a Certificate of Finality[16] declaring the 14 May 2013 Resolution of the COMELEC *En Banc* final and executory, considering that more than twenty-one (21) days have elapsed from the date of promulgation with no order issued by this Court restraining its execution.[17]

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[14] *Id.* at 140-157.

[15] *Id.* at 52-60.

[16] *Id.* at 163-165.

[17] Section 13, Rule 18 of the 1993 COMELEC Rules of Procedure in relation to Par. 2, Sec. 8 ofResolution No. 9523 provides that a decision or

On same day, petitioner took her oath of office[18] before Feliciano R. Belmonte Jr., Speaker of the House of Representatives.

Petitioner has yet to assume office, the term of which officially starts at noon of 30 June 2013.

In the present Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Preliminary Injunction and/or Status *Quo Ante* Order, petitioner raises the following issues:[19]

31) Whether or not Respondent Comelec is without jurisdiction over Petitioner who is a duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque.

32) Whether or not Respondent Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of Respondent Tan's alleged "newly-discovered evidence" without the same having been testified on and offered and admitted in evidence which became the basis for its Resolution of the case without giving the petitioner the opportunity to question and present controverting evidence, in violation of Petitioner's right to due process of law.

33) Whether or not Respondent Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Petitioner is not a Filipino citizen and did not meet the residency requirement for the position of Member of the House of Representatives.

34) Whether or not Respondent Commission on Elections committed grave abuse of discretion amounting to lack or excess of jurisdiction when, by enforcing the provisions of Republic Act No. 9225, it

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resolution of the COMELEC *En Banc* in special actions and special cases shall become final and executory five (5) days after its promulgation unless a restraining order is issued by the Supreme Court. Sec. 3, Rule 37, Part VII also provides that decisions in petitions to deny due course to or cancel certificates of candidacy shall become final and executory after the lapse of five (5) days from promulgation, unless restrained by the Supreme Court.

[18] *Id.* at 162.

[19] *Id.* at 9.

imposed additional qualifications to the qualifications of a Member of the House of Representatives as enumerated in Section 6 of Article VI of the 1987 Constitution of the Philippines.

The petition must fail.

At the outset, it is observed that the issue of jurisdiction of respondent COMELEC *vis-a-vis* that of House of Representatives Electoral Tribunal (HRET) appears to be a non-issue. Petitioner is taking an inconsistent, if not confusing, stance for while she seeks remedy before this Court, she is asserting that it is the HRET which has jurisdiction over her. Thus, she posits that the issue on her eligibility and qualifications to be a Member of the House of Representatives is best discussed in another tribunal of competent jurisdiction. It appears then that petitioner's recourse to this Court was made only in an attempt to enjoin the COMELEC from implementing its final and executory judgment in SPA No. 13-053.

Nevertheless, we pay due regard to the petition, and consider each of the issues raised by petitioner. The need to do so, and at once, was highlighted during the discussion *En Banc* on 25 June 2013 where and when it was emphasized that the term of office of the Members of the House of Representatives begins on the thirtieth day of June next following their election.

According to petitioner, the COMELEC was ousted of its jurisdiction when she was duly proclaimed[20] because pursuant to Section 17, Article VI of the 1987 Constitution, the HRET has the exclusive jurisdiction to be the "sole judge of all contests relating to the election, returns and qualifications" of the Members of the House of Representatives.

Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons:

First, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.

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[20] *Id.*

Second, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

> Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members**. x x x

As held in *Marcos v. COMELEC*,[21] the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, to wit:

> As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

The next inquiry, then, is when is a candidate considered a Member of the House of Representatives?

In *Vinzons-Chato v. COMELEC*,[22] citing *Aggabao v. COMELEC*[23] and *Guerrero v. COMELEC*,[24] the Court ruled that:

> The Court has invariably held that once a winning candidate has been **proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

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[21] 318 Phil. 329, 397 (1995).

[22] G.R. No. 172131, 2 April 2007, 520 SCRA 166, 179.

[23] G.R. No. 163756, 26 January 2005, 449 SCRA 400, 404-405.

[24] 391 Phil. 344, 352 (2000).

This pronouncement was reiterated in the case of *Limkaichong v. COMELEC*,[25] wherein the Court, referring to the jurisdiction of the COMELEC *vis-a-vis* the HRET, held that:

> The Court has invariably held that once a winning candidate has **been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This was again affirmed in *Gonzalez v. COMELEC*,[26] to wit:

> After **proclamation**, **taking of oath** and **assumption of office** by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns — were transferred to the HRET as the constitutional body created to pass upon the same. (Emphasis supplied.)

From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.

Indeed, in some cases, this Court has made the pronouncement that once a proclamation has been made, COMELEC's jurisdiction is already lost and, thus, its jurisdiction over contests relating to elections, returns, and qualifications ends, and the HRET's own jurisdiction begins. However, it must be noted that in these cases, the doctrinal pronouncement was made in the context of a proclaimed candidate who had not only taken an oath of office, but who had also assumed office.

For instance, in the case of *Dimaporo v. COMELEC*,[27] the Court upheld the jurisdiction of the HRET against that of the COMELEC *only after* the candidate had been proclaimed, taken his oath of office before the Speaker of the House, and assumed

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[25] G.R. Nos. 179240-41, 1 April 2009, 583 SCRA 1, 33.

[26] G.R. No. 192856, 8 March 2011, 644 SCRA 761, 798-799.

[27] G.R. No. 179285, 11 February 2008, 544 SCRA 381, 390.

the duties of a Congressman on 26 September 2007, or after the start of his term on 30 June 2007, *to wit*:

> On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the *status quo ante* order of the Court, he had already been **proclaimed** by the PBOC as the duly elected Member of the House of Representatives of the First Congressional District of Lanao del Norte. On that very same day, he had **taken his oath** before Speaker of the House Jose de Venecia, Jr. and **assumed his duties** accordingly.
>
> In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). (Emphasis supplied.)

Apparently, the earlier cases were decided after the questioned candidate had already assumed office, and hence, was already considered a Member of the House of Representatives, *unlike in the present case*.

Here, the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*"[28] Thus, until such time, the COMELEC retains jurisdiction.

In her attempt to comply with the second requirement, petitioner attached a purported *Oath Of Office* taken before Hon. Feliciano Belmonte Jr. on 5 June 2013. However, this is not the oath of office which confers membership to the House of Representatives.

Section 6, Rule II (Membership) of the Rules of the House of Representatives provides:

> Section 6. Oath or Affirmation of Members. – Members shall take their oath or affirmation either collectively or individually **before the Speaker in open session**.

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[28] Section 7, Article VI of the 1987 Constitution.

Consequently, before there is a valid or official taking of the oath it must be made (1) before the Speaker of the House of Representatives, and (2) in open session. Here, although she made the oath before Speaker Belmonte, there is no indication that it was made during plenary or in open session and, thus, it remains unclear whether the required oath of office was indeed complied with.

More importantly, we cannot disregard a fact basic in this controversy — that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner's qualifications to run for the position of Member of the House of Representative. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC *En Banc* decision. The Board of Canvasser which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC *En Banc* which affirmed a decision of the COMELEC First Division.

Indeed, the assailed Resolution of the COMELEC First Division which was promulgated on 27 March 2013, and the assailed Resolution of the COMELEC *En Banc* which was promulgated on 14 May 2013, became final and executory on 19 May 2013 based on Section 3, Rule 37 of the COMELEC Rules of Procedure which provides:

> Section 3. Decisions Final after five days. Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court.

To prevent the assailed Resolution dated 14 May 2013 from becoming final and executory, petitioner should have availed

herself of Section 1, Rule 37[29] of the COMELEC Rules of Procedure or Rule 64[30] of the Rules of Court by filing a petition before this Court within the 5-day period, but she failed to do so. She would file the present last hour petition on 10 June 2013. Hence, on 5 June 2013, respondent COMELEC rightly issued a Certificate of Finality.

As to the issue of whether petitioner failed to prove her Filipino citizenship, as well as her one-year residency in Marinduque, suffice it to say that the COMELEC committed no grave abuse of discretion in finding her ineligible for the position of Member of the House of Representatives.

Petitioner alleges that the COMELEC gravely abused its discretion when it took cognizance of "*newly-discovered evidence*" without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

Her contentions are incorrect.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order x x x to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the

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[29] Section 1.*Petition for Certiorari; and Time to File*.—Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from its promulgation.

[30] 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.

proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

Also, in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of *Sahali v. COMELEC*:[31]

> The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, **deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.** (Emphasis supplied)

As to the ruling that petitioner is ineligible to run for office on the ground of citizenship, the COMELEC First Division, discoursed as follows:

> "x x x *for respondent to reacquire her Filipino citizenship and become eligible for public office*, the law requires that she must have accomplished the following acts: (1) take the **oath of allegiance** to the Republic of the Philippines before the Consul-General of the Philippine Consulate in the USA; and (2) make a **personal and sworn renunciation of her American citizenship** before any public officer authorized to administer an oath.

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[31] G.R. No. 201796, 15 January 2013.

In the case at bar, there is no showing that respondent complied with the aforesaid requirements. Early on in the proceeding, respondent hammered on petitioner's lack of proof regarding her American citizenship, contending that it is petitioner's burden to present a case. She, however, specifically denied that she has become either a permanent resident or naturalized citizen of the USA.

Due to petitioner's submission of newly-discovered evidence thru a Manifestation dated February 7, 2013, however, establishing the fact that *respondent is a holder of an American passport which she continues to use until June 30, 2012*, petitioner was able to substantiate his allegations. The burden now shifts to respondent to present substantial evidence to prove otherwise. This, the respondent utterly failed to do, leading to the conclusion inevitable that respondent falsely misrepresented in her COC that she is a natural-born Filipino citizen. **Unless and until she can establish that she had availed of the privileges of RA 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines**."[32] (Emphasis supplied.)

Let us look into the events that led to this petition: In moving for the cancellation of petitioner's COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "*balikbayan*." At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

Notably, in her Motion for Reconsideration before the COMELEC *En Banc*, petitioner admitted that she is a holder of a US passport, but she averred that she is only a dual Filipino-

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[32] *Rollo*, pp. 47-48.

American citizen, thus the requirements of R.A. No. 9225 do not apply to her.[33] Still, attached to the said motion is an Affidavit of Renunciation of Foreign Citizenship dated 24 September 2012.[34] Petitioner explains that she attached said Affidavit "if only to show her desire and zeal to serve the people and to comply with rules, even as a superfluity."[35] We cannot, however, subscribe to petitioner's explanation. If petitioner executed said Affidavit "if only to comply with the rules," then it is an admission that R.A. No. 9225 applies to her. Petitioner cannot claim that she executed it to address the observations by the COMELEC as the assailed Resolutions were promulgated only in 2013, while the Affidavit was executed in September 2012.

Moreover, in the present petition, petitioner added a footnote to her oath of office as Provincial Administrator, to this effect: "This does not mean that Petitioner did not, prior to her taking her oath of office as Provincial Administrator, take her oath of allegiance for purposes of re-acquisition of natural-born Filipino status, which she reserves to present in the proper proceeding. The reference to the taking of oath of office is in order to make reference to what is already part of the records and evidence in the present case and to avoid injecting into the records evidence on matters of fact that was not previously passed upon by Respondent COMELEC."[36] This statement raises a lot of questions – Did petitioner execute an oath of allegiance for re-acquisition of natural-born Filipino status? If she did, why did she not present it at the earliest opportunity before the COMELEC? And is this an admission that she has indeed lost her natural-born Filipino status?

To cover-up her apparent lack of an oath of allegiance as required by R.A. No. 9225, petitioner contends that, since she took her oath of allegiance in connection with her appointment

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[33] *Id.* at 148.

[34] *Id.* at 154.

[35] *Id.* at 149.

[36] *Id.* at 26.

as Provincial Administrator of Marinduque, she is deemed to have reacquired her status as a natural-born Filipino citizen.

This contention is misplaced. For one, this issue is being presented for the first time before this Court, as it was never raised before the COMELEC. For another, said oath of allegiance cannot be considered compliance with Sec. 3 of R.A. No. 9225 as certain requirements have to be met as prescribed by Memorandum Circular No. AFF-04-01, otherwise known as the Rules Governing Philippine Citizenship under R.A. No. 9225 and Memorandum Circular No. AFF-05-002 (Revised Rules) and Administrative Order No. 91, Series of 2004 issued by the Bureau of Immigration. Thus, petitioner's oath of office as Provincial Administrator cannot be considered as the oath of allegiance in compliance with R.A. No. 9225.

These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.

As to the issue of residency, proceeding from the finding that petitioner has lost her natural-born status, we quote with approval the ruling of the COMELEC First Division that petitioner cannot be considered a resident of Marinduque:

> "Thus, a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. **Upon re-acquisition of Filipino citizenship pursuant to RA 9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.**
>
> In this case, there is no showing whatsoever that [petitioner] had already re-acquired her Filipino citizenship pursuant to RA 9225 so as to conclude that she has regained her domicile in the Philippines. There being no proof that [petitioner] had renounced her American citizenship, it follows that she has not abandoned her domicile of choice in the USA.
>
> The only proof presented by [petitioner] to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque is her claim that she served as Provincial Administrator of the province from

January 18, 2011 to July 13, 2011. **But such fact alone is not sufficient to prove her one-year residency. For, [petitioner] has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA**."[37] (Emphasis supplied.)

All in all, considering that the petition for denial and cancellation of the COC is summary in nature, the COMELEC is given much discretion in the evaluation and admission of evidence pursuant to its principal objective of determining of whether or not the COC should be cancelled. We held in *Mastura v. COMELEC*:[38]

> The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC — created and explicitly made independent by the Constitution itself — on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.

Time and again, We emphasize that the "grave abuse of discretion" which warrants this Court's exercise of *certiorari* jurisdiction has a well-defined meaning. Guidance is found in *Beluso v. Commission on Elections*[39] where the Court held:

> x x x A **petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.** "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. **For an act**

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

[38] G.R. No. 124521 29 January 1998, 285 SCRA 493, 499.

[39] G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456.

to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross. (Emphasis supplied.)

Here, this Court finds that petitioner failed to adequately and substantially show that grave abuse of discretion exists.

Lastly, anent the proposition of petitioner that the act of the COMELEC in enforcing the provisions of R.A. No. 9225, insofar as it adds to the qualifications of Members of the House of Representatives other than those enumerated in the Constitution, is unconstitutional, We find the same meritless.

The COMELEC did not impose additional qualifications on candidates for the House of Representatives who have acquired foreign citizenship. It merely applied the qualifications prescribed by Section 6, Article VI of the 1987 Constitution that the candidate must be a natural-born citizen of the Philippines and must have one-year residency prior to the date of elections. Such being the case, the COMELEC did not err when it inquired into the compliance by petitioner of Sections 3 and 5 of R.A. No. 9225 to determine if she reacquired her status as a natural-born Filipino citizen. It simply applied the constitutional provision and nothing more.

IN VIEW OF THE FOREGOING, the instant petition is **DISMISSED**, finding no grave abuse of discretion on the part of the Commission on Elections. The 14 May 2013 Resolution of the COMELEC *En Banc* affirming the 27 March 2013 Resolution of the COMELEC First Division is upheld.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, del Castillo, Abad, and *Reyes, JJ.,* concur.

Carpio, Villarama, Jr. and *Leonen, JJ.,* join the dissent of J. Brion.

Velasco, Jr. and *Mendoza,* JJ., no part.

Brion, J., see dissent.

Peralta, J., is on official leave.

Perlas-Bernabe, J., no part due to voluntary inhibition.

BRION, *J.*: *dissenting opinion:*

The petition before us is a petition for *certiorari*[1] with a prayer for a temporary restraining order, preliminary injunction and/or status *quo ante* order, that seeks to annul: (1) the respondent Commission on Elections (*COMELEC*) March 27, 2013[2] and May 14, 2013[3] COMELEC Resolutions cancelling petitioner Regina Ongsiako Reyes' (*petitioner* or *Reyes*) Certificate of Candidacy (*COC*) for the position of Representative in the lone district of Marinduque, and (2) the June 5, 2013 Certificate of Finality[4] declaring the May 14, 2013 Resolution final and executory in SPA Case No. 13-053(DC).

I. THE CASE AND THE DISSENT IN CONTEXT

I submit this Dissenting Opinion to express my strong reservations to the majority's outright dismissal of this most ***unusual** case* — a term I do not use lightly as shown by the reasons stated below.

I clarify at the outset that the present case is at its **inception stage**; it is a **newly filed petition** that the Court is **acting upon for the first time** and which the majority opted to **DISMISS OUTRIGHT** after an initial review, based solely on the petition and its annexes and its "finding [that there was] no grave abuse of discretion on the part of the Commission on Elections."

Subsequent to the COMELEC's rulings, however, **intervening events occurred** that might have materially affected the jurisdictional situation and the procedural requirements in handling and resolving the case. The petitioner was **proclaimed** as the winner by the Marinduque Provincial Board of Canvassers (*PBOC*), and she subsequently **took her oath of office**.

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[1] *Rollo*, pp. 3-37.

[2] *Id.* at 40-51.

[3] *Id.* at 52-55.

[4] *Id.* at 163-165.

This Dissent is filed, not on the basis of the intrinsic merits of the case, but because of the outright and reckless denial of the minority's plea that the respondents be required to at least **COMMENT** on the petition in light of the **gravity of the issues** raised, the potential **effect on jurisprudence**, and the affected personal relationships within and outside the Court, before any further action can be made. The presented issues refer to –

- the Court's **lack of jurisdiction** over the subject matter of the petition, which jurisdiction should now lie with the House of Representatives Electoral Tribunal (*HRET),* and
- the **grave abuse of discretion** by the COMELEC in handling the case that led to the assailed COMELEC decision.

Viewed in these lights, it should be appreciated that **the Court in effect did not rule on the merits of the case after considering the parties' legal and factual positions**. The majority's Resolution is in fact only a ruling that the Court no longer wishes to review the COMELEC's rulings despite the issues raised and the attendant intervening circumstances.

Despite its seemingly simple approach, the Court's outright dismissal of the petition is replete with profound effects on the petitioner on the indirect beneficiary of the ruling, and on jurisprudence, as it effectively upholds the disqualification of petitioner and leaves the remaining candidate in Marinduque as an unopposed candidate.[5] What is not easily seen by the lay observer is that by immediately ruling and ***avoiding the jurisdiction of the HRET on the matter of qualification***, the majority avoids a *quo warranto* petition that, if successful, would render petitioner Reyes disqualified, leaving the congressional position in Marinduque's lone district vacant.

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[5] Congressman Lord Allan Jay Velasco, son of incumbent Supreme Court Justice Presbitero J. Velasco, Jr.

Significantly, the Dissent is not a lonely one made solely by the undersigned; he is joined by three (3) other Justices.[6] Seven (7) Justices[7] formed the majority with three (3) Justices inhibiting for personal reasons,[8] with one (1) Justice absent.[9]

II. SUMMARY OF THE DISSENT'S SUPPORTING POSITIONS

That this unusual case at least deserves further proceedings from this Court other than the OUTRIGHT DISMISSAL the majority ordered, is supported by the following considerations:

***First*, the questions raised in the petition are NOT too unsubstantial to warrant further proceedings.**

a. Under Section 6, Rule 64 of the Rules of Court, the Court may dismiss the petition if it was filed ***manifestly for delay, or the questions raised are too unsubstantial to warrant further proceedings***. In the present case, the majority dismissed the petition outright despite the threshold issue of jurisdiction that Reyes squarely raised.

b. The due process issues Reyes raised with respect to the COMELEC proceedings cannot be taken lightly**,** in particular, the COMELEC's failure to accord her the opportunity to question the nature and authenticity of the evidence submitted by the respondent Joseph Tan (*Tan*) as well as controverting evidence the petition cited. In fact, no less than **COMELEC Chairman Sixto Brillantes Jr**., echoed this concern in his **Dissenting Opinion** from the May 14, 2013 Resolution of the COMELEC *en banc*.

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[6] Justices Antonio T. Carpio, Martin S. Villarama, Jr. and Marvic Mario Victor F. Leonen.

[7] Chief Justice Maria Lourdes P. A. Sereno; and Justices Teresita J. Leonardo-de Castro, Lucas P. Bersamin, Mariano C. del Castillo, Roberto A. Abad, Jose Portugal Perez, and Bienvenido L. Reyes.

[8] Justices Presbitero J. Velasco, Jr., Jose Catral Mendoza and Estela M. Perlas-Bernabe.

[9] Justice Diosdado M. Peralta.

c. A third issue raised relates to the COMELEC's imposition of a qualification for the position of congressman, other than those mentioned in the Constitution. The Court's Resolution glossed over this issue and did not touch it at all. For this reason, this Dissent will similarly refrain from discussing the issue, except to state that the issue raised touches on the Constitution and should have at least merited a passing mention by the Court in its immediate and outright dismissal of the petition.

***Second*, unless the case is clearly and patently shown to be without basis and out of our sense of *delicadeza* (which we should have), the Court should at least hear and consider both sides before making a ruling that would favor the son of a Member of the Court.**

To reiterate, the COMELEC *en banc* ruling cancelling Reyes' CoC means that: (1) Reyes' CoC is void *ab initio*; (2) that she was never a valid candidate at all; and (3) all the votes in her favor are stray votes. Consequently, the remaining candidate would be declared the winner, as held in *Aratea v. Commission on Elections*[10] *Jalosjos, Jr. v. Commission on Elections*[11] and *Maquiling v. Commission on Elections.*[12]

Third, the majority's holding that the jurisdiction of the HRET only begins after the candidate has assumed the office on June 30 is contrary to prevailing jurisprudence; in fact, it is **a major retrogressive jurisprudential development** that can emasculate the HRET. In making this kind of ruling, the *Court should have at least undertaken a full-blown proceeding rather than simply declare the **immediate and outright dismissal*** of the petition.

Note in this regard that the majority's jurisprudential ruling –

a. is contrary to the HRET rules.

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[10] G.R. No. 195229, October 9, 2012.

[11] G.R. Nos. 193237 and 193536, October 9, 2012.

[12] G.R. No. 195649, April 16, 2013.

b. effectively allows the filing of any election protest or a petition for *quo warranto* only after the assumption to office by the candidate on June 30 at the earliest. In the context of the present case, any election protest protest or petition for *quo warranto* filed on or after June 30 would be declared patently out of time since the filing would be more than fifteen (15) days from Reyes' proclamation on May 18, 2013.

c. would affect all future proclamations since they cannot be earlier than 15 days counted from the June 30 constitutional cut-off for the assumption to office of the newly elected officials.

III. THE ASSAILED COMELEC PETITION

A. *The Petition Before the COMELEC*

The present petition before this Court and its attachments show that on October 1, 2012, Reyes filed her CoC for the position of Representative for the lone district of Marinduque. On October 10, 2012, Tan filed with the COMELEC a petition to deny due course or to cancel Reyes' CoC. Tan alleged that Reyes committed material misrepresentations in her CoC, specifically: (1) that she is a resident of Brgy. Lupac, Boac Marinduque when in truth she is a resident of 135 J.P. Rizal, Brgy. Milagrosa Quezon City or Bauan Batangas following the residence of her husband; (2) that she is a natural-born Filipino citizen; (3) that she is not a permanent resident of, or an immigrant to, a foreign country; (4) that her date of birth is July 3, 1964, when in truth it is July 3, 1958; (5) that her civil status is single; and (6) that she is eligible for the office she seeks to be elected to.

B. *The COMELEC Proceedings*

In her Answer, Reyes averred that while she is publicly known to be the wife of Rep. Hermilando Mandanas of Bauan, Batangas, the truth of the matter is that they are not legally married; thus, Mandanas' residence cannot be attributed to her. She also

countered that the evidence presented by Tan does not support the allegation that she is a permanent resident or a citizen of the United States. With respect to her birth date, her birth certificate issued by the NSO showed that it was on July 3, 1964. At any rate, Reyes contended that the representations as to her civil status and date of birth are not material so as to warrant the cancellation of her CoC.

On February 8, 2013, Tan filed a Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits consisting of, among others, a copy of an article published online on January 8, 2013 entitled "Seeking and Finding the Truth about Regina O. Reyes." This article provided a database record from the Bureau of Immigration and Deportation (*BID*) indicating that Reyes is an American citizen and a holder of a US passport that she has been using since 2005. Tan also submitted a photocopy of a Certification of Travel Records from the BID, which showed that Reyes holds a US passport No. 306278853. Based on these pieces of evidence and the fact that Reyes failed to take an Oath of Allegiance and execute an Affidavit of Renunciation of her American citizenship pursuant to Republic Act No. 9225 (*RA 9225*), Tan argued that Reyes' was ineligible to run for the position of Representative and thus, her CoC should be cancelled.

C. ***The COMELEC First Division Ruling***

On **March 27, 2013**, the COMELEC First Division issued a Resolution granting the petition and cancelling Reyes' CoC. On the alleged misrepresentations in Reyes' CoC with respect to her civil status and birth date, the COMELEC First Division held that these are not material representations that could affect her qualifications or eligibility, thus cancellation of CoC on these grounds is not warranted.

The COMELEC First Division, however, found that Reyes committed false material representation with respect to her citizenship and residency. **Based on the newly discovered evidence submitted by Tan, the COMELEC First Division found that Reyes was a holder of a US passport, which she**

continued to use until June 30, 2012; she also failed to establish that she had applied for repatriation under RA 9225 by taking the required Oath of Allegiance and executing an Affidavit of Renunciation of her American Citizenship. Based on these findings, the COMELEC First Division ruled the Reyes remains to be an American citizen, and thus, is ineligible to run and hold any elective office.

On the issue of her residency in Brgy. Lupac, Boac, Marinduque, the COMELEC First Division found that Reyes did not regain her domicile of origin in Boac, Marinduque after she lost it **when she became a naturalized US citizen**; that Reyes had not shown that she had re-acquired her Filipino citizenship under RA 9225, there being no proof that she had renounced her US citizenship; thus, she has not abandoned her domicile of choice in America. Citing *Japzon v. Commission on Elections,*[13] the COMELEC First Division held that a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon re-acquisition of Filipino citizenship, he must still show that he chose to establish his domicile in the Philippines by positive acts and the period of his residency shall be counted from the time he made it his domicile of choice.

Finally, the COMELEC First Division disregarded Reyes' proof that she met the one-year residency requirement when she served as Provincial Administrator of the province of Marinduque from January 18, 2011 to July 13, 2011 as it is not sufficient to satisfy the one-year residency requirement.

On April 8, 2013, Reyes filed her motion for reconsideration. Attached to the motion were an Affidavit of Renunciation of Foreign Citizenship dated September 21, 2012 and a Voter Certification in Boac, Marinduque dated April 17, 2012. In her Motion, Reyes admitted that she was married to an American citizen named Saturnino S. Ador Dionisio in 1997 and thus, she acquired dual citizenship through marriage to an American citizen.

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[13] G.R. No. 180088, January 19, 2009, 576 SCRA 331.

D. ***The COMELEC en banc Ruling***

On **May 14, 2013**, the COMELEC *en banc* promulgated its Resolution denying Reyes' motion for reconsideration and affirming the ruling of the COMELEC First Division on the ground that the former's motion was a mere rehash of the arguments she raised against the First Division ruling.

D-a. ***Commissioner Lim's Concurring Opinion***

Commissioner Lim concurred in the result and held that Reyes failed to comply with twin requirements of RA 9225; she belatedly filed her Affidavit of Renunciation of Foreign Citizenship but failed to submit an Oath of Allegiance. She also failed to prove that she complied with the one-year residency requirement for lack of evidence of any overt or positive act that she had established and maintained her residency in Boac, Marinduque.

D-b. ***Chairman Brillantes' Dissenting Opinion***

Chairman Brillantes dissented from the majority and held that Tan *failed to offer substantial evidence to prove that Reyes lost her Filipino citizenship*. He noted that the internet article by a certain Eli Obligacion showing that Reyes used a US passport on June 30, 2012 is hearsay while the purported copy of the BID certification is merely a photocopy and not even a certified true copy of the original, thus similarly inadmissible as evidence. Chairman Brillantes also emphasized that *a petition to deny due course under Section 78 of the Omnibus Election Code (OEC) cannot be a pre-election substitute for a quo warranto proceeding*. Under prevailing laws, there remains to be no pre-election legal remedy to question the eligibility or lack of qualification of a candidate. Chairman Brillantes was of the view that *a petition to deny due course tackles exclusively the issue of deliberate misrepresentation over a qualification*, and not the lack of qualification *per se* which is the proper subject of a *quo warranto* proceeding.

Finally, he opined that the issues pertaining to Reyes' residence and citizenship requires exhaustive presentation and examination

of evidence that are *best addressed in a full blown quo warranto proceeding* rather than the summary proceedings in the present case.

IV. EVENTS SUBSEQUENT TO THE COMELEC DECISION

A. On **May 18, 2013**, **the Marinduque PBOC proclaimed Reyes** as the duly elected member of the House of Representatives for Marinduque, having garnered the highest number of votes in the total of 52, 209 votes.

B. On **June 5, 2013**, the COMELEC *en banc* issued a **Certificate of Finality** declaring its May 14, 2013 Resolution final and executory citing paragraph b, Section 13, Rule 18 of the COMELEC Rules of Procedure in relation to paragraph 2, Section 8, of Resolution No. 9523 which provides that **a decision or resolution of the Commission *en banc*** in Special Actions and Special Cases **shall become final and executory five (5) days after its promulgation** unless a restraining order is issued by the Supreme Court.

C. On **June 7, 2013**, Reyes took her **oath of office** before House Speaker Rep. Feliciano R. Belmonte, Jr.

V. THE PETITION BEFORE THIS COURT

A. *Positions and Arguments*

In support of her petition before this Court, Reyes submits the following positions and arguments:

(1) COMELEC has been ousted of jurisdiction when she was duly proclaimed the winner for the position of Representative of the lone district of Marinduque;

(2) COMELEC violated her right to due process when it took cognizance of the documents submitted by Tan that were not testified to, offered and admitted in evidence without giving her the opportunity to question the

authenticity of these documents as well as present controverting evidence;

(3) COMELEC gravely erred when it declared that petitioner is not a Filipino citizen and did not meet the one year residency requirement despite the finding that he assumed and held office as provincial administrator;

(4) COMELEC gravely abused its discretion in enforcing the provision of RA 9225 insofar as it adds to the qualifications of Members of the House of Representatives other than those enumerated in the Constitution.

B. *The Issues Raised*

As presented to this Court, the petition raised the following issues:

(1) Whether or not the COMELEC is ousted of jurisdiction over the petition who is a duly proclaimed winner and who has already taken her oath of office for the position of Member, House of Representatives?

(2) Whether or not the COMELEC gravely abused its discretion when it took cognizance of Tan's newly discovered evidence without having been testified to, as well as offered and admitted in evidence, in violation of Reyes' right to due process?

(3) Whether or not the COMELEC gravely abused its discretion when it declared that Reyes is not a Filipino citizen and did not meet the one-year residency requirement for the position of Member of the House of Representatives?

(4) Whether or not COMELEC gravely abused its discretion when, by enforcing RA 9225, it imposed additional qualifications to the qualifications of a Member of the House of Representatives under Section 6, Art. VI of the Constitution?

How the public respondent COMELEC views the issues presented, particularly the question of jurisdiction and grave abuse of discretion are presently unknown elements in these proceedings as the COMELEC has not been heard on the case. To be sure, it should have a say, as a named respondent, especially on the matter of jurisdiction.

VI. THE MAJORITY RULING

On the issue of the COMELEC's jurisdiction

Without the benefit of full blown arguments by the parties, the majority ruling ruled on the merits of the jurisdictional issue and held that the COMELEC has jurisdiction for the following reasons:

First, the HRET does not acquire jurisdiction over the issue of Reyes' qualifications and the assailed COMELEC Resolutions ***unless a petition is filed with the tribunal***.

Second, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives. A candidate is considered a Member of the House of Representatives with the concurrence of three requisites: (a) a valid proclamation; (b) a proper oath; and (c) assumption of office.

It went on to state that Reyes cannot be considered a Member of the House of Representatives because she had not yet assumed office; she can only do so on June 30, 2013. It pointed out, too, that *before Reyes' proclamation on May 18, 2013*, the COMELEC *en banc* had already finally disposed of the issue of Reyes US citizenship and lack of residency; thus, there was no longer any pending case at that time. In these lights, it held that COMELEC continued to have jurisdiction.

On the issue of admissibility of the evidence presented and due process

The majority emphasized that the COMELEC is not strictly bound to adhere to the technical rules of evidence. Since the

proceedings to deny due course or to cancel a CoC are summary in nature, then the newly discovered evidence was properly admitted by the COMELEC. Also, there was no denial of due process since Reyes was given every opportunity to argue her case before the COMELEC.

On the issue of citizenship

Again ruling on the merits, the majority upheld the COMELEC's finding that based on the Tan's newly discovered evidence, Reyes is an American citizen and thus is ineligible to run and hold any elective office. The majority likewise held that the burden of proof had been shifted to Reyes to prove that: (1) she is a natural-born Filipino citizen, and that (2) she re-acquired such status by properly complying with the requirements of RA 9225, and that Reyes had failed to substantiate that she is a natural born Filipino citizen and complied with the requirements of RA 9925. It emphasized that Reyes inexplicably failed to submit an Oath of Allegiance despite belatedly filing an Oath of Renunciation and that her oath that she took in connection with her appointment as Provincial Administrator does not suffice to satisfy the requirements of RA 9225.

On the issue of residency

The majority similarly affirmed the COMELEC's ruling that Reyes had not abandoned her domicile of choice in the United States and thus did not satisfy the one-year Philippine residency requirement. It held that Reyes effectively abandoned her domicile of origin in Boac, Marinduque when she became a naturalized US citizen. In the absence of proof that she had renounced her American citizenship, she cannot be considered to have abandoned her domicile of choice in the US. The majority also noted that Reyes' service as Provincial Administrator from January 18, 2011 to July 13, 2011 is not sufficient to prove her one-year residency in Boac, Marinduque.

VII. COMMENTS ON THE MAJORITY'S RULING

The majority's unusual approach and strained rulings that already touched on the merits of substantial issues raised should, at the very least, not be allowed to stand without comments. I call these "comments" as a "refutation" implies a consideration on the merits of properly submitted and debated issues, which did not happen in this case.

A. *No basis exists to DISMISS the petition outright.*

Section 6 of Rule 64 of the Rules of Court[14] merely requires that the petition be sufficient in form and substance to justify an order from the Court to act on the petition and to require the respondents to file their comments. The same rule also provides that the Court may dismiss the petition outright (as the majority did in the present case) if it was filed manifestly **for delay or if the questions raised are too unsubstantial to warrant further proceedings**.

In the present case, the petition is indisputably sufficient in form and substance; no issue on this point was even raised. Thus, the question before the Court — if Rule 64, Section 6 were to be followed — is whether the issues raised by Reyes were too unsubstantial to warrant further proceedings.

I submit that the issues raised cannot be unsubstantial as they involve crucial **issues of jurisdiction and due process**.

The due process issue, of course, pertained to the assailed COMELEC ruling that admittedly can be evaluated based on the records. The matter of evaluation, however, is not simply a matter of doing it; it is the very problem that I raise because

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[14] Section 6 of Rule 64 of the Rules of Court states:

Section 6. *Order to comment*. — If the Supreme Court finds the petition sufficient in form and substance, it shall order the respondents to file their comments on the petition within ten (10) days from notice thereof; otherwise, the Court may dismiss the petition outright. The Court may also dismiss the petition if it was filed manifestly for delay or the questions raised are too unsubstantial to warrant further proceedings. (n)

it must be a meaningful one that fully appreciates the parties' positions, particularly in a situation where the petition raised arguments that are not without their merits. **In this situation, the Court cannot simply go through the motions of evaluation and then simply strike out the petitioner's positions.** The Court's role as adjudicator and the demands of basic fairness require that we should fully hear the parties and rule based on our appreciation of the merits of their positions in light of what the law and established jurisprudence require.

a. **The Due Process Component**

The determination of the merits of the petitioner's claim point us, at the very least, to the need to consider whether evidence attributed to a person who is not before the Court and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case, should be taken as "truth." Even casting technical rules of evidence aside, common sense and the minimum sense of fairness dictate that an article in the internet cannot simply be taken to be evidence of the truth of what it says, nor can photocopies of documents not shown to be genuine be taken as proof of the "truth." To accept these materials as statements of "truth" is to be partisan and to deny the petitioner her right to both procedural and substantive due process. **Again, at the very least, further inquiry should have been made before there was the judgment.**

Some, to be sure, may label the denial of further inquiry to lack of prudence; **others, not so charitably minded, may however refer to this as partisanship.**

b. **The Jurisdictional Component.**

The jurisdictional component of the petition is interesting because it involved **matters that were not covered by the assailed COMELEC rulings** for the simple reason that **they were intervening events** that transpired outside (although related with) the assailed rulings. In fact, they involved questions of fact and law separate from those of the assailed COMELEC rulings. Yet, the majority, **in its <u>rush to judgment</u>**, lumped

them together with the assailed rulings under the dismissive phrase "did not commit any grave abuse of discretion" in the dispositive portion of its ruling. Such was the haste the majority exhibited in the desire to pronounce swift and dismissive judgment. **I can only surmise that the majority might have considered the jurisdictional issues raised "too insubstantial to warrant further proceedings."**

Is this still lack of prudence?

Reyes' proclamation divested the COMELEC of jurisdiction over her qualifications in favor of the HRET

The profound effect of the majority's ruling on HRET jurisdiction and on jurisprudence render comments on this point obligatory, if only to show that the matter is not insubstantial and should further be explored by the Court.

The majority held that the COMELEC still has jurisdiction because **the HRET does not acquire jurisdiction over the issue of the petitioner's qualifications, as well as over the assailed resolutions unless a petition is duly filed.** The *ponencia* emphasizes that Reyes has not averred that she has filed such action.

This line of thought is, to say the least, confusing, particularly on the point of why Reyes who has garnered the majority of the votes cast in Marinduque, who has been proclaimed pursuant to this electoral mandate, and who has since taken her oath of office, would file a petition, either of protest or *quo warranto*, before the HRET. Why she would file a petition for *certiorari* before this Court may be easier to understand — the COMELEC, despite her proclamation and oath, has issued an order mandating her disqualification executory; she may merely want to halt the enforcement of this COMELEC order with the claim that the arena for her election and qualification has shifted now to the HRET and is no longer with the COMELEC.

In any case, to stick to election law basics, the matter of jurisdiction between the COMELEC and the HRET has always

constituted a dichotomy; the relationship between the COMELEC and the HRET in terms of jurisdiction is not an appellate one but is mutually exclusive.

This mutually exclusive jurisdictional relationship is, as a rule, sequential. This means that the COMELEC's jurisdiction ends when the HRET's jurisdiction begins. Thus, there is no point in time, when a vacuum in jurisdiction would exist involving congressional candidates. This jurisdiction, of course, refers to **jurisdiction over the subject matter**, which no less than the Philippine Constitution governs. Under Section 17, Article VI, the subject matter of HRET's jurisdiction is the "election, returns, and qualifications of Members of the House of Representatives."

Where one jurisdiction ends and the other begins, is a matter that jurisprudence appears to have settled, but is nevertheless an issue that the Court should perhaps continue to examine and re-examine because of the permutation of possible obtaining situations — which, to my mind, translates to the existence of a critical issue that should be ventilated before this Court if it is to make any definitive ruling on any given situation.

I submit on this point that the **proclamation** of the winning candidate is the **operative fact** that triggers the jurisdiction of the HRET over election contests relating to the winning candidate's election, return and qualifications. In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation and the party questioning the qualifications of the winning candidate should now present his or her case in a proper proceeding (i.e. *quo warranto)* before the HRET who, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualification of members of the House of Representatives.

The Court has interestingly rendered various rulings on the points which all point to the statement above. In *Limkaichong v. Comelec,*[15] the Court pointedly held that the proclamation of

[15] G.R. Nos. 178831-32, 179120, 179132-33 & 179240-41, April 1, 2009, 583 SCRA 1.

a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation.[16]

The Court speaking through no less than **Associate Justice Roberto A. Abad** in the recent case of *Jalosjos, Jr. v Commission on Elections*[17] held that the **settled rule is that "the proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET**"[18]

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[16] *Id.*, "We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. **It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.** The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members."

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"Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto,* within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections* we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives."

[17] G.R. Nos. 192474, 192704, 193566, June 26, 2012.

[18] *Id.*, "While the Constitution vests in the COMELEC the power to decide all questions affecting elections, such power is not without limitation. It does not extend to contests relating to the election, returns, and qualifications of members of the House of Representatives and the Senate. The Constitution vests the resolution of these contests solely upon the appropriate Electoral Tribunal of the Senate or the House of Representatives.

Based on these considerations, it appears clear that any ruling from this Court — as the majority ruled — that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the proclaimed representative **who has been proclaimed but not yet assumed office** is a major retrogressive jurisprudential development, in fact, a complete turnaround from the Court's prevailing jurisprudence on the matter; **such rule — if it becomes established – can very well emasculate the HRET**.

Thus, the Court should now fully hear this matter, instead of dismissively ruling on a new petition where the respondent side has not been fully heard.

The ponencia's holding on the COMELEC's jurisdiction vis-à-vis the HRET is inconsistent with the HRET Rules

The view that the proclamation of the winning candidate is the operative fact that triggers the jurisdiction of the HRET is also supported by the HRET Rules. They state:

RULE 14. *Jurisdiction.* — The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.

RULE 15. *How Initiated*. — An election contest is initiated by the filing of a verified petition of protest or a verified petition for quo warranto against a Member of the House of Representatives. An

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The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. The proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET.

Here, when the COMELEC En Banc issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.

election protest shall not include a petition for quo warranto. Neither shall a petition for quo warranto include an election protest.

RULE 16. Election Protest. — A **verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate** who has duly filed a certificate of candidacy and has been voted for the same office, **<u>within fifteen (15) days after the proclamation of the winner.</u>** The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee. x x x

RULE 17. *Quo Warranto.* – **A verified petition for quo warranto contesting the election of a Member of the House of Representatives** on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned **<u>within fifteen (15) days from the date of the proclamation of the winner.</u>** The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent[.]

Based on the above Rules, it appears clear that as far as the HRET is concerned, the **proclamation of the winner** in the congressional elections serves as the **reckoning point** as well as the trigger that brings any contests relating to his or her election, return and qualifications within its sole and exclusive jurisdiction.

In the context of the present case, by holding that the COMELEC retained jurisdiction (because Reyes, although a proclaimed winner, has not yet assumed office), the majority effectively emasculates the HRET of its jurisdiction as it allows the filing of an election protest or a petition for *quo warranto* only after the assumption to office by the candidate (*i.e*, on June 30 in the usual case). To illustrate using the dates of the present case, any election protest or a petition for *quo warranto* filed after June 30 or more than fifteen (15) days from Reyes' proclamation on May 18, 2013, shall certainly be dismissed outright by the HRET for having been filed out of time under the HRET rules.

Did the COMELEC gravely abuse its discretion when it declared its May 14, 2013 Resolution final and executory?

By the petitioner's theory, the COMELEC *en banc's* May 14, 2013 Resolution (cancelling Reyes' CoC) did not attain finality because Reyes' proclamation on May 18, 2013 divested the COMELEC of its jurisdiction over matters pending before it relating to Reyes' eligibility. Two material records are critical on this point. **First**, the fact of proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 Resolution pursuant to the COMELEC Rules of Procedure. The **second** is the COMELEC order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory.

How these instruments will co-exist and be given weight in relation with one another is a matter that, at this point and in the absence of research, deliberation, debate and discussion may not be easily be made. **The Court, to be sure, would want to hear the HRET, the COMELEC and the Office of the Solicitor General, on this point. Of course, this hearing and debate will not take place under the hasty dismissive action the majority made.**

Did the COMELEC gravely abuse its discretion in the appreciation and evaluation of the evidence leading it to erroneously conclude that Reyes is not a natural born Filipino citizen and that she had abandoned and lost her domicile of origin when she became a naturalized American citizen

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions to this rule have been established and consistently

recognized, among others, when the COMELEC's appreciation and evaluation of evidence are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[19]

It is also basic in the law of evidence that one who alleges a fact has the burden of proving it. In administrative cases, the quantum of proof required is substantial evidence.[20] In the present case, the majority obviously believed, together with the COMELEC, that Tan did overcome this burden and that his documentary evidence he submitted established that Reyes is not a Filipino citizen. A major clash between the parties exists, of course, on this point as Reyes, as expressed in her petition, is of the completely opposite view. Even a quick look at Tan's evidence, however, indicates that Reyes' view is not without its merits and should not simply be dismissively set aside.

First, Tan submitted an article published online (**blog article**) written by one Eli J. Obligacion (*Obligacion*) entitled "Seeking and Finding the Truth About Regina O. Reyes." This printed blog article stated that the author had obtained records from the BID stating that Reyes is an American citizen; that she is the holder of a US passport and that she has been using the same since 2005.

How the law on evidence would characterize Obligacion's blog article or, for that matter, any similar newspaper article, is not hard for a law student answering the Bar exam to tackle: the article is double hearsay or hearsay evidence that is twice removed from being admissible as it was offered to prove its contents (that Reyes is an American citizen) without any other competent and credible evidence to corroborate them. Separately of course from this consideration of admissibility is the question of probative value. On top of these underlying considerations

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[19] *Sabili v. Commission on Elections,* G.R. No. 193261, April 24, 2012.

[20] *Matugas v. Commission on Elections,* G.R. No. 151944, January 20, 2004, 420 SCRA 365.

is the direct and frontal question: did the COMELEC gravely abuse its discretion when it relied on this piece of evidence to conclude that Reyes is not a Filipino citizen?

Second, Tan also submitted a **photocopy** of a "**certification**" issued by one Simeon L. Sanchez of the BID showing the travel records of Reyes from February 15, 2000 to June 30, 2012 and that she is a holder of US Passport No. 306278853. This photocopy also indicates in some entries that Reyes is an American while other entries denote that she is Filipino. The same questions of admissibility and probative value of evidence arise, together with the direct query on the characterization of the COMELEC action since the COMELEC concluded on the basis of these pieces of evidence that Reyes is not a Filipino citizen because it is not only incompetent but also lacks probative value as evidence.

Contributory to the possible answer is the ruling of this Court that a "certification" is not a certified copy and is not a document that proves that a party is not a Filipino citizen.[21]

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[21] See *Matugas v. Commission on Elections,* ibid, where the Court held:

"**Furthermore, Section 7, Rule 130 of the Rules of Court states that when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, the contents of said document may be proved by a certified copy issued by the public officer in custody thereof.** The subject letter-inquiry, which contains the notation, appears to be a mere photocopy, not a certified copy.

The other document relied upon by petitioner is the *Certification* dated 1 September 2000 issued by the B*ID.* Petitioner submits that private respondent has declared that he is an American citizen as shown by said *Certification* and, under Section 26, Rule 130 of the Rules of Court, such declaration may be given in evidence against him.

The rule cited by petitioner does not apply in this case because the rule pertains to the admissibility of evidence. There is no issue here as to the admissibility of the BID *Certification*; the COMELEC did not hold that the same was inadmissible. **In any case, the BID *Certification* suffers from the same defect as the notation from the supposed US Embassy official. Said *Certification* is also a photocopy, not a certified copy."**

Moreover, the certification contains inconsistent entries regarding the "nationality" of private respondent. While some entries indicate that he is "American," other entries state that he is "Filipino."

Interestingly, in its March 27, 2013 Resolution that the petitioner now also assails, the COMELEC First Division ruled:

> Due to petitioner's submission of newly-discovered evidence thru a Manifestation dated February 7, 2013, however, establishing the fact that respondent is a holder of an American passport which she continues to use until June 30, 2012, petitioner was able to substantiate his allegations. **The burden now shifts to respondent to present substantial evidence to prove otherwise.** This, the respondent utterly failed to do, leading to the conclusion inevitable that respondent falsely misrepresented in her CoC that she is a natural-born Filipino citizen. Unless and until she can establish that she had availed of the privileges of RA 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines.[22]

This ruling, undeniably, opens for Reyes the argument that in the absence of sufficient proof (*i.e*, other than a photocopy of a "certification") that she is not a natural born Filipino citizen, no burden of evidence shifts to her to prove anything, particularly the fact that she is not an American citizen. Considering that Tan might have also failed to prove by substantial evidence his allegation that Reyes is an American citizen, the burden of evidence also cannot be shifted to the latter to prove that she had availed of the privileges of RA 9225 in order to re-acquire her status as a natural born Filipino citizen.

It ought to be considered, too, that in the absence of sufficient proof that Reyes lost her Filipino citizenship, the twin requirements under RA 9225 for re-acquisition of Filipino citizenship should not apply to her. Of course, Reyes admitted in her MR before the COMELEC that she is married to an American citizen. This admission, however, leads only to further arguments on how her admitted marriage affected her citizenship. Jurisprudence is not lacking on this point as in *Cordora v. Comelec*,[23] the

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[22] *Rollo,* p. 48.

[23] G.R. No. 176947, 19 February 2009, 580 SCRA 12.

Court held that the twin requirements of RA 9225 does not apply to a candidate who is a natural born Filipino citizen who did not subsequently become a naturalized citizen of another country, *viz.:*

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano Valles v. COMELEC,* and *AASJS v. Datumanong*. *Mercado* and *Valles* involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.
>
> R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:
>
> I __________ , solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC, Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. **In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.**

As to the issue of Reyes' residency in Boac, Marinduque, the COMELEC First Division as affirmed by the COMELEC *en banc* held:

Accordingly, the more appropriate issue is whether respondent had regained her domicile of origin in the Municipality of Boac, Marinduque after she lost the same when she became a naturalized American citizen.

x x x x x x x x x

Thus, a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon re-acquisition of Filipino citizenship pursuant to RA9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.

In this case, there is no showing that whatsoever that respondent had already re-acquired her Filipino citizenship pursuant to RA 9225 so as to conclude that she has regained her domicile in the Philippines. There being no proof that respondent had renounced her American

citizenship, it follows that she has not abandoned her domicile of choice in the USA.

The only proof presented by respondent to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque is her claim that she served as Provincial Administrator of the province from January 18, 2011 to July 13, 2011. But such fact alone is not sufficient to prove her one-year residency. For, respondent has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA.[24]

This COMELEC action again opens questions about its appreciation and evaluation of the evidence and whether it overstepped the limits of its discretion to the point of being grossly unreasonable, if indeed the above-cited findings and conclusions have no basis in fact and in law.

To begin with, the evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the holder of a US passport. In *Aznar v. Comelec,*[25] the Court ruled that the mere fact that respondent Osmena was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the COMELEC arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.

VIII. CONCLUSIONS

All told, the COMELEC does not appear to have an airtight case based on substantial evidence on the citizenship and residence

[24] *Rollo,* pp. 48-50.

[25] G.R. No. 83820, May 25, 1990, 185 SCRA 703.

SECOND DIVISION

[A.M. No. SB-13-20-P. June 26, 2013]
(Formerly A.M. No. 12-29-SB-P)

RIA PAMELA B. ABULENCIA and BLESSIE M. BURGONIO, *complainants, vs.* **REGINO R. HERMOSISIMA, SECURITY GUARD II, SHERIFF AND SECURITY DIVISION, SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF MISCONDUCT; GRAVE MISCONDUCT DISTINGUISHED FROM SIMPLE MISCONDUCT; HURLING INVECTIVES ON CO-WORKERS DURING OFFICE HOURS AND WITHIN THE COURT PREMISES, ALTHOUGH NOT WORK RELATED, CONSTITUTE CLEAR DEVIATIONS FROM THE ESTABLISHED NORMS OF CONDUCT WHICH OUGHT TO BE FOLLOWED BY PUBLIC OFFICERS, AMOUNTING TO SIMPLE MISCONDUCT.—** Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. A misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. Otherwise, a misconduct is only simple. Accordingly, simple misconduct has been defined as an unacceptable behavior which transgresses the established rules of conduct for public officers, work-related or not. In the case at bar, respondent's act of hurling invectives on the complainants during office hours and within the court premises was correctly held to be a case of simple misconduct. Verily, respondent's foul and vulgar utterances, albeit not work related, constitute clear deviations from the established norms of conduct which ought to be followed by public officers. For such infractions, it cannot be gainsaid that respondent should be held administratively liable for the same.

2. **ID.; ID.; ID.; COURT EMPLOYEES ARE SUPPOSED TO BE WELL-MANNERED, CIVIL AND CONSIDERATE IN THEIR ACTUATIONS, BOTH IN THEIR RELATIONS WITH CO-WORKERS, AND THE TRANSACTING PUBLIC FOR BOORISH, FOUL LANGUAGE, AND ANY MISBEHAVIOR IN THE COURT PREMISES DIMINISH ITS SANCTITY AND DIGNITY.—** [I]t must be pointed out that respondent's justification, *i.e.*, that his outbursts were only made out of his frustration due to the delayed release of his loyalty benefit can be hardly regarded as a justifiable excuse. The Court has consistently reminded that court employees are supposed to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language, and any misbehavior in the court premises diminish its sanctity and dignity. As held in *Wee v. Bunao, Jr.*: x x x The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by strict propriety and decorum so as to earn and keep the public's respect for the judiciary. Any fighting or misunderstanding among court employees becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.

3. **ID.; ID.; ID.; ID.; ONE MONTH SUSPENSION IMPOSED FOR SIMPLE MISCONDUCT.—** Having failed to live up to the high standards of propriety and decorum expected of employees of the judiciary, the Court finds that respondent was correctly held administratively liable for simple misconduct. Under Rule 10, Section 46(D)(2) of the Uniform Rules on Administrative Cases in the Civil Service, the penalty for simple misconduct is suspension for one (1) month and one (1) day to six (6) months for the first offense. Accordingly, the penalty

recommended by the OCA, being within the range prescribed under the aforesaid rules, is therefore deemed to be proper.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from the Joint Complaint-Affidavit[1] filed by complainants Ria Pamela B. Abulencia and Blessie M. Burgonio, Clerk III and HRM Assistant, respectively, of the Administrative Division of the Sandiganbayan, charging respondent Regino R. Hermosisima, Security Guard II of the Sheriff and Security Division of the same court, with grave misconduct.

The Facts

On April 25, 2012, respondent inquired from the complainants about the status of the computation of the loyalty differential of Sandiganbayan employees. The complainants replied that they were still finalizing the computation based on the new directives of the Finance Division. Respondent then said, "*Bakit nyo pinapatagal?*"[2] to which complainant Burgonio replied, "*Matalino ka naman, ikaw na gumawa nyan!*"[3] Taken aback by the latter's response, respondent in a loud angry voice uttered, "*Mga putang-ina nyo, ang bobobo nyo! Ang ta-tanga nyo, ayusin nyo yang trabaho nyo!*"[4]

In this regard, complainants filed an administrative complaint against respondent for grave misconduct. In his Counter Affidavit,[5] respondent admitted his rude behavior which he explained was but an outburst of emotion, brought about by the delayed release of his loyalty benefits which he needed to sustain his five (5)

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[1] *Rollo,* pp. 12-13.

[2] *Id.* at 12.

[3] *Id.* at 18.

[4] *Id.* at 12.

children. He apologized to complainants for his conduct and pleaded for mercy and consideration.

A preliminary investigation was conducted by Atty. Mary Ruth M. Ferrer, Director III of the Legal Research and Technical Staff Division, who found a *prima facie* case against respondent for grave misconduct under Section 46(A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service or, at the very least, for simple misconduct under Section 46(D) (2), Rule 10 of the same rules.[6] The case was then assigned to Associate Justice Oscar C. Herrera, Jr. (Associate Justice Herrera, Jr.) for the conduct of a formal investigation where both parties were given the opportunity to present their respective evidence.

In a Resolution[7] dated October 22, 2012, Associate Justice Herrera, Jr. found the respondent guilty of simple misconduct only and recommended the penalty of one (1) month and one (1) day suspension from office with a warning that a repetition of the same or similar acts would warrant the imposition of a more severe penalty. The foregoing resolution was brought to the Office of the Court Administrator (OCA) for evaluation and recommendation.

The Action and Recommendation of the OCA

On April 10, 2013, the OCA submitted its Report[8] recommending that: (*a*) the administrative complaint against respondent be re-docketed as a regular administrative case; and (*b*) respondent be suspended for one (1) month and one (1) day without pay, and be sternly warned that a repetition of the same or similar acts shall be dealt with more severely.

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[5] *Id.* at 18-19.

[6] *Id.* at 3-9.

[7] *Id.* at 46-56.

[8] Administrative Matter for Agenda dated April 10, 2013 submitted by Court Administrator Jose Midas P. Marquez, *id.* at 140-144.

The Court's Ruling

The Court agrees with the findings and recommendations of the OCA.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. A misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. Otherwise, a misconduct is only simple.[9] Accordingly, simple misconduct has been defined as an unacceptable behavior which transgresses the established rules of conduct for public officers,[10] work-related or not.[11]

In the case at bar, respondent's act of hurling invectives on the complainants during office hours and within the court premises was correctly held to be a case of simple misconduct. Verily, respondent's foul and vulgar utterances, albeit not work related, constitute clear deviations from the established norms of conduct which ought to be followed by public officers. For such infractions, it cannot be gainsaid that respondent should be held administratively liable for the same.

In this relation, it must be pointed out that respondent's justification, *i.e.*, that his outbursts were only made out of his frustration due to the delayed release of his loyalty benefit can be hardly regarded as a justifiable excuse. The Court has consistently reminded that court employees are supposed to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language, and any misbehavior in the court

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[9] *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 506.

[10] *OCA v. Caya*, A.M. No. P-09-2632, June 18, 2010, 621 SCRA 221, 229.

[11] *Dela Cruz v. Zapico,* A.M. No. 2007-25-SC, September 18, 2008, 565 SCRA 658, 666.

premises diminish its sanctity and dignity.[12] As held in *Wee v. Bunao, Jr.*:[13]

> x x x The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by strict propriety and decorum so as to earn and keep the public's respect for the judiciary. Any fighting or misunderstanding among court employees becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.

In fine, having failed to live up to the high standards of propriety and decorum expected of employees of the judiciary, the Court finds that respondent was correctly held administratively liable for simple misconduct. Under Rule 10, Section 46(D)(2) of the Uniform Rules on Administrative Cases in the Civil Service, the penalty for simple misconduct is suspension for one (1) month and one (1) day to six (6) months for the first offense. Accordingly, the penalty recommended by the OCA, being within the range prescribed under the aforesaid rules, is therefore deemed to be proper.

WHEREFORE, respondent **REGINO R. HERMOSISIMA**, Security Guard II of the Sheriff and Security Division of the Sandiganbayan, is found **GUILTY** of **SIMPLE MISCONDUCT** and is **SUSPENDED** for a period of one (1) month and one (1) day without pay, effective immediately upon receipt of this Resolution. He is **STERNLY WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely.

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[12] *Wee v. Bunao, Jr.*, A.M. No. P-08-2487, September 29, 2010, 631 SCRA 445, 453.

[13] *Id.* at 454. (Citations omitted)

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 160982. June 26, 2013]

MANILA JOCKEY CLUB, INC., *petitioner, vs.* **AIMEE O. TRAJANO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION;; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; TO BE A VALID GROUND FOR DISMISSAL, THE SAME MUST BE BASED ON A WILLFUL BREACH OF TRUST AND CONFIDENCE FOUNDED ON CLEARLY ESTABLISHED FACTS, AND NOT ON THE EMPLOYER'S ARBITRARINESS, WHIMS, CAPRICES OR SUSPICION, AND MUST BE RELATED TO THE EMPLOYEE'S PEFORMANCE OF DUTIES; EXPOUNDED.— The valid termination of an employee may either be for just causes under Article 282 or for authorized causes under Article 283 and Article 284, all of the *Labor Code*. Specifically, loss of the employer's trust and confidence is a just cause under Article 282 (*c*), a provision that ideally applies only to cases involving an employee occupying a position of trust and confidence, or to a situation where the employee has been routinely charged with the care and custody of the employer's money or property. But the loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and confidence founded on clearly established facts. "A breach is willful," according to *AMA*

Computer College, Inc. v. Garay, "if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer." An ordinary breach is not enough. Moreover, the loss of trust and confidence must be related to the employee's performance of duties. As held in *Gonzales v. National Labor Relations Commission*: Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. He must be invested with confidence on delicate matters such as the custody, handling, care and protection of the employer's property and/or funds. But in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.

2. **ID.; ID.; ID.; ID.; THE LOSS OF TRUST AND CONFIDENCE MUST BE SHOWN TO BE GENUINE, NOT A MERE AFTERTHOUGHT TO JUSTIFY AN EARLIER ACTION TAKEN IN BAD FAITH, AND SHOULD NOT BE USED AS A SUBTERFUGE FOR CAUSES WHICH ARE ILLEGAL, IMPROPER AND UNJUSTIFIED.—** [T]o justify the supposed loss of its trust and confidence in Trajano, MJCI contends that the unauthorized cancellation of the ticket could have greatly prejudiced MJCI for causing damage to both its income and reputation. We consider the contention of MJCI unwarranted. As the records indicate, MJCI's prejudice remained speculative and unrealized. To dismiss an employee based on speculation as to the damage the employer could have suffered would be an injustice. The injustice in the case of Trajano would be greater if the supposed just cause for her dismissal was not even sufficiently established. While MJCI as the employer understandably had its own interests to protect, and could validly terminate any employee for a just cause, its exercise of the power to dismiss should always be tempered with compassion and imbued with understanding, avoiding its abuse. In this regard, we have to stress that the loss of trust and confidence as a ground for the dismissal of an employee must also be shown

to be genuine, for, as the Court has aptly pointed out in *Mabeza v. National Labor Relations Commission:* "x x x loss of confidence should not be simulated in order to justify what would otherwise be, under the provisions of law, an illegal dismissal. It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith."

3. **ID.; ID.; ID.; ID.; A BELATED INVOCATION OF LOSS OF CONFIDENCE BROADLY HINTS THE GROUND AS A MERE AFTERTHOUGHT TO BUTTRESS AN OTHERWISE BASELESS DISMISSAL OF THE EMPLOYEE.—** [T]he Court unavoidably notes that the invocation of loss of trust and confidence as a ground for dismissing Trajano was made belatedly. In its position paper dated September 2, 1998, MJCI invoked the grounds under Article 282 (*a*) and (*b*) of the *Labor Code* to support its dismissal of her, submitting then that the unauthorized cancellation of the ticket constituted a serious violation of company policy amounting to dishonesty. The first time that MJCI invoked breach of trust was in its motion for the reconsideration of the decision of the NLRC. MJCI also thereafter urged the ground of breach of trust in its petition for *certiorari* in the CA. Such a belated invocation of loss of confidence broadly hints the ground as a mere afterthought to buttress an otherwise baseless dismissal of the employee.

4. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS; NOTICE REQUIREMENT; NOT COMPLIED WITH.—** The procedure to be followed in the termination of employment based on just causes is laid down in Section 2 (*d*), Rule I of the *Implementing Rules of Book VI of the Labor Code*, to wit: Section 2. Security of Tenure. — x x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the *Labor Code*: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side. (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him. (iii) A written

notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In case of termination, the foregoing notices shall be served on the employee's last known address. A review of the records warrants a finding that MJCI did not comply with the prescribed procedure.

5. **ID.; ID.; ID.; ID.; CONFRONTATION OF WITNESSES IS REQUIRED ONLY IN ADVERSARIAL CRIMINAL PROSECUTIONS, BUT NOT IN COMPANY INVESTIGATIONS FOR THE ADMINISTRATIVE LIABILITY OF AN EMPLOYEE.—** Nor was it necessary at all for Trajano to be able to confront the complainant against her. In *Muaje-Tuazon v. Wenphil Corporation*, the Court has clarified that the opportunity to confront a witness is not demanded in company investigations of the administrative sins of an employee, holding thusly: x x x Petitioners must be reminded, however, that confrontation of witnesses is required only in adversarial criminal prosecutions, and not in company investigations for the administrative liability of the employee. Additionally, actual adversarial proceedings become necessary only for clarification, or when there is a need to propound searching questions to witnesses who give vague testimonies. This is not an inherent right, and in company investigations, summary proceedings may be conducted.

6. **ID.; ID.; ID.; ID.; PERSONAL SERVICE OF THE NOTICE OF TERMINATION ON THE EMPLOYEE IS NOT REQUIRED BUT THE NOTICE MUST BE SERVED ON THE LAST KNOWN ADDRESS OF THE EMPLOYEE.—** While personal service of the notice of termination on the employee is not required, Section 2 (*d*), Rule I of the *Implementing Rules of Book VI of the Labor Code* mandates that such notice be served on Trajano at her last known address, *viz*: x x x (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. **In case of termination, the foregoing notices shall be served on the employee's last known address.**

7. **ID.; ID.; ID.; THE EMPLOYER CARRIES THE BURDEN OF PROVING THAT ITS DISMISSAL OF THE EMPLOYEE WAS LEGAL.—** [T]he CA did not commit any error in

dismissing MJCI's petition for *certiorari* assailing the decision of the NLRC. It is worth repeating that in termination cases, the employer carries the burden of proving that its dismissal of the employee was legal. The employer's failure discharged its burden will readily mean that the dismissal has not been justified, and was, therefore, illegal. Accordingly, the failure of MJCI to establish the just cause for terminating Trajano fully warranted the NLRC's finding that Trajano's termination was illegal.

8. ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AND TO FULL BACKWAGES; IN CASE REINSTATEMENT IS NO LONGER POSSIBLE, AN AWARD OF SEPARATION PAY, IN LIEU OF REINSTATEMENT, WILL BE JUSTIFIED; REINSTATEMENT IS NO LONGER FEASIBLE WHEN A CONSIDERABLE TIME HAS LAPSED BETWEEN THE DISMISSAL AND THE RESOLUTION OF THE CASE; APPLIED.— Considering the lapse of time between the rendition of the decision of the NLRC and this ultimate resolution of the case, however, the Court holds that a review of the order of reinstatement and the award of backwages is necessary and in order. There is no question that an illegally dismissed employee is entitled to her reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances and other benefits or their monetary equivalent. In case the reinstatement is no longer possible, however, an award of separation pay, in lieu of reinstatement, will be justified. The Court has ruled that reinstatement is no longer possible: (*a*) when the former position of the illegally dismissed employee no longer exists; or (*b*) when the employer's business has closed down; or (*c*) when the employer-employee relationship has already been strained as to render the reinstatement impossible. The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case. In that regard, a lag of eight years or ten years is sufficient to justify an award of separation pay in lieu of reinstatement. Applying the foregoing to this case, the Court concludes that the reinstatement of Trajano is no longer feasible. More than 14 years have already passed since she initiated her complaint for illegal dismissal in 1998, filing

her position paper on September 3, 1998, before the Court could finally resolve her case. The lapse of that long time has rendered her reinstatement an impractical, if not an impossible, option for both her and MJCI. Consequently, an award of separation pay has become the practical alternative, computed at one month pay for every year of service.

9. ID.; ID.; ID.; ID.; AWARD OF BACKWAGES, COMPUTED FROM THE TIME THE EMPLOYEE'S ACTUAL COMPENSATION WAS WITHHELD UP TO THE FINALITY OF THE DECISION OF THE CASE.— Anent backwages, Trajano is entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time her actual compensation was withheld on June 6, 1998 up to the finality of this decision (on account of her reinstatement having meanwhile become non-feasible and impractical). This ruling is consistent with the legislative intent behind Republic Act No. 6715.

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos Law Office for petitioner.
Eduardo L. Antonio for respondent.

D E C I S I O N

BERSAMIN, *J.*:

An illegally dismissed employee is entitled to her reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances and other benefits or their monetary equivalent. Should the reinstatement be no longer feasible, an award of separation pay in lieu of reinstatement will be justified, and the backwages shall be reckoned from the time her wages were withheld until the finality of the decision.

The Case

Employer Manila Jockey Club, Inc. (MJCI) appeals *via* petition for review on *certiorari* the adverse decision promulgated on

January 30, 2003,[1] whereby the Court of Appeals (CA) dismissed the petition for *certiorari* MJCI had brought to assail the decision rendered by the National Labor Relations Commission (NLRC) declaring respondent Aimee O. Trajano to have been illegally dismissed, and ordered it to reinstate her to her former position with limited backwages of six months, without loss of seniority rights and other benefits.[2]

Antecedents

MJCI had employed Trajano as a selling teller of betting tickets since November 1989. On April 25, 1998, she reported for work. At around 7:15 p.m., two regular bettors gave her their respective lists of bets (*rota*) and money for the bets for Race 14. Although the bettors suddenly left her, she entered their bets in the selling machine and segregated the tickets for pick up by the two bettors upon their return. Before closing time, one of the bettors (requesting bettor) returned and asked her to cancel one of his bets worth ₱2,000.00. Since she was also operating the negative machine on that day, she obliged and immediately cancelled the bet as requested. She gave the remaining tickets and the ₱2,000.00 to the requesting bettor, the money pertaining to the canceled bet. When Race 14 was completed, she counted the bets received and the sold tickets. She found that the bets and the tickets balanced. But then she saw in her drawer the receipt for the canceled ticket, but the canceled ticket was not inside the drawer. Thinking she could have given the canceled ticket to the requesting bettor, she immediately looked for him but could not find him. It was only then that she remembered that there were two bettors who had earlier left their bets with her. Thus, she went to look for the other bettor (second bettor) to ask if the canceled ticket was with him. When she located the second bettor, she showed him

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[1] *Rollo,* pp. 35-42; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice), with Associate Justice Elvi John S. Asuncion and Associate Justice Sergio L. Pestaño, concurring.

[2] *Id.* at 43-53.

the receipt of the canceled ticket to counter-check the serial number with his tickets.[3]

Thereafter, the second bettor returned to Trajano and told her that it was one of his bets that had been canceled, instead of that of the requesting bettor. To complicate things, it was also the same bet that had won Race 14. Considering that the bet was for a daily double, the second bettor only needed to win Race 15 in order to claim dividends. At that point, she realized her mistake, and explained to the second bettor that the cancellation of his ticket had not been intentional, but the result of an honest mistake on her part. She offered to personally pay the dividends should the second bettor win Race 15, which the latter accepted. When Race 15 was completed, the second bettor lost. She was thus relieved of the obligation to pay any winnings to the second bettor.[4]

To her surprise, the reliever-supervisor later approached Trajano and told her to submit a written explanation about the ticket cancellation incident. The next day (April 26, 1998), she submitted the handwritten explanation to Atty. Joey R. Galit, Assistant Racing Supervisor. She then resumed her work as a selling teller, until later that day, when she received an inter-office correspondence signed by Atty. Galit informing her that she was being placed under preventive suspension effective April 28, 1998, for an unstated period of time. At the end of thirty days of her suspension, Trajano reported for work. But she was no longer admitted.[5] She then learned that she had been dismissed when she read a copy of an inter-office correspondence[6] about her termination posted in a selling station of MJCI.

Trajano instituted a complaint[7] for illegal dismissal against MJCI in the Department of Labor and Employment (DOLE).

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[3] *Id.* at 43-45.

[4] *Id.* at 45.

[5] *Id.*

[6] *Id.* at 193.

[7] *Id.* at 194-199.

She claimed that her dismissal was not based on any of the grounds enumerated under Article 282 of the *Labor Code*; that her dismissal on the ground of unauthorized cancellation of ticket had no basis because she was also the operator of the negative machine on the day in question with the authority to cancel tickets as requested; that the cancellation was not intentional on her part but resulted from an honest mistake that did not amount to dishonesty; that her dismissal was without due process of law because she was not aware of any justifiable cause of her termination; that she was not notified about or furnished a copy of the notice of dismissal; that instead, MJCI simply posted copies of the notice in all its selling stations, an act intended to embarrass and humiliate her by imputing an allegedly unauthorized cancellation of ticket against her; and that MCJI's acts were tainted with evident bad faith and malice.

Trajano prayed that she be reinstated to her former position without loss of seniority rights; that she be paid backwages until she would be fully reinstated; and that she be paid moral and exemplary damages amounting to ₱180,000.00 and attorney's fees of 10% of the total award.[8]

On its part, MJCI averred that on April 25, 1998, it received a letter[9] from Jun Carpio, the Field Officer of the Games and Amusement Board, calling its attention to a complaint against Trajano brought by a certain bettor named "Tito" who had reported the cancellation of his ticket that had already won the first leg (Race 14) of the daily double bet; that it acted on the complaint by placing her under preventive suspension[10] upon her submission of a written explanation[11] and after the conduct of preliminary investigation on the matter; that on June 5, 1998, it invited her to a clarificatory meeting in the presence of MJCI Raceday Union President Miguel Altonaga; and that it terminated

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[8] *Id.* at 198.

[9] *Id.* at 187.

[10] *Id.* at 191.

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

her services on the next day "*for cause due to unauthorized cancellation of ticket.*"[12]

MJCI maintained that Trajano's dismissal was justified because the unauthorized cancellation of the ticket had constituted a serious violation of company policy amounting to dishonesty; that her action had also constituted a just cause for terminating her employment under Article 282 of the *Labor Code*, particularly paragraph (*a*) on serious misconduct or willful disobedience and paragraph (*b*) on gross and habitual neglect of duty; that the admissions made in her written explanation left no doubt as to her participation in the unauthorized cancellation of the ticket; that she was afforded her right to due process by being given the chance to submit her written explanation and being appraised of the charges against her; that she was accompanied by the union leaders during the preliminary investigation of her case; and that the non-appeal of the decision to terminate her indicated that she and the union leaders believed in the merit of the decision to terminate her.[13]

Decision of the Labor Arbiter

On April 23, 1999, the Labor Arbiter dismissed the complaint for illegal dismissal upon finding that Trajano's gross negligence in the performance of her job warranted the termination of her employment. The Labor Arbiter observed that the bet of ₱2,000.00 was "a huge amount that necessarily requires extra care like [sic] its cancellation;"[14] and that she had been given her chance to dispute the charges made against her.[15]

Decision of the NLRC

Aggrieved, Trajano appealed to the NLRC, arguing that she did not commit any gross dishonesty or any serious misconduct

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[12] *Id.* at 193.

[13] *Id.* at 47.

[14] *Id.* at 167.

[15] *Id.* at 168.

or habitual neglect of duties, because what she committed was purely an honest mistake that did not merit the imposition of the penalty of dismissal from the service.

On October 27, 1999, the NLRC rendered its decision reversing and setting aside the decision of the Labor Arbiter and declaring Trajano to have been illegally dismissed by MJCI without just or authorized cause and without due process of law. It concluded that her cancellation of the ticket was an honest mistake that did not constitute a serious misconduct or willful disobedience of the lawful orders of her employer; that such cancellation did not amount to a gross and habitual neglect of duty because her mistake was only her first offense in the nine years of service to MJCI; and that MJCI sustained no damage.[16] It ordered MJCI to reinstate her to her former position without loss of seniority rights, and with payment of backwages equivalent to at least six months and other benefits.[17]

The NLRC denied MJCI's motion for reconsideration on February 18, 2000.[18]

Ruling of the CA

MJCI elevated the decision of the NLRC to the CA on *certiorari*, claiming that the NLRC thereby gravely abused its discretion in reversing the Labor Arbiter's decision. MJCI insisted that Trajano had been accorded procedural due process and had been dismissed for just cause; and that she was not entitled to the reliefs of reinstatement with payment of limited backwages of six months, without loss of seniority rights and other benefits.

On January 30, 2003, however, the CA upheld the NLRC, pointing out that MJCI had not given the valid notice of termination as required by law; that MJCI had not shown that the unauthorized cancellation of tickets by Trajano had violated

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[16] *Id.* at 51.

[17] *Id.* at 52.

[18] CA *rollo*, pp. 64-65.

company policy; and that the cancellation of the ticket had been only an honest mistake that did not amount to gross negligence as to warrant dismissal.[19]

Aggrieved, MJCI filed a motion for reconsideration,[20] but the CA denied its motion.[21]

Issues

Hence, MJCI appealed to the Court, raising the following issues:

1. Whether or not there was just cause when Petitioner (MJCI) dismissed Respondent Aimee O. Trajano from the service;[22] and

2. Whether or not Petitioner MJCI complied with the due process requirement when it effected the dismissal of Respondent Trajano.[23]

Ruling of the Court

The appeal lacks merit.

MJCI posits that Trajano held a position of trust and confidence; that the act of canceling the ticket was unauthorized because it was done without the consent of the bettor; that the CA thus erred in construing the phrase *unauthorized cancellation of ticket* as referring to whether or not she was authorized to cancel the ticket pursuant to company rules; that under the same premise, the loss of trust and confidence was established because the unauthorized cancellation of the ticket was a serious misconduct on her part considering that had the bet of ₱2,000.00 won the daily double race, the dividend to be paid could have been such a big amount that she would be unable to pay on her own; that the repercussions of her act to MJCI would have been disastrous

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[19] *Supra* note 1.

[20] *Rollo*, pp. 102-109.

[21] *Id.* at 101.

[22] *Id.* at 23.

[23] *Id.* at 28.

had the bet won, with MJCI being sued by the bettor and being scandalized in the media; that MJCI would have suffered great loss in both income and reputation due to such unauthorized cancellation of ticket; and that, consequently, MJCI had the just cause to dismiss her.[24]

We cannot sustain the position of MJCI.

The valid termination of an employee may either be for just causes under Article 282[25] or for authorized causes under Article 283[26] and Article 284,[27] all of the *Labor Code*.

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[24] *Id.* at 25-26.

[25] Article 282. TERMINATION BY EMPLOYER

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or will 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.

[26] Article 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL.

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Specifically, loss of the employer's trust and confidence is a just cause under Article 282 (*c*), a provision that ideally applies only to cases involving an employee occupying a position of trust and confidence, or to a situation where the employee has been routinely charged with the care and custody of the employer's money or property.[28] But the loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and confidence founded on clearly established facts. "A breach is willful," according to *AMA Computer College, Inc. v. Garay*,[29] "if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer."[30] An ordinary breach is not enough.

Moreover, the loss of trust and confidence must be related to the employee's performance of duties. As held in *Gonzales v. National Labor Relations Commission*:[31]

> Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position

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[27] Article 284. DISEASES AS GROUND FOR TERMINATION

An employer may terminated the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees; *Provided,* that he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[28] Azucena, C.A., *The Labor Code with Comments and Cases*, Volume Two, 2004 Ed., p. 630.

[29] G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317.

[30] Citing *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[31] G.R. No. 131653, March 26, 2001, 355 SCRA 195, 207-208; citing *Sanchez v. National Labor Relations Commission*, G.R. No. 124348, August 19, 1999, 312 SCRA 727, 735.

of responsibility, trust and confidence. He must be invested with confidence on delicate matters such as the custody, handling, care and protection of the employer's property and/or funds. But in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.

As a selling teller, Trajano held a position of trust and confidence. The nature of her employment required her to handle and keep in custody the tickets issued and the bets made in her assigned selling station. The bets were funds belonging to her employer. Although the act complained of — the unauthorized cancellation of the ticket (*i.e.*, unauthorized because it was done without the consent of the bettor) — was related to her work as a selling teller, MJCI did not establish that the cancellation of the ticket was intentional, knowing and purposeful on her part in order for her to have breached the trust and confidence reposed in her by MJCI, instead of being only out of an honest mistake.

Still, to justify the supposed loss of its trust and confidence in Trajano, MJCI contends that the unauthorized cancellation of the ticket could have greatly prejudiced MJCI for causing damage to both its income and reputation.

We consider the contention of MJCI unwarranted. As the records indicate, MJCI's prejudice remained speculative and unrealized. To dismiss an employee based on speculation as to the damage the employer could have suffered would be an injustice. The injustice in the case of Trajano would be greater if the supposed just cause for her dismissal was not even sufficiently established.

While MJCI as the employer understandably had its own interests to protect, and could validly terminate any employee for a just cause, its exercise of the power to dismiss should always be tempered with compassion and imbued with understanding, avoiding its abuse.[32]

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[32] *Blazer Car Marketing, Inc. v. Bulauan*, G.R. No. 181483, March 9, 2010, 614 SCRA 713, 722.

In this regard, we have to stress that the loss of trust and confidence as a ground for the dismissal of an employee must also be shown to be genuine, for, as the Court has aptly pointed out in *Mabeza v. National Labor Relations Commission:*[33] "x x x loss of confidence should not be simulated in order to justify what would otherwise be, under the provisions of law, an illegal dismissal. It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith."

The foregoing notwithstanding, the Court unavoidably notes that the invocation of loss of trust and confidence as a ground for dismissing Trajano was made belatedly. In its position paper dated September 2, 1998,[34] MJCI invoked the grounds under Article 282 (*a*) and (*b*) of the *Labor Code* to support its dismissal of her, submitting then that the unauthorized cancellation of the ticket constituted a serious violation of company policy amounting to dishonesty. The first time that MJCI invoked breach of trust was in its motion for the reconsideration of the decision of the NLRC.[35] MJCI also thereafter urged the ground of breach of trust in its petition for *certiorari* in the CA.[36] Such a belated invocation of loss of confidence broadly hints the ground as a mere afterthought to buttress an otherwise baseless dismissal of the employee.

Anent compliance with due process, MJCI argues that Trajano's notification of her termination through the posting in the selling stations should be deemed a substantial if not full compliance with the due process requirement, considering that she herself even presented a copy of the posting as evidence;[37] that the rule on giving notice of termination to an employee did not expressly require the personal service of the notice to the dismissed

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[33] G.R. No. 118506, April 18, 1997, 271 SCRA 670, 683.

[34] *Rollo*, pp. 72-75.

[35] *Id.* at 96-100.

[36] *Id.* at. 60-68.

[37] *Id.* at 29.

worker; and that what mattered was that she was notified in writing of MJCI's decision to terminate her through the posting in its selling stations.[38]

The argument is bereft of worth and substance.

The procedure to be followed in the termination of employment based on just causes is laid down in Section 2 (*d*), Rule I of the *Implementing Rules of Book VI of the Labor Code*, to wit:

> Section 2. Security of Tenure. —
>
> x x x x x x x x x
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the *Labor Code*:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In case of termination, the foregoing notices shall be served on the employee's last known address.

A review of the records warrants a finding that MJCI did not comply with the prescribed procedure.

In its October 27, 1999 decision, the NLRC declared that MJCI complied with the first notice requirement by serving a copy of the first notice upon Trajano,[39] who received the copy

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

[39] *Id.* at 82.

and affixed her signature thereon on April 26, 1998.[40] Such declaration seems to be supported by the records.

Yet, the NLRC concluded that the clarificatory meeting was not the hearing contemplated by law because the supposed complainants were not there for Trajano to confront.[41]

We disagree with the NLRC's conclusion, and instead find that there was a compliance with the second requirement for a hearing or conference. It is undeniable that Trajano was accorded the real opportunity to respond to the complaint against her, for she did submit her written explanation on April 26, 1998 and was invited to the final clarificatory meeting set on June 5, 1998 in the presence of the MJCI Raceday Union President.[42]

Nor was it necessary at all for Trajano to be able to confront the complainant against her. In *Muaje-Tuazon v. Wenphil Corporation*,[43] the Court has clarified that the opportunity to confront a witness is not demanded in company investigations of the administrative sins of an employee, holding thusly:

x x x x x x x x x

Petitioners must be reminded, however, that confrontation of witnesses is required only in adversarial criminal prosecutions, and not in company investigations for the administrative liability of the employee. Additionally, actual adversarial proceedings become necessary only for clarification, or when there is a need to propound searching questions to witnesses who give vague testimonies. This is not an inherent right, and in company investigations, summary proceedings may be conducted.

As for the last procedural requirement of giving the second notice, the posting of the notice of termination at MJCI's selling stations did not satisfy it, and the fact that Trajano was eventually notified of her dismissal did not cure the infirmity. It is notable,

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[40] *Id.* at 48-49.

[41] *Id.*

[42] *Id.* at 47.

[43] G.R. No. 162447, December 27, 2006, 511 SCRA 521, 531.

indeed, that the NLRC explicitly found in its October 27, 1999 decision that MJCI did not comply, to wit:

> In this case, there is the first written notice required but none of the second notice that informs her of the employer's or MJCI's decision to dismiss her. In fact, it was not even shown that the investigator, Atty. Joey Galit, whose office is that of an assistant racing manager, has the company's authority to dismiss the complainant, since that power is usually lodged with the head of the human resource department or with the President, but unusual with an assistant manager. The complainant asserts that she was never furnished a copy of her termination letter and what she had submitted as evidence on record (Annex "A" for the complainant, Record, p. 25) was one of those copies posted on all selling stations of MJCI. This accusation was not answered by the respondents nor have they ever proved that they had furnished the complainant a written notice of the decision of MJCI to terminate her services on the ground of serious violation of company policy (dishonesty).[44]

We uphold this finding of the NLRC, for the law on the matter has been clear. While personal service of the notice of termination on the employee is not required, Section 2 (*d*), Rule I of the *Implementing Rules of Book VI of the Labor Code* mandates that such notice be served on Trajano at her last known address, *viz*:

> x x x x x x x x x
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. **In case of termination, the foregoing notices shall be served on the employee's last known address.** (Emphasis supplied)
>
> x x x x x x x x x

Accordingly, the CA did not commit any error in dismissing MJCI's petition for *certiorari* assailing the decision of the NLRC. It is worth repeating that in termination cases, the employer carries the burden of proving that its dismissal of the employee

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[44] *Supra* note 2, at 49.

was legal.[45] The employer's failure discharged its burden will readily mean that the dismissal has not been justified, and was, therefore, illegal.[46] Accordingly, the failure of MJCI to establish the just cause for terminating Trajano fully warranted the NLRC's finding that Trajano's termination was illegal.

Considering the lapse of time between the rendition of the decision of the NLRC and this ultimate resolution of the case, however, the Court holds that a review of the order of reinstatement and the award of backwages is necessary and in order.

There is no question that an illegally dismissed employee is entitled to her reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances and other benefits or their monetary equivalent.[47]

In case the reinstatement is no longer possible, however, an award of separation pay, in lieu of reinstatement, will be justified.[48] The Court has ruled that reinstatement is no longer possible: (*a*) when the former position of the illegally dismissed employee no longer exists;[49] or (*b*) when the employer's business has closed down;[50] or (*c*) when the employer-employee relationship has already been strained as to render the reinstatement

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[45] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 505; *L.C. Ordoñez Construction v. Nicdao*, G.R. No. 149669, July 27, 2006, 496 SCRA 745, 759.

[46] *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. 153983, May 26, 2009, 588 SCRA 179, 192; *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 651.

[47] *Fulache v. ABS-CBN Broadcasting Corporation*, G.R. No. 183810, January 21, 2010, 610 SCRA 567, 588.

[48] *Pangilinan v. Wellmade Manufacturing Corporation*, G.R. No. 187005, April 7, 2010, 617 SCRA 567, 573.

[49] *Asian Terminals, Inc. v. Villanueva,* G.R. NO. 143219, November 28, 2006, 508 SCRA 346, 352.

[50] *Philtread Tire & Rubber Corporation v. Vicente,* G.R. No. 142759, November 10, 2004, 441 SCRA 574, 582.

impossible.[51] The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case.[52] In that regard, a lag of eight years or ten years is sufficient to justify an award of separation pay in lieu of reinstatement.

Applying the foregoing to this case, the Court concludes that the reinstatement of Trajano is no longer feasible. More than 14 years have already passed since she initiated her complaint for illegal dismissal in 1998, filing her position paper on September 3, 1998,[53] before the Court could finally resolve her case. The lapse of that long time has rendered her reinstatement an impractical, if not an impossible, option for both her and MJCI. Consequently, an award of separation pay has become the practical alternative, computed at one month pay for every year of service.[54]

Anent backwages, Trajano is entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time her actual compensation was withheld on June 6, 1998 up to the finality of this decision (on account of her reinstatement having meanwhile become non-feasible and impractical).[55] This ruling is consistent with the legislative intent behind Republic Act No. 6715.[56]

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[51] *Cabatulan v. Buat,* G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

[52] *Association of Independent Unions of the Philippines v. NLRC*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 235 and *Lambo v. National Labor Relations Commission,* G.R. No. 111042, October 26, 1999, 317 SCRA 420, 430.

[53] *Rollo*, p. 85

[54] *Gaco v. National Labor Relations Commission*, G.R. No. 104690, February 23, 1994, 230 SCRA 260, 268.

[55] *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010, 615 SCRA 13, 38.

[56] *An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the*

WHEREFORE, the Court **AFFIRMS** the decision promulgated on January 30, 2003, subject to the **MODIFICATIONS** that: (*a*) separation pay computed at one month pay for every year of service be awarded in lieu of reinstatement, and (*b*) backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from June 6, 1998, the date of respondent's termination, until the finality of this decision be paid to respondent.

The petitioner shall pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163061. June 26, 2013]

ALFONSO L. FIANZA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), BINGA HYDROELECTRIC PLANT, INC., ANTHONY C. ESCOLAR, ROLAND M. LAUTCHANG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ABANDONMENT; TO CONSTITUTE A VALID CAUSE FOR TERMINATION OF EMPLOYMENT,

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Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, As Amended, Otherwise Known as The Labor Code of the Philippines, Appropriating Funds Therefor and for Other Purposes.

THE DELIBERATE AND UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO RESUME HIS EMPLOYMENT MUST BE CLEARLY SHOWN, FOR MERE ABSENCE IS NOT SUFFICIENT BUT MUST BE ACCOMPANIED BY OVERT ACTS UNERRINGLY POINTING TO THE FACT THAT THE EMPLOYEE DOES NOT WANT TO WORK ANYMORE; BURDEN OF PROOF LIES WITH THE EMPLOYER.— At the outset, it is clear that the requisites for a judicial declaration of abandonment are absent in this case. Suffice it to say that abandonment is a fact that must be proven in accordance with the standard set by this Court: It is well-settled in our jurisprudence that "For abandonment to constitute a valid cause for termination of employment, there must be **a *deliberate, unjustified refusal*** of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient, it must be accompanied by overt acts unerringly pointing to the fact that the employee does not want to work anymore" Abandonment as a fact and a defense can only be claimed as a ground for dismissal if the employer follows the procedure set by law. In line with the burden of proof set by law, the employer who alleges abandonment "has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning." As this Court has stated in *Agabon v. National Labor Relations Commission*: For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employees has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified. From the foregoing, it is clear that respondent company failed to prove the necessary elements of abandonment. Additionally, the NLRC and the CA failed to take into account the strict requirements set by jurisprudence when they determined the existence of abandonment on the basis of mere allegations that were contradicted by the evidence shown.

2. ID.; ID.; ID.; THE EMPLOYEE'S CONTINUOUS INQUIRY ABOUT THE STATUS OF HIS EMPLOYMENT, HIS

WILLINGNESS TO RETURN TO WORK AT ANYTIME AND HIS FILING OF AN ILLEGAL DISMISSED CASE, EVINCED THE EMPLOYEE'S INTENT TO RETURN TO WORK.— The very act of filing the Complaint for illegal dismissal should have negated any intention on petitioner's part to sever his employment. In fact, it should already have been sufficient evidence to declare that there was no abandonment of work. Moreover, petitioner went back to the company several times to inquire about the status of his employment. The fact that his inquiries were not answered does not prejudice this position. Throughout the entire ordeal, petitioner was vigilant in protecting himself from any claim that he had abandoned his work. The following circumstances evinced his intent to return to work: 1. His continuous inquiry with respondent about the status of his work. 2. His willingness to return to work at any time, subject to the approval of respondent, and his visits to the plant to apply for work. 3. His filing of an illegal dismissal case. Considering all these facts, established by the LA and confirmed by the NLRC and the CA, we conclude that both appellate bodies were remiss in declaring the existence of abandonment.

3. **ID.; ID.; ID.; PETITIONER AND RESPONDENT HAD AN EMPLOYER AND EMPLOYEE RELATIONSHIP AND THAT THE PETITIONER WAS UNJUSTLY AND ILLEGALLY DISMISSED.—** Respondent company failed to realize however that Mr. Tan, being its president, was clothed with authority to hire employees on its behalf. This was precisely the import of petitioner's appointment papers, which even carried the letterhead of the company. There is no indication from the facts that his employment was of a confidential nature. The wording of his appointment itself does not bear out that conclusion x x x. Several things stand out in this appointment paper. First, its letterhead is that of respondent company, indicating the official nature of the document. Second, there is no indication that the employment is co-terminus with that of the appointing power, or that the position was a confidential one. In fact, alongside the obligation of petitioner to report to Mr. Tan, is that of reporting to those whom the latter had designated as well as to the management in case petitioner had any suggestion. This description evinces a supervisory function, by which the employee will carry out company policy,

but can only give suggestions to management as to the creation or implementation of a new policy. Finally, the appointment paper recognizes that the petitioner would initially be on probation status for two months, at the end of which he would be made a permanent employee should his services be found satisfactory by respondent. All these circumstances are evident from the appointment paper itself, which belies the claim of respondent that it had no employer-employee relationship with petitioner. For the foregoing reasons, this Court must assess whether it was a reversible error of law for the appellate court to rule that there was no grave abuse of discretion that amounted to a lack or an excess of jurisdiction on the part of the NLRC when it reversed the findings of the LA. Since what is at stake in this case is the proper application of the doctrine of abandonment and the legal concept of regular employment, it is clear to this Court that the CA indeed committed a reversible error, and that petitioner was therefore unjustly and illegally dismissed.

APPEARANCES OF COUNSEL

Leoncio L. Alangdeo for petitioner.
Domogan Law Office for Binga Hydroelectric Plant.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, appealing the Decision[1] of the Court of Appeals (CA) dated 12 June 2003 in CA-G.R. SP No. 72181 and its Resolution[2] dated 19 March 2004 on the same case.

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[1] *Rollo*, pp. 76-87, penned by then Associate Justice and now Presiding Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Eugenio S. Labitoria and Regalado E. Maambong.

[2] *Id.* at 109.

The dispute was initiated by a Complaint for illegal dismissal, which revolved around the determination of the employment status of petitioner Alfonso Fianza, ex-mayor of Itogon, as the "Social Acceptance Officer" of respondent Binga Hydroelectric Plant, Inc.

As a preliminary observation, the Court notes that certain factual allegations are in dispute, principally because the factual account of the CA and the National Labor Relations Commission (NLRC) slightly differs from that of the Labor Arbiter (LA). However, they do have mutually agreed facts that can facilitate the discussion and determination of the case.

The following facts are undisputed:

On 3 June 1997, petitioner Fianza was employed as Officer for Social Acceptance of respondent Binga Hydroelectric Plant, Inc. The details of his employment are embodied in Memorandum 97-10[3] dated 2 June 1997[4] issued by Mr. Catalino Tan, the president and chairperson of the board at that time.

In February 1999, petitioner did not receive his salary of ₱15,000 for the first 15 days of the month of February. He was advised not to report for work until his status was officially clarified by the Manila office.[5]

After petitioner made several other inquiries concerning his status,[6] he was told by a supervisor to report for work.[7] However, he was also told that the new management committee had to concur in his reappointment before he could be reinstated in the payroll.[8] It also wanted an opportunity to determine whether his services would still be necessary to the company.[9] Meanwhile,

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[3] CA *rollo*, pp. 70-71; Annex A.

[4] *Rollo*, pp. 76-78; CA *rollo*, 103-104.

[5] *Rollo*, p. 78; CA *rollo,* p. 104.

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

[7] *Rollo*, p. 78; CA *rollo*, p. 105.

[8] *Rollo*, p. 78.

[9] CA *rollo*, p. 105.

the chief of the rehabilitation department of the company recommended his return.[10]

As the management committee did not act on his inquiries for several months, on 24 May 1999 petitioner filed a Complaint for illegal dismissal before the LA.[11]

Ruling in favour of the petitioner, the LA applied the jurisprudentially-established control test to show that the petitioner and respondent company had a prevailing employer-employee relationship.[12] The arbiter thought that since petitioner was hired directly by the president of the company, he was entitled to a fixed income of ₱30,000.[13] Moreover, despite the existence of a controversy in respect of the corporation's ownership and rehabilitation, the employer-employee relationship subsisted on the basis of the doctrine of successor employer.[14]

As to petitioner's dismissal, the LA recognized the obligation of the company to maintain complete records of its personnel and transactions.[15] It was further opined that there was no abandonment because of respondent company's failure to comply with the strict requirements of the law for a declaration of abandonment.[16]

Finally, for purposes of determining liability, the LA deemed petitioner a "supervisory employee" and accordingly granted the benefits pertaining thereto. The LA nonetheless denied the prayer for moral damages, having seen no proof of malice on the part of respondent.[17]

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[10] *Rollo*, pp. 78-79.; CA *rollo*, p. 105.

[11] *Rollo*, p. 79.

[12] CA *rollo*, pp. 108-109.

[13] *Id.* at 109.

[14] *Id.*

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

[16] *Id.* at 111-114.

[17] CA *rollo*, pp. 114-117.

On appeal, the NLRC reversed the LA's Decision. It decided that the employer-employee relationship was not sufficiently established,[18] since the appointment letter recognized the probationary status of petitioner.[19] It found circumstances that allegedly negated his permanent and regular employment, such as his direct reporting to the hiring authority, his direct hiring which bypassed the existing hiring procedures of the company, his lack of a daily time record, the absence of the position "Social Acceptance Officer" from the organizational table of the company, the characterization of his salary as "retainer's fees," and the non-inclusion of his appointment in the company records.[20] The CA affirmed the NLRC's reversal, and denied[21] his Motion for Reconsideration.[22]

Petitioner thus filed this Petition for Review under Rule 45 before this Court.[23]

On 11 August 2008, this Court resolved to have the parties submit memoranda within 30 days from notice.[24] Petitioner duly filed his Memorandum.[25] However, respondent company was not properly notified of the pleadings filed before the Court, and the Orders issued in the case because it was allegedly under new management as a result of the ongoing rehabilitation of the company.[26] Thus, its Memorandum was submitted nearly a year later.[27]

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[18] *Id.* at 175.

[19] *Id.* at 176.

[20] *Id.*

[21] *Rollo*, p. 109.

[22] *Id.* at 88-107.

[23] *Id.* at 4-74.

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

[25] *Id.* at 135-197.

[26] *Id.* at 235.

[27] *Id.* at 307-316.

After a review of the arguments raised in the Memoranda, there are in essence, two important questions to be answered: first, whether petitioner abandoned his work; and second, whether his employment was regular.

In his pleadings, petitioner argues that he was a supervisory employee, as shown by the evidence he presented and the nature of his work.[28] He further contends that he did not abandon his work, because he always made sure he followed up the status of his employment, and he was willing to go back to work once he was re-enrolled in the payroll.[29]

Respondent company asserts in its Memorandum that petitioner was a confidential consultant of its former president and chairperson Catalino Tan. As such, petitioner's tenure was therefore co-terminus with that of Mr. Tan.[30]

At the outset, it is clear that the requisites for a judicial declaration of abandonment are absent in this case. Suffice it to say that abandonment is a fact that must be proven in accordance with the standard set by this Court:[31]

> It is well-settled in our jurisprudence that "For abandonment to constitute a valid cause for termination of employment, there must be **a *deliberate, unjustified refusal*** of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient, it must be accompanied by overt acts unerringly pointing to the fact that the employee does not want to work anymore" (Emphasis and italics supplied)[32]

Abandonment as a fact and a defense can only be claimed as a ground for dismissal if the employer follows the procedure

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[28] *Id.* at 32-60, 153-185.

[29] *Id.* at 60-66, 185-191.

[30] *Id.* at 312-314.

[31] *Kingsize Manufacturing Corp., v. National Labor Relations Commission*, G.R. Nos. 110452-54, 24 November 1994, 238 SCRA 349.

[32] *Labor v. National Labor Relations Commission*, 318 Phil. 219 (1995), citing *Flexo Manufacturing Corp. vs. National Labor Relations Commission*, 219 Phil. 659 (1985).

set by law.[33] In line with the burden of proof set by law, the employer who alleges abandonment "has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning."[34] As this Court has stated in *Agabon v. National Labor Relations Commission*:

> For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employees has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[35]

From the foregoing, it is clear that respondent company failed to prove the necessary elements of abandonment. Additionally, the NLRC and the CA failed to take into account the strict requirements set by jurisprudence when they determined the existence of abandonment on the basis of mere allegations that were contradicted by the evidence shown.

The very act of filing the Complaint for illegal dismissal should have negated any intention on petitioner's part to sever his employment.[36] In fact, it should already have been sufficient evidence to declare that there was no abandonment of work. Moreover, petitioner went back to the company several times to inquire about the status of his employment.[37] The fact that his inquiries were not answered does not prejudice this position.

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[33] CA *rollo*, pp. 112-113.

[34] *Labor v. National Labor Relations Commission, supra*. ; *Aquinas School v. Hon. Magnaye*, G.R. No. 110062, 344 Phil. 145, 151 (1997); *Labor Congress of the Philippines v. National Labor Relations Commission*, 352 Phil. 1118, 1136 (1998).

[35] 485 Phil. 248, 278 (2004).

[36] *Labor v. National Labor Relations Commission*, *supra*.

[37] *Rollo*, p. 78; CA *rollo*, pp. 104-105.

Throughout the entire ordeal, petitioner was vigilant in protecting himself from any claim that he had abandoned his work. The following circumstances evinced his intent to return to work:

1. His continuous inquiry with respondent about the status of his work.[38]
2. His willingness to return to work at any time, subject to the approval of respondent, and his visits to the plant to apply for work.[39]
3. His filing of an illegal dismissal case.[40]

Considering all these facts, established by the LA and confirmed by the NLRC and the CA, we conclude that both appellate bodies were remiss in declaring the existence of abandonment.

Since the first question has been disposed of, the second one now becomes the core issue, because the existence of an employer-employee relationship in the nature of regular employment will determine whether or not the company dismissed petitioner illegally.

Respondent company claims that because petitioner was a confidential employee of its former president, his tenure was co-terminus with that of his employer.[41] To establish this contention, respondent cites the CA's determination of the facts, as follows:

1. Petitioner directly reported to Mr. Tan, the hiring authority.
2. The hiring did not pass through the existing procedure.
3. The position of officer for social acceptance was absent from the company's table of organization and position title.

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[38] *Id.*

[39] *Rollo*, p. 78; CA *rollo*, pp. 104-107.

[40] Records, pp. 1-2.

[41] *Rollo*, pp. 313-315.

4. Petitioner did not submit any daily time record.
5. Monthly fees received from Mr. Tan were denominated as retainer fees and subjected to 10% deductions.
6. Petitioner was not included in the payroll.
7. The taxes on the fees were paid by respondent company on behalf of petitioner.
8. Petitioner's name was absent from respondent's records.[42]

These facts allegedly proved that petitioner was the confidential employee of Mr. Tan, respondent's former president.[43] All of this occurred in the context of a rehabilitation receivership conducted by the Securities and Exchange Commission Management Committee.[44]

Respondent company failed to realize however that Mr. Tan, being its president, was clothed with authority to hire employees on its behalf. This was precisely the import of petitioner's appointment papers, which even carried the letterhead of the company.[45] There is no indication from the facts that his employment was of a confidential nature. The wording of his appointment itself does not bear out that conclusion, *viz*:

To: Mr. Alfonso Fianza
From: Mr. Catalino Tan
Subject: Job and Responsibilities
Date: June 2, 1997
No: Mem97-10

This is to confirm your appointment as officer for social acceptance of BHEPI projects effective June 3, 1997. In this position, you will be directly reporting to me and to those whom I will designate to assure compliance and attainment of our corporate objectives in relation to the reforestation program, silt control, and the social

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[42] *Id.* at 313-314.

[43] *Id.*

[44] *Id.* at 312-313.

[45] CA *rollo*, p. 70; Annex C-1, referred to as Annex A *supra* note 3.

and livelihood projects to lift up the [unintelligible word] condition of the residence in your area of operations. Specifically, your job and responsibilities are:

1. Promote social acceptance by the local residence of the Itogon and the nearby municipalities of the corporate projects as required in the ROL contract and the Supplemental Agreement signed by the company with the National Power Corporation.

2. Identify problems in implementing ROL projects and offer possible solutions that the company may adopt in resolving conflicts.

3. Assist in monitoring the success and failure of the company's sponsored projects designed to help the social and economic well-being of the people in the Itogon community.

4. Submit monthly report covering the above mentioned work.

5. In addition to the above, you may suggest to the management for their consideration any program that will help attain the corporation objectives as a partner for progress of the whole province by the year 2000.

You will be under employment probation for two months during which we will evaluate your performance and will serve as the basis for permanent employment. Your compensation will be ₱25,000 monthly inclusive of all benefits.

Allow me to welcome you to the BHEPI family.

SGD. Catalino Tan

Conforme:[46]

Several things stand out in this appointment paper. First, its letterhead is that of respondent company, indicating the official nature of the document. Second, there is no indication that the employment is co-terminus with that of the appointing power, or that the position was a confidential one. In fact, alongside

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[46] *Id.* at 70-71.

the obligation of petitioner to report to Mr. Tan, is that of reporting to those whom the latter had designated as well as to the management in case petitioner had any suggestion. This description evinces a supervisory function, by which the employee will carry out company policy, but can only give suggestions to management as to the creation or implementation of a new policy.[47]

Finally, the appointment paper recognizes that the petitioner would initially be on probation status for two months, at the end of which he would be made a permanent employee should his services be found satisfactory by respondent. All these circumstances are evident from the appointment paper itself, which belies the claim of respondent that it had no employer-employee relationship with petitioner.

For the foregoing reasons, this Court must assess whether it was a reversible error of law for the appellate court to rule that there was no grave abuse of discretion that amounted to a lack or an excess of jurisdiction on the part of the NLRC when it reversed the findings of the LA. Since what is at stake in this case is the proper application of the doctrine of abandonment and the legal concept of regular employment, it 1is clear to this Court that the CA indeed committed a reversible error, and that petitioner was therefore unjustly and illegally dismissed.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision of the Court of Appeals dated 12 June 2003 on CA-G.R. SP No. 72181, and its Resolution dated 19 March 2004 on the same case are hereby **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated 28 February 2000 is **REINSTATED**.

SO ORDERED.

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

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[47] *United Pepsi-Cola Supervisory Union v. Judge Laguesma,* 351 Phil. 244 (1998).

SECOND DIVISION

[G.R. No. 178947. June 26, 2013]

VIRGINIA DE LOS SANTOS-DIO, as authorized representative of H.S. EQUITIES, LTD., and WESTDALE ASSETS, LTD., *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, JUDGE RAMON S. CAGUIOA, in his capacity as Presiding Judge of Branch 74, Regional Trial Court, Olongapo City, and TIMOTHY J. DESMOND,** *respondents.*

[G.R. No. 179079. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **TIMOTHY J. DESMOND,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; EXECUTIVE AND JUDICIAL DETERMINATION OF PROBABLE CAUSE DISTINGUISHED; A JUDGE IS NOT BOUND BY THE RESOLUTION OF THE PUBLIC PROSECUTOR WHO CONDUCTED THE PRELIMINARY INVESTIGATION, AND MUST HIMSELF ASCERTAIN FROM THE LATTER'S FINDINGS AND SUPPORTING DOCUMENTS WHETHER PROBABLE CAUSE EXISTS FOR THE PURPOSE OF ISSUING A WARRANT OF ARREST.— Determination of probable cause may be either executive or judicial. The first is made by the public prosecutor, during a preliminary investigation, where he is given broad discretion to determine whether probable cause exists for the purpose of filing a criminal information in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The second is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. In this respect, the judge must satisfy himself

that, on the basis of the evidence submitted, there is a necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge, therefore, finds no probable cause, the judge cannot be forced to issue the arrest warrant. Notably, since the judge is already duty-bound to determine the existence or non-existence of probable cause for the arrest of the accused immediately upon the filing of the information, the filing of a motion for judicial determination of probable cause becomes a mere superfluity, if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial. In the case of *Co v. Republic*, the Court emphasized the settled distinction between an executive and a judicial determination of probable cause, *viz*: We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge. On this score, it bears to stress that a judge is not bound by the resolution of the public prosecutor who conducted the preliminary investigation and must himself ascertain from the latter's findings and supporting documents whether probable cause exists for the purpose of issuing a warrant of arrest. This prerogative is granted by no less than the Constitution which provides that "no warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."

2. **ID.; ID.; ID.; THE JUDGE'S DISMISSAL OF A CASE MUST BE DONE ONLY IN CLEAR-CUT CASES WHEN THE EVIDENCE ON RECORD PLAINLY FAILS TO ESTABLISH PROBABLE CAUSE. BUT IF THE EVIDENCE ON RECORD SHOWS THAT, MORE LIKELY THAN NOT, THE CRIME CHARGED HAS BEEN COMMITTED AND THAT RESPONDENT IS PROBABLY GUILTY OF THE SAME, THE JUDGE SHOULD NOT DISMISS THE CASE AND THEREON, ORDER THE PARTIES TO PROCEED TO TRIAL.—** While a judge's determination of probable cause

is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause x x x. In this regard, so as not to transgress the public prosecutor's authority, it must be stressed ***that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged***. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.

3. **ID.; ID.; ID.; GUIDING PRINCIPLES; IMMEDIATE DISMISSAL OF THE CASE WAS IMPROPER WHERE THE STANDARD OF CLEAR LACK OF PROBABLE CAUSE WAS NOT OBSERVED.—** [O]nce the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (*a*) issue a warrant of arrest, if he finds probable cause; (*b*) immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and (*c*) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause. Applying these principles, the Court finds that the RTC's immediate dismissal, as affirmed by the CA , was improper as the standard of clear lack of probable cause was not observed. In this case, records show that certain essential facts – namely, (*a*) whether or not Desmond committed false representations that induced Dio to invest in Ocean Adventure; and (*b*) whether or not Desmond utilized the funds invested by Dio solely for the Miracle Beach Project for purposes different from what was agreed upon – remain controverted. As such, it cannot be said that the absence of the elements of the crime of *estafa* under Article 315(2)(a) and 315(1)(b) of the RPC had already been established, thereby rendering the RTC's immediate dismissal of the case highly improper.

4. ID.; ID.; ID.; A JUDGE'S DISCRETION TO DISMISS A CASE IMMEDIATELY AFTER THE FILING OF THE INFORMATION IN COURT IS APPROPRIATE ONLY WHEN THE FAILURE TO ESTABLISH PROBABLE CAUSE CAN BE CLEARLY INFERRED FROM THE EVIDENCE PRESENTED AND NOT WHEN ITS EXISTENCE IS SIMPLY DOUBTFUL.— Lest it be misconceived, trial judges will do well to remember that when a perceived gap in the evidence leads to a "neither this nor that" conclusion, a purposeful resolution of the ambiguity is preferable over a doubtful dismissal of the case. Verily, a judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful. After all, it cannot be expected that upon the filing of the information in court the prosecutor would· have already presented all the evidence necessary to secure a conviction of the accused, the objective of a previously-conducted preliminary investigation being merely to determine whether there is sufficient ground, to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. In this light, given that the lack of probable cause had not been clearly established in this case, the CA erred, and the RTC gravely abused its discretion, by ruling to dismiss Criminal Case Nos. 515-2004 and 516- 004. Indeed, these cases must stand the muster of a full-blown trial where the parties. could be given, as they should be given, the opportunity to ventilate their respective claims and defenses, on the basis of which the court *a quo* can properly resolve the factual disputes therein.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas and *Chavez Miranda Aseoche Law Offices* for petitioner.

Jose Frank Zuñiga for private respondent.

DECISION

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] assailingthe November 8, 2006 Decision[2] and July 19, 2007 Resolution[3] of the Court of A ppeals (CA) in CA - G.R. SP No. 88285, upholding the validity of the trial court's dismissal of separate criminal informations for estafa against private respondent Timothy J. Desmond (Desmond) due to lack of probable cause.

The Facts

In 2001, petitioner V irginia De Los Santos-Dio (Dio), the majority stockholder of H.S. Equities, Ltd. (HS Equities) and authorized representative of Westdale Assets, Ltd. (Westdale),[4] was introduced to Desmond, the Chairman and Chief Executive Officer (CEO) of the Subic Bay Marine Exploratorium, Inc. (SBMEI), and the authorized representative of A ctive Environments, Inc. and JV China, Inc. (JV China), the majority shareholder of SBMEI.[5] A fter some discussion on possible business ventures, Dio, on behalf of HS Equities, decided to invest a total of US$1,150,000.00[6] in SBMEI's Ocean Adventure Marine Park (Ocean A dventure), a theme park to be constructed at the Subic Bay Freeport Zone which, when operational, would

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[1] *Rollo* (G.R. No. 178947), pp. 54-87; *rollo* (G.R. No. 179079), pp. 9-33.

[2] *Rollo* (G.R. No. 178947), pp. 96-110; *rollo* (G.R. No. 179079), pp. 36-50. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring.

[3] *Rollo* (G.R. No. 178947), pp. 112-117; *rollo* (G.R. No. 179079), pp. 51-56.

[4] HS Equities and Westdale are both foreign companies organized and registered under the laws of the British Virgin Islands. *Rollo* (G.R. No. 178947), p. 57.

[5] *Rollo* (G.R. No. 179079), pp. 87-90.

[6] *Id.* at 91-93.

showcase live performances of false-killer whales and sea lions. In this relation, Dio claimed that Desmond led her to believe that SBMEI had a capital of US$5,500,000.00, inclusive of the value of the marine mammals to be used in Ocean A dventure,[7] and also guaranteed substantial returns on investment.[8] Desmond even presented a Business Plan, indicating that: (a) Ocean Adventure's "attendance will rise from 271,192 in 2001 to just over 386,728 in 2006, with revenues rising from US$4,420,000.00 million to US$7,290,000.00 million in the same time frame"; (b) "[e]arly investors are expected to reap an annual return of 23% in 2001, rising to 51% in 2006"; and (c) "[f]ully priced shares [would yield a 19% return] in 2001, rising to 42% in 2006."[9] Thus, on January 18, 2002, a Subscription A greement[10] was executed by Desmond, as representative of SBMEI and JV China, and Dio, as representative of HS Equities.

While no Certificate of Stock was issued either to HS Equities or to Dio, HS Equities was expressly granted minority protection rights in a subsequent Subscription and Shareholders A greement[11] dated March 12, 2002, stating that there shall be "a nominee of [the] Subscriber to be elected as Treasurer/Chief Financial Officer, who may not be removed by the Board of Directors without the affirmative vote of the Subscriber."[12] Accordingly, Dio was elected as a member of SBMEI's Board of Directors and further appointed as its Treasurer.[13] The parties later executed two (2) Investor's Convertible Promissory Notes — one dated A pril 4, 2001[14] and another dated May 8, 2001[15] — covering HS Equities'

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[7] *Id.* at 81, 87-90.

[8] See Complaint-Affidavit in I.S. No. 04-M-992, *id.* at 79-84.

[9] *Rollo* (G.R. No. 178947), p. 141; *rollo* (G.R. No. 179079), p. 86.

[10] *Rollo* (G.R. No. 178947), pp. 145-147.

[11] *Id.* at 148-167.

[12] *Id.* at 156.

[13] See Minutes of Annual Stockholders Meeting and Minutes of Organizational Meeting of the Board of Directors, *id.* at 172 & 175.

[14] *Id.* at 176-177.

[15] *Id.* at 178-179.

infusion of a total of US$1,000,000.00 for the purpose of purchasing machinery, equipment, accessories, and materials to be used for the construction of Ocean Adventure.

In June 2002, Dio, this time on behalf of Westdale, invested another US$1,000,000.00[16] in a separate business venture, called the Miracle Beach Hotel Project (Miracle Beach), which involved the development of a resort owned by Desmond adjoining Ocean Adventure. They agreed that the said investment would be used to settle SBMEI's ₱40,000,000.00 loan obligation to First Metro Investment Corporation and for the construction of 48 lodging units/cabanas.[17] However, when the corresponding subscription agreement was presented to Dio by SBMEI for approval, it contained a clause stating that the "funds in the Subscription Bank Account" were also to be used for the "[f]unding of Ocean Adventure's Negative Cash Flow not exceeding [US$200,000.00]."[18] This was in conflict with the exclusive purpose and intent of Westdale's investment in Miracle Beach and as such, Dio refused to sign the subscription agreement.

Dio further claimed that she found out that, contrary to Desmond's representations, SBMEI actually had no capacity to deliver on its guarantees, and that in fact, as of 2001, it was incurring losses amounting to ₱62,595,216.00.[19] She likewise claimed to have discovered false entries in the company's books and financial statements – specifically, its overvaluation of the marine animals and its non-disclosure of the true amount of JV China's investment[20] – which prompted her to call for an audit investigation. Consequently, Dio discovered that, without her knowledge and consent, Desmond made certain disbursements from Westdale's special account, meant only for Miracle Beach expenditures (special account), and diverted a total of

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[16] *Rollo* (G.R. No. 178947), p. 180; *rollo* (G.R. No. 179079), p. 114.

[17] *Rollo* (G.R. No. 178947), p. 220; *rollo* (G.R. No. 179079), p. 111.

[18] *Rollo* (G.R. No. 178947), p. 184.

[19] *Rollo* (G.R. No. 179079), p. 125.

[20] See Complaint-Affidavit (I.S. No. 04-M-993), *id.* at 109-113.

US$72,362.78 therein for the operating expenses of Ocean A dventure.[21] W hen Desmond refused to execute an undertaking to return the diverted funds, Dio, in her capacity as Treasurer of SBMEI, suspended the release of the remaining funds in the aforesaid special account.[22]

Eventually, after Dio was ousted as Director and Treasurer of SBMEI she filed, on April 19, 2004, two (2) criminal complaints[24] (subject criminal complaints) for *estafa* (a) through false pretenses under A rticle 315(1)(b)[25] of the Revised Penal Code[26] (RPC); and (b) with unfaithfulness or abuse of confidence through misappropriation or conversion under A rticle 315(2)(a)[27]

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[21] *Rollo* (G.R. No. 179079), pp. 115-118.

[22] *Id.* at 112 & 120.

[23] *Rollo* (G.R. No. 178947), p. 216; *rollo* (G.R. No. 179079), p. 83.

[24] *Rollo* (G.R. No. 178947), pp. 212-217 & 218-222; *rollo* (G.R. No. 179079), pp. 79-84 & 109-113.

[25] ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished

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2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

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[26] Act No. 3815, as amended.

[27] ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished

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1. With unfaithfulness or abuse of confidence, namely:

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(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

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of the RPC, both against Desmond before the Olongapo City Prosecutor's Office (City Prosecutor's Office), docketed as IS Nos. 04-M-992 and 04-M-993.

In defense, Desmond maintained that his representation of himself as Chairman and CEO of SBMEI was not a sham and that Dio has not even proven that he did not have the expertise and qualifications to double her investment. A mong others, he also denied having been fired from Beijing Landa A quarium Co. Ltd. for his supposed incompetence and mismanagement. He further asserted that it was not deceitful to value the marine mammals at US$3,720,000.00 as equity contribution of JV China in SBMEI, notwithstanding the fact that two (2) false killer whales had already perished before the company could start operations. This is because the said valuation, in any case, would be based on the collective income-earning capacity of the entire animal operating system derived from revenues generated by marine park attendance and admission fees.[28]

In reply, Dio insisted that SBMEI, at the outset, never had sufficient assets or resources of its own because, contrary to Desmond's claims, the total amount of US$2,300,000.00 it purportedly invested in buildings and equipment actually came from the investments Dio's company made in SBMEI.[29]

After the preliminary investigation, the City Prosecutor issued a Resolution[30] dated A ugust 26, 2004, finding probable cause against Desmond for the abovementioned crimes, to wit:

> The foregoing clearly applies in the instant two (2) cases as borne out by the following facts, to with [sic]: (1) Desmond, as the Chairman and Chief Executive Office of SBMEI and in order to persuade Dio to invest, represented that he possessed the necessary influence, expertise and resources (in terms of credit and property) for the project knowing the same to be false as he never had the capital for

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[28] See Counter-Affidavit, *rollo* (G.R. No. 178947), pp. 223-244.

[29] See Reply-Affidavit, *id.* at 245-250.

[30] *Rollo* (G.R. No. 178947), pp. 251-254; *rollo* (G.R. No. 179079), pp. 135-138. Penned by City Prosecutor Prudencio B. Jalandoni.

the project as borne out by his correspondences with Dio; and (2) Dio fell for these misrepresentations and the lure of profit offered by Desmond, thereby being induced to invest the amounts of $1,150,000.00 and $1,000,000.00 to the damage and prejudice of her company.

The elements of the crimes charged were thus established in these cases, namely Dio parted with her money upon the prodding and enticement of respondent on the false pretense that he had the capacity and resources for the proposed project. In the end, Dio was not able to get her money back, thus causing her damage and prejudice. Moreover, such defraudation or misappropriation having been committed by Desmond through his company SBMEI involving funds solicited from Dio as a member of the general public in contravention of the public interest, the probable cause clearly exists to indict Desmond for the crime of Estafa under A rticle 315 (1)(b) and (2)(a) of the Revised Penal Code in relation to PD No. 1689.[31]

In view of the foregoing, corresponding criminal informations[32] (subject informations) were filed with the Regional Trial Court of Olongapo City, Branch 74 (RTC), docketed as Criminal Case Nos. 516-2004 and 515- 2004. The accusatory portions thereof read as follows:

Criminal Case No. 516-2004[33]

That in or about and sometime in early 2001, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the officer of Subic Bay Marine Exploration, Inc. (SBMEI), acting as a syndicate and by means of deceit, did then and there, wilfully, unlawfully and feloniously defraud H.S. EQUITIES LIMITED, represented in this case by V irginia S. Delos Santos-Dio in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he made to said V irginia S. Delos Santos-Dio to the effect that he had the expertise and qualifications, as well as the resources, influence,

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[31] *Id.* at 253-254.

[32] *Rollo* (G.R. No. 178947), pp. 255-256 & 257-258; *rollo* (G.R. No. 179079), pp. 139-140 & 141-142.

[33] *Rollo* (G.R. No. 178947), pp. 255-256; *rollo* (G.R. No. 179079), pp. 139-140.

credit and business transaction with the Subic Bay Metropolitan A uthority (SBMA) and other financing institutions to ensure the viability of the Subic Bay Marine Exploration Ocean A dventure Project (SBMEOA), which he represented to be a qualified and legally existing investment enterprise with capacity to solicit investment from the general public, by submitting documents for the purpose, which representations he knew to be false and fraudulent and the supporting documents are similarly spurious and were only made in order to induce said V irginia S. Delos Santos-Dio to invest and deliver as in fact she invested and delivered a total amount of One Million One Hundred Fifty Thousand US Dollars ($1,150,000.00) to the said accused on the strength of said manifestations and representations and supporting documents, and said accused, once in possession of the said amount, misapplied, converted and misappropriated the same to his own personal use and benefit, to the damage and prejudice of H.S. Equities Limited in the amount of US $1,150,000.00 or Php57,500,000.00 Pesos, the dollar computed at the rate of Php 50.00 to [US]$1.00 which was the prevailing rate of exchange of a dollar to peso at the time of the commission of the offense.

CONTRARY TO LAW .

Criminal Case No. 515-2004[34]

That in or about and sometime during the period from June 2002 to July 2002, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously defraud W estdale A ssets, Limited represented in this case by V irginia S. Delos Santos-Dio in the following manner to wit: the said accused received in trust and for administration from the said V irginia S. Delos Santos-Dio the amount of One Million US Dollars ($1,000,000.00) under the express obligation of using the same to pay the loan facility of the Subic Bay Marine Exploration, Inc. (SBMEI) with First Metro Investment Corporation and to fund the construction and development of the Miracle Beach Project but the said accused, once in possession of the said amount, with grave abuse of confidence and with intent to defraud, misapplied, misappropriated and converted the same for

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[34] *Rollo* (G.R. No. 178947), pp. 257-258; *rollo* (G.R. No. 179079), pp. 141-142.

his own use and benefit by devoting it to a purpose or use different from that agreed upon and despite repeated demands made upon him to account for and to return the said amount, he failed and refused and still fails and refuses to do so, to the damage and prejudice of the said W estdale A ssets, Limited in the amount of US $1,000,000.00 or its equivalent to FIFTY MILLION (Php 50,000,000.00) Pesos, Philippine Currency, the dollar being computed at the rate of Php50.00 to $ 1.00 which was the prevailing rate of exchange at the commission of the offense, to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW .

Aggrieved, Desmond filed a Motion for Reconsideration,[35] as well as a Motion to W ithdraw Filed Informations.[36] He also filed before the RTC a Motion to Defer Further Proceedings and to Defer Issuance of W arrant of Arrest[37] but subsequently withdrew the same and filed, instead, a Motion for Judicial Determination of Probable Cause.[38]

The RTC Ruling

In an Order[39] dated October 21, 2004, the RTC ruled in favor of Desmond and declared that no probable cause exists for the crimes charged against him since the elements of *estafa* were not all present, to wit:

First, the element of misrepresentation or deceit found in par. 2 (a) A++++++++++++++++++++++++++rticle 315 of the Revised Penal Code is absent. It must be emphasized that the promises

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[35] *Rollo* (G.R. No. 178947), pp. 259-271; *rollo* (G.R. No. 179079), pp. 143-155.

[36] *Rollo* (G.R. No. 178947), pp. 274-276; *rollo* (G.R. No. 179079), pp. 156-158.

[37] *Rollo* (G.R. No. 178947), pp. 277-284; *rollo* (G.R. No. 179079), pp. 159-167.

[38] *Rollo* (G.R. No. 178947), pp. 286-291; *rollo* (G.R. No. 179079), pp. 168-173.

[39] *Rollo* (G.R. No. 178947), pp. 307-309; *rollo* (G.R. No. 179079), pp. 190-192. Penned by Executive Judge Ramon S. Caguioa.

allegedly made to the complainant by the accused that her company's investment will significantly increase, clearly appeared in the Subic Bay Marine Exploration, Inc.'s ("SBMEI", for brevity) printed business plan dated January 12, 2001 (Annex "A", Complaint-A ffidavit dated 19 April 2004). Verily, this is SBMEI's representation or "come on" to would-be investors and not a personal assurance of the accused. The fact that accused was the company's Chief Executive Officer and Chairman of the Board of Directors is of no moment in the absence of any evidence to show that accused personally prepared the business plan thereby making the alleged "rosy picture" his own personal enticements to the complainant. Therefore, there being a dearth of evidence pointing to the accused as author of the SBMEI's business plan, any misrepresentation or deceit committed cannot be personally attributed to him.

Furthermore, the court cannot find any sufficient evidence that the accused personally assured the complainant about his so-called power, influence and credit with the SBMA and other financial institutions that would supposedly insure the viability and profitability of the project. Note that nowhere in the Complaint-A ffidavit of the private complainant are there specific factual allegations that would show that the accused had personal business meetings with the SBMA and said financial institutions. A s to how and in what manner and scope accused exercised such alleged power, influence and credit over these juridical entities remain a bare and self-serving averment in the absence of any factual detail or account.

Finally, it cannot be gainsaid [sic] that accused was the one who personally valuated the marine mammals contributed by JV China Incorporated to the Subic Bay Marine Exploration, Inc. as capital amounting to US$3.724 Million. Evidence clearly point to an independent valuation done by a third party namely Beijing Landa A quarium that valued the marine mammals under the Buy-Out A greement dated September 9, 1998. Needless to state, the onus is on complainant to controvert this valuation. A gain, however, no adequate proof was adduced along this line.

Second, the element of personal misappropriation by the accused under par. 1(b) A rticle 315 of the Revised Penal Code is likewise not present. W hile it may be conceded that there was money utilized to pay salaries of expatriates and staff as well as the cost of utilities amounting to US$72,272.00 complainant failed to show that said money was taken from her companies' investments in SBMEI. It

must be pointed out that other than complainant's bare allegation, there was no document presented categorically stating that the investment of complainant's companies were earmark for a particular payment or project. Hence, when the investment entered SBMEI's financial coffers, the same presumably were co-mingled with other monies of the corporation.

Moreover and more revealing, is the fact that again there was no showing that it was accused who personally caused the payment of these expenses allegedly in violation of the objective of the investment. It must be noted that SBMEI is a corporation and not a single proprietorship. Being a corporation, expenses paid of such a kind as utilities and salaries are not authorized personally and solely by the President nor the Chief Executive Officer nor even by the Chairman of the Board for that matter. These are corporate acts that are passed through board resolutions. Hence, these corporate acts can in no way be considered personal acts of the accused. Yet, he was singled out among all 5 members of the Board of Directors who presumably, in the ordinary course of business, approved by resolution the payments of such utilities and salaries. Consequently, there is again insufficiency of evidence that the accused alone caused the payment of these salaries and utilities for the sole purpose of pocketing the money thereby using the same for personal gain.[40]

Consequently, the RTC denied the issuance of a warrant of arrest and hold departure order against Desmond and ordered the dismissal of the cases against him:

WHEREFORE, foregoing considered, the subject motion for judicial determination of probable cause is favorably granted. There being no probable cause, the cases against the accused must be dismissed as they are hereby DISMISSED. The motions to issue warrant of arrest and Hold Departure Order as well as the prayer for provisional remedy are necessarily DENIED.

SO ORDERED.[41]

Given the RTC's dismissal of the foregoing criminal cases, the City Prosecutor's Office filed motion for reconsideration

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[40] *Rollo* (G.R. No. 178947), pp. 307-308; *rollo* (G.R. No. 179079), pp. 190-191.

[41] *Rollo* (G.R. No. 178947), p. 309; *rollo* (G.R. No. 179079), p. 192.

which was, however, denied. A s such, it filed a petition for *certiorari* and *mandamus*[42] before the CA on the ground of grave abuse of discretion. Relatedly, Dio also filed a petition-in-intervention[43] before the CA, praying for the reinstatement of the subject criminal complaints.

The CA Ruling

In its November 8, 2006 Decision,[44] the CA upheld the RTC's authority to dismiss a criminal case if in the process of determining probable cause for issuing a warrant of arrest, it also finds the evidence on record insufficient to establish probable cause. It explained that such dismissal is an exercise of judicial discretion sanctioned under Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure. On this score, the CA evaluated the evidence presented and agreed with the RTC's conclusions that there was no sufficient basis showing that Desmond committed *estafa* by means of false pretenses. Neither was it established that the money sourced from petitioner Dio was converted by respondent Desmond for some other purpose other than that for which it was intended. Pertinent portions of the CA Decision restated the RTC's observations in this wise:

> In the instant case, the alleged false representations by Desmond which allegedly induced private complainants H.S. Equities, Ltd. ("H.S. Equities") and Dio, to part with their money are not supported by the facts on record. First, the alleged false representation employed by Desmond with respect to his expertise and qualifications in the form of influence, credit and business transactions with the Subic Bay Metropolitan A uthority (SBMA) and financial institutions and such resources to enable private complainants to double its investment with SBMEI has not been shown to be false.
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> Indeed, nowhere in the documentary evidence presented by private complainants that allegedly contained the above false representations

[42] *Rollo* (G.R. No. 178947), pp. 320-343; *rollo* (G.R. No. 179079), pp. 194-217.

[43] *Rollo* (G.R. No. 178947), pp. 350-393.

[44] *Rollo* (G.R. No. 178947), pp. 96-110; *rollo* (G.R. No. 179079), pp. 36-50.

does it show that it was private respondent himself who made such representation. Notably, the SBMEI's Business Plan dated January 12, 2001 to which private complainants anchor such allegation does not indicate that the representations made therein came personally from Desmond. In addition, neither does it appear from such document that the statements therein were used as a form of a personal assurance coming from Desmond that private complainants would indeed double the amount they had invested with SBMEI. If at all, we agree with the trial court that statements made in the said business plan were merely a form of enticement to encourage would-be investors from [sic] investing in such kind of business undertaking.

Moreover, we likewise agree with the trial court that no factual allegations were made by private complainants as to how such false pretense of power and influence was made upon them by Desmond and which convinced private complainants to part with their money. It bears stressing that the allegations of false pretense of power and influence in a case of estafa are mere conclusions of law which must be substantiated at the very least by circumstances which would show that the person accused of committing estafa did indeed commit acts of false representations. As the records show, there was no misrepresentation on the part of Desmond that he is the Chairman and Chief Executive Officer of SBMEI which is a corporation engaged in the business of developing marine parks. Significantly, the records likewise show that SBMEI did indeed build and develop a marine park in Subic Bay (Ocean A dventure) for the purposes stated in its business plan and had entered into a long-term lease agreement with SBMA. Documentary evidence in the form of the Report of Independent Auditors to SBMEI shows the amount of investment the corporation had invested in the said business undertaking. For instance, the corporation had invested the amount of ₱106,788,219.00 in buildings and equipment alone. It has also assets consisting of marine mammals which are necessary for the operation of the marine park. In this respect, we cannot subscribe to private complainants' contention that there was misrepresentation on the part of private respondent that he had overvalued the worth of the marine mammals it had purchased from Beijing Landa Aquarium Co., Ltd. of the Republic of China. This claim of private complainants of the deceitful acts employed by Desmond in overpricing the value of the marine animals for US$3.724 Million when in fact the sea animals were only valued for one U.S. dollar was not corroborated by the evidence on hand.

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In the same manner, the facts in the case at bar that would allegedly constitute a criminal charge of estafa under par. 1(b) are wanting. Be it noted that under the said paragraph, estafa with unfaithfulness or abuse of confidence through misappropriation or conversion of the money, goods or any other personal property must be received in trust, on commission, for administration, or under any other obligation which involves the duty to make delivery thereof or to return the same. It is not amiss to note that a perusal of private complainants' Complaint-Affidavit shows that subject money in the amount of US$1,000,000.00 to be used for the Miracle Beach Project was placed in a special account with Equitable-PCI Bank. As the records show, the said funds were placed by Dio under the control of Fatima Paglicawan, an employee of W estdale, such that, no money can be withdrawn from the special account without the signature of the said employee, Desmond and a certain John Corcoran. Therefore, at such time, it cannot be said that the funds were received for administration or already under the juridical possession of Desmond. Meanwhile, we would like to emphasize that to constitute conversion, it presupposes that the thing has been devoted to a purpose or use different from that agreed upon. Verily, a facial examination of the Journal Voucher and Check Voucher pertaining to the withdrawals made on such account clearly shows that the disbursements were not only authorized by Paglicawan but likewise indicated that the purpose for such withdrawals was to cover payments for BIR taxes and the salaries of local employees and expatriates.

To repeat, these withdrawals as well as the purpose thereof were known to Paglicawan when [sic] she authorized the disbursements. Paglicawan, who was designated by private complainant Dio to control the release of the said funds is presumed to have acted under the latter's authority. Such miscommunication between Dio and Paglicawan with respect to the purpose of the funds does not make out a case of estafa there being no abuse of confidence or conversion to speak of taking into account that the said funds were released under the presumed authority of private complainants through Paglicawan, and which were indeed used for the purpose for which it was withdrawn. That being the case, there can be no damage or prejudice to Westdale and Dio as there was no disturbance in the property rights of W estdale and Dio in the said funds since the same were used for the purpose for which it was disbursed.

Then again, we agree with the trial court that there is no sufficient evidence adduced to support the criminal charges of estafa against

Desmond. As pointed out by the trial court, while private respondent is the Chairman and Chief Executive Officer of SBMEI, there is no showing that he had personally and solely authorized the application of the above funds for the payment of expenses not directly connected with the Miracle Beach Project. Nor does it appear that as Chairman and Chief Executive Officer, Desmond has been appointed to execute, on his own, such corporate acts.[45] (Citations omitted)

The City Prosecutor and Dio filed their respective motions for reconsideration which were both denied in a Resolution[46] dated July 19, 2007.

Hence, the instant petitions.

The Issue Before the Court

The primordial issue in this case is whether or not the CA erred in finding no grave abuse of discretion on the part of the RTC when it dismissed the subject informations for lack of probable cause.

The Court's Ruling

The petitions are meritorious.

Determination of probable cause may be either executive or judicial.

The first is made by the public prosecutor, during a preliminary investigation, where he is given broad discretion to determine whether probable cause exists for the purpose of filing a criminal information in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.[47]

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[45] *Rollo* (G.R. No. 178947), pp. 105-109; *rollo* (G.R. No. 179079), pp. 45-49.

[46] *Rollo* (G.R. No. 178947), pp. 112-117; *rollo* (G.R. No. 179079), pp. 51-56.

[47] *People v. Castillo*, G.R. No. 171188, June 19, 2009, 590 SCRA 95, 105-106.

The second is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. In this respect, the judge must satisfy himself that, on the basis of the evidence submitted, there is a necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge, therefore, finds no probable cause, the judge cannot be forced to issue the arrest warrant.[48] Notably, since the judge is already duty-bound to determine the existence or non-existence of probable cause for the arrest of the accused immediately upon the filing of the information, the filing of a motion for judicial determination of probable cause becomes a mere superfluity,[49] if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial.

In the case of *Co v. Republic*,[50] the Court emphasized the settled distinction between an executive and a judicial determination of probable cause, *viz*:[51]

> We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge.

On this score, it bears to stress that a judge is not bound by the resolution of the public prosecutor who conducted the preliminary investigation and must himself ascertain from the latter's findings and supporting documents whether probable

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[48] *Id.* at 106.

[49] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 609.

[50] G.R. No. 168811, November 28, 2007, 539 SCRA 147.

[51] *Id.* at 157, citing *People v. Inting*, G.R. No. 88919, July 25, 1990, 187 SCRA 788, 794. See also *AAA v. Carbonell,* G.R. No. 171465, 8 June 2007, 524 SCRA 496.

cause exists for the purpose of issuing a warrant of arrest. This prerogative is granted by no less than the Constitution which provides that "no warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."[52]

While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a),[53] Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause,[54] *viz*:

SEC. 5. *When warrant of arrest may issue*. — (a) By the Regional Trial Court. — W ithin ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis and underscoring supplied)

In this regard, so as not to transgress the public prosecutor's authority, it must be stressed ***that the judge's dismissal of a***

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[52] 1987 PHILIPPINE CONSTITUTION, Article III, Section 2.

[53] Formerly Section 6 (a) of Rule 112. The deletion of Section 5 concerning the power of MTC judges to conduct preliminary investigation through the issuance of Administrative Matter No. 05-8-26-SC dated August 30, 2005 caused a renumbering of the subsequent sections beginning with Section 6.

[54] See also *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 196-197.

case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause — that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.[55]

In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (*a*) issue a warrant of arrest, if he finds probable cause; (*b*) immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and (*c*) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause.[56]

Applying these principles, the Court finds that the RTC's immediate dismissal, as affirmed by the CA , was improper as the standard of clear lack of probable cause was not observed. In this case, records show that certain essential facts — namely, (*a*) whether or not Desmond committed false representations that induced Dio to invest in Ocean Adventure; and (*b*) whether or not Desmond utilized the funds invested by Dio solely for the Miracle Beach Project for purposes different from what was agreed upon — remain controverted. A s such, it cannot be said that the absence of the elements of the crime of *estafa* under Article 315(2)(a)[57] and 315(1)(b)[58] of the RPC had already

[55] SEC. 5 (a), Rule 112, Revised Rules of Criminal Procedure, as amended by A.M. No. 05-8-26-SC.

[56] RIANO, W.B., Criminal Procedure (The Bar Lecture Series), 2011 Ed., p. 190.

[57] The elements of estafa through false pretenses under Article 315, paragraph 2 (a) of the RPC are: (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property,

been established, thereby rendering the RTC's immediate dismissal of the case highly improper.

Lest it be misconceived, trial judges will do well to remember that when a perceived gap in the evidence leads to a "neither this nor that" conclusion, a purposeful resolution of the ambiguity is preferable over a doubtful dismissal of the case. Verily, a judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful. After all, it cannot be expected that upon the filing of the information in court the prosecutor would· have already presented all the evidence necessary to secure a conviction of the accused, the objective of a previously-conducted preliminary investigation being merely to determine whether there is sufficient ground, to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.[59] In this light, given that the lack of probable cause had not been clearly established in this case, the CA erred, and the RTC gravely abused its discretion, by ruling to

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credit, agency, business or imaginary transactions; (2) that the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) that the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage. See *Ansaldo v. People*, G.R. No. 159381, March 26, 2010, 616 SCRA 556, 564.

[58] The elements of estafa with abuse of confidence through misappropriation or conversion under Article 315 1 (b) of the RPC are: (1) that money, goods or other personal property be 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 made by the offended party on the offender. See *Burgundy Realty Corporation v. Reyes*, G.R. No. 181021, December 10, 2012, 687 SCRA 524, 532-533.

[59] *People v. CA*, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 488.

dismiss Criminal Case Nos. 515-2004 and 516- 004. Indeed, these cases must stand the muster of a full-blown trial where the parties .could be given, as they should be given, the opportunity to ventilate their respective claims:and defenses, on the basis of which the court a quo can properly resolve the factual disputes therein.

WHEREFORE, the pet1t1ons are **GRANTED**. The November 8, 2006 Decision and July 19, 2007 Resolution of the Court of Appeals in CA- G.R. SP No. 88285 which affinned the October 21, 2004 Order of Dismissal issued by the Regional Trial Court of Olongapo City, Branch 74 are **SET ASIDE**. The two (2) criminal informations for estqfa against respondent Timothy J. Desmond in Criminal Case Nos. 515-2004 and 516-2004 are hereby **REINSTATED**. Accordingly, the trial court is directed to proceed with the arraignm nt of the accused and the trial of the case with dispatch.

SO·ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179448. June 26, 2013]

CARLOS L. TANENGGEE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; CUSTODIAL RIGHTS; RIGHT TO COUNSEL; THE PROSCRIPTION AGAINST THE ADMISSIBILITY OF ADMISSION OR CONFESSION OF GUILT OBTAINED IN VIOLATION OF

SECTION 12, ARTICLE III OF THE CONSTITUTION IS APPLICABLE ONLY IN CUSTODIAL INTERROGATION; EXPOUNDED.— The constitutional proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution, as correctly observed by the CA and the OSG, is applicable only in custodial interrogation. Custodial interrogation means any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. Indeed, a person under custodial investigation is guaranteed certain rights which attach upon the commencement thereof, *viz*: (1) to remain silent, (2) to have competent and independent counsel preferably of his own choice, and (3) to be informed of the two other rights above. In the present case, while it is undisputed that petitioner gave an uncounselled written statement regarding an anomaly discovered in the branch he managed, the following are clear: (1) the questioning was not initiated by a law enforcement authority but merely by an internal affairs manager of the bank; and, (2) petitioner was neither arrested nor restrained of his liberty in any significant manner during the questioning. Clearly, petitioner cannot be said to be under custodial investigation and to have been deprived of the constitutional prerogative during the taking of his written statement.

2. ID.; ID.; ID.; ID.; THE EMPLOYEE'S WRITTEN STATEMENT GIVEN DURING ADMINISTRATIVE INQUIRY CONDUCTED BY AN EMPLOYER IN CONNECTION WITH AN ANOMALY HE ALLEGEDLY COMMITTED DURING HIS EMPLOYMENT IS ADMISSIBLE IN EVIDENCE; EXCLUSIONARY RULE UNDER PARAGRAPH (2), SECTION 12 OF THE BILL OF RIGHTS APPLIES ONLY TO ADMISSIONS MADE IN A CRIMINAL INVESTIGATION BUT NOT TO THOSE MADE IN AN ADMINISTRATIVE INVESTIGATION.— [I]n *Remolona v. Civil Service Commission,* we declared that the right to counsel "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation." Amplifying further on the matter, the Court made clear in the recent case of *Carbonel v. Civil Service Commission*: However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during

custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation. Here, petitioner's written statement was given during an administrative inquiry conducted by his employer in connection with an anomaly/irregularity he allegedly committed in the course of his employment. No error can therefore be attributed to the courts below in admitting in evidence and in giving due consideration to petitioner's written statement as there is no constitutional impediment to its admissibility.

3. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; CONFESSION; PRESUMED VOLUNTARY UNTIL THE CONTRARY IS PROVED AND THE CONFESSANT BEARS THE BURDEN OF PROVING THE CONTRARY; ONE OF THE INDICIA OF VOLUNTARINESS IN THE EXECUTION OF EXTRAJUDICIAL STATEMENT IS THAT IT CONTAINS MANY DETAILS AND FACTS WHICH THE INVESTIGATING OFFICERS COULD NOT HAVE KNOWN AND COULD NOT HAVE SUPPLIED WITHOUT THE KNOWLEDGE AND INFORMATION GIVEN BY HIM.—** Petitioner attempts to convince us that he signed, under duress and intimidation, an already prepared typewritten statement. However, his claim lacks sustainable basis and his supposition is just an afterthought for there is nothing in the records that would support his claim of duress and intimidation. Moreover, "[i]t is settled that a confession [or admission] is presumed voluntary until the contrary is proved and the confessant bears the burden of proving the contrary." Petitioner failed to overcome this presumption. On the contrary, his written statement was found to have been executed freely and consciously. The pertinent details he narrated in his statement were of such nature and quality that only a perpetrator of the crime could furnish. The details contained therein attest to its voluntariness. x x x. In *People v. Muit*, it was held that "[o]ne of the indicia of voluntariness in the execution of [petitioner's] extrajudicial [statement] is that [it] contains many details and facts which the investigating officers could not have known and could not have supplied without the knowledge and information given by [him]."

4. ID.; ID.; ID.; ID.; WHERE THE DEFENDANT DID NOT PRESENT EVIDENCE OF COMPULSION, WHERE HE DID NOT INSTITUTE ANY CRIMINAL OR ADMINISTRATIVE ACTION AGAINST HIS SUPPOSED INTIMIDATORS, AND WHERE NO PHYSICAL EVIDENCE OF VIOLENCE WAS PRESENTED, HIS EXTRAJUDICIAL STATEMENT SHALL BE CONSIDERED AS HAVING BEEN VOLUNTARILY EXECUTED.— [T]he fact that petitioner did not raise a whimper of protest and file any charges, criminal or administrative, against the investigator and the two policemen present who allegedly intimidated him and forced him to sign negate his bare assertions of compulsion and intimidation. It is a settled rule that where the defendant did not present evidence of compulsion, where he did not institute any criminal or administrative action against his supposed intimidators, where no physical evidence of violence was presented, his extrajudicial statement shall be considered as having been voluntarily executed.

5. CRIMINAL LAW; FORGERIES; A FINDING OF FORGERY DOES NOT DEPEND ENTIRELY ON THE TESTIMONIES OF GOVERNMENT HANDWRITING EXPERTS WHOSE OPINIONS DO NOT MANDATORILY BIND THE COURTS; A TRIAL COURT IS NOT PRECLUDED BUT IS EVEN AUTHORIZED BY LAW TO CONDUCT AN INDEPENDENT EXAMINATION OF THE QUESTIONED SIGNATURE IN ORDER TO ARRIVE AT A REASONABLE CONCLUSION AS TO ITS AUTHENTICITY.— "Forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud." It can be established by comparing the alleged false signature with the authentic or genuine one. A finding of forgery does not depend entirely on the testimonies of government handwriting experts whose opinions do not mandatorily bind the courts. A trial judge is not precluded but is even authorized by law to conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. In this case, the finding of forgery on the signature of Romeo Tan (Tan) appearing in the promissory notes and cashier's checks was not anchored solely on the result of the examination conducted by the National Bureau of Investigation (NBI) Document Examiner. The trial court also made an independent examination of the questioned signatures and after analyzing

the same, reached the conclusion that the signatures of Tan appearing in the promissory notes are different from his genuine signatures appearing in his Deposit Account Information and Specimen Signature Cards on file with the bank. Thus, we find no reason to disturb the above findings of the RTC which was affirmed by the CA. A rule of long standing in this jurisdiction is that findings of a trial court, when affirmed by the CA, are accorded great weight and respect. Absent any reason to deviate from the said findings, as in this case, the same should be deemed conclusive and binding to this Court.

6. **REMEDIAL LAW; EVIDENCE; SUPPRESSED EVIDENCE; THE PRESUMPTION THAT SUPPRESSED EVIDENCE IS UNFAVORABLE DOES NOT APPLY WHERE THE EVIDENCE WAS AT THE DISPOSAL OF BOTH THE DEFENSE AND THE PROSECUTION.—** The prosecution has the prerogative to choose the evidence or the witnesses it wishes to present. It has the discretion as to how it should present its case. Moreover, the presumption that suppressed evidence is unfavorable does not apply where the evidence was at the disposal of both the defense and the prosecution. In the present case, if petitioner believes that Tan is the principal witness who could exculpate him from liability by establishing that it was Tan and not him who signed the subject documents, the most prudent thing to do is to utilize him as his witness. Anyway, petitioner has the right to have compulsory process to secure Tan's attendance during the trial pursuant to Article III, Section 14(2) of the Constitution. The records show, however, that petitioner did not invoke such right. In view of these, no suppression of evidence can be attributed to the prosecution.

7. **ID.; ID.; DENIALS; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE NEGATIVE AND SELF-SERVING EVIDENCE.—** The Court is also not persuaded by the bare and uncorroborated allegation of petitioner that the loans covered by the promissory notes and the cashier's checks were personally transacted by Tan against his approved letter of credit, although he admittedly never saw Tan affix his signature thereto. Again, this allegation, as the RTC aptly observed, is not supported by established evidence. "It is settled that denials which are unsubstantiated by clear and convincing evidence are negative and self-serving evidence. [They merit] no weight in law and cannot be given greater evidentiary value

over the testimony of credible witnesses who testified on affirmative matters." The chain of events in this case, from the preparation of the promissory notes to the encashment of the cashier's checks, as narrated by the prosecution witnesses and based on petitioner's own admission, established beyond reasonable doubt that he committed the unlawful acts alleged in the Informations.

8. **CRIMINAL LAW; FORGERIES; FALSIFICATION OF COMMERCIAL DOCUMENTS; ELEMENTS; ESTABLISHED.—** Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the Revised Penal Code (RPC) refers to falsification by a private individual or a public officer or employee, who did not take advantage of his official position, of public, private or commercial document. The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and, (3) that the falsification was committed in a public, official or commercial document. All the above-mentioned elements were established in this case. *First*, petitioner is a private individual. *Second*, the acts of falsification consisted in petitioner's (1) counterfeiting or imitating the handwriting or signature of Tan and causing it to appear that the same is true and genuine in all respects; and (2) causing it to appear that Tan has participated in an act or proceeding when he did not in fact so participate. *Third*, the falsification was committed in promissory notes and checks which are commercial documents. Commercial documents are, in general, documents or instruments which are "used by merchants or businessmen to promote or facilitate trade or credit transactions." Promissory notes facilitate credit transactions while a check is a means of payment used in business in lieu of money for convenience in business transactions. A cashier's check necessarily facilitates bank transactions for it allows the person whose name and signature appear thereon to encash the check and withdraw the amount indicated therein.

9. **ID.; ID.; WHEN THE OFFENDER COMMITS ON PUBLIC, OFFICIAL OR COMMERCIAL DOCUMENTS, ANY OF THE ACTS OF FALSIFICATION ENUMERATED IN ARTICLE**

171 OF THE REVISED PENAL CODE AS A NECESSARY MEANS TO COMMIT ANOTHER CRIME LIKE *ESTAFA*, THEFT OR MALVERSATION, THE TWO CRIMES FORM A COMPLEX CRIME.— When the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime like *estafa*, theft or malversation, the two crimes form a complex crime. Under Article 48 of the RPC, there are two classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another. In *Domingo v. People,* we held: The falsification of a public, official, or commercial document may be a means of committing *estafa*, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is *estafa*. But the damage is caused by the commission of *estafa*, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit *estafa*.

10. ID.; *ESTAFA*; ELEMENTS; PRESENT; WHERE FALSIFICATION OF THE QUESTIONED DOCUMENTS WAS A NECESSARY MEANS TO COMMIT *ESTAFA*, AND FALSIFICATION WAS ALREADY CONSUMMATED EVEN BEFORE THE FALSIFIED DOCUMENTS WERE USED TO DEFRAUD ANOTHER THE CRIME COMMITTED IS THE COMPLEX CRIME OF *ESTAFA* THROUGH FALSIFICATION OF COMMERCIAL DOCUMENTS.— "*Estafa* is generally committed when (a) the accused defrauded another by abuse of confidence, or by means of deceit, and (b) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation." "[D]eceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury." The elements of *estafa* obtain in this case. By

falsely representing that Tan requested him to process purported loans on the latter's behalf, petitioner counterfeited or imitated the signature of Tan in the cashier's checks. Through these, petitioner succeeded in withdrawing money from the bank. Once in possession of the amount, petitioner thereafter invested the same in Eurocan Future Commodities. Clearly, petitioner employed deceit in order to take hold of the money, misappropriated and converted it to his own personal use and benefit, and these resulted to the damage and prejudice of the bank in the amount of about ₱43 million. Taken in its entirety, the proven facts show that petitioner could not have withdrawn the money without falsifying the questioned documents. The falsification was, therefore, a necessary means to commit *estafa*, and falsification was already consummated even before the falsified documents were used to defraud the bank. The conviction of petitioner for the complex crime of *Estafa* through Falsification of Commercial Document by the lower courts was thus proper.

11. **ID.; COMPLEX CRIME OF *ESTAFA* THROUGH FALSIFICATION OF COMMERCIAL DOCUMENT; PROPER PENALTY.—** The penalty for falsification of a commercial document under Article 172 of the RPC is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000. The penalty in *estafa* cases, on the other hand, as provided under paragraph 1, Article 315 of the RPC is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount involved exceeds the latter sum, the same paragraph provides the imposition of the penalty in its maximum period with an incremental penalty of one year imprisonment for every ₱10,000.00 but in no case shall the total penalty exceed 20 years of imprisonment. Petitioner in this case is found liable for the commission of the complex crime of *estafa* through falsification of commercial document. The crime of falsification was established to be a necessary means to commit *estafa*. Pursuant to Article 48 of the Code, the penalty to be imposed in such case should be that corresponding to the most serious crime, the same to be applied in its maximum period. The applicable penalty therefore is for the crime of *estafa*, being the more serious offense than falsification. The amounts

involved in this case range from ₱2 million to ₱16 million. Said amounts being in excess of ₱22,000.00, the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor*, adding one (1) year for each additional ₱10,000.00. Considering the amounts involved, the additional penalty of one (1) year for each additional ₱10,000.00 would surely exceed the maximum limitation provided under Article 315, which is twenty (20) years. Thus, the RTC correctly imposed the maximum term of twenty (20) years of *reclusion temporal*. There is need, however, to modify the penalties imposed by the trial court as affirmed by the CA in each case respecting the minimum term of imprisonment. The trial court imposed the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum which is beyond the lawful range. Under the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower to that prescribed by law for the offense. Since the penalty prescribed for the *estafa* charge against petitioner is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum and medium periods which has a duration of six (6) months and one (1) day to four (4) years and two (2) months. Thus, the Court sets the minimum term of the indeterminate penalty at four (4) years and two (2) months of *prision correccional*. Petitioner is therefore sentenced in each case to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

APPEARANCES OF COUNSEL

Gabionza De Santos & Partners for petitioner.
The Solicitor General for respondent.
Perez Calima Maynigo & Roque Law Offices for Private complainant Metrobank.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the December 12, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 23653 affirming with modification the June 25, 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 30, in Criminal Case Nos. 98-163806-10 finding Carlos L. Tanenggee (petitioner) guilty beyond reasonable doubt of five counts of *estafa* through falsification of commercial documents. Likewise questioned is the CA's September 6, 2007 Resolution[4] denying petitioner's Motion for Reconsideration[5] and Supplemental Motion for Reconsideration.[6]

Factual Antecedents

On March 27, 1998, five separate Informations[7] for *estafa* through falsification of commercial documents were filed against petitioner. The said Informations portray the same mode of commission of the crime as in Criminal Case No. 98-163806 but differ with respect to the numbers of the checks and promissory notes involved and the dates and amounts thereof, *viz*:

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[1] *Rollo*, pp. 18-103.

[2] CA *rollo*, pp. 206-230; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now members of this Court).

[3] Records of Criminal Case No. 98-163806, pp. 396-405; penned by Judge Senecio O. Ortile.

[4] CA *rollo*, pp. 277-279.

[5] *Id.* at 231-243.

[6] *Id.* at 247-257.

[7] Records of Criminal Case No. 98-163806, pp. 2-3; records of Criminal Case No. 98-163807, pp. 1-2; records of Criminal Case No. 98-163808, pp. 1-2; records of Criminal Case No. 98-163809, pp. 1-2; records of Criminal Case No. 98-163810, pp. 1-2.

That on or about July 24, 1997, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there wilfully, unlawfully and feloniously defraud, thru falsification of commercial document, the METROPOLITAN BANK & TRUST CO. (METROBANK), represented by its Legal officer, Atty. Ferdinand R. Aguirre, in the following manner: herein accused, being then the Manager of the COMMERCIO BRANCH OF METROBANK located at the New Divisoria Market Bldg., Divisoria, Manila, and taking advantage of his position as such, prepared and filled up or caused to be prepared and filled up METROBANK Promissory Note Form No. 366857 with letters and figures reading "BD#083/97" after the letters reading "PN", with figures reading "07.24.97" after the word "DATE", with the amount of ₱16,000,000.00 in words and in figures, and with other words and figures now appearing thereon, typing or causing to be typed at the right bottom thereof the name reading "ROMEO TAN", feigning and forging or causing to be feigned and forged on top of said name the signature of Romeo Tan, affixing his own signature at the left bottom thereof purportedly to show that he witnessed the alleged signing of the said note by Romeo Tan, thereafter preparing and filling up or causing to be prepared and filled up METROBANK CASHIER'S CHECK NO. CC 0000001531, a commercial document, with date reading "July 24, 1997", with the name reading "Romeo Tan" as payee, and with the sum of ₱15,362,666.67 in words and in figures, which purports to be the proceeds of the loan being obtained, thereafter affixing his own signature thereon, and [directing] the unsuspecting bank cashier to also affix his signature on the said check, as authorized signatories, and finally affixing, feigning and forging or causing to be affixed, feigned and forged four (4) times at the back thereof the signature of said Romeo Tan, thereby making it appear, as it did appear that Romeo Tan had participated in the [preparation], execution and signing of the said Promissory Note and the signing and endorsement of the said METROBANK CASHIER'S CHECK and that he obtained a loan of ₱16,000,000.00 from METROBANK, when in truth and in fact, as the said accused well knew, such was not the case in that said Romeo Tan did not obtain such loan from METROBANK, neither did he participate in the preparation, execution and signing of the said promissory note and signing and endorsement of said METROBANK CASHIER'S CHECK, much less authorize herein accused to prepare, execute and affix his signature in the said documents; that once the said documents were forged and falsified in the manner above set forth, the said accused released, obtained

and received from the METROBANK the sum of ₱15,363,666.67 purportedly representing the proceeds of the said loan, which amount, once in his possession, with intent to defraud, he misappropriated, misapplied and converted to his own personal use and benefit, to the damage and prejudice of the said METROBANK in the same sum of ₱15,363,666.67, Philippine currency.

CONTRARY TO LAW.[8]

On May 27, 1998, the RTC entered a plea of not guilty for the petitioner after he refused to enter a plea.[9] The cases were then consolidated and jointly tried.

The proceedings before the RTC as aptly summarized by the CA are as follows:

During the pre-trial, except for the identity of the accused, the jurisdiction of the court, and that accused was the branch manager of Metrobank Commercio Branch from July 1997 to December 1997, no other stipulations were entered into. Prosecution marked its exhibits "A" to "L" and sub-markings.

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The prosecution alleged that on different occasions, appellant caused to be prepared promissory notes and cashier's checks in the name of Romeo Tan, a valued client of the bank since he has substantial deposits in his account, in connection with the purported loans obtained by the latter from the bank. Appellant approved and signed the cashier's check as branch manager of Metrobank Commercio Branch. Appellant affixed, forged or caused to be signed the signature of Tan as endorser and payee of the proceeds of the checks at the back of the same to show that the latter had indeed endorsed the same for payment. He handed the checks to the Loans clerk, Maria Dolores Miranda, for encashment. Once said documents were forged and falsified, appellant released and obtained from Metrobank the proceeds of the alleged loan and misappropriated the same to his use and benefit. After the discovery of the irregular loans, an internal audit was conducted and an administrative investigation was held in the Head Office of Metrobank, during which appellant signed a written

[8] Records of Criminal Case No. 98-163806, pp. 2-3.

[9] *Id.* at 73.

statement (marked as Exhibit "N") in the form of questions and answers.

The prosecution presented the following witnesses:

Valentino Elevado, a member of the Internal Affairs [D]epartment of Metrobank[,] testified that he conducted and interviewed the appellant in January 1998; that in said interview, appellant admitted having committed the allegations in the Informations, specifically forging the promissory notes; that the proceeds of the loan were secured or personally received by the appellant although it should be the client of the bank who should receive the same; and that all the answers of the appellant were contained in a typewritten document voluntarily executed, thumbmarked, and signed by him (Exhibit "N").

Rosemarie Tan Apostol, assistant branch manager, testified that the signatures appearing on the promissory notes were not the signatures of Romeo Tan; that the promissory notes did not bear her signature although it is required, due to the fact that Romeo Tan is a valued client and her manager accommodated valued clients; that she signed the corresponding checks upon instruction of appellant; and that after signing the checks, appellant took the same [which] remained in his custody.

Eliodoro M. Constantino, NBI Supervisor and a handwriting expert, testified that the signatures appearing on the promissory notes and specimen signatures on the signature card of Romeo Tan were not written by one and the same person.

Maria Dolores Miranda, a Loans Clerk at Metrobank Commercio Branch, testified that several cashier's checks were issued in favor of Romeo Tan; that appellant instructed her to encash the same; and that it was appellant who received the proceeds of the loan.

For his defense, appellant Carlos Lo Tanenggee testified that he is a holder of a Masters degree from the Asian Institute of Management, and was the Branch Manager of Metrobank Commercio Branch from 1994 until he was charged in 1998 [with] the above-named offense. He was with Metrobank for nine (9) years starting as assistant manager of Metrobank Dasmariñas Branch, Binondo, Manila. As manager, he oversaw the day to day operations of the [branch], solicited accounts and processed loans, among others.

Appellant claimed that he was able to solicit Romeo Tan as a client-depositor when he was the branch manager of Metrobank Commercio.

As a valued client, Romeo Tan was granted a credit line for forty million pesos ([₱]40,000,000.00) by Metrobank. Tan was also allowed to open a fictitious account for his personal use and was assisted personally by appellant in his dealings with the bank. In the middle of 1997, Tan allegedly opened a fictitious account and used the name Jose Tan. Such practice for valued clients was allowed by and known to the bank to hide their finances due to rampant kidnappings or from the Bureau of Internal Revenue (BIR) or from their spouses.

According to appellant, Tan availed of his standing credit line (through promissory notes) for five (5) times on the following dates: 1) 24 July 1997 for sixteen million pesos ([₱]16,000,000.00), 2) 27 October 1997 for six million pesos ([₱]6,000,000.00), 3) 12 November 1997 for three million pesos ([₱]3,000,000.00), 4) 21 November 1997 for sixteen million pesos ([₱]16,000,000,00), 5) 22 December 1997 for two million pesos ([₱]2,000,000.00). On all these occasions except the loan on 24 July 1997 when Tan personally went to the bank, Tan allegedly gave his instructions regarding the loan through the telephone. Upon receiving the instructions, appellant would order the Loans clerk to prepare the promissory note and send the same through the bank's messenger to Tan's office, which was located across the [street]. The latter would then return to the bank, through his own messenger, the promissory notes already signed by him. Upon receipt of the promissory note, appellant would order the preparation of the corresponding cashier's check representing the proceeds of the particular loan, send the same through the bank's messenger to the office of Tan, and the latter would return the same through his own messenger already endorsed together with a deposit slip under Current Account No. 258-250133-7 of Jose Tan. Only Cashier's Check dated 21 November 1997 for sixteen million pesos ([₱]16,000,000.00) was not endorsed and deposited for, allegedly, it was used to pay the loan obtained on 24 July 1997. Appellant claimed that all the signatures of Tan appearing on the promissory notes and the cashier's checks were the genuine signatures of Tan although he never saw the latter affix them thereon.

In the middle of January 1998, two (2) Metrobank auditors conducted an audit of the Commercio Branch for more than a week. Thereafter or on 26 January 1998, appellant was asked by Elvira Ong-Chan, senior vice president of Metrobank, to report to the Head Office on the following day. When appellant arrived at the said office, he was surprised that there were seven (7) other people present: two

(2) senior branch officers, two (2) bank lawyers, two (2) policemen (one in uniform and the other in plain clothes), and a representative of the Internal Affairs unit of the bank, Valentino Elevado.

Appellant claimed that Elevado asked him to sign a paper (Exhibit "N") in connection with the audit investigation; that he inquired what he was made to sign but was not offered any explanation; that he was intimidated to sign and was threatened by the police that he will be brought to the precinct if he will not sign; that he was not able to consult a lawyer since he was not apprised of the purpose of the meeting; [and] that "just to get it over with" he signed the paper which turned out to be a confession. After the said meeting, appellant went to see Tan at his office but was unable to find the latter. He also tried to phone him but to no avail.[10]

Ruling of the Regional Trial Court

After the joint trial, the RTC rendered a consolidated Decision[11] dated June 25, 1999 finding petitioner guilty of the crimes charged, the decretal portion of which states:

WHEREFORE, the Court finds the accused, Carlos Lo Tanenggee, guilty beyond reasonable doubt of the offense of *estafa* thru falsification of commercial document[s] charged in each of the five (5) Informations filed and hereby sentences him to suffer the following penalties:

1. In Criminal Case No. 98-163806[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law.

2. In Criminal Case No. 98-163807[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱16 Million with interest [at] 18% per annum counted from 27 November 1997 until fully paid.

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[10] CA *rollo*, pp. 210-215.

[11] Records of Criminal Case No. 98-163806, pp. 396-405.

3. In Criminal Case No. 98-163808[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱6 Million with interest [at] 18% per annum counted from 27 October 1997 until fully paid.

4. In Criminal Case No. 98-163809[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱2 Million with interest [at] 18% per annum counted from 22 December 1997 until fully paid.

5. In Criminal Case No. 98-163810[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱3 Million with interest [at] 18% per annum [counted] from 12 November 1997 until fully paid.

Accused shall serve the said penalties imposed successively.

As mandated in Article 70 of the Revised Penal Code, the maximum duration of the sentence imposed shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him and such maximum period shall in no case exceed forty (40) years.

SO ORDERED.[12]

Ruling of the Court of Appeals

Petitioner appealed the judgment of conviction to the CA where the case was docketed as CA-G.R. CR No. 23653. On December 12, 2006, the CA promulgated its Decision[13] affirming with modification the RTC Decision and disposing of the appeal as follows:

WHEREFORE, the appeal is DENIED for lack of merit and the Decision dated 25 June 1999 of the Regional Trial Court (RTC) of

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[12] *Id.* at 404-405.

[13] CA *rollo*, pp. 206-230.

Manila, Branch 30 convicting the accused-appellant Carlos Lo [Tanenggee] on five counts of *estafa* through falsificationof commercial documents is hereby **AFFIRMED** with **MODIFICATION** that in Criminal Case No. 98-163806, he is further ordered to indemnify Metrobank the sum of [₱]16 Million with interest [at] 18% per annum counted from 24 July 1997 until fully paid.

SO ORDERED.[14]

On December 29, 2006,[15] petitioner moved for reconsideration, which the CA denied per its September 6, 2007 Resolution.[16]

Hence, the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court raising the basic issues of: (1) whether the CA erred in affirming the RTC's admission in evidence of the petitioner's written statement based on its finding that he was not in police custody or under custodial interrogation when the same was taken; and, (2) whether the essential elements of *estafa* through falsification of commercial documents were established by the prosecution.[17]

The Parties' Arguments

While he admits signing a written statement,[18] petitioner refutes the truth of the contents thereof and alleges that he was only forced to sign the same without reading its contents. He asserts that said written statement was taken in violation of his rights under Section 12, Article III of the Constitution, particularly of his right to remain silent, right to counsel, and right to be informed of the first two rights. Hence, the same should not have been admitted in evidence against him.

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), maintains

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[14] *Id.* at 229-230.

[15] *Id.* at 231.

[16] *Id.* at 277-279.

[17] *Rollo*, p. 671.

[18] Exhibit "N," records of Criminal Case No. 98-163806, pp. 189-194.

that petitioner's written statement is admissible in evidence since the constitutional proscription invoked by petitioner does not apply to inquiries made in the context of private employment but is applicable only in cases of custodial interrogation. The OSG thus prays for the affirmance of the appealed CA Decision.

Our Ruling

We find the Petition wanting in merit.

Petitioner's written statement is admissible in evidence.

The constitutional proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution, as correctly observed by the CA and the OSG, is applicable only in custodial interrogation.

Custodial interrogation means any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. Indeed, a person under custodial investigation is guaranteed certain rights which attach upon the commencement thereof, *viz*: (1) to remain silent, (2) to have competent and independent counsel preferably of his own choice, and (3) to be informed of the two other rights above.[19] In the present case, while it is undisputed that petitioner gave an uncounselled written statement regarding an anomaly discovered in the branch he managed, the following are clear: (1) the questioning was not initiated by a law enforcement authority but merely by an internal affairs manager of the bank; and, (2) petitioner was neither arrested nor restrained of his liberty in any significant manner during the questioning. Clearly, petitioner cannot be said to be under custodial investigation and to have been deprived of the constitutional prerogative during the taking of his written statement.

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[19] *People v. Bandula*, G.R. No. 89223, May 27, 1994, 232 SCRA 566, 574.

Moreover, in *Remolona v. Civil Service Commission,*[20] we declared that the right to counsel "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation." Amplifying further on the matter, the Court made clear in the recent case of *Carbonel v. Civil Service Commission*:[21]

> However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.[22]

Here, petitioner's written statement was given during an administrative inquiry conducted by his employer in connection with an anomaly/irregularity he allegedly committed in the course of his employment. No error can therefore be attributed to the courts below in admitting in evidence and in giving due consideration to petitioner's written statement as there is no constitutional impediment to its admissibility.

Petitioner's written statement was given voluntarily, knowingly and intelligently.

Petitioner attempts to convince us that he signed, under duress and intimidation, an already prepared typewritten statement. However, his claim lacks sustainable basis and his supposition is just an afterthought for there is nothing in the records that would support his claim of duress and intimidation.

Moreover, "[i]t is settled that a confession [or admission] is presumed voluntary until the contrary is proved and the confessant bears the burden of proving the contrary."[23] Petitioner failed to

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[20] 414 Phil. 590, 599 (2001).

[21] G.R. No. 187689, September 7, 2010, 630 SCRA 202.

[22] *Id.* at 207.

[23] *People v. Rapeza*, 549 Phil. 378, 404 (2007).

overcome this presumption. On the contrary, his written statement was found to have been executed freely and consciously. The pertinent details he narrated in his statement were of such nature and quality that only a perpetrator of the crime could furnish. The details contained therein attest to its voluntariness. As correctly pointed out by the CA:

> As the trial court noted, the written statement (Exhibit N) of appellant is replete with details which could only be supplied by appellant. The statement reflects spontaneity and coherence which cannot be associated with a mind to which intimidation has been applied. Appellant's answers to questions 14 and 24 were even initialed by him to indicate his conformity to the corrections made therein. The response to every question was fully informative, even beyond the required answers, which only indicates the mind to be free from extraneous restraints.[24]

In *People v. Muit*,[25] it was held that "[o]ne of the indicia of voluntariness in the execution of [petitioner's] extrajudicial [statement] is that [it] contains many details and facts which the investigating officers could not have known and could not have supplied without the knowledge and information given by [him]."

Also, the fact that petitioner did not raise a whimper of protest and file any charges, criminal or administrative, against the investigator and the two policemen present who allegedly intimidated him and forced him to sign negate his bare assertions of compulsion and intimidation. It is a settled rule that where the defendant did not present evidence of compulsion, where he did not institute any criminal or administrative action against his supposed intimidators, where no physical evidence of violence was presented, his extrajudicial statement shall be considered as having been voluntarily executed.[26]

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[24] CA *rollo*, p. 220.

[25] G.R. No. 181043, October 8, 2008, 568 SCRA 251, 268.

[26] *People v. Del Rosario*, 411 Phil. 676, 690-691 (2001), citing *People v. Santalani*, 181 Phil. 481, 490 (1979), *People v. Balane*, 208 Phil. 537, 556 (1983) and *People v. Villanueva*, 213 Phil. 440, 453-454 (1984).

Neither will petitioner's assertion that he did not read the contents of his statement before affixing his signature thereon "just to get it over with" prop up the instant Petition. To recall, petitioner has a masteral degree from a reputable educational institution and had been a bank manager for quite a number of years. He is thus expected to fully understand and comprehend the significance of signing an instrument. It is just unfortunate that he did not exercise due diligence in the conduct of his own affairs. He can therefore expect no consideration for it.

Forgery duly established.

"Forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud."[27] It can be established by comparing the alleged false signature with the authentic or genuine one. A finding of forgery does not depend entirely on the testimonies of government handwriting experts whose opinions do not mandatorily bind the courts. A trial judge is not precluded but is even authorized by law[28] to conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.

In this case, the finding of forgery on the signature of Romeo Tan (Tan) appearing in the promissory notes and cashier's checks was not anchored solely on the result of the examination conducted by the National Bureau of Investigation (NBI) Document Examiner. The trial court also made an independent examination of the questioned signatures and after analyzing the same, reached the conclusion that the signatures of Tan appearing in the promissory notes are different from his genuine signatures appearing in his Deposit Account Information and Specimen Signature Cards on file with the bank. Thus, we find no reason to disturb the above findings of the RTC which was affirmed by the CA. A rule of long standing in this jurisdiction is that findings of a trial court, when affirmed by the CA, are accorded

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[27] *Ocampo v. Land Bank of the Philippines*, G.R. No. 164968, July 3, 2009, 591 SCRA 562, 570.

[28] RULES OF COURT, Rule 132, Section 22.

great weight and respect. Absent any reason to deviate from the said findings, as in this case, the same should be deemed conclusive and binding to this Court.

No suppression of evidence on the part of the prosecution.

Petitioner claims that the prosecution should have presented Tan in court to shed light on the matter. His non-presentation created the presumption that his testimony if given would be adverse to the case of the prosecution. Petitioner thus contends that the prosecution suppressed its own evidence.

Such contention is likewise untenable. The prosecution has the prerogative to choose the evidence or the witnesses it wishes to present. It has the discretion as to how it should present its case.[29] Moreover, the presumption that suppressed evidence is unfavorable does not apply where the evidence was at the disposal of both the defense and the prosecution.[30] In the present case, if petitioner believes that Tan is the principal witness who could exculpate him from liability by establishing that it was Tan and not him who signed the subject documents, the most prudent thing to do is to utilize him as his witness. Anyway, petitioner has the right to have compulsory process to secure Tan's attendance during the trial pursuant to Article III, Section 14(2)[31] of the Constitution. The records show, however, that petitioner

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[29] *People v. Daco*, G.R. No. 168166, October 10, 2008, 568 SCRA 348, 361.

[30] *People v. Mazo*, 419 Phil. 750, 768 (2001), citing *People v. Padiernos*, 161 Phil. 623, 632-633 (1976).

[31] Section 14. (1) x x x

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

did not invoke such right. In view of these, no suppression of evidence can be attributed to the prosecution.

Petitioner's denial is unavailing.

The Court is also not persuaded by the bare and uncorroborated allegation of petitioner that the loans covered by the promissory notes and the cashier's checks were personally transacted by Tan against his approved letter of credit, although he admittedly never saw Tan affix his signature thereto. Again, this allegation, as the RTC aptly observed, is not supported by established evidence. "It is settled that denials which are unsubstantiated by clear and convincing evidence are negative and self-serving evidence. [They merit] no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters."[32] The chain of events in this case, from the preparation of the promissory notes to the encashment of the cashier's checks, as narrated by the prosecution witnesses and based on petitioner's own admission, established beyond reasonable doubt that he committed the unlawful acts alleged in the Informations.

Elements of falsification of commercial documents established.

Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the Revised Penal Code (RPC) refers to falsification by a private individual or a public officer or employee, who did not take advantage of his official position, of public, private or commercial document. The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC;[33] and, (3)

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[32] *People v. Sison*, G.R. No. 172752, June 18, 2008, 555 SCRA 156, 170.

[33] ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister.* — The penalty of *prision mayor* and a fine not to

that the falsification was committed in a public, official or commercial document.

All the above-mentioned elements were established in this case. *First*, petitioner is a private individual. *Second*, the acts of falsification consisted in petitioner's (1) counterfeiting or imitating the handwriting or signature of Tan and causing it to appear that the same is true and genuine in all respects; and (2) causing it to appear that Tan has participated in an act or proceeding when he did not in fact so participate. *Third*, the falsification was committed in promissory notes and checks which are commercial documents. Commercial documents are, in general, documents or instruments which are "used by merchants or businessmen to promote or facilitate trade or credit transactions."[34] Promissory notes facilitate credit transactions while a check is a means of payment used in business in lieu of money for convenience in business transactions. A cashier's check necessarily facilitates bank transactions for it allows the person whose name

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exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature, or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

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[34] *Monteverde v. People*, 435 Phil. 906, 921 (2002).

and signature appear thereon to encash the check and withdraw the amount indicated therein.[35]

Falsification as a necessary means to commit estafa.

When the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime like *estafa*, theft or malversation, the two crimes form a complex crime. Under Article 48 of the RPC, there are two classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another.

In *Domingo v. People*,[36] we held:

> The falsification of a public, official, or commercial document may be a means of committing *estafa*, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is *estafa*. But the damage is caused by the commission of *estafa*, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit *estafa*.

"*Estafa* is generally committed when (a) the accused defrauded another by abuse of confidence, or by means of deceit, and (b) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation."[37] "[D]eceit

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[35] *Domingo v. People*, G.R. No. 186101, October 12, 2009, 603 SCRA 488, 505-506.

[36] *Id.* at 506-507.

[37] *Eugenio v. People*, G.R. No. 168163, March 26, 2008, 549 SCRA 433, 447.

is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."[38]

The elements of *estafa* obtain in this case. By falsely representing that Tan requested him to process purported loans on the latter's behalf, petitioner counterfeited or imitated the signature of Tan in the cashier's checks. Through these, petitioner succeeded in withdrawing money from the bank. Once in possession of the amount, petitioner thereafter invested the same in Eurocan Future Commodities. Clearly, petitioner employed deceit in order to take hold of the money, misappropriated and converted it to his own personal use and benefit, and these resulted to the damage and prejudice of the bank in the amount of about ₱43 million.

Taken in its entirety, the proven facts show that petitioner could not have withdrawn the money without falsifying the questioned documents. The falsification was, therefore, a necessary means to commit *estafa*, and falsification was already consummated even before the falsified documents were used to defraud the bank. The conviction of petitioner for the complex crime of *Estafa* through Falsification of Commercial Document by the lower courts was thus proper.

The Proper Imposable Penalty

The penalty for falsification of a commercial document under Article 172 of the RPC is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00.

The penalty in *estafa* cases, on the other hand, as provided under paragraph 1, Article 315 of the RPC is *prision correccional*

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[38] *Joson v. People*, G.R. No. 178836, July 23, 2008, 559 SCRA 649, 656 citing *People v. Menil, Jr*. 394 Phil. 433, 452 (2000).

[39] Minimum: 4 years, 2 months and 1 day to 5 years, 5 months and 10 days
Medium: 5 years, 5 months and 11 days to 6 years, 8 months and 20 days
Maximum: 6 years, 8 months and 21 days to 8 years.

in its maximum period to *prision mayor* in its minimum period[39] if the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount involved exceeds the latter sum, the same paragraph provides the imposition of the penalty in its maximum period with an incremental penalty of one year imprisonment for every ₱10,000.00 but in no case shall the total penalty exceed 20 years of imprisonment.

Petitioner in this case is found liable for the commission of the complex crime of *estafa* through falsification of commercial document. The crime of falsification was established to be a necessary means to commit *estafa*. Pursuant to Article 48 of the Code, the penalty to be imposed in such case should be that corresponding to the most serious crime, the same to be applied in its maximum period. The applicable penalty therefore is for the crime of *estafa*, being the more serious offense than falsification.

The amounts involved in this case range from ₱2 million to ₱16 million. Said amounts being in excess of ₱22,000.00, the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor*, adding one (1) year for each additional ₱10,000.00. Considering the amounts involved, the additional penalty of one (1) year for each additional ₱10,000.00 would surely exceed the maximum limitation provided under Article 315, which is twenty (20) years. Thus, the RTC correctly imposed the maximum term of twenty (20) years of *reclusion temporal*.

There is need, however, to modify the penalties imposed by the trial court as affirmed by the CA in each case respecting the minimum term of imprisonment. The trial court imposed the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum which is beyond the lawful range. Under the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower to that prescribed by law for the offense. Since the penalty prescribed for the *estafa* charge against petitioner is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum and medium periods which has a duration of six (6) months

and one (1) day to four (4) years and two (2) months. Thus, the Court sets the minimum term of the indeterminate penalty at four (4) years and two (2) months of *prision correccional*. Petitioner is therefore sentenced in each case to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

WHEREFORE, the Petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 23653 dated December 12, 2006 and September 6, 2007, respectively, are hereby **AFFIRMED with the MODIFICATION** that the minimum term of the indeterminate sentence to be imposed upon the petitioner should be four (4) years and two (2) months of *prision correccional*.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179736. June 26, 2013]

SPOUSES BILL AND VICTORIA HING, *petitioners, vs.* **ALEXANDER CHOACHUY, SR. and ALLAN CHOACHUY,** *respondents.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY; DEFINED; THE RIGHT TO PRIVACY IS THE RIGHT OF AN INDIVIDUAL TO BE LET ALONE. NO ONE, NOT EVEN THE STATE, EXCEPT IN CASE OF

OVERRIDING SOCIAL NEED AND THEN ONLY UNDER THE STRINGENT PROCEDURAL SAFEGUARDS, CAN A DISTURB HIM THE PRIVACY OF HIS HOME.— The right to privacy is enshrined in our Constitution and in our laws. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Simply put, the right to privacy is "the right to be let alone." The Bill of Rights guarantees the people's right to privacy and protects them against the State's abuse of power. In this regard, the State recognizes the right of the people to be secure in their houses. No one, not even the State, except "in case of overriding social need and then only under the stringent procedural safeguards," can disturb them in the privacy of their homes.

2. **CIVIL LAW; HUMAN RELATIONS; RIGHT TO PRIVACY; PHRASE "PRYING INTO THE PRIVACY OF ANOTHER'S RESIDENCE" CONSTRUED; AN INDIVIDUAL'S RIGHT TO PRIVACY UNDER ARTICLE 26 (1) OF THE CIVIL CODE SHOULD NOT BE CONFINED TO HIS HOUSE OR RESIDENCE, AS IT MAY EXTEND TO BUSINESS OFFICE WHERE HE HAS THE RIGHT TO EXCLUDE THE PUBLIC OR DENY THEM ACCESS AND ONLY INDIVIDUALS ARE ALLOWED TO ENTER.—** Article 26(1) of the Civil Code, on the other hand, protects an individual's right to privacy and provides a legal remedy against abuses that may be committed against him by other individuals. x x x This provision recognizes that a man's house is his castle, where his right to privacy cannot be denied or even restricted by others. It includes "any act of intrusion into, peeping or peering inquisitively into the residence of another without the consent of the latter." The phrase "prying into the privacy of another's residence," however, does not mean that only the residence is entitled to privacy. As elucidated by Civil law expert Arturo M. Tolentino: Our Code specifically mentions "prying into the privacy of another's residence." This does not mean, however, that only the residence is entitled to privacy, because the law covers also "similar acts." **A business office is entitled to the same privacy when the public is**

excluded therefrom and only such individuals as are allowed to enter may come in. x x x Thus, an individual's right to privacy under Article 26(1) of the Civil Code should not be confined to his house or residence as it may extend to places where he has the right to exclude the public or deny them access. The phrase "prying into the privacy of another's residence," therefore, covers places, locations, or even situations which an individual considers as private. And as long as his right is recognized by society, other individuals may not infringe on his right to privacy. The CA, therefore, erred in limiting the application of Article 26(1) of the Civil Code only to residences.

3. ID.; ID.; ID.; REASONABLE EXPECTATION OF PRIVACY TEST; THE REASONABLENESS OF A PERSON'S EXPECTATION OF PRIVACY DEPENDS ON WHETHER, BY HIS CONDUCT, THE INDIVIDUAL HAS EXHIBITED AN EXPECTATION OF PRIVACY, AND THIS EXPECTATION IS ONE THAT SOCIETY RECOGNIZES AS REASONABLE; THE INSTALLATION OF VIDEO SURVEILLANCE CAMERAS SHOULD NOT COVER PLACES WHERE THERE IS REASONABLE EXPECTATION OF PRIVACY, UNLESS THE CONSENT OF THE INDIVIDUAL, WHOSE RIGHT TO PRIVACY WOULD BE AFFECTED, WAS OBTAINED; NOR SHOULD THESE CAMERAS BE USED TO PRY INTO THE PRIVACY OF ANOTHER'S RESIDENCE OR BUSINESS OFFICE.— In ascertaining whether there is a violation of the right to privacy, courts use the "reasonable expectation of privacy" test. This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated. In *Ople v. Torres*, we enunciated that "the reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether, by his conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable." Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy." Hence, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case. In this day and age, video surveillance cameras are installed practically everywhere for the protection

and safety of everyone. The installation of these cameras, however, should not cover places where there is reasonable expectation of privacy, unless the consent of the individual, whose right to privacy would be affected, was obtained. Nor should these cameras be used to pry into the privacy of another's residence or business office as it would be no different from eavesdropping, which is a crime under Republic Act No. 4200 or the Anti-Wiretapping Law.

4. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE THEREOF JUSTIFIED WHERE THERE IS A CLEAR VIOLATION OF THE PARTIES' RIGHT TO PRIVACY.—** The RTC, x x x considered that petitioners have a "reasonable expectation of privacy" in their property, whether they use it as a business office or as a residence and that the installation of video surveillance cameras directly facing petitioners' property or covering a significant portion thereof, without their consent, is a clear violation of their right to privacy. As we see then, the issuance of a preliminary injunction was justified. We need not belabor that the issuance of a preliminary injunction is discretionary on the part of the court taking cognizance of the case and should not be interfered with, unless there is grave abuse of discretion committed by the court. Here, there is no indication of any grave abuse of discretion. Hence, the CA erred in finding that petitioners are not entitled to an injunctive writ.

5. **REMEDIAL LAW; PARTIES; PARTIES-IN-INTEREST; A REAL PARTY DEFENDANT IS ONE WHO HAS A CORRELATIVE LEGAL OBLIGATION TO REDRESS A WRONG DONE TO THE PLAINTIFF BY REASON OF THE DEFENDANT'S ACT OR OMISSION WHICH HAD VIOLATED THE LEGAL RIGHT OF THE FORMER; RESPONDENTS ARE THE PROPER PARTIES TO BE IMPLEADED IN THE CASE AT BAR.—** A real party defendant is "one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former." In ruling that respondents are not the proper parties, the CA reasoned that since they do not own the building, they could not have installed the video surveillance cameras. Such reasoning, however, is erroneous. The fact that respondents are not the registered

owners of the building does not automatically mean that they did not cause the installation of the video surveillance cameras. In their Complaint, petitioners claimed that respondents installed the video surveillance cameras in order to fish for evidence, which could be used against petitioners in another case. During the hearing of the application for Preliminary Injunction, petitioner Bill testified that when respondents installed the video surveillance cameras, he immediately broached his concerns but they did not seem to care, and thus, he reported the matter to the barangay for mediation, and eventually, filed a Complaint against respondents before the RTC. He also admitted that as early as 1998 there has already been a dispute between his family and the Choachuy family concerning the boundaries of their respective properties. With these factual circumstances in mind, we believe that respondents are the proper parties to be impleaded.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina and Lopez Law Offices for petitioners.

Zosa & Quijano Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"The concept of liberty would be emasculated if it does not likewise compel respect for [one's] personality as a unique individual whose claim to privacy and [non]-interference demands respect."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the July 10, 2007 Decision[3] and the

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[1] *Morfe v. Mutuc*, 130 Phil. 415, 434 (1968).

[2] *Rollo,* pp. 10-33.

[3] CA *rollo*, pp. 111-116; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Antonio L. Villamor and Stephen C. Cruz.

September 11, 2007 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01473.

Factual Antecedents

On August 23, 2005, petitioner-spouses Bill and Victoria Hing filed with the Regional Trial Court (RTC) of Mandaue City a Complaint[5] for Injunction and Damages with prayer for issuance of a Writ of Preliminary Mandatory Injunction/Temporary Restraining Order (TRO), docketed as Civil Case MAN-5223 and raffled to Branch 28, against respondents Alexander Choachuy, Sr. and Allan Choachuy.

Petitioners alleged that they are the registered owners of a parcel of land (Lot 1900-B) covered by Transfer Certificate of Title (TCT) No. 42817 situated in Barangay Basak, City of Mandaue, Cebu;[6] that respondents are the owners of Aldo Development & Resources, Inc. (Aldo) located at Lots 1901 and 1900-C, adjacent to the property of petitioners;[7] that respondents constructed an auto-repair shop building (Aldo Goodyear Servitec) on Lot 1900-C; that in April 2005, Aldo filed a case against petitioners for Injunction and Damages with Writ of Preliminary Injunction/TRO, docketed as Civil Case No. MAN-5125;[8] that in that case, Aldo claimed that petitioners were constructing a fence without a valid permit and that the said construction would destroy the wall of its building, which is adjacent to petitioners' property;[9] that the court, in that case, denied Aldo's application for preliminary injunction for failure to substantiate its allegations;[10] that, in order to get evidence to

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[4] *Id.* at 128-129.

[5] Records, pp. 1-8.

[6] *Id.* at 2.

[7] *Id.* at 3.

[8] *Id.*

[9] *Id.*

[10] *Id.*

support the said case, respondents on June 13, 2005 illegally set-up and installed on the building of Aldo Goodyear Servitec two video surveillance cameras facing petitioners' property;[11] that respondents, through their employees and without the consent of petitioners, also took pictures of petitioners' on-going construction;[12] and that the acts of respondents violate petitioners' right to privacy.[13] Thus, petitioners prayed that respondents be ordered to remove the video surveillance cameras and enjoined from conducting illegal surveillance.[14]

In their Answer with Counterclaim,[15] respondents claimed that they did not install the video surveillance cameras,[16] nor did they order their employees to take pictures of petitioners' construction.[17] They also clarified that they are not the owners of Aldo but are mere stockholders.[18]

Ruling of the Regional Trial Court

On October 18, 2005, the RTC issued an Order[19] granting the application for a TRO. The dispositive portion of the said Order reads:

> WHEREFORE, the application for a [T]emporary [R]estraining [O]rder or a [W]rit of [P]reliminary [I]njunction is granted. Upon the filing and approval of a bond by [petitioners], which the Court sets at ₱50,000.00, let a [W]rit of [P]reliminary [I]njunction issue against the [respondents] Alexander Choachuy, Sr. and Allan Choachuy.

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[11] *Id.*

[12] *Id.* at 4.

[13] *Id.* at 5.

[14] *Id.* at 8.

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

[16] *Id.* at 24.

[17] *Id.* at 25.

[18] *Id.* at 24.

[19] *Id.* at 51-56; penned by Judge Marilyn Lagura-Yap.

They are hereby directed to immediately remove the revolving camera that they installed at the left side of their building overlooking the side of [petitioners'] lot and to transfer and operate it elsewhere at the back where [petitioners'] property can no longer be viewed within a distance of about 2-3 meters from the left corner of Aldo Servitec, facing the road.

IT IS SO ORDERED.[20]

Respondents moved for a reconsideration[21] but the RTC denied the same in its Order[22] dated February 6, 2006.[23] Thus:

WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of merit. Issue a [W]rit of [P]reliminary [I]njunction in consonance with the Order dated 18 October 2005.

IT IS SO ORDERED.[24]

Aggrieved, respondents filed with the CA a Petition for *Certiorari*[25] under Rule 65 of the Rules of Court with application for a TRO and/or Writ of Preliminary Injunction.

Ruling of the Court of Appeals

On July 10, 2007, the CA issued its Decision[26] granting the Petition for *Certiorari*. The CA ruled that the Writ of Preliminary Injunction was issued with grave abuse of discretion because petitioners failed to show a clear and unmistakable right to an injunctive writ.[27] The CA explained that the right to privacy of residence under Article 26(1) of the Civil Code was not violated

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[20] *Id.* at 55-56.

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

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

[23] Erroneously dated as February 6, 2005.

[24] Records, p. 99.

[25] CA *rollo*, pp. 2-12.

[26] *Id.* at 111-116.

[27] *Id.* at 113-114.

since the property subject of the controversy is not used as a residence.[28] The CA also said that since respondents are not the owners of the building, they could not have installed video surveillance cameras.[29] They are mere stockholders of Aldo, which has a separate juridical personality.[30] Thus, they are not the proper parties.[31] The *fallo* reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case. The assailed orders dated October 18, 2005 and February 6, 200[6] issued by the respondent judge are hereby **ANNULLED** and **SET ASIDE**.

SO ORDERED.[32]

Issues

Hence, this recourse by petitioners arguing that:

I.

THE X X X [CA] COMMITTED A REVERSIBLE ERROR WHEN IT ANNULLED AND SET ASIDE THE ORDERS OF THE [RTC] DATED 18 OCTOBER 2005 AND 6 FEBRUARY 2006 HOLDING THAT THEY WERE ISSUED WITH GRAVE ABUSE OF DISCRETION.

II.

THE X X X [CA] COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER SPOUSES HING ARE NOT ENTITLED TO THE WRIT OF PRELIMINARY INJUNCTION ON THE GROUND THAT THERE IS NO VIOLATION OF THEIR CONSTITUTIONAL AND CIVIL RIGHT TO PRIVACY DESPITE THE FACTUAL FINDINGS

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[28] *Id.* at 114.

[29] *Id.*

[30] *Id.* at 115.

[31] *Id.*

[32] *Id.* at 116. Emphases in the original.

[OF] THE RTC, WHICH RESPONDENTS CHOACHUY FAILED TO REFUTE, THAT THE ILLEGALLY INSTALLED SURVEILLANCE CAMERAS OF RESPONDENTS CHOACH[U]Y WOULD CAPTURE THE PRIVATE ACTIVITIES OF PETITIONER SPOUSES HING, THEIR CHILDREN AND EMPLOYEES.

III.

THE X X X [CA] COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT SINCE THE OWNER OF THE BUILDING IS ALDO DEVELOPMENT AND RESOURCES, INC. THEN TO SUE RESPONDENTS CHOACHUY CONSTITUTE[S] A PURPORTEDLY UNWARRANTED PIERCING OF THE CORPORATE VEIL.

IV.

THE X X X [CA] COMMITTED A REVERSIBLE ERROR WHEN IT IGNORED THE SERIOUS FORMAL DEFICIENCIES OF BOTH THE PETITION AND THE MOTION FOR RECONSIDERATION DATED 15 MARCH 2006 OF RESPONDENT[S] CHOACH[U]Y AND GAVE X X X THEM DUE COURSE AND CONSIDERATION.[33]

Essentially, the issues boil down to (1) whether there is a violation of petitioners' right to privacy, and (2) whether respondents are the proper parties to this suit.

Petitioners' Arguments

Petitioners insist that they are entitled to the issuance of a Writ of Preliminary Injunction because respondents' installation of a stationary camera directly facing petitioners' property and a revolving camera covering a significant portion of the same property constitutes a violation of petitioners' right to privacy.[34] Petitioners cite Article 26(1) of the Civil Code, which enjoins

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[33] *Rollo*, pp. 20-21.

[34] *Id.* at 173-176.

persons from prying into the private lives of others.[35] Although the said provision pertains to the privacy of another's residence, petitioners opine that it includes business offices, citing Professor Arturo M. Tolentino.[36] Thus, even assuming arguendo that petitioners' property is used for business, it is still covered by the said provision.[37]

As to whether respondents are the proper parties to implead in this case, petitioners claim that respondents and Aldo are one and the same, and that respondents only want to hide behind Aldo's corporate fiction.[38] They point out that if respondents are not the real owners of the building, where the video surveillance cameras were installed, then they had no business consenting to the ocular inspection conducted by the court.[39]

Respondents' Arguments

Respondents, on the other hand, echo the ruling of the CA that petitioners cannot invoke their right to privacy since the property involved is not used as a residence.[40] Respondents maintain that they had nothing to do with the installation of the video surveillance cameras as these were installed by Aldo, the registered owner of the building,[41] as additional security for its building. [42] Hence, they were wrongfully impleaded in this case.[43]

Our Ruling

The Petition is meritorious.

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[35] *Id.* at 172.

[36] *Id.* at 174-175.

[37] *Id.*

[38] *Id.* at 27.

[39] *Id.*

[40] *Id.* at 153-154.

[41] *Id.* at 152.

[42] *Id.* at 154.

[43] *Id.* at 152.

The right to privacy is the right to be let alone.

The right to privacy is enshrined in our Constitution[44] and in our laws. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities."[45] It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."[46] Simply put, the right to privacy is "the right to be let alone."[47]

The Bill of Rights guarantees the people's right to privacy and protects them against the State's abuse of power. In this regard, the State recognizes the right of the people to be secure in their houses. No one, not even the State, except "in case of overriding social need and then only under the stringent procedural safeguards," can disturb them in the privacy of their homes.[48]

The right to privacy under Article 26(1) of the Civil Code covers business offices

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[44] Section 2, Article III of the Constitution provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[45] *Social Justice Society (SJS) v. Dangerous Drugs Board,* G.R. Nos. 157870, 158633 & 161658, November 3, 2008, 570 SCRA 410, 431.

[46] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, 1990 Edition, Volume I, p. 108.

[47] *Ople v. Torres*, 354 Phil. 948, 970 (1998).

[48] *Sony Music Entertainment (Phils.), Inc. v. Judge Español,* 493 Phil. 507, 516 (2005), citing *Villanueva v. Querubin,* 150-C Phil. 519, 525 (1972).

where the public are excluded therefrom and only certain individuals are allowed to enter.

Article 26(1) of the Civil Code, on the other hand, protects an individual's right to privacy and provides a legal remedy against abuses that may be committed against him by other individuals. It states:

Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another's residence;

x x x x x x x x x

This provision recognizes that a man's house is his castle, where his right to privacy cannot be denied or even restricted by others. It includes "any act of intrusion into, peeping or peering inquisitively into the residence of another without the consent of the latter."[49] The phrase "prying into the privacy of another's residence," however, does not mean that only the residence is entitled to privacy. As elucidated by Civil law expert Arturo M. Tolentino:

Our Code specifically mentions "prying into the privacy of another's residence." This does not mean, however, that only the residence is entitled to privacy, because the law covers also "similar acts." **A business office is entitled to the same privacy when the public is excluded therefrom and only such individuals as are allowed to enter may come in.** x x x[50] (Emphasis supplied)

Thus, an individual's right to privacy under Article 26(1) of the Civil Code should not be confined to his house or residence as

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[49] Pineda, Ernesto L., Torts and Damages (Annotated), 2004 Edition, p. 279.

[50] *Supra* note 46 at 110.

it may extend to places where he has the right to exclude the public or deny them access. The phrase "prying into the privacy of another's residence," therefore, covers places, locations, or even situations which an individual considers as private. And as long as his right is recognized by society, other individuals may not infringe on his right to privacy. The CA, therefore, erred in limiting the application of Article 26(1) of the Civil Code only to residences.

The "reasonable expectation of privacy" test is used to determine whether there is a violation of the right to privacy.

In ascertaining whether there is a violation of the right to privacy, courts use the "reasonable expectation of privacy" test. This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated.[51] In *Ople v. Torres*,[52] we enunciated that "the reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether, by his conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable." Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy."[53] Hence, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.[54]

In this day and age, video surveillance cameras are installed practically everywhere for the protection and safety of everyone. The installation of these cameras, however, should not cover places where there is reasonable expectation of privacy, unless

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[51] *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, 535 Phil. 687, 715 (2006).

[52] *Supra* note 47 at 980.

[53] *Id.* at 981.

[54] *Id.* at 980.

the consent of the individual, whose right to privacy would be affected, was obtained. Nor should these cameras be used to pry into the privacy of another's residence or business office as it would be no different from eavesdropping, which is a crime under Republic Act No. 4200 or the Anti-Wiretapping Law.

In this case, the RTC, in granting the application for Preliminary Injunction, ruled that:

> After careful consideration, there is basis to grant the application for a temporary restraining order. The operation by [respondents] of a revolving camera, even if it were mounted on their building, violated the right of privacy of [petitioners], who are the owners of the adjacent lot. The camera does not only focus on [respondents'] property or the roof of the factory at the back (Aldo Development and Resources, Inc.) but it actually spans through a good portion of [the] land of [petitioners].
>
> Based on the ocular inspection, the Court understands why [petitioner] Hing was so unyielding in asserting that the revolving camera was set up deliberately to monitor the on[-]going construction in his property. The monitor showed only a portion of the roof of the factory of [Aldo]. If the purpose of [respondents] in setting up a camera at the back is to secure the building and factory premises, then the camera should revolve only towards their properties at the back. [Respondents'] camera cannot be made to extend the view to [petitioners'] lot. To allow the [respondents] to do that over the objection of the [petitioners] would violate the right of [petitioners] as property owners. "The owner of a thing cannot make use thereof in such a manner as to injure the rights of a third person."[55]

The RTC, thus, considered that petitioners have a "reasonable expectation of privacy" in their property, whether they use it as a business office or as a residence and that the installation of video surveillance cameras directly facing petitioners' property or covering a significant portion thereof, without their consent, is a clear violation of their right to privacy. As we see then, the issuance of a preliminary injunction was justified. We need not

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[55] Records, p. 55.

belabor that the issuance of a preliminary injunction is discretionary on the part of the court taking cognizance of the case and should not be interfered with, unless there is grave abuse of discretion committed by the court.[56] Here, there is no indication of any grave abuse of discretion. Hence, the CA erred in finding that petitioners are not entitled to an injunctive writ.

This brings us to the next question: whether respondents are the proper parties to this suit.

A real party defendant is one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former.

Section 2, Rule 3 of the Rules of Court provides:

> SEC. 2. *Parties-in-interest.* — A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest.

A real party defendant is "one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former."[57]

In ruling that respondents are not the proper parties, the CA reasoned that since they do not own the building, they could not have installed the video surveillance cameras.[58] Such

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[56] *Overseas Workers Welfare Administration v. Chavez*, G.R. No. 169802, June 8, 2007, 524 SCRA 451, 471.

[57] *Reyes v. Enriquez*, G.R. No. 162956, April 10, 2008, 551 SCRA 86, 92.

[58] CA *rollo*, pp. 114-115.

reasoning, however, is erroneous. The fact that respondents are not the registered owners of the building does not automatically mean that they did not cause the installation of the video surveillance cameras.

In their Complaint, petitioners claimed that respondents installed the video surveillance cameras in order to fish for evidence, which could be used against petitioners in another case.[59] During the hearing of the application for Preliminary Injunction, petitioner Bill testified that when respondents installed the video surveillance cameras, he immediately broached his concerns but they did not seem to care,[60] and thus, he reported the matter to the barangay for mediation, and eventually, filed a Complaint against respondents before the RTC.[61] He also admitted that as early as 1998 there has already been a dispute between his family and the Choachuy family concerning the boundaries of their respective properties.[62] With these factual circumstances in mind, we believe that respondents are the proper parties to be impleaded.

Moreover, although Aldo has a juridical personality separate and distinct from its stockholders, records show that it is a family-owned corporation managed by the Choachuy family.[63]

Also quite telling is the fact that respondents, notwithstanding their claim that they are not owners of the building, allowed the court to enter the compound of Aldo and conduct an ocular inspection. The counsel for respondents even toured Judge Marilyn Lagura-Yap inside the building and answered all her questions regarding the set-up and installation of the video surveillance cameras.[64] And when respondents moved for reconsideration of the Order dated October 18, 2005 of the RTC, one of the

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[59] Records, p. 3

[60] *Id.* at 54.

[61] *Id.* at 52.

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

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

[64] *Id.* at 58-71.

arguments they raised is that Aldo would suffer damages if the video surveillance cameras are removed and transferred.[65] Noticeably, in these instances, the personalities of respondents and Aldo seem to merge.

All these taken together lead us to the inevitable conclusion that respondents are merely using the corporate fiction of Aldo as a shield to protect themselves from this suit. In view of the foregoing, we find that respondents are the proper parties to this suit.

WHEREFORE, the Petition is hereby **GRANTED.** The Decision dated July 10, 2007 and the Resolution dated September 11, 2007 of the Court of Appeals in CA-G.R. CEB-SP No. 01473 are hereby **REVERSED** and **SET ASIDE.** The Orders dated October 18, 2005 and February 6, 200[6] of Branch 28 of the Regional Trial Court of Mandaue City in Civil Case No. MAN-5223 are hereby **REINSTATED** and **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180476. June 26, 2013]

RAYMUNDO CODERIAS, as represented by his Attorney-in-Fact, MARLON M. CODERIAS, *petitioner, vs.* **ESTATE OF JUAN CHIOCO, represented by its Administrator, DR. RAUL R. CARAG,** *respondent.*

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[65] *Id.* at 71.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; THE LAND REFORM CODE (RA 3844); AGRICULTURAL LEASEHOLD RELATION; RIGHTS OF THE AGRICULTURAL TENANT; WHERE THE FARM HAS BEEN EXPROPRIATED AND PLACED UNDER THE COVERAGE OF THE LAND REFORM LAW, THE LANDOWNER HAS NO RIGHT TO EVICT THE TENANT — FARMER AND ENTER THE PROPERTY, BUT IS BOUND TO RESPECT THE JURIDICAL TIE THAT EXISTS BETWEEN HIM AND THE TENANT-FARMER.—** It must be recalled from the facts that the farm has been placed under the coverage of RA 3844. It is also undisputed that a tenancy relation existed between Chioco and petitioner. In fact, a CLT had been issued in favor of the petitioner; thus, petitioner already had an expectant right to the farm. A CLT serves as "a provisional title of ownership over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner. This certificate proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land he was tilling." Since the farm is considered expropriated and placed under the coverage of the land reform law, Chioco had no right to evict petitioner and enter the property. More significantly, Chioco had no right to claim that petitioner's cause of action had prescribed. x x x **[T]he Land Reform Code forges by operation of law, between the landowner and the farmer — be [he] a leasehold tenant or temporarily a share tenant — a *vinculum juris* with certain vital consequences, such as security of tenure of the tenant and the tenant's right to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, and now, more basically, the farmer's pre-emptive right to buy the land he cultivates under Section 11 of the Code, as well as the right to redeem the land, if sold to a third person without his knowledge, under Section 12 of this Code.** x x x. The CA has failed to recognize this *vinculum juris*, this juridical tie, that exists between the petitioner and Chioco, which the latter is bound to respect.

2. ID.; ID.; ID.; THE AGRICULTURAL LEASEHOLD RELATION SHALL BE EXTINGUISHED WHEN THE LEASEHOLD TENANT ABANDONED THE LANDHOLDING WITHOUT THE KNOWLEDGE OF THE AGRICULTURAL LESSOR, OR WHEN THE AGRICULTURAL LESSEE VOLUNTARILY SURRENDERED THE LANDHOLDING, OR THE ABSENCE OF THE PERSONS UNDER SECTION 9 OF RA 3844 TO SUCCEED THE LESSEE; NOT PRESENT.— Under Section 8 of RA 3844, the agricultural leasehold relation shall be extinguished only under any of the following three circumstances, to wit: "(1) abandonment of the landholding without the knowledge of the agricultural lessor; (2) voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or (3) absence of the persons under Section 9 to succeed the lessee x x x." None of these is obtaining in this case. In particular, petitioner cannot be said to have abandoned the landholding. It will be recalled that Chioco forcibly ejected him from the property through threats and intimidation. His house was bulldozed and his crops were destroyed. Petitioner left the farm in 1980 and returned only in 1993 upon learning of Chioco's death. Two years after, or in 1995, he filed the instant Petition.

3. ID.; ID.; ID.; AN ACTION TO ENFORCE ANY CAUSE OF ACTION UNDER RA 3844 SHALL BE BARRED IF NOT COMMENCED WITHIN THREE YEARS AFTER SUCH CAUSE OF ACTION ACCRUED; RECKONING PERIOD; FOR AS LONG AS THE INTIMIDATION AND THREATS TO THE FARMER'S LIFE AND LIMB EXISTED, THE FARMER HAD A CAUSE OF ACTION AGAINST THE AGRICULTURAL LESSOR TO ENFORCE THE RECOGNITION OF THE JURIDICAL TIE THAT EXISTS BETWEEN THEM.— [S]ection 38 of RA 3844 specifically provides that "[a]n action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued." In this case, we deem it proper to reckon petitioner's cause of action to have accrued only upon his knowledge of the death of Chioco in 1993, and not at the time he was forcibly ejected from the landholding in 1980. For as long as the intimidation and threats to petitioner's

life and limb existed, petitioner had a cause of action against Chioco to enforce the recognition of this juridical tie. Since the threats and intimidation ended with Chioco's death, petitioner's obligation to file a case to assert his rights as grantee of the farm under the agrarian laws within the prescriptive period commenced. These rights, x x x, include the right to security of tenure, to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, the pre-emptive right to buy the land, as well as the right to redeem the land, if sold to a third person without his knowledge.

4. **REMEDIAL LAW; RULES OF PROCEDURE; TECHNICALITIES MAY BE SET ASIDE FOR REASONS OF EQUITY.—** Petitioner may not be faulted for acting only after Chioco passed away for his life and the lives of members of his family are not worth gambling for a piece of land. The bulldozing of his house — his castle — is only an example of the fate that could befall them. Under the circumstances, it is therefore understandable that instead of fighting for the farm, petitioner opted to leave and keep his family safe. Any man who cherishes his family more than the most valuable material thing in his life would have done the same. Force and intimidation restrict or hinder the exercise of the will, and so long as they exist, petitioner is deprived of his free will. He could not occupy his farm, plant his crops, tend to them, and harvest them. He could not file an agrarian case against Chioco, for that meant having to return to Nueva Ecija. He could not file the case anywhere else; any other agrarian tribunal or agency would have declined to exercise jurisdiction. Notably, on various instances, we have set aside technicalities for reasons of equity. We are inclined to apply the same liberality in view of the peculiar situation in this case.

5. **LABOR AND SOCIAL LEGISLATION; THE LAND REFORM CODE (RA 3844); AGRICULTURAL LEASEHOLD RELATION; WHERE A CERTIFICATE OF LAND TITLE (CLT) HAD ALREADY BEEN ISSUED TO THE TENANT — FARMERS, NOR TO CLAIM PRESCRIPTION, FOR THE LATTER ARE GUARANTEED CONTINUED ENJOYMENT AND POSSESSION OF THEIR LAND HOLDING EXCEPT WHEN THEIR DISPOSSESSION HAD BEEN AUTHORIZED BY VIRTUE OF A FINAL AND**

EXECUTORY JUDGMENT.— [R]espondent had no right to claim prescription because a CLT had already been issued in favor of petitioner. The farm is considered expropriated and placed under the coverage of the land reform law. As such, respondent had neither the right to evict petitioner nor to claim prescription. In *Catorce v. Court of Appeals*, this Court succinctly held: Petitioner had been adjudged the *bona fide* tenant of the landholding in question. Not only did respondent fail to controvert this fact, but he even impliedly admitted the same in his Answer to petitioner's Complaint when he raised, as one of his defenses, the alleged voluntary surrender of the landholding by petitioner. Respondent Court should have taken this fact into consideration for tenants are guaranteed security of tenure, meaning, the continued enjoyment and possession of their landholding except when their dispossession had been authorized by virtue of a final and executory judgment, which is not so in the case at bar.

6. **REMEDIAL LAW; RULES OF PROCEDURE; A PARTY CANNOT LEGALLY INVOKE THE STRICT APPLICATION OF THE RULES ON PRESCRIPTION WHERE THE FAILURE OF THE OTHER PARTY TO IMMEDIATELY FILE THE PETITION WAS DUE TO ITS OWN MANEUVERS; THE COURTS, UNDER THE PRINCIPLE OF EQUITY, WILL NOT BE GUIDED OR BOUND STRICTLY BY THE STATUTE OF LIMITATIONS OR THE DOCTRINE OF LACHES WHEN TO DO SO, MANIFEST WRONG OR INJUSTICE WOULD RESULT.—** [R]espondent cannot legally invoke the strict application of the rules on prescription because the failure of petitioner to immediately file the Petition was due to its own maneuvers. This Court should not allow respondent to profit from its threats and intimidation. Besides, if we subscribe to respondent's ratiocination that petitioner's cause of action had already prescribed, it would lead to an absurd situation wherein a tenant who was unlawfully deprived of his landholding would be barred from pursuing his rightful claim against the transgressor. We have ruled time and again that litigants should have the amplest opportunity for a proper and just disposition of their cause — free, as much as possible, from the constraints of procedural technicalities. In the interest of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved

on its merits. Rules of procedure should promote, not defeat, substantial justice. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties. Rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided. "It is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result." It must also be emphasized that "[t]he statute of limitations has been devised to operate primarily against those who slept on their rights and not against those desirous to act but cannot do so for causes beyond their control."

7. LABOR AND SOCIAL LEGISLATION; THE LAND REFORM CODE (RA 3844); AGRICULTURAL LEASEHOLD RELATION; WHERE THE TENANT — FARMER'S TENURE ON THE FARM IS DEEMED UNINTERRUPTED, ANY BENEFIT OR ADVANTAGE FROM THE LAND SHALL ACCRUE TO HIM.— Petitioner's tenure on the farm should be deemed uninterrupted since he could not set foot thereon. And if he could not make the required payments to Chioco or the Land Bank of the Philippines, petitioner should not be faulted. And, since his tenure is deemed uninterrupted, any benefit or advantage from the land should accrue to him as well. Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the antiquated and inequitable feudal system of land ownership. It aims to ensure the continued possession, cultivation and enjoyment by the beneficiary of the land that he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award – in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil.

APPEARANCES OF COUNSEL

Mercedes B. Evangelista for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The Court cannot sanction the use of force to evict beneficiaries of land reform. Eviction using force is reversion to the feudal system, where the landed elite have free rein over their poor vassals. In effect, might is right.

This Petition for Review on *Certiorari*[1] seeks the reversal of the April 27, 2007 Decision[2] of the Court of Appeals (CA) and its November 5, 2007 Resolution[3] denying petitioner's Motion for Reconsideration[4] in CA-G.R. SP No. 86149.

Factual Antecedents

The deceased Juan O. Chioco (Chioco) owned a 4-hectare farm in Lupao, Nueva Ecija (the farm). As tiller of the farm,[5] petitioner Raymundo Coderias was issued a Certificate of Land Transfer (CLT) on April 26, 1974.[6]

In 1980, individuals connected with Chioco — who was a former Governor of Nueva Ecija — threatened to kill petitioner if he did not leave the farm. His standing crops (corn and vegetables) and house were bulldozed. For fear of his life, petitioner, together with his family, left the farm.[7]

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[1] *Rollo*, pp. 3-15.

[2] CA *rollo*, pp. 113-120; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] *Id.* at 134-135.

[4] *Id.* at 123-126.

[5] Records, p. 12.

[6] *Id.* at 64.

[7] *Id.* at 11.

In 1993 upon learning of Chioco's death, petitioner and his family re-established themselves on the farm.[8] On March 9, 1995[9] petitioner filed with the Department of Agrarian Reform Adjudication Board (DARAB) in Talavera, Nueva Ecija a Petition[10] against respondent Chioco's estate praying that his possession and cultivation of the farm be respected; that the corresponding agricultural leasehold contract between them be executed; that he be awarded actual damages for the destruction of his house, his standing crops, unrealized harvest from 1980 up to 1993, attorney's fees and costs of litigation.[11] The case was docketed as DARAB Case No. 1572-NNE-95.

Respondent moved to dismiss[12] the Petition, contending that petitioner's cause of action has prescribed under Section 38[13] of Republic Act (RA) No. 3844,[14] as amended, since the alleged dispossession took place in 1980 but the Petition was filed only in 1995, or beyond the statutory three-year period for filing such claims. Petitioner filed an opposition[15] arguing that his tenure/tillage should be deemed uninterrupted since his departure was due to threats made by Chioco's henchmen; thus, the three-year prescriptive period should not be applied to his case.

Ruling of the Provincial Agrarian Reform Adjudicator (PARAD)

On September 10, 1996, the PARAD issued a Decision[16] dismissing the Petition on the ground of prescription. It adopted

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[8] *Id.* at 10.

[9] *Id.* at 12.

[10] *Id.* at 12-8.

[11] *Id.* at 9.

[12] *Id.* at 35-34.

[13] Section 38. Statute of Limitations - An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

[14] The Agricultural Land Reform Code.

[15] Records, pp. 49-48.

[16] *Id.* at 53-50; penned by Provincial Adjudicator Romeo B. Bello.

respondent's argument, adding that although petitioner was forcibly evicted from the farm, he was not without remedy under the law to assert his rights. Yet, he filed the Petition only after 14 years, or in 1995. He is thus guilty of laches and is deemed to have abandoned his rights and privileges under the agrarian laws.

Ruling of the DARAB

Petitioner appealed[17] to the DARAB, which appeal was docketed as DARAB Case No. 6066.

On December 8, 2003, the DARAB issued a Decision,[18] decreeing as follows:

WHEREFORE, the appealed decision is hereby set aside. A new judgment is entered:

1. Ordering the Respondent-Appellee to respect and maintain the Petitioner-Appellant in his peaceful possession and cultivation of the subject landholding; and

2. Ordering the Respondent-Appellee to reimburse Raymundo Coderias of the money equivalent representing the latter's unrealized harvest from 1980 to 1993 or if he has not been allowed to re-enter up to the time this decision is rendered then his share from the harvest should be computed from 1980 to the present, and ordering the MARO of the municipality to assist the parties in the computation thereof.

SO ORDERED.[19]

Respondent filed a Motion for Reconsideration[20] which, in an August 3, 2004 Resolution,[21] the DARAB denied.

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[17] *Id.* at 54.

[18] *Id.* at 64-60; penned by DAR Assistant Secretary Lorenzo R. Reyes with the concurrence of DARAB Members Rolando G. Mangulabnan, Augusto P. Quijano, Edgar A. Igano, and Rustico T. de Belen.

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

[20] *Id.* at 77-75.

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

Ruling of the Court of Appeals

Respondent went up to the CA by Petition for Review,[22] insisting that petitioner's cause of action has been barred by prescription and laches.

On April 27, 2007, the CA rendered the assailed Decision, the dispositive portion of which reads, as follows:

WHEREFORE, in view of the foregoing, the ***Decision***, dated December 8, 2003, and the ***Resolution***, dated August 3, 2004, of the DARAB-Central Office in DARAB Case No. 6066 are hereby **SET ASIDE**. The ***Decision***, dated September 10, 1996 of the Provincial Adjudicator in DARAB Case No. 1572 'NNE' 95 is ordered **REINSTATED**. No costs.

SO ORDERED.[23]

The CA held that undoubtedly, a tenancy relation existed between Chioco and petitioner under RA 3844.[24] Nevertheless, it found that petitioner's action had prescribed, in that the complained acts occurred in 1980 but petitioner filed DARAB Case No. 1572-NNE-95 only in 1995, or beyond the three-year prescriptive period under Section 38 of RA 3844. The CA held that this delayed action by petitioner amounts to laches as well.[25]

On May 23, 2007, petitioner filed a Manifestation with Motion for Reconsideration.[26] However, the CA denied the same via the assailed November 5, 2007 Resolution.

Petitioner thus timely filed the instant Petition for Review on *Certiorari*.

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[22] CA *rollo*, pp. 17-24.

[23] *Id.* at 119. Emphases in the original.

[24] *Id.* at 117.

[25] *Id.* at 117-119.

[26] *Id.* at 123-126.

Issue

In this Petition which seeks a reversal of the CA pronouncement and reinstatement of the December 8, 2003 DARAB Decision, petitioner submits this lone issue for the Court's resolution:

AS A RULE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE AND CANNOT BE REVIEWED ON APPEAL TO THE SUPREME COURT. HOWEVER, THE FINDINGS OF FACT OF THE COURT OF APPEALS MAY BE REVIEWED BY THE SUPREME COURT ON APPEAL BY *CERTIORARI* WHERE THERE IS GRAVE ABUSE OF DISCRETION. AT BAR, THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FINDING THAT PRESCRIPTION HAD SET IN SINCE IT DISREGARD [sic] THE PRINCIPLE LAID DOWN IN SECTIONS 3, 3.1, AND 3.2, RULE I OF THE 2003 DARAB RULES OF PROCEDURE.[27]

Petitioner's Arguments

Petitioner contends in his Petition and Reply[28] that the three-year prescriptive period under Section 38 of RA 3844 should be counted from the time that the intimidation by Chioco ceased upon his death. Petitioner argues that while the intimidation and threats against him and his family continued, the prescriptive period to file a case under RA 3844 should not run.

Petitioner adds that Section 38 should not be applied to his case, as Sections 3, 3.1 and 3.2, Rule I[29] of the 2003 DARAB

[27] *Rollo*, p. 10.

[28] *Id.* at 89-94.

[29] Section 3. *Technical Rules Not Applicable*. – The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence and shall proceed to hear and decide all agrarian cases, disputes, or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity.

3.1 If and when a case comes up for adjudication wherein there is no applicable provision under these rules, the procedural law and jurisprudence generally applicable to agrarian disputes shall be applied.

Rules of Procedure allow for the relaxation of technical rules, procedures, and evidence, as well as the adoption of measures that are appropriate and applicable to agrarian disputes. He likewise cites the pronouncement of the DARAB to the effect that Section 38 is not applicable because the case filed was precisely to obtain security and protection from Chioco's acts of intimidation against him, which continued until Chioco's death in 1993. Since it was Chioco's threats and intimidation which drove him away and kept him from returning to the farm and filing the appropriate case, petitioner suggests that the applicable prescriptive period should be reckoned from the time that he returned to the farm when the threats and intimidation ceased.

Respondent's Arguments

Respondent, in its Comment,[30] insists that petitioner's cause of action had prescribed. It also argues that, as correctly found by the CA, Section 38 of RA 3844 should apply in determining whether petitioner's cause of action has prescribed. RA 3844 is a special law and its provisions on prescription – not those of the Civil Code, which is a general law — should apply to the parties' agrarian dispute.

Our Ruling

The Court grants the Petition.

Petitioner availed of the remedy of Petition for Review on *Certiorari*, but claimed that the CA committed grave abuse of discretion, which accusation properly pertains to an original Petition for *Certiorari* under Rule 65. However, this should

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3.2 In the absence of any applicable procedural law and jurisprudence generally applicable to agrarian disputes and in the interest of expeditious agrarian justice and whenever practicable, the Adjudication Board (Board), and its Regional Agrarian Reform Adjudicators (RARADs) and Provincial Agrarian Reform Adjudicators (PARADs) hereinafter referred to as the Adjudicators, shall have the authority to adopt any appropriate measure or procedure in any given situation or matter not covered by these Rules.

[30] *Rollo*, pp. 98-100.

not affect his case for the CA committed a glaring error on a question of law which must be reversed.

It must be recalled from the facts that the farm has been placed under the coverage of RA 3844. It is also undisputed that a tenancy relation existed between Chioco and petitioner. In fact, a CLT had been issued in favor of the petitioner; thus, petitioner already had an expectant right to the farm.[31] A CLT serves as "a provisional title of ownership over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner. This certificate proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land he was tilling."[32] Since the farm is considered expropriated and placed under the coverage of the land reform law,[33] Chioco had no right to evict petitioner and enter the property. More significantly, Chioco had no right to claim that petitioner's cause of action had prescribed.

> x x x **[T]he Land Reform Code forges by operation of law, between the landowner and the farmer — be [he] a leasehold tenant or temporarily a share tenant — a *vinculum juris* with certain vital consequences, such as security of tenure of the tenant and the tenant's right to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, and now, more basically, the farmer's pre-emptive right to buy the land he cultivates under Section 11 of the Code, as well as the right to redeem the**

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[31] *Vinzons-Magana v. Hon. Estrella*, 278 Phil. 544, 550 (1991); *Pagtalunan v. Judge Tamayo*, 262 Phil. 267, 275-276 (1990).

[32] *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP)*, G.R. No. 169913, June 8, 2011, 651 SCRA 352, 382.

[33] The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. *Land Bank of the Philippines v. Heirs of Salvador Encinas*, G.R. No. 167735, April 18, 2012, 670 SCRA 52, 59; *Land Bank of the Philippines v. Department of Agrarian Reform*, G.R. No. 171840, April 4, 2011, 647 SCRA 152, 169.

land, if sold to a third person without his knowledge, under Section 12 of this Code.

To strengthen the security of tenure of tenants, Section 10 of R.A. No. 3844 provides that the agricultural leasehold relation shall not be extinguished by the sale, alienation or transfer of the legal possession of the landholding. With unyielding consistency, we have held that transactions involving the agricultural land over which an agricultural leasehold subsists resulting in change of ownership, such as the sale or transfer of legal possession, will not terminate the rights of the agricultural lessee who is given protection by the law by making such rights enforceable against the transferee or the landowner's successor in interest. x x x

In addition, Section 7 of the law enunciates the principle of security of tenure of the tenant, such that it prescribes that the relationship of landholder and tenant can only be terminated for causes provided by law. x x x [S]ecurity of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their [landholdings] is tantamount to deprivation of their only means of livelihood. Perforce, the termination of the leasehold relationship can take place only for causes provided by law. x x x[34] (Emphasis supplied and citations omitted)

The CA has failed to recognize this *vinculum juris*, this juridical tie, that exists between the petitioner and Chioco, which the latter is bound to respect.

Under Section 8 of RA 3844, the agricultural leasehold relation shall be extinguished only under any of the following three circumstances, to wit: "(1) abandonment of the landholding without the knowledge of the agricultural lessor; (2) voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or (3) absence of the persons under Section 9 to succeed the lessee x x x." None of these is obtaining in this case. In particular, petitioner cannot be said to have abandoned the landholding. It will be recalled that Chioco forcibly ejected him from the property through threats and intimidation. His house was bulldozed and

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[34] *Sarne v. Hon. Maquiling*, 431 Phil. 675, 686-687 (2002).

his crops were destroyed. Petitioner left the farm in 1980 and returned only in 1993 upon learning of Chioco's death. Two years after, or in 1995, he filed the instant Petition.

Indeed, Section 38 of RA 3844 specifically provides that "[a]n action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued." In this case, we deem it proper to reckon petitioner's cause of action to have accrued only upon his knowledge of the death of Chioco in 1993, and not at the time he was forcibly ejected from the landholding in 1980. For as long as the intimidation and threats to petitioner's life and limb existed, petitioner had a cause of action against Chioco to enforce the recognition of this juridical tie. Since the threats and intimidation ended with Chioco's death, petitioner's obligation to file a case to assert his rights as grantee of the farm under the agrarian laws within the prescriptive period commenced. These rights, as enumerated above, include the right to security of tenure, to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, the pre-emptive right to buy the land, as well as the right to redeem the land, if sold to a third person without his knowledge.

Petitioner may not be faulted for acting only after Chioco passed away for his life and the lives of members of his family are not worth gambling for a piece of land. The bulldozing of his house — his castle — is only an example of the fate that could befall them. Under the circumstances, it is therefore understandable that instead of fighting for the farm, petitioner opted to leave and keep his family safe. Any man who cherishes his family more than the most valuable material thing in his life would have done the same.

Force and intimidation restrict or hinder the exercise of the will, and so long as they exist, petitioner is deprived of his free will. He could not occupy his farm, plant his crops, tend to them, and harvest them. He could not file an agrarian case against Chioco, for that meant having to return to Nueva Ecija.

He could not file the case anywhere else; any other agrarian tribunal or agency would have declined to exercise jurisdiction.

Notably, on various instances, we have set aside technicalities for reasons of equity. We are inclined to apply the same liberality in view of the peculiar situation in this case.[35]

It is worth reiterating at this juncture that respondent had no right to claim prescription because a CLT had already been issued in favor of petitioner. The farm is considered expropriated and placed under the coverage of the land reform law. As such, respondent had neither the right to evict petitioner nor to claim prescription. In *Catorce v. Court of Appeals*,[36] this Court succinctly held:

> Petitioner had been adjudged the *bona fide* tenant of the landholding in question. Not only did respondent fail to controvert this fact, but he even impliedly admitted the same in his Answer to petitioner's Complaint when he raised, as one of his defenses, the alleged voluntary surrender of the landholding by petitioner. Respondent Court should have taken this fact into consideration for tenants are guaranteed security of tenure, meaning, the continued enjoyment and possession of their landholding except when their dispossession had been authorized by virtue of a final and executory judgment, which is not so in the case at bar.
>
> The Agricultural Land Reform Code has been designed to promote economic and social stability. Being a social legislation, it must be interpreted liberally to give full force and effect to its clear intent, which is 'to achieve a dignified existence for the small farmers' and to make them 'more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society'.[37]

At any rate, respondent cannot legally invoke the strict application of the rules on prescription because the failure of petitioner to immediately file the Petition was due to its own

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[35] *Philippine Veterans Bank v. Solid Homes, Inc*., G.R. No. 170126, June 9, 2009, 589 SCRA 40, 53.

[36] 214 Phil. 181 (1984).

[37] *Id.* at 184-185.

maneuvers.[38] This Court should not allow respondent to profit from its threats and intimidation. Besides, if we subscribe to respondent's ratiocination that petitioner's cause of action had already prescribed, it would lead to an absurd situation wherein a tenant who was unlawfully deprived of his landholding would be barred from pursuing his rightful claim against the transgressor.[39]

> We have ruled time and again that litigants should have the amplest opportunity for a proper and just disposition of their cause — free, as much as possible, from the constraints of procedural technicalities. In the interest of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits. Rules of procedure should promote, not defeat, substantial justice. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties.
>
> Rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.[40]

"It is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result."[41] It must also be emphasized that "[t]he statute of limitations has been devised to operate primarily against those who slept on their rights and not against those desirous to act but cannot do so for causes beyond their control."[42]

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[38] *Philippine Veterans Bank v. Solid Homes, Inc.*, *supra*; *Casela v. Court of Appeals*, 146 Phil. 292, 295 (1970); *Bausa v. Heirs of Juan Dino*, G.R. No. 167281, August 28, 2008, 563 SCRA 533, 542.

[39] *Cando v. Spouses Olazo*, 547 Phil. 630, 638 (2007).

[40] *Id.* at 637-638.

[41] *Bausa v. Heirs of Juan Dino, supra* note 38.

[42] *Republic v. Court of Appeals*, 221 Phil. 685, 693 (1985).

Petitioner's tenure on the farm should be deemed uninterrupted since he could not set foot thereon. And if he could not make the required payments to Chioco or the Land Bank of the Philippines, petitioner should not be faulted. And, since his tenure is deemed uninterrupted, any benefit or advantage from the land should accrue to him as well.

Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the antiquated and inequitable feudal system of land ownership. It aims to ensure the continued possession, cultivation and enjoyment by the beneficiary of the land that he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award — in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil.[43]

WHEREFORE, the Petition is **GRANTED**. The April 27, 2007 Decision and November 5, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 86149 are hereby **ANNULLED and SET ASIDE**. The December 8, 2003 Decision of the Department of Agrarian Reform Adjudication Board is ordered **REINSTATED and AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[43] *Micking Vda. de Coronel v. Tanjangco, Jr.*, G.R. No. 170693, August 9, 2010, 627 SCRA 160, 176-177.

FIRST DIVISION

[G.R. No. 182295. June 26, 2013]

7K CORPORATION, *petitioner, vs.* **EDDIE ALBARICO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; JURISDICTION OVER OTHER LABOR DISPUTES; THE VOLUNTARY ARBITRATORS MAY, BY AGREEMENT OF THE PARTIES, ASSUME JURISDICTION OVER A TERMINATION DISPUTE.—** [A]lthough the general rule under the Labor Code gives the labor arbiter exclusive and original jurisdiction over termination disputes, it also recognizes exceptions. One of the exceptions is provided in Article 262 of the Labor Code. In *San Jose v. NLRC,* we said: The phrase "Except as otherwise provided under this Code" refers to the following exceptions: A. Art. 217. Jurisdiction of Labor Arbiters . . . x x x (c) Cases arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company procedure/policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitrator as may be provided in said agreement. **B.** ***Art. 262. Jurisdiction over other labor disputes.*** **The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.** We also said in the same case that "[t]he labor disputes referred to in the same Article 262 [of the Labor Code] can include all those disputes mentioned in Article 217 over which the Labor Arbiter has original and exclusive jurisdiction." From the above discussion, it is clear that voluntary arbitrators may, by agreement of the parties, assume jurisdiction over a termination dispute such as the present case, contrary to the assertion of petitioner that they may not.

2. **ID.; EMPLOYER AND EMPLOYEE; TERMINATION OF EMPLOYMENT; SEPARATION PAY MAY BE AWARDED FOR CONSIDERATIONS OF SOCIAL JUSTICE EVEN IF AN EMPLOYEE HAS BEEN TERMINATED FOR A JUST CAUSE OTHER THAN SERIOUS MISCONDUCT OF AN ACT REFLECTING ON MORAL CHARACTER; NOT PRESENT.—** We rule that although petitioner correctly contends that separation pay may in fact be awarded for reasons other than illegal dismissal, the circumstances of the instant case lead to no other conclusion than that the claim of respondent Albarico for separation pay was premised on his allegation of illegal dismissal. Thus, the voluntary arbitrator properly assumed jurisdiction over the issue of the legality of his dismissal. True, under the Labor Code, separation pay may be given not only when there is illegal dismissal. In fact, it is also given to employees who are terminated for authorized causes, such as redundancy, retrenchment or installation of labor-saving devices under Article 283 of the Labor Code. Additionally, jurisprudence holds that separation pay may also be awarded for considerations of social justice, even if an employee has been terminated for a just cause other than serious misconduct or an act reflecting on moral character. The Court has also ruled that separation pay may be awarded if it has become an established practice of the company to pay the said benefit to voluntarily resigning employees or to those validly dismissed for non-membership in a union as required in a closed-shop agreement. The above circumstances, however, do not obtain in the present case. There is no claim that the issue of entitlement to separation pay is being resolved in the context of any authorized cause of termination undertaken by petitioner corporation. Neither is there any allegation that a consideration of social justice is being resolved here. In fact, even in instances in which separation pay is awarded in consideration of social justice, the issue of the validity of the dismissal still needs to be resolved first. Only when there is already a finding of a valid dismissal for a just cause does the court then award separation pay for reason of social justice. The other circumstances when separation pay may be awarded are not present in this case. The foregoing findings indisputably prove that the issue of separation pay emanates solely from respondent's allegation of illegal dismissal. In fact, petitioner itself acknowledged the issue of illegal dismissal in its position paper submitted to the NCMB.

3. **ID.; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; JURISDICTION OVER OTHER LABOR DISPUTES; A VOLUNTARY ARBITRATOR HAS PLENARY JURISDICTION AND AUTHORITY TO INTERPRET AN AGREEMENT TO ARBITRATE AND TO DETERMINE THE SCOPE OF HIS OWN AUTHORITY WHEN THE SAID AGREEMENT IS VAGUE, SUBJECT ONLY, IN A PROPER CASE, TO THE *CERTIORARI* JURISDICTION OF THE COURT; THE VOLUNTARY ARBITRATOR RIGHTLY ASSUMED JURISDICTION TO DECIDE THE ISSUE OF LEGALITY OF DISMISSAL, ALTHOUGH NOT EXPLICITLY INCLUDED IN THE SUBMISSION AGREEMENT, WHERE THE ISSUE OF THE EMPLOYEE'S ENTITLEMENT TO SEPARATION PAY EMANATES SOLELY FROM HIS ALLEGATION OF ILLEGAL DISMISSAL.—** [W]e note that even the NLRC was of the understanding that the NCMB arbitration case sought to resolve the issue of the legality of the dismissal of the respondent. In fact, the identity of the issue of the legality of his dismissal, which was previously submitted to the NCMB, and later submitted to the NLRC, was the basis of the latter's finding of forum shopping and the consequent dismissal of the case before it. In fact, petitioner also implicitly acknowledged this when it filed before the NLRC its Motion to Dismiss respondent's Complaint on the ground of forum shopping. Thus, it is now estopped from claiming that the issue before the NCMB does not include the issue of the legality of the dismissal of respondent. Besides, there has to be a reason for deciding the issue of respondent's entitlement to separation pay. To think otherwise would lead to absurdity, because the voluntary arbitrator would then be deciding that issue in a vacuum. The arbitrator would have no basis whatsoever for saying that Albarico was entitled to separation pay or not if the issue of the legality of respondent's dismissal was not resolve first. Hence, the voluntary arbitrator correctly assumed that the core issue behind the issue of separation pay is the legality of the dismissal of respondent. Moreover, we have ruled in *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin* that a voluntary arbitrator has plenary jurisdiction and authority to interpret an agreement to arbitrate and to determine the scope of his own authority when the said agreement is vague — subject only, in a proper case, to the *certiorari* jurisdiction of this

Court. Having established that the issue of the legality of dismissal of Albarico was in fact necessarily — albeit not explicitly — included in the Submission Agreement signed by the parties, this Court rules that the voluntary arbitrator rightly assumed jurisdiction to decide the said issue.

4. **ID.; ID.; ID.; THE VOLUNTARY ARBITRATOR MAY AWARD BACKWAGES UPON A FINDING OF ILLEGAL DISMISSAL, EVEN THOUGH THE ISSUE OF ENTITLEMENT THERETO IS NOT EXPLICITLY CLAIMED IN THE SUBMISSION AGREEMENT.—** [W]e also rule that the voluntary arbitrator may award backwages upon a finding of illegal dismissal, even though the issue of entitlement thereto is not explicitly claimed in the Submission Agreement. Backwages, in general, are awarded on the ground of equity as a form of relief that restores the income lost by the terminated employee by reason of his illegal dismissal. In *Sime Darby* we ruled that although the specific issue presented by the parties to the voluntary arbitrator was only "the issue of performance bonus," the latter had the authority to determine not only the issue of whether or not a performance bonus was to be granted, but also the related question of the amount of the bonus, were it to be granted. We explained that there was no indication at all that the parties to the arbitration agreement had regarded "the issue of performance bonus" as a two-tiered issue, of which only one aspect was being submitted to arbitration. Thus, we held that the failure of the parties to limit the issues specifically to that which was stated allowed the arbitrator to assume jurisdiction over the related issue. Similarly, in the present case, there is no indication that the issue of illegal dismissal should be treated as a two-tiered issue whereupon entitlement to backwages must be determined separately. Besides, "since arbitration is a final resort for the adjudication of disputes," the voluntary arbitrator in the present case can assume that he has the necessary power to make a final settlement. Thus, we rule that the voluntary arbitrator correctly assumed jurisdiction over the issue of entitlement of respondent Albarico to backwages on the basis of the former's finding of illegal dismissal.

APPEARANCES OF COUNSEL

RRV Legal Consultancy Firm for petitioner.

D E C I S I O N

SERENO, *CJ:*

This is a Petition for Review on *Certiorari* filed under Rule 45 of the Revised Rules of Court, asking the Court to determine whether a voluntary arbitrator in a labor dispute exceeded his jurisdiction in deciding issues not specified in the submission agreement of the parties. It assails the Decision[1] dated 18 September 2007 and the Resolution[2] dated 17 March 2008 of the Court of Appeals (CA).[3]

FACTS

When he was dismissed on 5 April 1993, respondent Eddie Albarico (Albarico) was a regular employee of petitioner 7K Corporation, a company selling water purifiers. He started working for the company in 1990 as a salesman.[4] Because of his good performance, his employment was regularized. He was also promoted several times: from salesman, he was promoted to senior sales representative and then to acting team field supervisor. In 1992, he was awarded the President's Trophy for being one of the company's top water purifier specialist distributors.

In April of 1993, the chief operating officer of petitioner 7K Corporation terminated Albarico's employment allegedly for his poor sales performance.[5] Respondent had to stop reporting for work, and he subsequently submitted his money claims against petitioner for arbitration before the *National Conciliation and*

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[1] *Rollo*, pp. 26-43.

[2] *Id.* at 44.

[3] Both the Decision and the Resolution in CA-G.R. SP No. 92526 were penned by CA Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

[4] *Rollo*, p. 27; CA Decision, p. 2.

[5] *Id.* at 28; CA Decision, p. 3.

Mediation Board (NCMB). The issue for voluntary arbitration before the NCMB, according to the parties' Submission Agreement dated 19 April 1993, was whether respondent Albarico was entitled to the payment of separation pay and the sales commission reserved for him by the corporation.[6]

While the NCMB arbitration case was pending, respondent Albarico filed a Complaint against petitioner corporation with the Arbitration Branch of the National Labor Relations Commission (NLRC) for illegal dismissal with money claims for overtime pay, holiday compensation, commission, and food and travelling allowances.[7] The Complaint was decided by the labor arbiter in favor of respondent Albarico, who was awarded separation pay in lieu of reinstatement, backwages and attorney's fees.[8]

On appeal by petitioner, the labor arbiter's Decision was vacated by the NLRC for forum shopping on the part of respondent Albarico, because the NCMB arbitration case was still pending.[9] The NLRC Decision, which explicitly stated that the dismissal was without prejudice to the pending NCMB arbitration case,[10] became final after no appeal was taken.

On 17 September 1997, petitioner corporation filed its Position Paper in the NCMB arbitration case.[11] It denied that respondent was terminated from work, much less illegally dismissed. The corporation claimed that he had voluntarily stopped reporting for work after receiving a verbal reprimand for his sales performance; hence, it was he who was guilty of abandonment of employment. Respondent made an oral manifestation that he was adopting the position paper he submitted to the labor

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 60-65, Labor Arbiter's Decision.

[9] *Id.* at 96-102, NLRC Decision.

[10] *Id.* at 101; NLRC Decision, p. 6.

[11] *Id.* at 29; CA Decision, p. 4.

arbiter, a position paper in which the former claimed that he had been illegally dismissed.[12]

On 12 January 2005, almost 12 years after the filing of the NCMB case, both parties appeared in a hearing before the NCMB.[13] Respondent manifested that he was willing to settle the case amicably with petitioner based on the decision of the labor arbiter ordering the payment of separation pay in lieu of reinstatement, backwages and attorney's fees. On its part, petitioner made a counter-manifestation that it was likewise amenable to settling the dispute. However, it was willing to pay only the separation pay and the sales commission according to the Submission Agreement dated 19 April 1993.[14]

The factual findings of the voluntary arbitrator, as well as of the CA, are not clear on what happened afterwards. Even the records are bereft of sufficient information.

On 18 November 2005, the NCMB voluntary arbitrator rendered a Decision finding petitioner corporation liable for illegal dismissal.[15] The termination of respondent Albarico, by reason of alleged poor performance, was found invalid.[16] The arbitrator explained that the promotions, increases in salary, and awards received by respondent belied the claim that the latter was performing poorly.[17] It was also found that Albarico could not have abandoned his job, as the abandonment should have been clearly shown. Mere absence was not sufficient, according to the arbitrator, but must have been accompanied by overt acts pointing to the fact that the employee did not want to work anymore. It was noted that, in the present case, the immediate filing of a complaint for illegal dismissal against the employer,

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[12] *Id.* at 10; Instant Rule 45 Petition, p. 8.

[13] *Id.* at 30; CA Decision, p. 5.

[14] *Id.*

[15] *Id.* at 89-95; Voluntary Arbitrator's Decision.

[16] *Id.* at 89-95; Voluntary Arbitrator's Decision, p. 4.

[17] *Id.*

with a prayer for reinstatement, showed that the employee was not abandoning his work. The voluntary arbitrator also found that Albarico was dismissed from his work without due process.

However, it was found that reinstatement was no longer possible because of the strained relationship of the parties.[18] Thus, in lieu of reinstatement, the voluntary arbitrator ordered the corporation to pay separation pay for two years at ₱4,456 for each year, or a total amount of ₱8,912.

Additionally, in view of the finding that Albarico had been illegally dismissed, the voluntary arbitrator also ruled that the former was entitled to backwages in the amount of ₱90,804.[19] Finally, the arbitrator awarded attorney's fees in respondent's favor, because he had been compelled to file an action for illegal dismissal.[20]

Petitioner corporation subsequently appealed to the CA, imputing to the voluntary arbitrator grave abuse of discretion amounting to lack or excess of jurisdiction for awarding backwages and attorney's fees to respondent Albarico based on the former's finding of illegal dismissal.[21] The arbitrator contended that the issue of the legality of dismissal was not explicitly included in the Submission Agreement dated 19 April 1993 filed for voluntary arbitration and resolution. It prayed that the said awards be set aside, and that only separation pay of ₱8,912.00 and sales commission of ₱4,787.60 be awarded.

The CA affirmed the Decision of the voluntary arbitrator, but eliminated the award of attorney's fees for having been made without factual, legal or equitable justification.[22] Petitioner's Motion for Partial Reconsideration was denied as well.[23]

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[18] *Id.* at 93; Voluntary Arbitrator's Decision, p. 5.

[19] *Id.*

[20] *Id.* at 94; Voluntary Arbitrator's Decision, p. 6.

[21] *Id.* at 121-136; Petitioner's CA Memorandum.

[22] *Id.* at 26-43; CA Decision.

[23] *Id.* at 44; CA Resolution.

Hence, this Petition.

ISSUE

The issue before the Court is whether the CA committed reversible error in finding that the voluntary arbitrator properly assumed jurisdiction to decide the issue of the legality of the dismissal of respondent as well as the latter's entitlement to backwages, even if neither the legality nor the entitlement was expressedly claimed in the Submission Agreement of the parties.

The Petition is denied for being devoid of merit.

DISCUSSION

Preliminarily, we address petitioner's claim that under Article 217 of the Labor Code, original and exclusive jurisdiction over termination disputes, such as the present case, is lodged only with the labor arbiter of the NLRC.[24]

Petitioner overlooks the proviso in the said article, thus:

Art. 217. Jurisdiction of the Labor Arbiters and the Commission.

a. *Except as otherwise provided under this Code*, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

2. **Termination disputes;**

x x x x x x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, **all other claims arising from employer-employee relations**, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) **regardless of whether accompanied with a claim for reinstatement.** (Emphases supplied)

[24] *Id.* at 15; Instant Rule 45 Petition, p. 13.

Thus, although the general rule under the Labor Code gives the labor arbiter exclusive and original jurisdiction over termination disputes, it also recognizes exceptions. One of the exceptions is provided in Article 262 of the Labor Code. In *San Jose v. NLRC,*[25] we said:

The phrase "Except as otherwise provided under this Code" refers to the following exceptions:

A. Art. 217. Jurisdiction of Labor Arbiters . . .

x x x x x x x x x

(c) Cases arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company procedure/policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitrator as may be provided in said agreement.

B. ***Art. 262. Jurisdiction over other labor disputes.*** **The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.** (Emphasis supplied)

We also said in the same case that "[t]he labor disputes referred to in the same Article 262 [of the Labor Code] can include all those disputes mentioned in Article 217 over which the Labor Arbiter has original and exclusive jurisdiction."[26]

From the above discussion, it is clear that voluntary arbitrators may, by agreement of the parties, assume jurisdiction over a termination dispute such as the present case, contrary to the assertion of petitioner that they may not.

We now resolve the main issue. Petitioner argues that, assuming that the voluntary arbitrator has jurisdiction over the present termination dispute, the latter should have limited his decision to the issue contained in the Submission Agreement of the parties

[25] 355 Phil. 759 (1998).

[26] *Id.*

— the issue of whether respondent Albarico was entitled to separation pay and to the sales commission the latter earned before being terminated.[27] Petitioner asserts that under Article 262 of the Labor Code, the jurisdiction of a voluntary arbitrator is strictly limited to the issues that the parties agree to submit. Thus, it contends that the voluntary arbitrator exceeded his jurisdiction when he resolved the issues of the legality of the dismissal of respondent and the latter's entitlement to backwages on the basis of a finding of illegal dismissal.

According to petitioner, the CA wrongly concluded that the issue of respondent's entitlement to separation pay was necessarily based on his allegation of illegal dismissal, thereby making the issue of the legality of his dismissal implicitly submitted to the voluntary arbitrator for resolution.[28] Petitioner argues that this was an erroneous conclusion, because separation pay may in fact be awarded even in circumstances in which there is no illegal dismissal.

We rule that although petitioner correctly contends that separation pay may in fact be awarded for reasons other than illegal dismissal, the circumstances of the instant case lead to no other conclusion than that the claim of respondent Albarico for separation pay was premised on his allegation of illegal dismissal. Thus, the voluntary arbitrator properly assumed jurisdiction over the issue of the legality of his dismissal.

True, under the Labor Code, separation pay may be given not only when there is illegal dismissal. In fact, it is also given to employees who are terminated for authorized causes, such as redundancy, retrenchment or installation of labor-saving devices under Article 283[29] of the Labor Code. Additionally, jurisprudence

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[27] *Id.* at 14-15; Instant Rule 45 Petition, pp. 12-13.

[28] *Id.* at 16-17; Instant Rule 45 Petition, pp. 14-15.

[29] **Art. 283. Closure of establishment and reduction of personnel.** The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this

holds that separation pay may also be awarded for considerations of social justice, even if an employee has been terminated for a just cause other than serious misconduct or an act reflecting on moral character.[30] The Court has also ruled that separation pay may be awarded if it has become an established practice of the company to pay the said benefit to voluntarily resigning employees[31] or to those validly dismissed for non-membership in a union as required in a closed-shop agreement.[32]

The above circumstances, however, do not obtain in the present case. There is no claim that the issue of entitlement to separation pay is being resolved in the context of any authorized cause of termination undertaken by petitioner corporation. Neither is there any allegation that a consideration of social justice is being resolved here. In fact, even in instances in which separation pay is awarded in consideration of social justice, the issue of the validity of the dismissal still needs to be resolved first. Only when there is already a finding of a valid dismissal for a just cause does the court then award separation pay for reason of social justice. The other circumstances when separation pay may be awarded are not present in this case.

The foregoing findings indisputably prove that the issue of separation pay emanates solely from respondent's allegation of

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Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, <u>the worker affected thereby shall be entitled to a separation pay</u> equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[30] *Eastern Paper Mills, Inc. v. NLRC*, 252 Phil. 618 (1989).

[31] *Hinatuan Mining Corporation v. NLRC*, 335 Phil. 1090 (1997).

[32] *United States Lines, Inc. v. Acting Minister of Labor*, 202 Phil. 729 (1982).

illegal dismissal. In fact, petitioner itself acknowledged the issue of illegal dismissal in its position paper submitted to the NCMB.

Moreover, we note that even the NLRC was of the understanding that the NCMB arbitration case sought to resolve the issue of the legality of the dismissal of the respondent. In fact, the identity of the issue of the legality of his dismissal, which was previously submitted to the NCMB, and later submitted to the NLRC, was the basis of the latter's finding of forum shopping and the consequent dismissal of the case before it. In fact, petitioner also implicitly acknowledged this when it filed before the NLRC its Motion to Dismiss respondent's Complaint on the ground of forum shopping. Thus, it is now estopped from claiming that the issue before the NCMB does not include the issue of the legality of the dismissal of respondent. Besides, there has to be a reason for deciding the issue of respondent's entitlement to separation pay. To think otherwise would lead to absurdity, because the voluntary arbitrator would then be deciding that issue in a vacuum. The arbitrator would have no basis whatsoever for saying that Albarico was entitled to separation pay or not if the issue of the legality of respondent's dismissal was not resolve first.

Hence, the voluntary arbitrator correctly assumed that the core issue behind the issue of separation pay is the legality of the dismissal of respondent. Moreover, we have ruled in *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*[33] that a voluntary arbitrator has plenary jurisdiction and authority to interpret an agreement to arbitrate and to determine the scope of his own authority when the said agreement is vague — subject only, in a proper case, to the *certiorari* jurisdiction of this Court.

Having established that the issue of the legality of dismissal of Albarico was in fact necessarily — albeit not explicitly — included in the Submission Agreement signed by the parties, this Court rules that the voluntary arbitrator rightly assumed jurisdiction to decide the said issue.

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[33] 259 Phil. 658 (1989).

Consequently, we also rule that the voluntary arbitrator may award backwages upon a finding of illegal dismissal, even though the issue of entitlement thereto is not explicitly claimed in the Submission Agreement. Backwages, in general, are awarded on the ground of equity as a form of relief that restores the income lost by the terminated employee by reason of his illegal dismissal.[34]

In *Sime Darby* we ruled that although the specific issue presented by the parties to the voluntary arbitrator was only "the issue of performance bonus," the latter had the authority to determine not only the issue of whether or not a performance bonus was to be granted, but also the related question of the amount of the bonus, were it to be granted. We explained that there was no indication at all that the parties to the arbitration agreement had regarded "the issue of performance bonus" as a two-tiered issue, of which only one aspect was being submitted to arbitration. Thus, we held that the failure of the parties to limit the issues specifically to that which was stated allowed the arbitrator to assume jurisdiction over the related issue.

Similarly, in the present case, there is no indication that the issue of illegal dismissal should be treated as a two-tiered issue whereupon entitlement to backwages must be determined separately. Besides, "since arbitration is a final resort for the adjudication of disputes," the voluntary arbitrator in the present case can assume that he has the necessary power to make a final settlement.[35] Thus, we rule that the voluntary arbitrator correctly assumed jurisdiction over the issue of entitlement of respondent Albarico to backwages on the basis of the former's finding of illegal dismissal.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The 18 September 2007 Decision and 17 March 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 92526, are hereby **AFFIRMED**.

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[34] *Torillo v. Leogardo*, 274 Phil. 758 (1991).

[35] *Ludo v. Saornido*, 443 Phil. 554 (2003).

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 185729-32. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ANTONIO P. BELICENA, ULDARICO P. ANDUTAN, JR., RAUL C. DE VERA, ROSANNA P. DIALA and JOSEPH A. CABOTAJE,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE FILING OF THE CRIMINAL ACTION AGAINST AN ACCUSED IN COURT DOES NOT PREVENT THE OMBUDSMAN FROM EXERCISING HIS POWER TO GRANT HIM IMMUNITY FROM CRIMINAL PROSECUTION SO HE CAN BE USED AS STATE WITNESS.—** [T]he filing of the criminal action against an accused in court does not prevent the Ombudsman from exercising the power that the Congress has granted him. Section 17 of R.A. 6770 provides: Section 17. *Immunities.* — x x x Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional

functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office. His above authority enables the Ombudsman to carry out his constitutional mandate to ensure accountability in the public service. It gives the Ombudsman wide latitude in using an accused discharged from the information to increase the chances of conviction of the other accused and attain a higher prosecutorial goal. Immunity statutes seek to provide a balance between the state's interests and the individual's right against self-incrimination. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution. In such a case, both interests and rights are satisfied. As it happened in this case, the Ombudsman had already filed with the Sandiganbayan the criminal action against Mercado and the other respondents in Criminal Cases 27511-14 prior to the Ombudsman's grant of immunity to Mercado. Having already acquired jurisdiction over Mercado's case, it remained within the Sandiganbayan's power to determine whether or not he may be discharged as a state witness in accordance with Section 17, Rule 119 of the Rules of Criminal Procedure.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DISCHARGE OF ACCUSED TO BE STATE WITNESS; REQUIREMENTS.—** The Ombudsman premised its grant of immunity to Mercado on his undertaking to produce all the documents in his possession relative to the DOF tax credit scam and to testify in all pending criminal, civil, and administrative cases against those involved. Indeed, he had consistently cooperated even prior to immunity agreement in the investigation and prosecution of the case. His testimony gave the prosecution a clearer picture of the transactions that led to the issuance of the subject certificates. In any event, the question before the Sandiganbayan was whether or not Mercado met, from its point of view, the following requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

3. ID.; ID.; ID.; ID.; THE POWER TO GRANT IMMUNITY IS NOT AN INHERENT JUDICIAL FUNCTION BUT THE SAME IS VESTED IN THE OMBUDSMAN AS WELL AS IN THE SECRETARY OF JUSTICE; COURTS SHOULD DEFER TO THE JUDGMENT OF THE PROSECUTION AND DENY A MOTION TO DISCHARGE AN ACCUSED SO HE CAN BE USED AS A WITNESS ONLY IN CLEAR CASE OF FAILURE TO MEET THE REQUIREMENTS OF THE RULES.— The authority to grant immunity is not an inherent judicial function. Indeed, Congress has vested such power in the Ombudsman as well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not as a rule have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119.

4. ID.; ID.; ID.; ID.; UNLESS MADE IN CLEAR VIOLATION OF THE RULES, THE PROSECUTORIAL DISCRETION IN THE DETERMINATION OF WHO SHOULD BE USED AS A STATE WITNESS TO BOLSTER THE SUCCESSFUL PROSECUTION OF CRIMINAL OFFENSES SHOULD BE GIVEN WEIGHT BY OUR COURTS.— [T]he Sandiganbayan held that Mercado's testimony is not absolutely necessary because the state has other direct evidence that may prove the offenses charged. x x x. But the records, particularly Mercado's consolidated affidavit, show that his testimony if true could be indispensable in establishing the circumstances that led to the preparation and issuance of fraudulent tax credit certificates. Indeed, nobody appears to be in a better position to testify on this than he, as president of JAM Liner, Inc., the company to which those certificates were issued. x x x. The decision to

move for the discharge of Mercado was part of prosecutorial discretion in the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses. Unless made in clear violation of the Rules, this determination should be given great weight by our courts. As this Court held in *People v. Court of Appeals*: The Rules do not require absolute certainty in determining those conditions. Perforce, the Judge has to rely in a large part upon the suggestions and the considerations presented by the prosecuting officer. "A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. *In coming to his conclusions as to the necessity for the testimony of the accused whose discharge is requested, as to the availability or non-availability of other direct or corroborative evidence; as to which of the accused is the 'most guilty' one; and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer.* x x x."

5. **ID.; ID.; ID.; ID.; WHERE A CRIME IS CONTRIVED IN SECRET, THE DISCHARGE OF ONE OF THE CONSPIRATORS IS ESSENTIAL SO HE CAN TESTIFY AGAINST THE OTHERS.—** [T]he criminal informations in these cases charge respondents with having conspired in approving and issuing the fraudulent tax credit certificates. One rule of wisdom is that where a crime is contrived in secret, the discharge of one of the conspirators is essential so he can testify against the others. Who else outside the conspiracy can testify about the goings-on that took place among the accused involved in the conspiracy to defraud the government in this case? No one can underestimate Mercado's testimony since he alone can provide a detailed picture of the fraudulent scheme that went into the approval and issuance of the tax credit certificates. The documents can show the irregularities but not the detailed events that led to their issuance. As correctly pointed out by the prosecution, Mercado's testimony can fill in the gaps in the evidence.

6. ID.; ID.; ID.; ID.; THE IMMUNITY GRANTED TO AN ACCUSED DOES NOT BLOT OUT HIS COMMISSION OF THE OFFENSE BUT THE STATE SAW A HIGHER SOCIAL VALUE IN ELICITING INFORMATION FROM HIM RATHER THAN IN ENGAGING IN HIS PROSECUTION.— Respondents further contend that Mercado should not be granted immunity because he also benefited from the unlawful transactions. But the immunity granted to Mercado does not blot out the fact that he committed the offense. While he is liable, the State saw a higher social value in eliciting information from him rather than in engaging in his prosecution.

APPEARANCES OF COUNSEL

Jose B. Flaminiano for Antonio P. Balcena.

Santos Parungao Aquino & Santos for U.P. Andutan, Jr.

David Cui-David Buenaventura and Ang Law Offices for Raul C. Dera & Rosanna P. Diala.

D E C I S I O N

ABAD, *J.:*

This case arose from the issuance of two Tax Credit Certificates in favor of JAM Liner, Inc. which were investigated and found fraudulent by the Presidential Task Force 156, created by then President Joseph E. Estrada.

The Facts and the Case

The principal respondent in this case, Homero A. Mercado, was the President of JAM Liner, Inc. The other respondents, Antonio A. Belicena, Uldarico P. Andutan Jr., Raul C. De Vera, and Rosanna P. Diala, were Department of Finance (DOF) officials formerly assigned at its One-Stop Shop Inter-Agency Tax Credit and Drawback Center (DOF One-Stop Shop).

Sometime in 2000, showing willingness to testify against the criminal syndicate that allegedly ran the tax credit scam at the DOF One-Stop Shop, Mercado applied with the Department of

Justice (DOJ) for immunity as state witness under its witness protection program. On June 5, 2000 the DOJ favorably acted on the application and granted immunity to Mercado. Still, since the investigation of the case fell within the authority of the Office of the Ombudsman (Ombudsman), the latter charged him and the other respondents before the Sandiganbayan's Fourth Division with violations of Section 3(j) of Republic Act (R.A.) 3019 and two counts of falsification under Article 171, paragraph 4, of the Revised Penal Code in Criminal Cases 27511-14.

The first information alleged that respondent DOF officials approved and issued in 1996 Tax Credit Certificate 7711 for ₱7,350,444.00 in favor of JAM Liner, Inc. for domestic capital equipment although it did not qualify for such tax credit. The second Information alleged that they further illegally issued in 1996 Tax Credit Certificate 7708 for ₱4,410,265.50 in favor of the same company covering its purchase of six Mitsubishi buses.

Mercado filed a motion for reconsideration or reinvestigation before the Ombudsman, citing the DOJ's grant of immunity to him. Acting favorably on the motion, on September 4, 2003 the Ombudsman executed an Immunity Agreement[1] with Mercado. The agreement provided that, in consideration for granting him immunity from suit, Mercado would produce all relevant documents in his possession and testify against the accused in all the cases, criminal or otherwise, that may be filed against them. Accordingly, on the same date, the Ombudsman filed a motion to discharge Mercado[2] from the information involving him.

But on April 30, 2008 the Sandiganbayan issued a Resolution,[3] denying the Ombudsman's motion. That court held that the

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[1] Exhibit "UUU," signed by the Office of the Ombudsman, represented by Dennis M. Villa-Ignacio, Special Prosecutor, and Homero A. Mercado.

[2] *Rollo*, pp. 56-58.

[3] *Id.* at 37-41, penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Samuel R. Martires.

pieces of evidence adduced during the hearing of the Ombudsman's motion failed to establish the conditions required under Section 17, Rule 119 of the Rules of Court for the discharge of an accused as a state witness. The Ombudsman filed a motion for reconsideration but the court denied it on November 6, 2008,[4] hence, this petition of the People of the Philippines.

Issue Presented

The central issue that this case presents is whether or not the Sandiganbayan gravely abused its discretion in refusing to recognize the immunity from criminal prosecution that the Ombudsman granted respondent Mercado and, as a result, in declining to discharge him from the information as a state witness.

Ruling of the Court

In denying the Ombudsman's motion to drop Mercado from the information, the Sandiganbayan largely dwelt on the question of whether or not the prosecution complied with the requirements of Section 17, Rule 119 of the Rules of Criminal Procedure.

Respondents De Vera and Diala, Mercado's co-accused who opposed the grant of immunity to him, contend that the immunity that the Ombudsman gave Mercado does not bind the court, which in the meantime already acquired jurisdiction over the case against him. That immunity merely relieves Mercado from any further proceedings, including preliminary investigation, which the state might still attempt to initiate against him.[5]

This in a way is true. But the filing of the criminal action against an accused in court does not prevent the Ombudsman from exercising the power that the Congress has granted him. Section 17 of R.A. 6770 provides:

Section 17. *Immunities.* – x x x Under such terms and conditions as it may determine, taking into account the pertinent provisions of

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[4] *Id.* at 42-45.

[5] See Entry of Appearance with Comment/Opposition, *id.* at 260-267.

the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

His above authority enables the Ombudsman to carry out his constitutional mandate to ensure accountability in the public service.[6] It gives the Ombudsman wide latitude in using an accused discharged from the information to increase the chances of conviction of the other accused and attain a higher prosecutorial goal.[7] Immunity statutes seek to provide a balance between the state's interests and the individual's right against self-incrimination. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution.[8] In such a case, both interests and rights are satisfied.

As it happened in this case, the Ombudsman had already filed with the Sandiganbayan the criminal action against Mercado and the other respondents in Criminal Cases 27511-14 prior to the Ombudsman's grant of immunity to Mercado. Having already acquired jurisdiction over Mercado's case, it remained within the Sandiganbayan's power to determine whether or not he may be discharged as a state witness in accordance with Section 17, Rule 119 of the Rules of Criminal Procedure.

The Ombudsman premised its grant of immunity to Mercado on his undertaking to produce all the documents in his possession relative to the DOF tax credit scam and to testify in all pending

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[6] *Quarto v. Marcelo*, G.R. No. 169042, October 5, 2011, 658 SCRA 580, 600.

[7] *Mapa, Jr. v. Sandiganbayan*, G.R. No. 100295, April 26, 1994, 231 SCRA 783.

[8] *Supra* note 6, at 597.

criminal, civil, and administrative cases against those involved. Indeed, he had consistently cooperated even prior to immunity agreement in the investigation and prosecution of the case. His testimony gave the prosecution a clearer picture of the transactions that led to the issuance of the subject certificates.

In any event, the question before the Sandiganbayan was whether or not Mercado met, from its point of view, the following requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

The authority to grant immunity is not an inherent judicial function.[9] Indeed, Congress has vested such power in the Ombudsman as well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not as a rule have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119.

Here, the Sandiganbayan held that Mercado's testimony is not absolutely necessary because the state has other direct evidence that may prove the offenses charged. It held that Mercardo's testimony, in large part, would only help (1) identify numerous documents and (2) disclose matters that are essentially already contained in such documents.

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[9] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 430 (1998).

But the records, particularly Mercado's consolidated affidavit, show that his testimony if true could be indispensable in establishing the circumstances that led to the preparation and issuance of fraudulent tax credit certificates. Indeed, nobody appears to be in a better position to testify on this than he, as president of JAM Liner, Inc., the company to which those certificates were issued. This is what he said in that affidavit:

Sometime in June 1997, Joseph Cabotaje went to Jam Compound office, approached Jerry Mapalo, the liaison officer of Jam Liner and claimed that as a former salesman of Diamond Motor Corporation, he could facilitate the release of the tax credit. He was brought to my office and impressed upon me that he could do the work as he personally knows the top brass in the Center, like Raul De Vera, Assistant Executive Director; Uldarico Andutan, Jr., Deputy Director and Undersecretary Antonio Belicena.

x x x x x x x x x

x x x He asked for a fee of 20% of the amount of the tax credit and explained that this amount he would still share with his "connections" in the Center.

As Jam Liner['s] application with the Center for the 16 Mitsubishi bus units was pending, and having nobody to turn to, my liaison officer recommended that I accept the offer of services of Cabotaje. There was nothing written about the arrangement and it was with the understanding of "no cure no pay," meaning Cabotaje would only be paid after the tax credit certificates were released.

Sometime in July 1997, Cabotaje handed to me tax credit certificates for ₱4.4 million and ₱7.3 million in favor of Jam Liner. I believed that these certificates were approved upon the intercession and through the efforts of Cabotaje. The tax credit certificates were issued on June 30, 1997.

The 2 TCCs were received and handed to me by Mr. Cabotaje. When he presented the TCCs to me, I noticed that the amount was bigger than what we were supposed to get. In my estimate, there was an over evaluation of about 20% equivalent to ₱100,000.00 per unit, more or less.[10]

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[10] Consolidated Affidavit, p. 13.

During direct examination by the Sandiganbayan, Mercado also testified that:

> AJ Ponferrada: The question is, what is unusal about that document? Answer.
>
> Mr. Mercado: It says here, date complied, when we haven't given anything to the Department of Finance except for those we filed originally on April 11, sir. We have not submitted any document related in this application other than those we originally filed on April 11, sir. But it says here, dated (sic) complied, June 26, so, it means, for us, that we have complied with their requirements while we did not give any additional documents to them, Your Honors (*sic*).
>
> x x x x x x x x x
>
> Q: What else did you notice aside from the date of suspension?
>
> A: The date of suspension, sir, was April 13, a few days after we filed the application and on the third page of Exhibit "KKK-2". If I may repeat my testimony before, this amount is much bigger than those we filed with the Department of Finance. But the engine and chassis number are the same except for the amount, which was noted to ₱4,094,000.00, sir.[11] x x x

The decision to move for the discharge of Mercado was part of prosecutorial discretion in the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses. Unless made in clear violation of the Rules, this determination should be given great weight by our courts. As this Court held in *People v. Court of Appeals*:[12]

> The Rules do not require absolute certainty in determining those conditions. Perforce, the Judge has to rely in a large part upon the suggestions and the considerations presented by the prosecuting officer.
>
> "A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial

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[11] TSN, March 21, 2006, pp. 13-17.

[12] 209 Phil. 277 (1983).

> as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. *In coming to his conclusions as to the necessity for the testimony of the accused whose discharge is requested, as to the availability or non-availability of other direct or corroborative evidence; as to which of the accused is the 'most guilty' one; and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer.* x x x."[13] (Emphasis supplied)

What is more, the criminal informations in these cases charge respondents with having conspired in approving and issuing the fraudulent tax credit certificates. One rule of wisdom is that where a crime is contrived in secret, the discharge of one of the conspirators is essential so he can testify against the others.[14] Who else outside the conspiracy can testify about the goings-on that took place among the accused involved in the conspiracy to defraud the government in this case?[15] No one can underestimate Mercado's testimony since he alone can provide a detailed picture of the fraudulent scheme that went into the approval and issuance of the tax credit certificates. The documents can show the irregularities but not the detailed events that led to their issuance. As correctly pointed out by the prosecution, Mercado's testimony can fill in the gaps in the evidence.

Respondents further contend that Mercado should not be granted immunity because he also benefited from the unlawful transactions. But the immunity granted to Mercado does not blot out the fact that he committed the offense. While he is liable, the State saw a higher social value in eliciting information from him rather than in engaging in his prosecution.[16]

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[13] *Id.* at 281-282.

[14] *Chua v. Court of Appeals*, 329 Phil. 841, 847 (1996).

[15] *Id.* at 854.

[16] *Tanchanco v. Sandiganbayan (Second Division)*, 512 Phil. 590, 616 (2005).

WHEREFORE, the Court **GRANTS** the petition, **SETS ASIDE** the Sandiganbayan's Resolutions of April 30 and November 6, 2008 in Criminal Cases 27511-14, and **ORDERS** the discharge of accused Homero A. Mercado from the criminal information to be used as state witness.

SO ORDERED.

Velasco (Chairperson), Jr., Perez,[*] *Mendoza,* and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185891. June 26, 2013]

CATHAY PACIFIC AIRWAYS, *petitioner, vs.* **JUANITA REYES, WILFREDO REYES, MICHAEL ROY REYES, SIXTA LAPUZ, and SAMPAGUITA TRAVEL CORP.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS; NOT PRESENT.—** At the outset, it bears pointing out that respondent Sixta had no cause of action against Cathay Pacific or Sampaguita Travel. The elements of a cause of action consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right. As culled from the records, there has been no violation of any right or breach of any duty on the part of Cathay Pacific and Sampaguita Travel. As a holder of

[*] Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Reffle dated February 14, 2011.

a valid booking, Sixta had the right to expect that she would fly on the flight and on the date specified on her airplane ticket. Cathay Pacific met her expectations and Sixta was indeed able to complete her flight without any trouble. The absence of any violation to Sixta's right as passenger effectively deprived her of any relief against either Cathay Pacific or Sampaguita Travel.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF CARRIAGE; WHEN AN AIRLINE ISSUES A TICKET TO A PASSENGER CONFIRMED ON A PARTICULAR FLIGHT, ON A CERTAIN DATE, A CONTRACT OF CARRIAGE ARISES, AND THE PASSENGER HAS EVERY RIGHT TO EXPECT THAT HE WOULD FLY ON THAT FLIGHT AND ON THAT DATE. IF HE DOES NOT, THEN THE CARRIER OPENS ITSELF TO A SUIT FOR BREACH OF CONTRACT OF CARRIAGE.—** Respondents entered into a contract of carriage with Cathay Pacific. As far as respondents are concerned, they were holding valid and confirmed airplane tickets. The ticket in itself is a valid written contract of carriage whereby for a consideration, Cathay Pacific undertook to carry respondents in its airplane for a round-trip flight from Manila to Adelaide, Australia and then back to Manila. In fact, Wilfredo called the Cathay Pacific office in Adelaide one week before his return flight to re-confirm his booking. He was even assured by a staff of Cathay Pacific that he does not need to re- confirm his booking. In its defense, Cathay Pacific posits that Wilfredo's booking was cancelled because a ticket number was not inputted by Sampaguita Travel, while bookings of Juanita and Michael were not honored for being fictitious. Cathay Pacific clearly blames Sampaguita Travel for not finalizing the bookings for the respondents' return flights. Respondents are not privy to whatever misunderstanding and confusion that may have transpired in their bookings. On its face, the airplane ticket is a valid written contract of carriage. This Court has held that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.

3. **ID.; ID.; CONTRACT OF SERVICE; THE STANDARD OF CARE REQUIRED IS THAT OF A GOOD FATHER OF A FAMILY WHICH CONNOTES REASONABLE CARE CONSISTENT WITH THAT WHICH AN ORDINARY PRUDENT PERSON WOULD HAVE OBSERVED WHEN CONFRONTED WITH A SIMILAR SITUATION.—** Cathay Pacific breached its contract of carriage with respondents when it disallowed them to board the plane in Hong Kong going to Manila on the date reflected on their tickets. Thus, Cathay Pacific opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit. In contrast, the contractual relation between Sampaguita Travel and respondents is a contract for services. The object of the contract is arranging and facilitating the latter's booking and ticketing. It was even Sampaguita Travel which issued the tickets. Since the contract between the parties is an ordinary one for services, the standard of care required of respondent is that of a good father of a family under Article 1173 of the Civil Code. This connotes reasonable care consistent with that which an ordinarily prudent person would have observed when confronted with a similar situation. The test to determine whether negligence attended the performance of an obligation is: did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.

4. **ID.; DAMAGES; NEGLIGENCE IN THE PERFORMANCE OF AN OBLIGATION RENDERS A PARTY LIABLE FOR DAMAGES.—** There was indeed failure on the part of Sampaguita Travel to exercise due diligence in performing its obligations under the contract of services. It was established by Cathay Pacific, through the generation of the PNRs, that Sampaguita Travel failed to input the correct ticket number for Wilfredo's ticket. Cathay Pacific even asserted that Sampaguita Travel made two fictitious bookings for Juanita and Michael. The negligence of Sampaguita Travel renders it also liable for damages.

5. **ID.; ID.; ACTUAL DAMAGES; TO JUSTIFY AN AWARD THEREOF, THERE MUST BE COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS; CLAIM FOR ACTUAL DAMAGES DENIED FOR FAILURE TO SHOW PROOF**

THEREOF.— For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts. We echo the findings of the trial court that respondents failed to show proof of actual damages. Wilfredo initially testified that he personally incurred losses amounting to ₱300,000.00 which represents the amount of the contract that he was supposedly scheduled to sign had his return trip not been cancelled. During the cross-examination however, it appears that the supposed contract-signing was a mere formality and that an agreement had already been hatched beforehand. Hence, we cannot fathom how said contract did not materialize because of Wilfredo's absence, and how Wilfredo incurred such losses when he himself admitted that he entered into said contract on behalf of Parsons Engineering Consulting Firm, where he worked as construction manager. Thus, if indeed there were losses, these were losses suffered by the company and not by Wilfredo. Moreover, he did not present any documentary evidence, such as the actual contract or affidavits from any of the parties to said contract, to substantiate his claim of losses. With respect to the remaining passengers, they likewise failed to present proof of the actual losses they suffered.

6. **ID.; ID.; TO WARRANT AN AWARD OF MORAL DAMAGES IN BREACHES OF CONTRACT, THERE MUST BE PROOF THAT THE DEFENDANT ACTED FRAUDULENTLY OR IN BAD FAITH; TO WARRANT AN AWARD OF EXEMPLARY DAMAGES, THE DEFENDANT MUST HAVE ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.—** Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit. In the same vein, to warrant the award of exemplary damages,

defendant must have acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.

7. **ID.; ID.; MORAL AND EXEMPLARY DAMAGES CANNOT BE AWARDED ABSENT PROOF THAT THE DEFENDANTS' ACTIONS HAVE BEEN TAINTED WITH MALICE OR BAD FAITH; NO FACTUAL AND LEGAL JUSTIFICATION FOR THE AWARD OF ATTORNEY'S FEES.—** The Court of A ppeals is correct in stating that "what may be attributed to x x x Cathay Pacific is negligence concerning the lapses in their process of confirming passenger bookings and reservations, done through travel agencies. But this negligence is not so gross so as to amount to bad faith." Cathay Pacific was not motivated by malice or bad faith in not allowing respondents to board on their return flight to Manila. It is evident and was in fact proven by Cathay Pacific that its refusal to honor the return flight bookings of respondents was due to the cancellation of one booking and the two other bookings were not reflected on its computerized booking system. Likewise, Sampaguita Travel cannot be held liable for moral damages. True, Sampaguita Travel was negligent in the conduct of its booking and ticketing which resulted in the cancellation of flights. But its actions were not proven to have been tainted with malice or bad faith. Under these circumstances, respondents are not entitled to moral and exemplary damages. With respect to attorney's fees, we uphold the appellate court's finding on lack of factual and legal justification to award attorney's fees.

8. **ID.; ID.; NOMINAL DAMAGES; RECOVERABLE WHERE A LEGAL RIGHT IS TECHNICALLY VIOLATED AND MUST BE VINDICATED AGAINST AN INVASION THAT HAS PRODUCED NO ACTUAL PRESENT LOSS OF ANY KIND OR WHERE THERE HAS BEEN A BREACH OF CONTRACT AND NO SUBSTANTIAL INJURY OR ACTUAL DAMAGES WHATSOEVER HAVE BEEN OR CAN BE SHOWN.—** We however sustain the award of nominal damages in the amount of ₱25,000.00 to only three of the four respondents who were aggrieved by the last-minute cancellation of their flights. Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no

substantial injury or actual damages whatsoever have been or can be shown. Under Article 2221 of the Civil Code, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered. Considering that the three respondents were denied boarding their return flight from HongKong to Manila and that they had to wait in the airport overnight for their return flight, they are deemed to have technically suffered injury. Nonetheless, they failed to present proof of actual damages. Consequently, they should be compensated in the form of nominal damages.

9. **ID.; ID.; ID.; THE AMOUNT OF DAMAGES TO BE AWARDED SHALL BE EQUAL OR AT LEAST COMMENSURATE TO THE INJURY SUSTAINED BY THE PARTY CONSIDERING THE CONCEPT AND PURPOSE OF SUCH DAMAGES AND THE SPECIAL REASONS EXTANT IN THE CASE.—** The amount to be awarded as nominal damages shall be equal or at least commensurate to the injury sustained by respondents considering the concept and purpose of such damages. The amount of nominal damages to be awarded may also depend on certain special reasons extant in the case. The amount of such damages is addressed to the sound discretion of the court and taking into account the relevant circumstances, such as the failure of some respondents to board the flight on schedule and the slight breach in the legal obligations of the airline company to comply with the terms of the contract, i.e., the airplane ticket and of the travel agency to make the correct bookings. We find the award of ₱25,000.00 to the Reyeses correct and proper.

10. **ID.; OBLIGATIONS AND CONTRACTS; *QUASI DELICT*; THE RESPONSIBILITY OF JOINT TORTFEASORS WHO ARE LIABLE FOR A *QUASI-DELICT* IS SOLIDARY.—** Cathay Pacific and Sampaguita Travel acted together in creating the confusion in the bookings which led to the erroneous cancellation of respondents' bookings. Their negligence is the proximate cause of the technical injury sustained by respondents. Therefore, they have become joint tortfeasors, whose responsibility for *quasi-delict,* under Article 2I94 or the Civil Code, is solidary.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro and Leaño Law Offices for petitioner.

Camilo R. Flores for Sampaguita Travel Corp.

Marichelle L. Reyes for respondents Reyes and Lapuz.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review are the Decision[1] dated 22 October 2008 in CA-G.R. CV. No. 86156 and the 6 January 2009 Resolution[2] in the same case of the Court of Appeals.

This case started as a complaint for damages filed by respondents against Cathay Pacific Airways (Cathay Pacific) and Sampaguita Travel Corp. (Sampaguita Travel), now joined as a respondent. The factual backdrop leading to the filing of the complaint is as follows:

Sometime in March 1997, respondent Wilfredo Reyes (Wilfredo) made a travel reservation with Sampaguita Travel for his family's trip to Adelaide, Australia scheduled from 12 April 1997 to 4 May 1997. Upon booking and confirmation of their flight schedule, Wilfredo paid for the airfare and was issued four (4) Cathay Pacific round-trip airplane tickets for Manila-HongKong-Adelaide-HongKong-Manila with the following record locators:

Name of Passenger	PNR OR RECORD LOCATOR NOS.[3]
Reyes, Wilfredo	J76TH
Reyes, Juanita	HDWC3

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican, concurring. *Rollo*, pp. 49-59.

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

[3] PNR or Passenger Name Record is used interchangeably with Record Locator in this case. In the strict sense, these two terms are different. A

Reyes, Michael Roy	H9VZF
Lapuz, Sixta	HTFMG[4]

On 12 April 1997, Wilfredo, together with his wife Juanita Reyes (Juanita), son Michael Roy Reyes (Michael) and mother-in-law Sixta Lapuz (Sixta), flew to Adelaide, Australia without a hitch.

One week before they were scheduled to fly back home, Wilfredo reconfirmed his family's return flight with the Cathay Pacific office in Adelaide. They were advised that the reservation was "still okay as scheduled."

On the day of their scheduled departure from Adelaide, Wilfredo and his family arrived at the airport on time. When the airport check-in counter opened, Wilfredo was informed by a staff from Cathay Pacific that the Reyeses did not have confirmed reservations, and only Sixta's flight booking was confirmed. Nevertheless, they were allowed to board the flight to HongKong due to adamant pleas from Wilfredo. When they arrived in HongKong, they were again informed of the same problem. Unfortunately this time, the Reyeses were not allowed to board because the flight to Manila was fully booked. Only Sixta was allowed to proceed to Manila from HongKong. On the following day, the Reyeses were finally allowed to board the next flight bound for Manila.

Passenger Name Record (PNR) contains the details of a passenger's reservation and other information related to a passenger's trip. PNRs can also contain information to assist airline personnel with passenger handling. When a PNR is filed in the system, it is assigned a 6-character code called a record locator. The record locator is used to retrieve a previously created and filed PNR. Amadeus Passenger Name Record- User Guide http://www.google.com.ph/url?sa=t&rct=j&q=amadeus%20pnr&source=web&cd=1&ved=0CCsQFjAA&url=http%3A%2F%2Ftraining.amadeusschweiz.com%2Fen%2Fdocumentation%2Fusermanuals.html%3Ffile%3Dassets%2Ftheme%2Fcontent%2Fdocs%2Fen%2Fusermanuals%2FAmadeus_Passenger_Name_Record.pdf&ei=FuRNUcO8NoneigeJzYGgAw&usg=AFQjCNFTchpgHoipa9XzK0mebrN9bdNvwA. (Last visited 12 April 2013).

[4] *Rollo,* p. 7.

Upon arriving in the Philippines, Wilfredo went to Sampaguita Travel to report the incident. He was informed by Sampaguita Travel that it was actually Cathay Pacific which cancelled their bookings.

On 16 June 1997, respondents as passengers, through counsel, sent a letter to Cathay Pacific advising the latter of the incident and demanding payment of damages.

After a series of exchanges and with no resolution in sight, respondents filed a Complaint for damages against Cathay Pacific and Sampaguita Travel and prayed for the following relief: a) ₱1,000,000.00 as moral damages; b) ₱300,000.00 as actual damages; c) ₱100,000.00 as exemplary damages; and d) ₱100,000.00 as attorney's fees.[5]

In its Answer, Cathay Pacific alleged that based on its computerized booking system, several and confusing bookings were purportedly made under the names of respondents through two (2) travel agencies, namely: Sampaguita Travel and Rajah Travel Corporation. Cathay Pacific explained that only the following Passenger Name Records (PNRs) appeared on its system: PNR No. H9V15, PNR No. HTFMG, PNR No. J9R6E, PNR No. J76TH, and PNR No. H9VSE. Cathay Pacific went on to detail each and every booking, to wit:

1. **PNR No. H9V15**
   Agent: Sampaguita Travel Corp.
   Party: Ms. J Reyes, Mr. M R Reyes, Mr. W Reyes
   Itinerary: CX902/CX105 MNL/HKG/ADL 12 APR.
   The itinerary listed above was confirmed booking. However, the itinerary did not include booking for the return flights. From information retrieved from ABACUS (the booking system used by agents), the agent has, on 10 April, added segments CX104/CX905 ADL/HKG/MNL 04 MAY on MK status, which was not a confirmed booking. MK function is used for synchronizing records or for ticketing purposes only. It does not purport to be a real booking. As a result, no booking was transmitted into CPA's system.

[5] Records, p. 3.

2. **PNR No. HTFMG**

   Agent: Sampaguita Travel Corp.

   Party: Mrs. Sixta Lapuz

   Itinerary: CX902/CX105 MNL/HKG/ADL 12 APR, CX104/CX907 ADL/HKG/MNL 04/05 MAY.

   The above itinerary is the actual itinerary that the passenger has flown. However, for the return sector, HKG/MNL, the original booking was on CX905 of 04 May. This original booking was confirmed on 21 Mar. and ticketed on 11 Apr. This booking was cancelled on 04 May at 9:03 p.m. when CX905 was almost scheduled to leave at the behest of the passenger and she was re-booked on CX907 of 05 May at the same time.

3. **PNR No. J9R6E**

   Agent: Rajah Travel Corp.

   Party: Mrs. Julieta Gaspar, Mrs. Sixta Lapuz, Mrs. Juanita Reyes, Mr. Michael Roy Reyes, Mr. Wilfredo Reyes.

   Itinerary: CX900 & CX902 MNL/HKG 12 APR, CX105 HKG/ADL 12 APR, CX104/CX905 ADL/HKG/MNL 04 MAY & 07 MAY

   The party was confirmed initially on CX900/12 Apr, CX105/12 Apr, CX104/CX9095 07 May and on waiting list for CX902/12 Apr, CX104/CX905 04 May.

   However, on 31 Mar., the booking was cancelled by the agent.

4. **PNR No. J76TH**

   Agent: Sampaguita Travel Corp.

   Party: Mr. W Reyes

   Itinerary: CX104/CX905 ADL/HKG/MNL 04 MAY.

   The booking on the above itinerary was confirmed initially. When the agent was asked for the ticket number as the flight CX905 04 May was very critical, the agent has inputted the ticket number on 10 Apr. but has removed the record on 11 April. Since the booking was reflected as not ticketed, the booking was cancelled on 18 Apr. accordingly.

   This PNR was split from another PNR record, H9VSE.

5. **PNR No. H9VSE**

   Agent: Sampaguita Travel Corp.

   Party: Ms. R Lapuz, Mr. R Lapuz, Mr. A Samson, originally Mr. W Reyes was included in this party as well

> Itinerary: CX104/CX905 ADL/HKG/MNL 04 MAY.
> The booking was confirmed initially but were not ticketed by 11 Apr. and was cancelled accordingly. However, the PNR of Mr. W Reyes who was originally included in this party was split to a separate record of J76TH.[6]

Cathay Pacific asserted that in the case of Wilfredo with PNR No. J76TH, no valid ticket number was inputted within a prescribed period which means that no ticket was sold. Thus, Cathay Pacific had the right to cancel the booking. Cathay Pacific found that Sampaguita Travel initially inputted a ticket number for PNR No. J76TH and had it cancelled the following day, while the PNR Nos. HDWC3 and HTFMG of Juanita and Michael do not exist.

The Answer also contained a cross-claim against Sampaguita Travel and blamed the same for the cancellation of respondents' return flights. Cathay Pacific likewise counterclaimed for payment of attorney's fees.

On the other hand, Sampaguita Travel, in its Answer, denied Cathay Pacific's claim that it was the cause of the cancellation of the bookings. Sampaguita Travel maintained that it made the necessary reservation with Cathay Pacific for respondents' trip to Adelaide. After getting confirmed bookings with Cathay Pacific, Sampaguita Travel issued the corresponding tickets to respondents. Their confirmed bookings were covered with the following PNRs:

PASSENGER NAME	PNR No.
Lapuz, Sixta	H9V15/ J76TH
Reyes, Wilfredo	H9V15/HDWC3
Reyes, Michael Roy	H9V15/H9VZF
Reyes, Juanita	HTFMG[7]

Sampaguita Travel explained that the Reyeses had two (2) PNRs each because confirmation from Cathay Pacific was made

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[6] *Id.* at 14-15.

[7] *Id.* at 55.

one flight segment at a time. Sampaguita Travel asserted that it only issued the tickets after Cathay Pacific confirmed the bookings. Furthermore, Sampaguita Travel exonerated itself from liability for damages because respondents were claiming for damages arising from a breach of contract of carriage. Sampaguita Travel likewise filed a cross-claim against Cathay Pacific and a counterclaim for damages.

During the pre-trial, the parties agreed on the following stipulation of facts:

1. That the plaintiffs did not deal directly with Cathay Pacific Airways;

2. That the plaintiffs did not make their bookings directly with Cathay Pacific Airways;

3. That the plaintiffs did not purchase and did not get their tickets from Cathay Pacific Airways;

4. That Cathay Pacific Airways has promptly replied to all communications sent by the plaintiffs through their counsel;

5. That the plane tickets issued to plaintiffs were valid, which is why they were able to depart from Manila to Adelaide, Australia and that the reason why they were not able to board their return flight from Adelaide was because of the alleged cancellation of their booking by Cathay Pacific Airways at Adelaide, save for that of Sixta Lapuz whose booking was confirmed by Cathay Pacific Airways;

6. That several reservations and bookings for the plaintiffs were done by defendant Sampaguita Travel Corporation through the computer reservation system and each of such request was issued a PNR;

7. That, as a travel agent, defendant Sampaguita Travel Corporation merely acts as a booking/sales/ticketing arm for airline companies and it has nothing to do with the airline operations;

8. That in the travel industry, the practice of reconfirmation of return flights by passengers is coursed or done directly with the airline company and not with the travel agent, which

has no participation, control or authority in making such reconfirmations.

9. That in the travel industry, the practice of cancellation of flights is within the control of the airline and not of the travel agent, unless the travel agent is requested by the passengers to make such cancellations; and,

10. That defendant Cathay Pacific Airways has advertised that "there is no need to confirm your flight when travelling with us", although Cathay Pacific Airways qualifies the same to the effect that in some cases there is a need for reconfirmations.[8]

After trial on the merits, the Regional Trial Court (RTC) rendered a Decision,[9] the dispositive part of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants and against the herein plaintiff. Accordingly, plaintiffs' complaint is hereby ordered DISMISSED for lack of merit. Defendants' counterclaims and cross-claims are similarly ordered dismissed for lack of merit. No pronouncement as to cost.[10]

The trial court found that respondents were in possession of valid tickets but did not have confirmed reservations for their return trip to Manila. Additionally, the trial court observed that the several PNRs opened by Sampaguita Travel created confusion in the bookings. The trial court however did not find any basis to establish liability on the part of either Cathay Pacific or Sampaguita Travel considering that the cancellation was not without any justified reason. Finally, the trial court denied the claims for damages for being unsubstantiated.

Respondents appealed to the Court of Appeals. On 22 October 2008, the Court of Appeals ordered Cathay Pacific to pay ₱25,000.00 each to respondents as nominal damages.

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

[9] Presided by Presiding Judge Severino B. De Castro, Jr. *Id.* at 446-454.

[10] *Id.* at 454.

Upon denial of their motion for reconsideration, Cathay Pacific filed the instant petition for review assigning the following as errors committed by the Court of Appeals:

A.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN HOLDING THAT CATHAY PACIFIC AIRWAYS IS LIABLE FOR NOMINAL DAMAGES FOR ITS ALLEGED INITIAL BREACH OF CONTRACT WITH THE PASSENGERS EVEN THOUGH CATHAY PACIFIC AIRWAYS WAS ABLE TO PROVE BEYOND REASONABLE DOUBT THAT IT WAS NOT AT FAULT FOR THE PREDICAMENT OF THE RESPONDENT PASSENGERS.

B.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN RELYING ON MATTERS NOT PROVED DURING THE TRIAL AND NOT SUPPORTED BY THE EVIDENCE AS BASIS FOR HOLDING CATHAY PACIFIC AIRWAYS LIABLE FOR NOMINAL DAMAGES.

C.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN HOLDING CATHAY PACIFIC AIRWAYS LIABLE FOR NOMINAL DAMAGES TO RESPONDENT SIXTA LAPUZ.

D.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN NOT HOLDING SAMPAGUITA TRAVEL CORP. [LIABLE] TO CATHAY PACIFIC AIRWAYS FOR WHATEVER DAMAGES THAT THE AIRLINE COMPANY WOULD BE ADJUDGED THE RESPONDENT PASSENGERS.

E.

ALTERNATIVELY, WHETHER OR NOT THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR WHEN IT FAILED TO APPLY THE DOCTRINE OF STARE DECISIS IN FIXING THE AMOUNT OF NOMINAL DAMAGES TO BE AWARDED.[11]

Cathay Pacific assails the award of nominal damages in favor of respondents on the ground that its action of cancelling the flight bookings was justifiable. Cathay Pacific reveals that upon investigation, the respondents had no confirmed bookings for their return flights. Hence, it was not obligated to transport the respondents. In fact, Cathay Pacific adds, it exhibited good faith in accommodating the respondents despite holding unconfirmed bookings.

Cathay Pacific also scores the Court of Appeals in basing the award of nominal damages on the alleged asthmatic condition of passenger Michael and old age of Sixta. Cathay Pacific points out that the records, including the testimonies of the witnesses, did not make any mention of Michael's asthma. And Sixta was in fact holding a confirmed booking but she refused to take her confirmed seat and instead stayed in HongKong with the other respondents.

Cathay Pacific blames Sampaguita Travel for negligence in not ensuring that respondents had confirmed bookings for their return trips.

Lastly, assuming *arguendo* that the award of nominal damages is proper, Cathay Pacific contends that the amount should be reduced to ₱5,000.00 for each passenger.

At the outset, it bears pointing out that respondent Sixta had no cause of action against Cathay Pacific or Sampaguita Travel. The elements of a cause of action consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the

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[11] *Rollo,* pp. 13-14.

defendant in violation of such right.[12] As culled from the records, there has been no violation of any right or breach of any duty on the part of Cathay Pacific and Sampaguita Travel. As a holder of a valid booking, Sixta had the right to expect that she would fly on the flight and on the date specified on her airplane ticket. Cathay Pacific met her expectations and Sixta was indeed able to complete her flight without any trouble. The absence of any violation to Sixta's right as passenger effectively deprived her of any relief against either Cathay Pacific or Sampaguita Travel.

With respect to the three remaining respondents, we rule as follows:

The determination of whether or not the award of damages is correct depends on the nature of the respondents' contractual relations with Cathay Pacific and Sampaguita Travel. It is beyond dispute that respondents were holders of Cathay Pacific airplane tickets and they made the booking through Sampaguita Travel.

Respondents' cause of action against Cathay Pacific stemmed from a breach of contract of carriage. A contract of carriage is defined as one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price.[13] Under Article 1732 of the Civil Code, this "persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public" is called a common carrier.

Respondents entered into a contract of carriage with Cathay Pacific. As far as respondents are concerned, they were holding valid and confirmed airplane tickets. The ticket in itself is a valid written contract of carriage whereby for a consideration, Cathay Pacific undertook to carry respondents in its airplane

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[12] *Shell Philippines Exploration B.V. v. Jalos,* G.R. No. 179918, 8 September 2010, 630 SCRA 399, 408 citing *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 524 (2005).

[13] *Crisostomo v. Court of Appeals*, 456 Phil. 845, 855 (2003).

for a round-trip flight from Manila to Adelaide, Australia and then back to Manila. In fact, Wilfredo called the Cathay Pacific office in Adelaide one week before his return flight to re-confirm his booking. He was even assured by a staff of Cathay Pacific that he does not need to re-confirm his booking.

In its defense, Cathay Pacific posits that Wilfredo's booking was cancelled because a ticket number was not inputted by Sampaguita Travel, while bookings of Juanita and Michael were not honored for being fictitious. Cathay Pacific clearly blames Sampaguita Travel for not finalizing the bookings for the respondents' return flights. Respondents are not privy to whatever misunderstanding and confusion that may have transpired in their bookings. On its face, the airplane ticket is a valid written contract of carriage. This Court has held that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.[14]

As further elucidated by the Court of Appeals:

> Now, Article 1370 of the Civil Code mandates that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." Under Section 9, Rule 130 of the Rules of Court, once the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon by the parties and no evidence of such terms other than the contents of the written agreement shall be admissible. The terms of the agreement of appellants and appellee Cathay Pacific embodied in the tickets issued by the latter to the former are plain — appellee Cathay Pacific will transport appellants to Adelaide, Australia from Manila via Hongkong on 12 April 1991 and back to Manila from Adelaide, Australia also via Hongkong on 4 May 1997. In addition, the tickets reveal that all appellants have confirmed bookings for their flight to Adelaide, Australia and back

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[14] *Japan Airlines v. Simangan*, G.R. No. 170141, 22 April 2008, 552 SCRA 341, 360.

to Manila as manifested by the words "Ok" indicated therein. Arlene Ansay, appellee Cathay Pacific's Reservation Supervisor, validated this fact in her testimony saying that the return flights of all appellants to the Philippines on 4 May 1997 were confirmed as appearing on the tickets. Indubitably, when appellee Cathay Pacific initially refused to transport appellants to the Philippines on 4 May 1997 due to the latter's lack of reservation, it has, in effect, breached their contract of carriage. Appellants, however, were eventually accommodated and transported by appellee Cathay Pacific to Manila.[15]

Cathay Pacific breached its contract of carriage with respondents when it disallowed them to board the plane in Hong Kong going to Manila on the date reflected on their tickets. Thus, Cathay Pacific opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.

In contrast, the contractual relation between Sampaguita Travel and respondents is a contract for services. The object of the contract is arranging and facilitating the latter's booking and ticketing. It was even Sampaguita Travel which issued the tickets.

Since the contract between the parties is an ordinary one for services, the standard of care required of respondent is that of a good father of a family under Article 1173 of the Civil Code. This connotes reasonable care consistent with that which an ordinarily prudent person would have observed when confronted with a similar situation. The test to determine whether negligence attended the performance of an obligation is: did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.[16]

There was indeed failure on the part of Sampaguita Travel to exercise due diligence in performing its obligations under the contract of services. It was established by Cathay Pacific, through the generation of the PNRs, that Sampaguita Travel failed to

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[15] *Rollo*, p. 54.

[16] *Crisostomo v. Court of Appeals, supra* note 13 at 856-857.

input the correct ticket number for Wilfredo's ticket. Cathay Pacific even asserted that Sampaguita Travel made two fictitious bookings for Juanita and Michael.

The negligence of Sampaguita Travel renders it also liable for damages.

For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[17]

We echo the findings of the trial court that respondents failed to show proof of actual damages. Wilfredo initially testified that he personally incurred losses amounting to ₱300,000.00 which represents the amount of the contract that he was supposedly scheduled to sign had his return trip not been cancelled. During the cross-examination however, it appears that the supposed contract-signing was a mere formality and that an agreement had already been hatched beforehand. Hence, we cannot fathom how said contract did not materialize because of Wilfredo's absence, and how Wilfredo incurred such losses when he himself admitted that he entered into said contract on behalf of Parsons Engineering Consulting Firm, where he worked as construction manager. Thus, if indeed there were losses, these were losses suffered by the company and not by Wilfredo. Moreover, he did not present any documentary evidence, such as the actual contract or affidavits from any of the parties to said contract, to substantiate his claim of losses. With respect to the remaining passengers, they likewise failed to present proof of the actual losses they suffered.

Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order

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[17] *OMC Carriers Inc. v. Nabua*, G.R. No. 148974, 2 July 2010, 622 SCRA 624, 640.

upon a showing that the defendant acted fraudulently or in bad faith.[18] What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit. In the same vein, to warrant the award of exemplary damages, defendant must have acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.[19]

In the instant case, it was proven by Cathay Pacific that first, it extended all possible accommodations to respondents. They were promptly informed of the problem in their bookings while they were still at the Adelaide airport. Despite the non-confirmation of their bookings, respondents were still allowed to board the Adelaide to Hong Kong flight. Upon arriving in Hong Kong, they were again informed that they could not be accommodated on the next flight because it was already fully booked. They were however allowed to board the next available flight on the following day. Second, upon receiving the complaint letter of respondents, Cathay Pacific immediately addressed the complaint and gave an explanation on the cancellation of their flight bookings.

The Court of Appeals is correct in stating that "what may be attributed to x x x Cathay Pacific is negligence concerning the lapses in their process of confirming passenger bookings and reservations, done through travel agencies. But this negligence is not so gross so as to amount to bad faith."[20] Cathay Pacific was not motivated by malice or bad faith in not allowing respondents to board on their return flight to Manila. It is evident and was in fact proven by Cathay Pacific that its refusal to honor the return flight bookings of respondents was due to the cancellation of one booking and the two other bookings were not reflected on its computerized booking system.

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[18] *Northwest Airlines Inc. v. Chiong*, G.R. No. 155550, 31 January 2008, 543 SCRA 308, 325 citing *BPI Family Bank v. Franco*, G.R. No. 123498, 23 November 2007, 538 SCRA 184, 203-204.

[19] *Japan Airlines v. Simangan*, *supra* note 14 at 361-362.

[20] *Rollo*, p. 56.

Likewise, Sampaguita Travel cannot be held liable for moral damages. True, Sampaguita Travel was negligent in the conduct of its booking and ticketing which resulted in the cancellation of flights. But its actions were not proven to have been tainted with malice or bad faith. Under these circumstances, respondents are not entitled to moral and exemplary damages. With respect to attorney's fees, we uphold the appellate court's finding on lack of factual and legal justification to award attorney's fees.

We however sustain the award of nominal damages in the amount of ₱25,000.00 to only three of the four respondents who were aggrieved by the last-minute cancellation of their flights. Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.[21] Under Article 2221 of the Civil Code, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered.

Considering that the three respondents were denied boarding their return flight from HongKong to Manila and that they had to wait in the airport overnight for their return flight, they are deemed to have technically suffered injury. Nonetheless, they failed to present proof of actual damages. Consequently, they should be compensated in the form of nominal damages.

The amount to be awarded as nominal damages shall be equal or at least commensurate to the injury sustained by respondents considering the concept and purpose of such damages. The amount of nominal damages to be awarded may also depend on certain special reasons extant in the case.[22]

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[21] *Francisco v. Ferrer, Jr.*, 405 Phil. 741, 751 (2001) citing *Areola v. Court of Appeals*, G.R. No. 95641, 22 September 1994, 236 SCRA 643, 654; *Cojuangco, Jr. v. Court of Appeals*, 369 Phil. 41, 60-61 (1991).

[22] *PNOC Shipping and Transport Corp. v. Court of Appeals*, 358 Phil. 38, 61 (1998) citing *China Air Lines, Ltd. v. Court of Appeals*, G.R. No. 45985

The amount of such damages is addressed to the sound discretion of the court and taking into account the relevant circumstances,[23] such as the failure of some respondents to board the flight on schedule and the slight breach in the legal obligations of the airline company to comply with the terms of the contract, *i.e.*, the airplane ticket and of the travel agency to make the correct bookings. We find the award of ₱25,000.00 to the Reyeses correct and proper.

Cathay Pacific and Sampaguita Travel acted together in creating the confusion in the bookings which led to the erroneous cancellation of respondents' bookings. Their negligence is the proximate cause of the technical injury sustained by respondents. Therefore, they have become joint tortfeasors, whose responsibility for *quasi-delict*, under Article 2194 of the Civil Code, is solidary.

Based on the foregoing, Cathay Pacific and Sampaguita Travel are jointly and solidarily liable for nominal damages awarded to respondents Wilfredo, Juanita and Michael Roy.

WHEREFORE, the Petition is **DENIED**. The 22 October 2008 Decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION** that Sampaguita Travel is held to be solidarily liable with Cathay Pacific in the payment of nominal damages of ₱25,000.00 each for Wilfredo Reyes, Juanita Reyes, and Michael Roy Reyes. The complaint of respondent Sixta Lapuz is **DISMISSED** for lack of cause of action.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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and G.R. No. 46036, 18 May 1990, 185 SCRA 449, 460; *Robes-Francisco Realty & Development Corporation v. Court of First Instance of Rizal (Branch XXXIV),* G.R. No. L-41093, 30 October 1978, 86 SCRA 59, 65 citing *Northwest Airlines, Inc. v. Cuenca*, G.R. No. L-22425, 31 August 1965, 14 SCRA 1063, 1065-1066.

[23] *Realda v. New Age Graphics, Inc.*, G.R. No. 192190, 25 April 2012, 671 SCRA 410, 423.

FIRST DIVISION

[G.R. No. 186014. June 26, 2013]

ALI AKANG, *petitioner, vs.* **MUNICIPALITY OF ISULAN, SULTAN KUDARAT PROVINCE, represented by its MUNICIPAL MAYOR AND MUNICIPAL VICE MAYOR AND MUNICIPAL COUNCILORS/ KAGAWADS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL AND NOT RAISED IN THE PROCEEDINGS IN THE LOWER COURT ARE BARRED BY ESTOPPEL FOR TO CONSIDER THE ALLEGED FACTS AND ARGUMENTS RAISED BELATEDLY WOULD AMOUNT TO TRAMPLING ON THE BASIC PRINCIPLES OF FAIR PLAY, JUSTICE, AND DUE PROCESS.—** The petitioner asserts that the Deed of Sale was notarized by Atty. Gualberto B. Baclig who was not authorized to administer the same, hence, null and void. This argument must be rejected as it is being raised for the first time only in this petition. In his arguments before the RTC and the CA, the petitioner focused mainly on the validity and the nature of the Deed of Sale, and whether there was payment of the purchase price. The rule is settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process. Accordingly, the petitioner's attack on the validity of the Deed of Sale *vis-à-vis* its compliance with the 2004 New Notarial Law must be disregarded.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; CONTRACT OF SALE; ELEMENTS; PRESENT.—** A contract of sale is defined under Article 1458 of the Civil Code: By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent. The elements of a

contract of sale are: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent. The Deed of Sale executed by the petitioner and the respondent is a perfected contract of sale, all its elements being present. There was mutual agreement between them to enter into the sale, as shown by their free and voluntary signing of the contract. There was also an absolute transfer of ownership of the property by the petitioner to the respondent as shown in the stipulation: "*x x x I [petitioner] hereby sell, transfer, cede, convey and assign as by these presents do have sold, transferred, ceded, conveyed and assigned, x x x.*" There was also a determinate subject matter, that is, the two-hectare parcel of land as described in the Deed of Sale. Lastly, the price or consideration is at Three Thousand Pesos (₱3,000.00), which was to be paid after the execution of the contract. The fact that no express reservation of ownership or title to the property can be found in the Deed of Sale bolsters the absence of such intent, and the contract, therefore, could not be one to sell. Had the intention of the petitioner been otherwise, he could have: (1) immediately sought judicial recourse to prevent further construction of the municipal building; or (2) taken legal action to contest the agreement. The petitioner did not opt to undertake any of such recourses.

3. **ID.; ID.; ID.; CONTRACT TO SELL; DEFINED; DISTINGUISHED FROM CONTRACT TO SALE.—** A contract to sell, on the other hand, is defined by Article 1479 of the Civil Code: [A] bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold, whereas in a contract to sell, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price.

4. **ID.; ID.; ID.; CONTRACT OF SALE; PERFECTED THE MOMENT THE PARTIES AGREED ON THE OBJECT OF THE SALE AND THE PRICE; NON-PAYMENT OF THE PURCHASE PRICE IS IMMATERIAL AND HAS NO**

EFFECT ON THE VALIDITY OF THE CONTRACT OF SALE BUT IT MERELY GIVE THE PETITIONER THE RIGHT TO EITHER DEMAND SPECIFIC PERFORMANCE OR RESCISSION OF THE CONTRACT OF SALE.— The petitioner's allegation of non-payment is of no consequence taking into account the Municipal Voucher presented before the RTC, which proves payment by the respondent of Three Thousand Pesos (₱3,000.00). The petitioner, notwithstanding the lack of the Municipal Treasurer's approval, admitted that the signature appearing on the Municipal Voucher was his and he is now estopped from disclaiming payment. Even assuming, *arguendo*, that the petitioner was not paid, such non payment is immaterial and has no effect on the validity of the contract of sale. A contract of sale is a consensual contract and what is required is the meeting of the minds on the object and the price for its perfection and validity. In this case, the contract was perfected the moment the petitioner and the respondent agreed on the object of the sale — the two-hectare parcel of land, and the price — Three Thousand Pesos (₱3,000.00). Non-payment of the purchase price merely gave rise to a right in favor of the petitioner to either demand specific performance or rescission of the contract of sale.

5. **ID.; ID.; ID.; CONTRACTS ENTERED INTO BY A PERSON WITH ANY MORO OR OTHER NON-CHRISTIAN INHABITANTS OR CULTURAL MINORITIES SHALL NOT BE VALID UNLESS WITH EXECUTIVE APPROVAL IN ACCORDANCE WITH SECTIONS 145 AND 146 OF THE ADMINISTRATIVE CODE OF MINDANAO AND SULU, AND SECTION 120 OF THE PUBLIC LAND ACT, AS AMENDED; NOT APPLICABLE TO CASE AT BAR; THE LAW WILL NOT BE APPLIED SO STRINGENTLY AS TO RENDER INEFFECTIVE A CONTRACT THAT IS OTHERWISE VALID, EXCEPT FOR WANT OF APPROVAL BY THE COMMISSION ON NATIONAL INTEGRATION.—** Section 145 of the Administrative Code of Mindanao and Sulu essentially provides for the requisites of the contracts entered into by a person with any Moro or other non-Christian inhabitants. Section 146, meanwhile, provides that contracts entered into in violation of Section 145 are void. These provisions aim to safeguard the patrimony of the less developed ethnic groups in the Philippines by shielding

them against imposition and fraud when they enter into agreements dealing with realty. Section 120 of the PLA (Commonwealth Act No. 141) affords the same protection. R.A. No. No. 3872 likewise provides that conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration. In *Jandoc-Gatdula v. Dimalanta,* however, the Court categorically stated that while the purpose of Sections 145 and 146 of the Administrative Code of Mindanao and Sulu in requiring executive approval of contracts entered into by cultural minorities is indeed to protect them, **the Court cannot blindly apply that law without considering how the parties exercised their rights and obligations**. In this case, Municipality Resolution No. 70, which approved the appropriation of ₱3,000.00, was, in fact, accepted by the Provincial Board of Cotabato. In approving the appropriation of ₱3,000.00, the Municipal Council of Isulan and the Provincial Board of Cotabato, necessarily, scrutinized the Deed of Sale containing the terms and conditions of the sale. Moreover, there is nothing on record that proves that the petitioner was duped into signing the contract, that he was taken advantage of by the respondent and that his rights were not protected. The court's duty to protect the native vendor, however, should not be carried out to such an extent as to deny justice to the vendee when truth and justice happen to be on the latter's side. The law cannot be used to shield the enrichment of one at the expense of another. More important, the law will not be applied so stringently as to render ineffective a contract that is otherwise valid, except for want of approval by the CNI. This principle holds, especially when the evils sought to be avoided are not obtaining.

6. **REMEDIAL LAW; LACHES; DEFINED; AN ACTION TO RECOVER REGISTERED LAND COVERED BY THE TORRENS SYSTEM MAY NOT BE BARRED BY LACHES. BUT THE COURT, IN EXCEPTIONAL CASES, ALLOWS LACHES AS A BAR TO RECOVER A TITLED PROPERTY.—** Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier. It should be stressed that laches is not

concerned only with the mere lapse of time. As a general rule, an action to recover registered land covered by the Torrens System may not be barred by laches. Neither can laches be set up to resist the enforcement of an imprescriptible legal right. In exceptional cases, however, the Court allowed laches as a bar to recover a titled property. Thus, in *Romero v. Natividad*, the Court ruled that laches will bar recovery of the property even if the mode of transfer was invalid. Likewise, in *Vda. de Cabrera v. CA*, the Court ruled: In our jurisdiction, it is an enshrined rule that **even a registered owners of property may be barred from recovering possession of property by virtue of laches.** Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches.

7. **ID.; ID.; WHILE THE SALE OF REAL PROPERTY BY A CULTURAL MINORITY IS NULL AND VOID FOR LACK OF EXECUTIVE APPROVAL, NEVERTHELESS, HIS RIGHT TO RECOVER POSSESSION AND OWNERSHIP IS BASED BY LACHES, DUE TO HIS LENGTHY INACTION AND NEGLIGENCE WARRANTING A CONCLUSION THAT HE AQUIESCED OR CONFORMED TO THE SALE.—** [L]aches will bar recovery of a property, even if the mode of transfer used by an alleged member of a cultural minority lacks executive approval. Thus, in *Heirs of Dicman v. Cariño*, the Court upheld the Deed of Conveyance of Part Rights and Interests in Agricultural Land executed by Ting-el Dicman in favor of Sioco Cariño despite lack of executive approval. The Court stated that "despite the judicial pronouncement that the sale of real property by illiterate ethnic minorities is null and void for lack of approval of competent authorities, the right to recover possession has nonetheless been barred through the operation of the equitable doctrine of laches." Similarly in this case, while the respondent may not be considered as having acquired ownership by virtue of its long and continued possession, nevertheless, the petitioner's right to recover has been converted into a stale demand due to the respondent's long period of possession and by the petitioner's own inaction and neglect. The Court cannot accept the petitioner's explanation that his delayed filing and assertion

of rights was due to Martial Law and the Cotabato Ilaga-Black Shirt Troubles. The Martial Law regime was from 1972 to 1986, while the Ilaga-Black Shirt Troubles were from the 1970s to the 1980s. The petitioner could have sought judicial relief, or at the very least made his demands to the respondent, as early as the third quarter of 1962 after the execution of the Deed of Sale and before the advent of these events. Moreover, even if, as the petitioner claims, access to courts were restricted during these times, he could have immediately filed his claim after Martial Law and after the Cotabato conflict has ended. The petitioner's reliance on the Court's treatment of Martial Law as *force majeure* that suspended the running of prescription in *Development Bank of the Philippines v. Pundogar* is inapplicable because the Court's ruling therein pertained to prescription and not laches. Consequently, the petitioner's lengthy inaction sufficiently warrants the conclusion that he acquiesced or conformed to the sale. *Vigilantibus sed non dormientibus jura subverniunt.* The law aids the vigilant, not those who sleep on their rights. This legal percept finds application in the petitioner's case.

APPEARANCES OF COUNSEL

Adil & Adil, Jr. Law Offices for petitioner.
Aurelio C. Freires, Jr. for respondents.

D E C I S I O N

REYES, *J.*:

This case was originally filed as a petition for *certiorari* under Rule 65 of the Rules of Court. In the Court's Resolution dated March 9, 2009, however, the petition was treated as one for review under Rule 45.[1] Assailed is the Decision[2] dated April

[1] Initially, the Court dismissed the petition in its Resolution dated March 3, 2010 for failure of the petitioner to file a reply to the respondent's comment as directed by the Court in its Resolution dated July 15, 2009. The Court, however, later reinstated the petition per Resolution dated July 21, 2010.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. (now retired), with Associate Justices Michael P. Elbinias and Edgardo T. Lloren, concurring; *rollo*, pp. 20-41.

25, 2008 and Resolution[3] dated October 29, 2008 of the Court of Appeals Mindanao Station (CA) in CA-G.R. CV No. 00156, which reversed the Judgment[4] dated January 14, 2004 of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19 in Civil Case No. 1007 for Recovery of Possession of Subject Property and/or Quieting of Title thereon and Damages.

The Facts

Ali Akang (petitioner) is a member of the national and cultural community belonging to the Maguindanaon tribe of Isulan, Province of Sultan Kudarat and the registered owner of Lot 5-B-2-B-14-F (LRC) Psd 1100183 located at Kalawag III, Isulan, Sultan Kudarat, covered by Transfer Certificate of Title (TCT) No. T-3653,[5] with an area of 20,030 square meters.[6]

Sometime in 1962, a two-hectare portion of the property was sold by the petitioner to the Municipality of Isulan, Province of Sultan Kudarat (respondent) through then Isulan Mayor Datu Ampatuan under a Deed of Sale executed on July 18, 1962, which states:

"**That for and in consideration of the sum of THREE THOUSAND PESOS ([₱]3,000.00), Philippine Currency, value to be paid and deliver to me, and of which receipt of which shall be acknowledged by me to my full satisfaction by the MUNICIPAL GOVERNMENT OF ISULAN, represented by the Municipal Mayor, Datu Sama Ampatuan, hereinafter referred to as the VENDEE, I hereby sell, transfer, cede, convey and assign as by these presents do have sold, transferred, ceded, conveyed and assigned, an area of TWO (2) hectares, more or less, to and**

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

[4] Penned by Judge German M. Malcampo; *id.* at 44-93.

[5] Under the name of Ali Akang married to Patao Talipasan stating on its face that it was originally registered on the 1st day of December 1965 with Original Certificate of Title No. P-26626 pursuant to Homestead Patent No. V-4454 granted on the 17th day of March 1955 under Act 141; *id.* at 44.

[6] *Id.*

in favor of the MUNICIPAL GOVERNMENT OF ISULAN, her (sic) heirs, assigns and administrators to have and to hold forevery (sic) and definitely, which portion shall be utilized purposely and exclusively as a GOVERNMENT CENTER SITE x x x[.]"[7]

The respondent immediately took possession of the property and began construction of the municipal building.[8]

Thirty-nine (39) years later or on October 26, 2001, the petitioner, together with his wife, Patao Talipasan, filed a civil action for Recovery of Possession of Subject Property and/or Quieting of Title thereon and Damages against the respondent, represented by its Municipal Mayor, et al.[9] In his complaint, the petitioner alleged, among others, that the agreement was one to sell, which was not consummated as the purchase price was not paid.[10]

In its answer, the respondent denied the petitioner's allegations, claiming, among others: that the petitioner's cause of action was already barred by laches; that the Deed of Sale was valid; and that it has been in open, continuous and exclusive possession of the property for forty (40) years.[11]

After trial, the RTC rendered judgment in favor of the petitioner. The RTC construed the Deed of Sale as a contract to sell, based on the wording of the contract, which allegedly showed that the consideration was still to be paid and delivered on some future date — a characteristic of a contract to sell.[12] In addition, the RTC observed that the Deed of Sale was not determinate as to its object since it merely indicated two (2) hectares of the 97,163 sq m lot, which is an undivided portion of the entire property owned by the petitioner. The RTC found

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[7] *Id.* at 34-35.

[8] *Id.* at 25.

[9] *Id.*

[10] *Id.* at 27-28.

[11] *Id.* at 46-47.

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

that segregation must first be made to identify the parcel of land indicated in the Deed of Sale and it is only then that the petitioner could execute a final deed of absolute sale in favor of the respondent.[13]

As regards the payment of the purchase price, the RTC found the same to have not been made by the respondent. According to the RTC, the Municipal Voucher is not a competent documentary proof of payment but is merely evidence of admission by the respondent that on the date of the execution of the Deed of Sale, the consideration stipulated therein had not yet been paid. The RTC also ruled that the Municipal Voucher's validity and evidentiary value is in question as it suffers infirmities, that is, it was neither duly recorded, numbered, signed by the Municipal Treasurer nor was it pre-audited.[14]

The RTC also ruled that the Deed of Sale was not approved pursuant to Section 145 of the Administrative Code for Mindanao and Sulu or Section 120 of the Public Land Act (PLA), as amended. Resolution No. 70,[15] which was issued by the respondent, appropriating the amount of ₱3,000.00 as payment for the property, and Resolution No. 644 of the Provincial Board of Cotabato, which approved Resolution No. 70, cannot be considered proof of the sale as said Deed of Sale was not presented for examination and approval of the Provincial Board.[16] Further, since the respondent's possession of the property was not in the concept of an owner, laches cannot be a valid defense for claiming ownership of the property, which has been registered in the petitioner's name under the Torrens System.[17]

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[13] *Id.* at 79.

[14] *Id.* at 80.

[15] Resolution No. 70, passed on October 6, 1962, states: "Furthermore, by virtue of the provision on Section 3 of Republic Act No. 2264, let there be appropriated as appropriations be made from funds not unless otherwise appropriated in the sum of ₱3,000.00 to be expended for payment of the purchase price of the two-hectare lot and be made payable to Ali Akang subject to audit rules and regulations."

[16] *Rollo*, p. 85.

[17] *Id.* at 81-82.

The dispositive portion of the RTC Decision[18] dated January 14, 2004 reads:

WHEREFORE, upon all the foregoing considerations, judgment is hereby rendered:

a. Declaring the contract entered into between the plaintiffs and the defendant, Municipal Government of Isulan, Cotabato (now Sultan Kudarat), represented by its former Mayor, Datu Suma Ampatuan, dated July 18, 1962, as a contract to sell, without its stipulated consideration having been paid; and for having been entered into between plaintiff Ali Akang, an illiterate non-Christian, and the defendant, Municipal Government of Isulan, in violation of Section 120 of C.A. No. 141, said contract/agreement is hereby declared null and void;

b. Declaring the Deed of Sale (Exh. "1"-"E") dated July 18, 1962, null and void [ab] initio, for having been executed in violation of Section 145 of the Administrative Code of Mindanao and Sulu, and of Section 120 of the Public Land Law, as amended by R.A. No. 3872;

c. Ordering the defendants to pay plaintiffs, the value of the lot in question, Lot No. 5-B-2-B-14-F (LRC) Psd 110183, containing an area of 20,030 Square Meters, at the prevailing market value, as may [be] reflected in its Tax Declaration, or in the alternative, to agree on the payment of monthly back rentals, retroactive to 1996, until defendants should decide to buy and pay the value of said lot as aforestated, with legal interest in both cases;

d. Ordering the defendant, Municipal Government of Isulan, Sultan Kudarat, to pay plaintiffs, by way of attorney's fee, the equivalent of 30% of the value that defendants would pay the plaintiffs for the lot in question; and to pay plaintiffs the further sum of [₱]100,000.00, by way of moral and exemplary damages;

e. Ordering the defendants, members of the Sangguniang Bayan of Isulan, Sultan Kudarat, to pass a resolution/ordinance for the appropriation of funds for the payment of the value of

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[18] *Id.* at 44-93.

plaintiffs' Lot 5-B-2-B-14-F (LRC) Psd-110183, and of the damages herein awarded to the plaintiffs; and

f. Ordering the defendants to pay the costs of suit.

For lack of merit, the counterclaims of the defendants should be, as it is hereby, dismissed.

IT IS SO ORDERED.[19]

By virtue of said RTC decision, proceedings for the Cancellation of Certificate of Title No. T-49349 registered under the name of the respondent was instituted by the petitioner under Miscellaneous Case No. 866 and as a result, the respondent's title over the property was cancelled and a new one issued in the name of the petitioner.

The respondent appealed the RTC Decision dated January 14, 2004 and in the Decision[20] dated April 25, 2008, the CA reversed the ruling of the RTC and upheld the validity of the sale. The dispositive portion of the CA Decision provides:

WHEREFORE, the assailed decision dated January 14, 2004 is hereby **REVERSED** and a new one entered, upholding the contract of sale executed on July 18, 1962 between the parties.

SO ORDERED.[21]

The CA sustained the respondent's arguments and ruled that the petitioner is not entitled to recover ownership and possession of the property as the Deed of Sale already transferred ownership thereof to the respondent. The CA held that the doctrines of estoppel and laches must apply against the petitioner for the reasons that: (1) the petitioner adopted inconsistent positions when, on one hand, he invoked the interpretation of the Deed of Sale as a contract to sell but still demanded payment, and called for the application of Sections 145 and 146 of the Administrative Code for Mindanao and Sulu, on the other; and (2) the petitioner did not raise at the earliest opportunity the

[19] *Id.* at 91-93.

[20] *Id.* at 20-41.

[21] *Id.* at 40.

nullity of the sale and remained passive for 39 years, as it was raised only in 2001.[22]

The CA also ruled that the Deed of Sale is not a mere contract to sell but a perfected contract of sale. There was no express reservation of ownership of title by the petitioner and the fact that there was yet no payment at the time of the sale does not affect the validity or prevent the perfection of the sale.[23]

As regards the issue of whether payment of the price was made, the CA ruled that there was actual payment, as evidenced by the Municipal Voucher, which the petitioner himself prepared and signed despite the lack of approval of the Municipal Treasurer. Even if he was not paid the consideration, it does not affect the validity of the contract of sale for it is not the fact of payment of the price that determines its validity.[24]

In addition, the CA noted that there was an erroneous cancellation of the certificate of title in the name of the respondent and the registration of the same property in the name of the petitioner in Miscellaneous Case No. 866. According to the CA, this does not affect in any way the ownership of the respondent over the subject property because registration or issuance of a certificate of title is not one of the modes of acquiring ownership.[25]

The petitioner sought reconsideration of the CA Decision, which was denied by the CA in its Resolution[26] dated October 29, 2008.

Hence, this petition.

Issue

WHETHER THE PETITIONER IS ENTITLED TO RECOVER OWNERSHIP AND POSSESSION OF THE PROPERTY IN DISPUTE.

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[22] *Id.* at 28-30.

[23] *Id.* at 35-36.

[24] *Id.* at 37-39.

[25] *Id.* at 39.

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

Resolution of the above follows determination of these questions: (1) whether the Deed of Sale dated July 18, 1962 is a valid and perfected contract of sale; (2) whether there was payment of consideration by the respondent; and (3) whether the petitioner's claim is barred by laches.

The petitioner claims that the acquisition of the respondent was null and void because: (1) he is an illiterate non-Christian who only knows how to sign his name in Arabic and knows how to read the Quran but can neither read nor write in both Arabic and English; (2) the respondent has not paid the price for the property; (3) the Municipal Voucher is not admissible in evidence as proof of payment; (4) the Deed of Sale was not duly approved in accordance with Sections 145 and 146 of the Administrative Code of Mindanao and Sulu, and Section 120 of the PLA, as amended; and (4) the property is a registered land covered by a TCT and cannot be acquired by prescription or adverse possession.[27] The petitioner also explained that the delayed filing of the civil action with the RTC was due to Martial Law and the Ilaga-Blackshirt Troubles in the then Province of Cotabato.[28]

The respondent, however, counters that: (1) the petitioner is not an illiterate non-Christian and he, in fact, was able to execute, sign in Arabic, and understand the terms and conditions of the Special Power of Attorney dated July 23, 1996 issued in favor of Baikong Akang (Baikong); (2) the Deed of Sale is valid as its terms and conditions were reviewed by the Municipal Council of Isulan and the Provincial Board of Cotabato; and (3) the Deed of Sale is a contract of sale and not a contract to sell.[29]

Ruling of the Court

The Court finds the petition devoid of merit.

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[27] *Id.* at 7-8.

[28] *Id.* at 15.

[29] *Id.* at 100-120.

Issue Raised for the First Time on Appeal is Barred by Estoppel

The petitioner asserts that the Deed of Sale was notarized by Atty. Gualberto B. Baclig who was not authorized to administer the same, hence, null and void. This argument must be rejected as it is being raised for the first time only in this petition. In his arguments before the RTC and the CA, the petitioner focused mainly on the validity and the nature of the Deed of Sale, and whether there was payment of the purchase price. The rule is settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.[30] Accordingly, the petitioner's attack on the validity of the Deed of Sale *vis-à-vis* its compliance with the 2004 New Notarial Law must be disregarded.[31]

The Deed of Sale is a Valid Contract of Sale

The petitioner alleges that the Deed of Sale is merely an agreement to sell, which was not perfected due to non-payment of the stipulated consideration.[32] The respondent, meanwhile, claims that the Deed of Sale is a valid and perfected contract of absolute sale.[33]

A contract of sale is defined under Article 1458 of the Civil Code:

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate

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[30] *Imani v. Metropolitan Bank & Trust Company,* G.R. No. 187023, November 17, 2010*, 635 SCRA 357, 371.*

[31] *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38.

[32] *Rollo*, p. 45.

[33] *Id.* at 108.

thing, and the other to pay therefore a price certain in money or its equivalent.

The elements of a contract of sale are: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.[34]

A contract to sell, on the other hand, is defined by Article 1479 of the Civil Code:

> [A] bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold, whereas in a contract to sell, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price.[35]

The Deed of Sale executed by the petitioner and the respondent is a perfected contract of sale, all its elements being present. There was mutual agreement between them to enter into the sale, as shown by their free and voluntary signing of the contract. There was also an absolute transfer of ownership of the property by the petitioner to the respondent as shown in the stipulation: "*x x x I [petitioner] hereby sell, transfer, cede, convey and assign as by these presents do have sold, transferred, ceded, conveyed and assigned, x x x.*"[36] There was also a determinate

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[34] *David v. Misamis Occidental II Electric Cooperative, Inc.*, G.R. No. 194785, July 11, 2012, 676 SCRA 367, 376-377.

[35] *Heirs of Paulino Atienza v. Espidol*, G.R. No. 180665, August 11, 2010, 628 SCRA 256, 262, citing *Lim v. Court of Appeals*, 261 Phil. 690, 695 (1990).

[36] *Rollo*, p. 35.

subject matter, that is, the two-hectare parcel of land as described in the Deed of Sale. Lastly, the price or consideration is at Three Thousand Pesos (₱3,000.00), which was to be paid after the execution of the contract. The fact that no express reservation of ownership or title to the property can be found in the Deed of Sale bolsters the absence of such intent, and the contract, therefore, could not be one to sell. Had the intention of the petitioner been otherwise, he could have: (1) immediately sought judicial recourse to prevent further construction of the municipal building; or (2) taken legal action to contest the agreement.[37] The petitioner did not opt to undertake any of such recourses.

Payment of consideration or purchase price

The petitioner's allegation of non-payment is of no consequence taking into account the Municipal Voucher presented before the RTC, which proves payment by the respondent of Three Thousand Pesos (₱3,000.00). The petitioner, notwithstanding the lack of the Municipal Treasurer's approval, admitted that the signature appearing on the Municipal Voucher was his and he is now estopped from disclaiming payment.

Even assuming, *arguendo*, that the petitioner was not paid, such non payment is immaterial and has no effect on the validity of the contract of sale. A contract of sale is a consensual contract and what is required is the meeting of the minds on the object and the price for its perfection and validity.[38] In this case, the contract was perfected the moment the petitioner and the respondent agreed on the object of the sale — the two-hectare parcel of land, and the price — Three Thousand Pesos (₱3,000.00). Non-payment of the purchase price merely gave rise to a right in favor of the petitioner to either demand specific performance or rescission of the contract of sale.[39]

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

[38] *Province of Cebu v. Heirs of Rufina Morales*, G.R. No. 170115, February 19, 2008, 546 SCRA 315, 323.

[39] *Id.* at 324.

Sections 145 and 146 of the Administrative Code of Mindanao and Sulu, and Section 120 of the PLA, as amended, are not applicable

The petitioner relies on the foregoing laws in assailing the validity of the Deed of Sale, claiming that the contract lacks executive approval and that he is an illiterate non-Christian to whom the benefits of Sections 145 and 146 of the Administrative Code of Mindanao and Sulu should apply.

Section 145 of the Administrative Code of Mindanao and Sulu essentially provides for the requisites of the contracts entered into by a person with any Moro or other non-Christian inhabitants.[40]

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[40] These provisions read:

Sec. 145. Contracts with non-Christians: requisites.—Save and except contracts of sale or barter of personal property and contracts of personal service comprehended in chapter seventeen hereof no contract or agreement shall be made in the Department by any person with any Moro or other non-Christian inhabitant of the same for the payment or delivery of money or other thing of value in present or in prospective, or any manner affecting or relating to any real property, unless such contract or agreement be executed and approved as follows:

(a) Such contract or agreement shall be in writing, and a duplicate thereof delivered to each party.

(b) It shall be executed before a judge of a court of record, justice or auxiliary justice of the peace, or notary public, and shall bear the approval of the provincial governor wherein the same was executed or his representative duly authorized in writing for such purpose, indorsed upon it.

(c) It shall contain the names of all parties in interest, their residence and occupation; x x x

(d) It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected and the person or persons to whom payment is to be made, the disposition to be made thereof when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, the same shall be specifically set forth.

Section 146,[41] meanwhile, provides that contracts entered into in violation of Section 145 are void. These provisions aim to safeguard the patrimony of the less developed ethnic groups in the Philippines by shielding them against imposition and fraud when they enter into agreements dealing with realty.[42]

Section 120 of the PLA (Commonwealth Act No. 141) affords the same protection.[43] R.A. No. No. 3872[44] likewise provides that conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.

(e) x x x x x x x x x

(f) The judge, justice or auxiliary justice of the peace, or notary public before whom such contract or agreement is executed shall certify officially thereon the time when and the place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties making the same; the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of any party or parties thereto.

[41] Sec. 146. Void contracts. — Every contract or agreement made in violation of the next preceding section shall be null and void; x x x.

[42] *Jandoc-Gatdula v. Dimalanta*, 528 Phil. 839, 858-859 (2006), citing *Cunanan v. CA*, 134 Phil. 338, 341-342 (1968).

[43] Sec.120 states:

Conveyance and encumbrance made by persons belonging to the so-called "non-christian Filipinos" or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrances is written. Conveyances or encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.

[44] Entitled, "An Act to Amend Sections Forty-four, forty-eight and one hundred Twenty of Commonwealth Act Numbered One Hundred Forty-one, As Amended otherwise Known as the 'Public Land Act, and for other Purposes," approved on June 18, 1964.

In *Jandoc-Gatdula v. Dimalanta,*[45] however, the Court categorically stated that while the purpose of Sections 145 and 146 of the Administrative Code of Mindanao and Sulu in requiring executive approval of contracts entered into by cultural minorities is indeed to protect them, **the Court cannot blindly apply that law without considering how the parties exercised their rights and obligations**. In this case, Municipality Resolution No. 70, which approved the appropriation of ₱3,000.00, was, in fact, accepted by the Provincial Board of Cotabato. In approving the appropriation of ₱3,000.00, the Municipal Council of Isulan and the Provincial Board of Cotabato, necessarily, scrutinized the Deed of Sale containing the terms and conditions of the sale. Moreover, there is nothing on record that proves that the petitioner was duped into signing the contract, that he was taken advantage of by the respondent and that his rights were not protected.

> The court's duty to protect the native vendor, however, should not be carried out to such an extent as to deny justice to the vendee when truth and justice happen to be on the latter's side. The law cannot be used to shield the enrichment of one at the expense of another. More important, the law will not be applied so stringently as to render ineffective a contract that is otherwise valid, except for want of approval by the CNI. This principle holds, especially when the evils sought to be avoided are not obtaining.[46]

The Court must also reject the petitioner's claim that he did not understand the import of the agreement. He alleged that he signed in Arabic the Deed of Sale, the Joint Affidavit and the Municipal Voucher, which were all in English, and that he was not able to comprehend its contents. Records show the contrary. The petitioner, in fact, was able to execute in favor of Baikong a Special Power of Attorney (SPA) dated July 23, 1996, which was written in English albeit signed by the petitioner in Arabic. Said SPA authorized Baikong, the petitioner's sister, to follow-up the payment of the purchase price. This raises doubt on the

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[45] 528 Phil. 839 (2006).

[46] *Id.* at 859.

veracity of the petitioner's allegation that he does not understand the language as he would not have been able to execute the SPA or he would have prevented its enforcement.

The Petitioner's Claim for Recovery of Possession and Ownership is Barred by Laches

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier.[47] It should be stressed that laches is not concerned only with the mere lapse of time.[48]

As a general rule, an action to recover registered land covered by the Torrens System may not be barred by laches.[49] Neither can laches be set up to resist the enforcement of an imprescriptible legal right.[50] In exceptional cases, however, the Court allowed laches as a bar to recover a titled property. Thus, in *Romero v. Natividad*,[51] the Court ruled that laches will bar recovery of the property even if the mode of transfer was invalid. Likewise, in *Vda. de Cabrera v. CA*,[52] the Court ruled:

> In our jurisdiction, it is an enshrined rule that **even a registered owners of property may be barred from recovering possession of property by virtue of laches.** Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches x x x.[53] (Citation omitted and emphasis supplied)

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[47] *Id.* at 854; *Isabela Colleges, Inc. v. The Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000).

[48] *Pineda v. Heirs of Eliseo Guevara*, 544 Phil. 554, 562 (2007).

[49] *Mateo v. Diaz*, 424 Phil. 772, 781 (2002).

[50] *Heirs of Ingjug-Tiro v. Spouses Casals*, 415 Phil. 665, 674 (2001).

[51] 500 Phil. 322 (2005).

[52] 335 Phil. 19 (1997).

[53] *Id.* at 34.

More particularly, laches will bar recovery of a property, even if the mode of transfer used by an alleged member of a cultural minority lacks executive approval.[54] Thus, in *Heirs of Dicman v. Cariño*,[55] the Court upheld the Deed of Conveyance of Part Rights and Interests in Agricultural Land executed by Ting-el Dicman in favor of Sioco Cariño despite lack of executive approval. The Court stated that "despite the judicial pronouncement that the sale of real property by illiterate ethnic minorities is null and void for lack of approval of competent authorities, the right to recover possession has nonetheless been barred through the operation of the equitable doctrine of laches."[56] Similarly in this case, while the respondent may not be considered as having acquired ownership by virtue of its long and continued possession, nevertheless, the petitioner's right to recover has been converted into a stale demand due to the respondent's long period of possession and by the petitioner's own inaction and neglect.[57] The Court cannot accept the petitioner's explanation that his delayed filing and assertion of rights was due to Martial Law and the Cotabato Ilaga-Black Shirt Troubles. The Martial Law regime was from 1972 to 1986, while the Ilaga-Black Shirt Troubles were from the 1970s to the 1980s. The petitioner could have sought judicial relief, or at the very least made his demands to the respondent, as early as the third quarter of 1962 after the execution of the Deed of Sale and before the advent of these events. Moreover, even if, as the petitioner claims, access to courts were restricted during these times, he could have immediately filed his claim after Martial Law and after the Cotabato conflict has ended. The petitioner's reliance on the Court's treatment of Martial Law as *force majeure* that suspended the running of prescription in *Development Bank of the Philippines v. Pundogar*[58] is inapplicable because the Court's

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[54] *Supra* note 45, at 854.

[55] 523 Phil. 630 (2006).

[56] *Id.* at 661.

[57] *Mejia de Lucas v. Gamponia*, 100 Phil. 277, 282-284 (1956).

[58] G.R. No. 96921, January 29, 1993, 218 SCRA 118.

ruling therein pertained to prescription and not laches. Consequently, the petitioner's lengthy inaction sufficiently warrants the conclusion that he acquiesced or conformed to the sale.

Vigilantibus sed non dormientibus jura subverniunt. The law aids the vigilant, not those who sleep on their rights. This legal percept finds application in the petitioner's case.

WHEREFORE, the appeal is **DENIED**. The Decision dated April 25, 2008 and Resolution dated October 29, 2008 of the Court of Appeals Mindanao Station in CA-G.R. CV No. 00156 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186137. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff- appellee, vs.* **DATU NOT ABDUL,** *defendant- appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; POINTS OF LAW, THEORIES, ISSUES, AND ARGUMENTS SHOULD BE BROUGHT TO THE ATTENTION OF THE TRIAL COURT, AS THESE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL EXCEPT WHEN THERE IS PLAIN ERROR.—** Points of law, theories, issues, and arguments should be brought to the attention of the trial court, as these cannot be raised for the first time on appeal. An exception to this rule arises when there is plain error. An instance of plain error is overlooking,

misapprehending, or misapplying facts of weight and substance that, if properly appreciated, would warrant a different conclusion. This case falls under this exception because the CA, in appreciating the facts, erred in affirming the RTC's ruling that there was compliance with the rule on the chain of custody.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN-OF-CUSTODY RULE; EXPOUNDED; LINK IN THE CHAIN-OF-CUSTODY NOT COMPLIED WITH.— The chain-of-custody rule is a method of authenticating evidence, by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene. This rule, when applied to drug cases, requires a more stringent application, because the *corpus delicti* – the narcotic substance - is not readily identifiable and must be subjected to scientific analysis to determine its composition and nature. *Malillin v. People* explains this rigorous standard when it comes to the chain of custody of narcotic substances: x x x the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about **every link in the chain**, from the moment the item was picked up to the time it was offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Hence, every link in the chain of custody must not show any possibility of tampering, alteration or substitution. However, it is accepted that a perfect chain is not the standard. Nonetheless, two crucial links must be complied with. *First,* the seized illegal drug must be marked in the presence of the accused and immediately upon confiscation. This marking must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking. *Second,* the turnover of the seized drugs at every stage — from confiscation from the accused,

transportation to the police station, conveyance to the chemistry lab, and presentation to the court — must be shown and substantiated. The records are replete with instances of noncompliance with the foregoing.

3. **ID.; ID.; ID.; SUBSTANTIAL EVIDENTIARY GAPS IN THE CHAIN OF CUSTODY OF THE PLASTIC SACHET CONFISCATED FROM THE APPELLANT PUT INTO QUESTION THE RELIABILITY AND EVIDENTIARY VALUE OF THE CONTENTS THEREOF; FAILURE TO PROVE THAT THE SPECIMEN SUBMITTED FOR LABORATORY EXAMINATION WAS THE SAME ONE ALLEGEDLY SEIZED FROM THE ACCUSED IS FATAL FOR THE PROSECUTION.—** All the x x x facts show that there were substantial evidentiary gaps in the chain of custody of the plastic sachet. Hence, these facts put into question the reliability and evidentiary value of the contents of the alleged confiscated plastic sachet from appellant — if indeed it was the same as the one brought to the laboratory for examination, found positive for *shabu*, and then presented before the RTC. It was a grave error for the CA to rule that there was an unbroken chain of custody simply because the plastic sachet had been marked, inventoried, sent to the crime laboratory for analysis, and found positive for *shabu*, despite the fact that the integrity of the confiscated item throughout the entire process had never been established. It is of no moment either that appellant stipulated the existence of Chemistry Report No. D-057-05, as this report did not amount to an admission of the identity of the contents of the plastic sachet. Instead, it merely proved the existence and authenticity of the request for a laboratory examination, and its result had no bearing on the required chain of custody from the time of seizure of the plastic sachet. As we have held in *People v. Sanchez*, "it is fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused." We take this opportunity to remind all courts what we have elucidated in *People v. Tan:* x x x "By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is

great." Thus, the 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. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants' guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *C.J.*:

Datu Not Abdul (appellant) brings this Notice of Appeal[1] dated 4 August 2008 before the Supreme Court, assailing the Decision[2] dated 14 July 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02783 for being contrary to facts, law, and jurisprudence. The said CA Decision affirmed the Decision[3] dated 5 March 2007 of the Regional Trial Court of Baguio City, Branch 61 (RTC) in Criminal Case No. 24621-R finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

The sole issue before us is whether the prosecution sufficiently established compliance with the chain-of-custody rule.

The facts according to the prosecution are as follows:

On 25 June 2005, Police Officer 2 Daniel E. Akia (PO2 Akia) of the Philippine Drug Enforcement Agency-Cordillera

[1] CA *rollo,* pp. 132-134, penned by Associate Justice Martin S. Villarama, Jr., now a member of this Court, Associate Justices Noel G. Tijam and Arturo G. Tayag concurring.

[2] *Id.* at 109-128.

[3] *Id.* at 56-64, penned by Presiding Judge Antonio C. Reyes.

Administrative Region (PDEA-CAR) received a telephone call from an informant reporting the illegal drug activities of appellant. Acting on this information, PO2 Akia met with the informant and brought her to the PDEA office for an interview, in the course of which she disclosed that appellant would be coming from Agoo, La Union to meet her between 1:00 p.m. and 2:00 p.m. of that day. Losing no time, Police Senior Inspector Paul John A. Mencio (P S/Insp. Mencio), together with Senior Police Officer 4 Marquez K. Madlon (SPO4 Madlon) and Police Officer 2 Erwin M. Garcia (PO2 Garcia), planned and prepared for a buy-bust operation that was to take place in the afternoon of that day. The team agreed that PO2 Akia would pose as the buyer and bring with him two pieces of 500-peso bills and some fake money. They also agreed that the signal for the other police officers to arrest appellant was when PO2 Akia grabbed him.[4]

The police officers, together with the informant, then proceeded to San Vicente, Baguio City. Upon arriving there, SPO4 Madlon and PO2 Garcia hid, while PO2 Akia and the informant stood along the sidewalk. After twenty minutes, appellant arrived on board a taxi. The informant touched PO2 Akia's back to let him know that the passenger of the cab was their target. Appellant got out of the taxi and approached the informant, who introduced the police officer as her friend. PO2 Akia asked appellant how much *shabu* the latter brought, and appellant replied that he had *shabu* worth 6,500. Appellant pulled out of his pocket a medium-sized, transparent, heat-sealed plastic sachet containing a white crystalline substance and handed it to PO2 Akia, who subsequently handed the buy-bust money to the former. Appellant started to count it, but soon realized that he was being paid with fake money. PO2 Akia immediately grabbed him and announced that the former was a PDEA agent. Upon seeing the signal, SPO4 Madlon and PO2 Garcia hurried to the scene and assisted PO2 Akia in arresting appellant. Afterwards, the police officers brought him to the PDEA office, where the operation was documented and the arrest report and the Affidavits of the

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[4] *Rollo,* pp. 3-4.

arresting officers were prepared. Also, an inventory of the item seized from appellant was made in the presence of representatives from the Department of Justice (DOJ), the media, and the *barangay* council. PO2 Akia allegedly marked the plastic sachet with the initials "MKM, DEA, EMG" and Exhibit "A."[5]

The plastic sachet was then forwarded to the PNP Regional Crime Laboratory Office Cordillera Administrative Region for analysis. The forensic analyst, PO2 Juliet Valentin Albon (PO2 Albon), examined the substance inside the sachet. She issued a chemistry report numbered D-057-05 which found that the plastic sachet with markings "A, MKM, DEA, EMG" contained 1.85 grams of a white crystalline substance; and that a qualitative examination gave a positive result for the presence of methamphetamine hydrochloride (*shabu*), a dangerous drug.[6]

Thus, an Information was filed on 30 June 2005, which reads:

> That on or about the 25th day of June, 2005, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously sell, and /or distribute to PO1 Daniel E. Akia, Jr., a member of the Philippine Drug Enforcement Agency, based at Melvin Jones, Harrison Road, Baguio City, who passed as buyer, one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "shabu," a dangerous drug, weighing 1.85 grams for an agreed amount of 6,500.00, without any lawful authority in violation of the aforecited provision of law.[7]

Appellant entered a plea of "not guilty" during his arraignment, after which trial on the merits ensued.[8]

During the pretrial conference, both parties admitted that a forensic chemist had examined the substance allegedly confiscated from respondent, that it was found positive for methamphetamine

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

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

[7] *Id.* at 3.

[8] *Id.*

hydrochloride, and that the forensic chemist prepared a report thereon.[9]

The prosecution presented the testimonies of PO2 Akia, PO2 Garcia, and SPO4 Madlon.[10] It also offered in evidence the money used during the buy-bust operation, the dangerous drug allegedly recovered, and the chemistry report on the dangerous drug retrieved from respondent.[11] On the other hand, the defense presented the testimonies of appellant and Norma Abdul, his aunt.[12]

Through the testimonies of appellant and his aunt, the defense alleged that the former was a victim of a frame-up.[13] It contended that appellant was a native of Cotabato City who went to visit his uncle in La Union. After spending a few weeks in that place, he visited Baguio City with a friend. There, he was apprehended by three men, who brought him to the PDEA office where he was forced to admit that he was engaged in selling *shabu*. He kept denying the accusation, but the police officers continued to keep him in custody. When his aunt visited him, she told him that the police officers were demanding 20,000 for his release. However, she was able to give them only 5,000. As a result, appellant was not discharged and, instead, a criminal case was filed against him.[14]

The RTC held that the straightforward testimonies of the prosecution witness, PO2 Akia, clearly established the identity of appellant as the seller, the object being *shabu,* and the consideration of 6,500. Also established were the delivery of the illegal drug and the payment for it.[15] Furthermore, the trial

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[9] Records, p. 55.

[10] *Id.* at 69, 93, 145.

[11] *Id.* at 147-148.

[12] *Id.* at 160, 190.

[13] *Rollo,* p. 8.

[14] *Id.* at 7-8.

[15] CA *rollo,* pp. 17-20.

court ruled that there was a presumption of regularity in the performance of the duties of the PDEA officers, because there was no reason for them to impute such a serious charge to the accused.[16] Hence, it found appellant guilty beyond reasonable doubt of the crime charged, and sentenced him to suffer life imprisonment and to pay a fine of 500,000, as well as the costs of suit.[17]

Aggrieved, appellant, through counsel, filed a Notice of Appeal[18] dated 16 March 2007, citing errors of fact and law in the RTC Decision.

In his Brief[19] dated 16 November 2007, appellant argued that the RTC failed to take into account the glaring inconsistencies in the testimonies of the three police officers.[20] He said that PO2 Akia and PO2 Garcia testified that there were only three members of the buy-bust operation team.[21] However, SPO4 Madlon asserted that it had four members.[22] Further, PO2 Akia testified that he handed the drugs over to SPO4 Madlon after the arrest of appellant.[23] According to PO2 Akia, SPO4 Madlon kept the evidence from the time of the arrest to the time appellant was brought to the office.[24] On the other hand, SPO4 Madlon testified that the drugs were turned over by PO2 Akia to their team leader P S/Insp. Mencio.[25] Appellant also asserted that the buy-bust operation team failed to follow the guidelines for drug operations, as SPO4 Madlon testified that he did not place

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[16] *Id.* at 20.

[17] *Id.* at 21.

[18] *Id.* at 22.

[19] *Id.* at 35-55.

[20] *Id.* at 43.

[21] *Id.* at 44.

[22] *Id.*

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

[24] *Id.*

[25] *Id.* at 45.

any markings on the plastic sachet of *shabu* at the place where the arrest took place, but only marked it at the office. Also, the testimonies of PO2 Akia and PO2 Garcia were silent as to when and where the marking of the *shabu* took place. This omission, according to appellant, cast grave doubt on the identity of the subject specimen allegedly recovered from him, which may not have been the same one presented in evidence.[26]

To rebut the arguments of appellant, the state, through the Office of the Solicitor General (OSG), presented its Appellee's Brief.[27] It argued that inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance or weight thereof.[28] Also, appellant is not allowed to question, for the first time on appeal, the admissibility of evidence on the ground of a violation of the rule on the chain of custody.[29]

The CA, citing considerable parts of the RTC's Transcript of Stenographic Notes (TSN), affirmed the RTC's finding that the prosecution was able to sufficiently establish the elements of an illegal sale of dangerous drugs.[30] It considered the inconsistencies pointed out by appellant as trivial matters that had no bearing on the crime charged.[31] It likewise found that appellant had failed to adduce clear and convincing evidence to support his defense of frame-up.[32] Lastly, it held that he could not raise on appeal the issue of noncompliance with the chain-of-custody rule if he had failed to do so before the trial court.[33]

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[26] *Id.* at 48-49.

[27] *Id.* at 77-96.

[28] *Id.* at 86-89.

[29] *Id.* at 89-93.

[30] *Rollo,* p. 10.

[31] *Id.* at 16.

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

[33] *Id.* at 18.

Undeterred, appellant filed before this Court his Notice of Appeal, dated 04 August 2008.

In a Resolution dated 04 March 2009, the Court required the parties to file their supplemental briefs, if they so desired.[34]

Appellant filed a Supplemental Brief[35] dated 21 May 2009, in which he reiterated the failure of the prosecution to show compliance with the rule on the chain of custody as required by Republic Act No. 9165 and its Implementing Rules and Regulations. On the other hand, appellee manifested that all the issues raised had already been discussed in its Brief before the CA and, hence, would no longer file any supplemental brief.[36]

THE COURT'S RULING

Although we recognize and laud the CA's thorough discussion, the records of the case point to significant lapses in the chain of custody of the confiscated sachet. These evidentiary gaps cast reasonable doubt on the identity of the *corpus delicti* that would compel us to acquit appellant.

DISCUSSION

Points of law, theories, issues, and arguments should be brought to the attention of the trial court, as these cannot be raised for the first time on appeal.[37] An exception to this rule arises when there is plain error.[38] An instance of plain error is overlooking, misapprehending, or misapplying facts of weight and substance that, if properly appreciated, would warrant a different conclusion. This case falls under this exception because

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[34] *Id.* at 28-29.

[35] *Id.* at 30-36.

[36] *Id.* at 41.

[37] *Ramos v. PNB,* G.R. No. 178218, 14 December 2011, 662 SCRA 479, 495.

[38] *Buklod ng Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.* G.R. No. 131481, 16 March 2011, 645 SCRA 401, 456.

the CA, in appreciating the facts, erred in affirming the RTC's ruling that there was compliance with the rule on the chain of custody.

The chain-of-custody rule is a method of authenticating evidence, by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene.[39] This rule, when applied to drug cases, requires a more stringent application, because the *corpus delicti* — the narcotic substance — is not readily identifiable and must be subjected to scientific analysis to determine its composition and nature.[40] *Malillin v. People*[41] explains this rigorous standard when it comes to the chain of custody of narcotic substances:

> x x x the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about **every link in the chain**, from the moment the item was picked up to the time it was offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Emphasis supplied)

Hence, every link in the chain of custody must not show any possibility of tampering, alteration or substitution.[42] However,

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[39] *People v. Alejandro,* G.R. No. 176350, 10 August 2011, 655 SCRA 279, 287-288.

[40] *Malillin v. People,* G.R. No. 172953, 30 April 2008, 553 SCRA 619.

[41] *Id.*

[42] *Id.* at 632-633.

it is accepted that a perfect chain is not the standard.[43] Nonetheless, two crucial links must be complied with. *First,* the seized illegal drug must be marked in the presence of the accused and immediately upon confiscation. This marking must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking. *Second,* the turnover of the seized drugs at every stage — from confiscation from the accused, transportation to the police station, conveyance to the chemistry lab, and presentation to the court — must be shown and substantiated.[44]

The records are replete with instances of noncompliance with the foregoing.

The time and place of the marking was never established.

Although the item confiscated from appellant had undoubtedly been marked, no evidence was presented to adequately indicate when, where, and how it was marked.

The testimony of PO2 Akia never established when he marked the plastic sachet and who witnessed his act. His statements as to its marking are limited to the following:

Q Anyway, you said that you were handed a medium sized sachet, did you place any marking on this sachet?
A Yes, sir my initial.

Q And what would those initial be?
A DEA and Exhibit A, sir.

Q I am showing you Exhibit A, a sachet of shabu with marking DEA, MKM, ENG, are these the same markings that you placed?
A Yes, sir.

Q And what does MKM stands for?
A Marquez K. Madlon, sir.

Q How about ENG?
WITNESS
A Erwin N. Garcia, sir.

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[43] *Asiatico v. People,* G.R. No. 195005, 12 September 2011, 657 SCRA 443.

[44] *People v. Alejandro, supra* at 288-289.

PROS. CATRAL:
Q And DEA?
A My initial, sir.[45]

Not only was SPO4 Madlon's testimony deficient in the same way as that of PO2 Akia's; the former also averred that he was unaware of when the other police officers marked the item, *viz:*

WITNESS:
A I remember it was Akia who gave me for marking, Sir.

ATTY. AWISAN:
Q You did not place any marking at the shabu at the place of the arrest?
A I don't know to my co-arresting officers but it was in our office where I put my initials, Sir.

Q So the shabu was marked at your office and the initials of the arresting were placed on that shabu?
A I don't know with my co-officers but for me it was in our office, Sir.[46]

With respect to PO2 Garcia, he never articulated that he had marked the plastic sachet, even if his initials "EMG" were on it. Neither did he corroborate his colleagues' testimonies about the marking of the plastic sachet.[47]

It was unclear who had custody of the drug after PO2 Akia confiscated it from appellant.

PO2 Akia said that he was the one who received the plastic sachet filled with white crystalline substance from appellant. However, the statements of PO2 Akia, PO2 Garcia, and SPO4 Madlon vary as to whom the plastic sachet was given after its confiscation from appellant.

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[45] TSN, 20 February 2006, pp. 22-23.

[46] TSN, 11 October 2006, p. 29.

[47] TSN, 18 April 2006; TSN 25 July 2006.

PO2 Akia mentioned that he gave the plastic sachet to SPO4 Madlon, to wit:

Q Anyway, you said that you were handed a medium sized sachet, did you place any marking on this sachet?
A Yes, sir my initial.

Q And what would those initial be?
A DEA and Exhibit A, sir.

Q I am showing you Exhibit A, a sachet of shabu with marking DEA, MKM, ENG, are these the same markings that you placed?
A Yes, sir.

Q And what does MKM stands for?
A Marquez K. Madlon, sir.

Q How about ENG?

WITNESS

A Erwin N. Garcia, sir.

PROS. CATRAL:

Q And DEA?
A My initial, sir.

Q And this was the same item the accused handed to you in exchange with the buy bust money and the boodle money?
A Yes, sir.

Q And at what point in time did you hand this to Officer Madlon?
A After Officer Garcia has placed him under arrest and Officer Garcia has stated his constitutional rights, sir.

Q And that was conducted in the area?
A Yes, sir[48]

This testimony was supported by that of PO2 Garcia, as follows:

Q How about the drugs subject of this case?
A It was also turned over to SPO4 Madlon, Sir.

[48] TSN, 20 February 2006, pp. 22-23.

PROS. CATRAL:

Q So it was SPO4 Madlon who kept the evidence from that point up to the time you brought the accused to your office?
A Yes, Sir.

Q For proper documentation and dispensation of this case?
A Yes, Sir.[49]

Yet, SPO4 Madlon, the person to whom PO2 Akia had allegedly handed the plastic sachet, refuted this testimony on the witness stand:

Q How about the alleged shabu which the accused sold to Akia who held those items in custody?
A I remember it was immediately turned over by Akia to our team leader, Sir.

Q But you said that only you and officer Garcia who went to their place?
A Together with our team leader PSI Mencio, Sir.

Q And Akia gave the shabu to PSI Mencio also at the place of arrest?
A Yes, Sir.

ATTY. AWISAN:

Q And, of course, you saw Akia gave that item to PSI Mencio
A Yes, Sir.

Q And what did PSI Mencio do with the shabu which was allegedly sold to Akia by the accused?
A He held it and after effecting the arrest...I don't know because after the arrest of the suspect I went immediately to Station 8 to inform the operation, Sir.

Q Where did PSI Mencio bring the shabu which was allegedly handed to him by Akia?
A I did not see it particularly when Akia gave this shabu to PSI Mencio, however, after arriving at our office when I asked the evidence that was the time Akia informed me that the shabu was in the possession of our team leader, Sir.

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[49] TSN, 25 July 2006, pp.7-8.

x x x x x x x x x

Q So from the place of arrest at San Vicente Barangay you never saw the shabu subject of this case again, is it not?

A Just after the arrest of the suspect I saw in the possession of Akia, however just after the arrest I went to coordinate the operation at Station 8, Sir.

Q So you never saw the shabu at your office?

A During the inventory and it was brought for marking, Sir.

Q Who brought out the shabu?

A Akia, Sir.

Q Not Mencio?

WITNESS:

A I remember it was Akia who gave me for marking, Sir.[50]

Furthermore, the Joint Affidavit of Arrest[51] executed by PO2 Garcia and SPO4 Madlon asserts that the poseur-buyer PO2 Akia had turned the plastic sachet over to the team leader, PSI Mencio. The pertinent part of the affidavit reads:

7. The Poseur-Buyer surrendered the medium size, transparent plastic sachet containing suspected dangerous drug (shabu) to the Team Leader.

x x x x

9. Confiscated dangerous drugs were labeled and was submitted at the Crime Laboratory Service, Camp Baco Dangwa, La Trinidad, Benguet for chemical analysis.[52] x x x.

This inconsistency, contrary to the CA's ruling, is not a trivial matter that is irrelevant to the crime. The assertion of PO2 Akia that he gave the plastic sachet to SPO4 Madlon and the latter's denial of this assertion shows that they failed to secure the integrity of the plastic sachet and its contents after confiscating it from appellant. This failure opens up the possibility of corruption or alteration of the confiscated item.

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[50] TSN, 11 October 2006, pp. 26-29.

[51] Records, pp. 6-7.

[52] *Id.* at 7.

Moreover, the prosecution failed to show and substantiate the identity of the person who carried the plastic sachet from the location of the buy-bust operation to the police station, who kept it before it was transmitted to the laboratory, who received it after the examination, and who stored it until it was brought to court.

Evidentiary gaps in the chain of custody of the confiscated plastic sachet cast reasonable doubt on its integrity.

All the foregoing facts show that there were substantial evidentiary gaps in the chain of custody of the plastic sachet. Hence, these facts put into question the reliability and evidentiary value of the contents of the alleged confiscated plastic sachet from appellant — if indeed it was the same as the one brought to the laboratory for examination, found positive for *shabu*, and then presented before the RTC. It was a grave error for the CA to rule that there was an unbroken chain of custody simply because the plastic sachet had been marked, inventoried, sent to the crime laboratory for analysis, and found positive for *shabu*, despite the fact that the integrity of the confiscated item throughout the entire process had never been established. It is of no moment either that appellant stipulated the existence of Chemistry Report No. D-057-05, as this report did not amount to an admission of the identity of the contents of the plastic sachet. Instead, it merely proved the existence and authenticity of the request for a laboratory examination, and its result had no bearing on the required chain of custody from the time of seizure of the plastic sachet.[53]

As we have held in *People v. Sanchez*,[54] "it is fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused."

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[53] *People v. Alejandro, supra* at 291-292.

[54] G.R. No. 175832, 15 October 2008, 569 SCRA 194.

We take this opportunity to remind all courts what we have elucidated in *People v. Tan:*[55]

x x x "By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the 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. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants' guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

WHEREFORE, in view of the foregoing, the 14 July 2008 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Appellant is hereby **ACQUITTED** on the ground of the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED** from detention, unless he is being confined for another lawful cause. Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from his receipt of this Decision, the action he has taken.

SO ORDERED.

Leonardo-de Castro, Bersamin, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[55] 401 Phil. 259, 273 (2000).

[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per raffle dated 19 June 2013.

SECOND DIVISION

[G.R. No. 186475. June 26, 2013]

POSEIDON INTERNATIONAL MARITIME SERVICES, INC., *petitioner, vs.* **TITO R. TAMALA, FELIPE S. SAURIN, JR., ARTEMIO A. BO-OC and JOEL S. FERNANDEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON; *CERTIORARI*; THE COURT CANNOT TOUCH ON FACTUAL QUESTIONS EXCEPT IN THE COURSE OF DETERMINING WHETHER THE COURT OF APPEALS CORRECTLY RULED IN DETERMINING WETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING AND APPRECIATING THE FACTUAL ISSUES BEFORE IT.—** The settled rule is that a petition for review on *certiorari* under Rule 45 is limited to the review of questions of law, *i.e.,* to legal errors that the CA may have committed in its decision, in contrast with the review for jurisdictional errors that we undertake in original *certiorari* actions under Rule 65. In reviewing the legal correctness of a CA decision rendered under Rule 65 of the Rules of Court, we 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, and not strictly on the basis of whether the NLRC decision under review is intrinsically 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. Viewed in this light, we do not re-examine the factual findings of the NLRC and the CA, nor do we substitute our own judgment for theirs, as their findings of fact are generally conclusive on this Court. We cannot touch on factual questions "*except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating [the] factual [issues before it].*"

2. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA NO. 8042), SECTION 10 THEREOF; NOT APPLICABLE WHEN THE OVERSEAS CONTRACT WORKER WAS NOT ILLEGALLY DISMISSED.— The application of Section 10 of R.A. No. 8042 presumes a finding of illegal dismissal. The pertinent portion of Section 10 of R.A. No. 8042 reads: SEC. 10. MONEY CLAIMS. — x x x x x x In case of ***termination of overseas employment without just, valid or authorized cause*** as defined by law or contract[.] A plain reading of this provision readily shows that it applies only to ***cases of illegal dismissal or dismissal without any just, authorized or valid cause*** and finds no application in cases where the overseas Filipino worker was not illegally dismissed. We found the occasion to apply this rule in *International Management Services v. Logarta*, where we held that Section 10 of R.A. No. 8042 applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause.

3. ID.; ID.; ID.; THE MANAGEMENT HAS THE RIGHT TO REGULATE THE BUSINESS AND CONTROL ITS EVERY ASPECT WHICH INCLUDES THE FREEDOM TO CLOSE OR CEASE ITS OPERATIONS FOR ANY REASON, AS LONG AS IT IS DONE IN GOOD FAITH AND THE EMPLOYER FAITHFULLY COMPLIES WITH THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS LAID DOWN BY LAW AND JURISPRUDENCE; SECTION 10 OF RA NO. 8042 NOT APPLICABLE FOR THE CLOSURE OF PETITIONER'S BUSINESS OPERATIONS IS A VALID EXERCISE OF MANAGEMENT'S PREROGATIVE; RESPONDENTS WERE NOT LEGALLY DISMISSED; HENCE, THEY ARE NOT ENTITLED TO THE UNPAID PORTION OF THEIR FULL SALARIES.— [B]y law and subject to the State's corollary right to review its determination, management has the right to regulate the business and control its every aspect. Included in this management right is the *freedom to close or cease its operations for any reason*, as long as it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence. We observe that the records

of the case do not show that Van Doorn ever intended to defeat the respondents' rights under our labor laws when it undertook its decision to close its fishing operations on November 20, 2004. x x x. Considering therefore the absence of any indication that Van Doorn stopped its fishing operations to circumvent the protected rights of the respondents, our courts have no basis to question the reason that might have impelled Van Doorn to reach its closure decision. [S]ince Poseidon ceased its fishing operations in the valid exercise of its management prerogative, Section 10 of R.A. No. 8042 finds no application. **Consequently, we find that the CA erroneously imputed grave abuse of discretion on the part of the NLRC in not applying Section 10 of R.A. No. 8042 and in awarding the respondents the unpaid portion of their full salaries.**

4. ID.; ID.; ARTICLE 283 OF THE LABOR CODE AND POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); CESSATION OF BUSINESS OPERATIONS IS A VALID GROUND FOR THE TERMINATION OF AN OVERSEAS EMPLOYMENT; REQUISITES; COMPLIED WITH.— [Article 283 of our Labor Code] applies in the present case as under the contract the employer and the workers signed and submitted to the Philippine Overseas Employment Agency (*POEA*), the Philippine labor law expressly applies. This legal reality is reiterated under Section 18-B, paragraph 2, in relation with Section 23 of the POEA Standard Employment Contract (*POEA-SEC*) (which is deemed written into every overseas employment contract) which recognizes the validity of the cessation of the business operations as a valid ground for the termination of an overseas employment. This recognition is subject to compliance with the following requisites: 1.The **decision to close or cease operations must be *bona fide*** in character; 2. Service of **written notice** on the affected employees and on the Department of Labor and Employment *(DOLE)* **at least one (1) month prior to the effectivity of the termination**; and 3. Payment to the affected employees of **termination or separation pay** equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. We are sufficiently convinced, based on the records, that Van Doorn's termination of the respondents' employment arising from the cessation of its fishing operations complied with the above requisites and is thus valid.

5. ID.; ID.; WAIVERS AND QUITCLAIMS; VALID AND BINDING WHERE THE PERSON MAKING THE SAME HAS DONE SO VOLUNTARILY, WITH A FULL UNDERSTANDING OF ITS TERM AND WITH THE PAYMENT OF CREDIBLE AND REASONABLE CONSIDERATION.— Generally, this Court looks with disfavor at quitclaims executed by employees for being contrary to public policy. Where the person making the waiver, however, has done so ***voluntarily, with a full understanding of its terms and with the payment of credible and reasonable consideration***, we have no option but to recognize the transaction to be valid and binding. We find the requisites for the validity of the respondents' quitclaim present in this case. x x x. **Consequently, we find that the CA erroneously imputed grave abuse of discretion in misreading the submitted evidence, and in relying on the May 25, 2005 agreement and on Section 10 of R.A. No. 8042.**

6. ID.; ID.; TERMINATION OF EMPLOYMENT; PROCEDURAL REQUISITES; NOT COMPLIED WITH; A LEGALLY DISMISSED EMPLOYEE IS ENTITLED TO AN AWARD OF NOMINAL DAMAGES AS INDEMNITY FOR THE VIOLATION OF THE REQUIRED STATUTORY PROCEDURES.— [W]e observe that while Van Doorn has a just and valid cause to terminate the respondents' employment, it failed to meet the requisite procedural safeguards provided under Article 283 of the Labor Code. In the termination of employment under Article 283, Van Doorn, as the employer, is required to serve a written notice to the respondents and to the DOLE of the intended termination of employment at least one month prior to the cessation of its fishing operations. Poseidon could have easily filed this notice, in the way it represented Van Doorn in its dealings in the Philippines. While this omission does not affect the validity of the termination of employment, it subjects the employer to the payment of indemnity in the form of nominal damages. Consistent with our ruling in *Jaka Food Processing Corporation v. Pacot,* we deem it proper to award the respondents nominal damages in the amount of ₱30,000.00 as indemnity for the violation of the required statutory procedures. Poseidon shall be solidarily liable to the respondents for the payment of these damages.

APPEARANCES OF COUNSEL

Naval Caculitan Ragunjan Law Offices for petitioner.
Linsangan Linsangan & Linsangan Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the September 30, 2008 Decision[2] and the February 11, 2009[3] Resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 98783. These CA rulings set aside the December 29, 2006 and February 12, 2007 Resolutions[4] of the National Labor Relations Commission (*NLRC*) in NLRC CA No. 049479-06. The NLRC, in turn, affirmed *in toto* the May 2006 Decision[5] of the labor arbiter *(LA)* dismissing the complaint for illegal termination of employment filed by respondents Tito R. Tamala, Felipe S. Saurin, Jr., Artemio A. Bo-oc and Joel S. Fernandez against petitioner Poseidon International Maritime Services, Inc. (*Poseidon*), and its principal, Van Doorn Fishing Pty, Ltd. (*Van Doorn*).

The Factual Antecedents

In 2004, Poseidon hired the respondents, in behalf of Van Doorn, to man the fishing vessels of Van Doorn and those of its partners — Dinko Tuna Farmers Pty. Ltd. (*Dinko*) and

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[1] Petition for review on *certiorari* dated March 5, 2009 and filed on March 6, 2009 under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 3-14.

[2] Penned by Associate Justice Isaias Dicdican, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison; *id.* at 20-30.

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

[4] Penned by Commissioner Gregorio O. Bilog III; *id.* at 86-94 and 112-113 respectively.

[5] Penned by Labor Arbiter Fe Superiaso-Cellan; *id.* at 58-66.

Snappertuna Cv. Lda. (*Snappertuna*) — at the coastal and offshore area of Cape Verde Islands. The respondents' contracting dates, positions, vessel assignments, duration of the contract, basic monthly salaries, guaranteed overtime pay and vacation leave pay, as reflected in their approved contracts,[6] are summarized below:

	Artemio A. Bo-oc	Joel S. Fernandez	Felipe S. Saurin, Jr.	Tito R. Tamala
Date Contracted	June 1, 2004	June 24, 2004	July 19, 2004[7]	October 20, 2004
Position	Third Engineer	Chief Mate	Third Engineer	Ordinary Seaman
Vessel Assignment	M/V "Lukoran DVA"	M/V "Lukoran DVA"	M/V "Lukoran Cetriri"	M/V "Lukoran DVA"
Contract Duration	Twelve (12) months	Twelve (12) months	Twelve (12) months	Twelve (12) months
Basic Monthly Salary	US$800.00	US$1,120.00	US$800.00	US$280.00
Guaranteed Overtime Pay	US$240.00/mo.	US$336.00/mo.	US$240.00/mo.	US$84.00/mo.
Vacation Leave Pay	US$66.66	US$93.33	US$66.66	US$23.33

The fishing operations for which the respondents were hired started on September 17, 2004. On November 20, 2004, the operations abruptly stopped and did not resume. On May 25, 2005, before the respondents disembarked from the vessels, Goran Ekstrom of Snappertuna (the respondents' immediate employer on board the fishing vessels) and the respondents

[6] CA *rollo*, pp. 30-33.

[7] Per the petition, respondent Felipe Saurin, Jr. was contracted on October 20, 2004; *rollo,* p. 6.

executed an agreement *(May 25, 2005 agreement)* regarding the respondents' salaries.[8] The agreement provided that the respondents would get the full or 100% of their unpaid salaries for the unexpired portion of their pre-terminated contract in accordance with Philippine laws. The respective amounts the respondents would receive *per* the May 25, 2005 agreement are:

Artemio A. Bo-oc	US$6,047.99
Joel S. Fernandez	US$7,767.90
Felipe S. Saurin, Jr.	US$6,647.99
Tito R. Tamala	US$7,047.99

On May 26, 2005, however, Poseidon and Van Doorn, with Goran of Snappertuna and Dinko Lukin of Dinko, entered into another agreement *(letter of acceptance)* reducing the previously agreed amount to 50% of the respondents' unpaid salaries *(settlement pay)* for the unexpired portion of their contract.[9] On May 28, 2005, the respondents arrived in Manila. On June 10, 2005, the respondents received the settlement pay under their letter of acceptance. The respondents then signed a waiver and quitclaim[10] and the corresponding cash vouchers.[11]

On November 16, 2005, the respondents filed a complaint[12] before the Labor Arbitration Branch of the NLRC, National Capital Region for illegal termination of employment with prayer for the payment of their salaries for the unexpired portion of their contracts; and for non-payment of salaries, overtime pay and vacation leave pay.[13] The respondents also prayed for moral and exemplary damages and attorney's fees.

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[8] CA *rollo*, pp. 54, 56, 58 and 61.

[9] Letter of Acceptance executed on May 26, 2005; *id.* at 71.

[10] *Id.* at 168-169.

[11] *Id.* at 164-167.

[12] *Id.* at 34-35.

[13] Respondents' Position Paper filed before the LA; *rollo,* pp. 34-46.

The respondents anchored their claim on their May 25, 2005 agreement with Goran, and contended that their subsequent execution of the waiver and quitclaim in favor of Poseidon and Van Doorn should not be given weight nor allowed to serve as a bar to their claim. The respondents alleged that their dire need for cash for their starving families compelled and unduly influenced their decision to sign their respective waivers and quitclaims. In addition, the complicated language employed in the document rendered it highly suspect.

In their position paper,[14] Poseidon and Van Doorn argued that the respondents had no cause of action to collect the remaining 50% of their unpaid wages. To Poseidon and Van Doorn, the respondents' voluntary and knowing agreement to the settlement pay, which they confirmed when they signed the waivers and quitclaims, now effectively bars their claim. Poseidon and Van Doorn submitted before the LA the signed letter of acceptance, the waiver and quitclaim, and the cash vouchers to support their stance.

In a Decision[15] dated May 2006, the LA dismissed the respondents' complaint for lack of merit, declaring as valid and binding their waivers and quitclaims. The LA explained that while quitclaims executed by employees are generally frowned upon and do not bar them from recovering the full measure of what is legally due, excepted from this rule are the waivers knowingly and voluntarily agreed to by the employees, such as the waivers assailed by the respondents. Citing jurisprudence, the LA added that the courts should respect, as the law between the parties, those legitimate waivers and quitclaims that represent voluntary and reasonable settlement of employees' claims. In the respondents' case, this pronouncement holds more weight, as they understood fully well the contents of their waivers and knew the consequences of their acts.

The LA did not give probative weight to the May 25, 2005 agreement considering that the entities which contracted the

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[14] Poseidon's position paper filed before the LA; *id.* at 51-55.

[15] *Supra* note 5.

respondents' services -Poseidon and Van Doorn — did not actively participate. Moreover, the LA noted that the respondents' signed letter of acceptance superseded this agreement. The LA likewise considered the respondents' belated filing of the complaint as a mere afterthought.

Finally, the LA dismissed the issue of illegal dismissal, noting that the respondents already abandoned this issue in their pleadings. The respondents appealed[16] the LA's decision before the NLRC.

The Ruling of the NLRC

By Resolution[17] dated December 29, 2006, the NLRC affirmed *in toto* the LA's decision. As the LA did, the NLRC ruled that the respondents' knowing and voluntary acquiescence to the settlement and their acceptance of the payments made bind them and effectively bar their claims. The NLRC also regarded the amounts the respondents received as settlement pay to be reasonable; despite the cessation of the fishing operations, the respondents were still paid their full wages from December 2004 to January 2005 and 50% of their wages from February 2005 until their repatriation in May 2005.

On February 12, 2007, the NLRC denied[18] the respondents' motion for reconsideration,[19] prompting them to file with the CA a petition for *certiorari*20 under Rule 65 of the Rules of Court.

The Ruling of the CA

In its September 30, 2008 Decision,[21] the CA granted the respondents' petition and ordered Poseidon and Van Doorn to

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[16] Memorandum on Appeal; *rollo,* pp. 67-80.

[17] *Supra* note 4.

[18] *Ibid.*

[19] *Rollo*, pp. 96-105.

[20] *Id.* at 115-127.

[21] *Supra* note 2.

pay the respondents the amounts tabulated below, representing the difference between the amounts they were entitled to receive under the May 25, 2005 agreement and the amounts that they received as settlement pay:

Artemio A. Bo-oc	US$3,705.00
Joel S. Fernandez	US$4,633.57
Felipe S. Saurin, Jr.	US$4,008.62
Tito R. Tamala	US$4,454.20

In setting aside the NLRC's ruling, the CA considered the waivers and quitclaims invalid and highly suspicious. The CA noted that the respondents in fact questioned in their pleadings the letter's due execution. In contrast with the NLRC, the CA observed that the respondents were coerced and unduly influenced into accepting the 50% settlement pay and into signing the waivers and quitclaims because of their financial distress. The CA moreover considered the amounts stated in the May 25, 2005 agreement with Goran to be more reasonable and in keeping with Section 10 of Republic Act *(R.A.)* No. 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995.*

The CA also pointed out with emphasis that the *pre-termination of the respondents' employment contract was simply the result of Van Doorn's decision to stop its operations*.

Finally, the CA did not consider the respondents' complaint as a mere afterthought; the respondents are precisely given under the Labor Code a three-year prescriptive period to allow them to institute such actions.

Poseidon filed the present petition after the CA denied its motion for reconsideration[22] in the CA's February 11, 2009 Resolution.[23]

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[22] *Rollo,* pp. 141-148.

[23] *Supra* note 3.

The Petition

Poseidon's petition argues that the labor tribunals' findings are not only binding but are fully supported by evidence. Poseidon contends that the CA's application of Section 10 of R.A. No. 8042 to justify the amounts it awarded to the respondents is misplaced, as the respondents never raised the issue of illegal dismissal before the NLRC and the CA. It claims that the respondents, in assailing the NLRC ruling before the CA, mainly questioned the validity of the waivers and quitclaims they signed and their binding effect on them. While the respondents raised the issue of illegal dismissal before the LA, they eventually abandoned it in their pleadings — a matter the LA even pointed out in her May 2006 Decision.

Poseidon further argues that the NLRC did not exceed its jurisdiction nor gravely abuse its discretion in deciding the case in its favor, pointing out that the respondents raised issues pertaining to mere errors of judgment before the CA. Thus, as matters stood, these issues did not call for the grant of a writ of *certiorari* as this prerogative writ is limited to the correction of errors of jurisdiction committed through grave abuse of discretion, not errors of judgment.

Finally, Poseidon maintains that it did not illegally dismiss the respondents. Highlighting the CA's observation and the respondents' own admission in their various pleadings, Poseidon reiterates that it simply ceased its fishing operations as a business decision in the exercise of its management prerogative.

The Case for the Respondents

The respondents point out in their comment[24] that the petition raises questions of fact, which are not proper for a Rule 45 petition. They likewise point out that the petition did not specifically set forth the grounds as required under Rule 45 of the Rules of Court. On the merits, and relying on the CA ruling, the respondents

[24] *Rollo,* pp. 196-203.

argue that Poseidon dismissed them without a valid cause and without the observance of due process.

The Issues

At the core of this case are the validity of the respondents' waivers and quitclaims and the issue of whether these should bar their claim for unpaid salaries. At the completely legal end is the question of whether Section 10 of R.A. No. 8042 applies to the respondents' claim.

The Court's Ruling

We resolve to **partly GRANT** the petition.

Preliminary considerations

The settled rule is that a petition for review on *certiorari* under Rule 45 is limited to the review of questions of law,[25] *i.e.,* to legal errors that the CA may have committed in its decision,[26] in contrast with the review for jurisdictional errors that we undertake in original *certiorari* actions under Rule 65.[27] In reviewing the legal correctness of a CA decision rendered under Rule 65 of the Rules of Court, we 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, and not strictly on the basis of whether the NLRC decision under review is intrinsically correct.[28] In other words, we have to be keenly aware that the CA undertook a Rule 65

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[25] See *Genuino Ice Company, Inc. v. Magpantay,* 526 Phil. 170, 178 (20006); and *Luna v. Allado Construction Co., Inc.,* G.R. No. 175251, May 30, 2011, 649 SCRA 262, 272.

[26] See *Wensha Spa Center, Inc. v. Yung,* G.R. No. 185122, August 16, 2010, 628 SCRA 311, 320.

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

[28] *Ibid.*; and *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna,* G.R. No. 172086, December 3, 2012.

review, not a review on appeal, of the NLRC decision challenged before it.[29]

Viewed in this light, we do not re-examine the factual findings of the NLRC and the CA, nor do we substitute our own judgment for theirs,[30] as their findings of fact are generally conclusive on this Court. We cannot touch on factual questions "*except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating [the] factual [issues before it]*."[31]

On the Merits of the Case

The core issue decided by the tribunals below is the validity of the respondents' waivers and quitclaims. The CA set aside the NLRC ruling for grave abuse of discretion; the CA essentially found the waivers and quitclaims unreasonable and involuntarily executed, and could not have superseded the May 25, 2005 agreement. In doing so, and in giving weight to the May 25, 2005 agreement, the CA found justification under Section 10 of R.A. No. 8042.

The respondents are not entitled to the unpaid portion of their salaries under Section 10 of R.A. No. 8042

The application of Section 10 of R.A. No. 8042 presumes a finding of illegal dismissal. The pertinent portion of Section 10 of R.A. No. 8042 reads:

SEC. 10. MONEY CLAIMS. — x x x

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[29] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna, supra*, citing *Montoya v. Transmed Manila Corporation*, *supra* note 27, at 342-343.

[30] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna, supra*.

[31] *Montoya v. Transmed Manila Corporation, supra* note 27, at 344.

x x x x x x x x x

In case of ***termination of overseas employment without just, valid or authorized cause*** as defined by law or contract[.] [emphasis and italics ours]

A plain reading of this provision readily shows that it applies only to ***cases of illegal dismissal or dismissal without any just, authorized or valid cause*** and finds no application in cases where the overseas Filipino worker was not illegally dismissed.[32] We found the occasion to apply this rule in *International Management Services v. Logarta*,[33] where we held that Section 10 of R.A. No. 8042 applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause.[34]

Whether the respondents in the present case were illegally dismissed is a question we resolve in the negative for three reasons.

First, the respondents' references to illegal dismissal in their several pleadings were mere cursory declarations rather than a definitive demand for redress. The LA's May 2006 Decision clearly enunciated this point when she dismissed the respondents' claim of illegal dismissal "as complainants themselves have lost interest to pursue the same."[35]

Second, the respondents, in their motion for reconsideration filed before the NLRC, positively argued that the fishing operations for which they were hired ceased as a result of the business decision of Van Doorn and of its partners;[36] thus, negating by omission any claim for illegal dismissal.

[32] See *International Management Services v. Logarta,* G.R. No. 163657, April 18, 2012, 670 SCRA 22, 36-37. See also *Sadagnot v. Reinier Pacific International Shipping, Inc.,* 556 Phil. 252, 262 (2007); and *Dela Rosa v. Michaelmar Philippines, Inc.,* G.R. No. 182262, April 13, 2011, 648 SCRA 721, 731.

[33] *Supra*.

[34] *Id.* at 36.

[35] *Rollo,* p. 63.

[36] *Id.* at 97.

Third, the CA, in its assailed decision, likewise made the very same inference — that the fishing operations ceased as a result of a business decision of Van Doorn and of its partners. In other words, the manner of dismissal was not a contested issue; the records clearly showed that the respondents' employment was terminated because *Van Doorn and its partners simply* ***decided to stop their fishing operations*** *in the exercise of their management prerogative,* which prerogative even our labor laws recognize.

We confirm in this regard that, by law and subject to the State's corollary right to review its determination,[37] management has the right to regulate the business and control its every aspect.[38] Included in this management right is the *freedom to close or cease its operations for any reason*, as long as it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[39] Article 283 of our Labor Code provides:

> Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or ***cessation of operation of the*** establishment or ***undertaking*** unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department of Labor and Employment] at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year. [Italics, underscores and emphases ours]

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[37] *Espina v. Court of Appeals,* 548 Phil. 255, 272 (2007).

[38] See *United Laboratories, Inc. v. Domingo,* G.R. No. 186209, September 21, 2011, 658 SCRA 159, 175; and *Tinio v. Court of Appeals,* G.R. No. 171764, June 8, 2007, 524 SCRA 533, 540.

[39] See *Espina v. Court of Appeals, supra* note 37, at 273-274.

This provision applies in the present case as under the contract the employer and the workers signed and submitted to the Philippine Overseas Employment Agency (*POEA*), the Philippine labor law expressly applies.

This legal reality is reiterated under Section 18-B, paragraph 2,[40] in relation with Section 23[41] of the POEA Standard Employment Contract (*POEA-SEC*) (which is deemed written into every overseas employment contract) which recognizes the validity of the cessation of the business operations as a valid ground for the termination of an overseas employment. This recognition is subject to compliance with the following requisites:

1. The **decision to close or cease operations must be *bona fide*** in character;

2. Service of **written notice** on the affected employees and on the Department of Labor and Employment *(DOLE)* **at least one (1) month prior to the effectivity of the termination**; and

3. Payment to the affected employees of **termination or separation pay** equivalent to one (1) month pay or at

[40] SECTION 18. TERMINATION OF EMPLOYMENT

x x x x x x x x x

B. The *employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons*:

x x x x x x x x x

2. When the seafarer signs-off due to shipwreck, ship's sale, lay-up of vessel, ***discontinuance of voyage*** or change of vessel principal ***in accordance with Sections*** 22, ***23*** and 26 ***of this Contract***. [italics and emphases ours]

[41] SECTION 23. TERMINATION DUE TO VESSEL SALE, LAY-UP OR DISCONTINUANCE OF VOYAGE

Where the vessel is sold, laid up, ***or the voyage is discontinued*** *necessitating the termination of employment before the date indicated in the Contract*, the <u>seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay,</u> unless arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract which case the seafarer shall be entitled to basic wages until the date of joining the other vessel. [Italics and underscore and emphasis ours]

> least one-half (1/2) month pay for every year of service, whichever is higher.[42]

We are sufficiently convinced, based on the records, that Van Doorn's termination of the respondents' employment arising from the cessation of its fishing operations complied with the above requisites and is thus valid.

We observe that the records of the case do not show that Van Doorn ever intended to defeat the respondents' rights under our labor laws when it undertook its decision to close its fishing operations on November 20, 2004. From this date until six months after, the undertaking was at a complete halt. That Van Doorn and its partners might have suffered losses during the six-month period is not entirely remote. Yet, Van Doorn did not immediately repatriate the respondents or hire another group of seafarers to replace the respondents in a move to resume its fishing operations. Quite the opposite, the respondents, although they were no longer rendering any service or doing any work, still received their full salary for November 2004 up to January 2005. In fact, from February 2005 until they were repatriated to the Philippines in May 2005, the respondents still received wages, albeit half of their respective basic monthly salary rate. Had Van Doorn intended to stop its fishing operations simply to terminate the respondents' employment, it would have immediately repatriated the respondents to the Philippines soon after, in order that it may hire other seafarers to replace them — a possibility that did not take place.

Considering therefore the absence of any indication that Van Doorn stopped its fishing operations to circumvent the protected rights of the respondents, our courts have no basis to question the reason that might have impelled Van Doorn to reach its closure decision.[43]

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[42] *Ramirez v. Mar Fishing Co., Inc.,* G.R. No. 168208, June 13, 2012, 672 SCRA 136, 144-145; and *Marc II Marketing, Inc. v. Joson,* G.R. No. 171993, December 12, 2011, 662 SCRA 35, 59-60.

[43] See *Marc II Marketing, Inc. v. Joson, supra*, at 59; and *Nippon Housing Phil., Inc. v. Leynes,* G.R. No. 177816, August 3, 2011, 655 SCRA 77, 89.

In sum, since Poseidon ceased its fishing operations in the valid exercise of its management prerogative, Section 10 of R.A. No. 8042 finds no application. **Consequently, we find that the CA erroneously imputed grave abuse of discretion on the part of the NLRC in not applying Section 10 of R.A. No. 8042 and in awarding the respondents the unpaid portion of their full salaries.**

The waivers and quitclaims signed by the respondents are valid and binding

We cannot support the CA's act of giving greater evidentiary weight to the May 25, 2005 agreement over the respondents' waivers and quitclaims; not only do we find the latter documents to be reasonable and duly executed, we also find that they superseded the May 25, 2005 agreement.

Generally, this Court looks with disfavor at quitclaims executed by employees for being contrary to public policy.[44] Where the person making the waiver, however, has done so ***voluntarily, with a full understanding of its terms and with the payment of credible and reasonable consideration***, we have no option but to recognize the transaction to be valid and binding.[45]

We find the requisites for the validity of the respondents' quitclaim present in this case. We base this conclusion on the following observations:

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[44] *Ison v. Crewserve, Inc.,* G.R. No. 173951, April 16, 2012, 669 SCRA 481, 497; *Aujero v. Philippine Communications Satellite Corporation,* G.R. No. 193484, January 18, 2012, 663 SCRA 467, 483; and *Goodrich Manufacturing Corporation v. Ativo,* G.R. No. 188002, February 1, 2010, 611 SCRA 261, 266.

[45] *Ison v. Crewserve, Inc., supra*, at 497-498. See also *Plastimer Industrial Corporation v. Gopo,* G.R. No. 183390, February 16, 2011, 643 SCRA 502, 511; *Goodrich Manufacturing Corporation v. Ativo, supra*, at 266, citing *Periquet v. National Labor Relations Commission,* G.R. No. 91298, June 22, 1990, 186 SCRA 724; and *Aujero v. Philippine Communications Satellite Corporation, supra*, at 482-483.

First, the respondents acknowledged in their various pleadings, as well as in the very document denominated as "waiver and quitclaim," that they voluntarily signed the document after receiving the agreed settlement pay.

Second, the settlement pay is reasonable under the circumstances, especially when contrasted with the amounts to which they were respectively entitled to receive as termination pay pursuant to Section 23 of the POEA-SEC and Article 283 of the Labor Code. The comparison of these amounts is tabulated below:

	Settlement Pay	Termination Pay
Joel S. Fernandez	US$3134.33	US$1120.00
Artemio A. Bo-oc	US$2342.37	US$800.00
Felipe S. Saurin, Jr.	US$2639.37	US$800.00
Tito R. Tamala	US$2593.79	US$280.00

Thus, the respondents undeniably received more than what they were entitled to receive under the law as a result of the cessation of the fishing operations.

Third, the contents of the waiver and quitclaim are clear, unequivocal and uncomplicated so that the respondents could fully understand the import of what they were signing and of its consequences.[46] Nothing in the records shows that what they received was different from what they signed for.

Fourth, the respondents are mature and intelligent individuals, with college degrees, and are far from the naive and unlettered individuals they portrayed themselves to be.

Fifth, while the respondents contend that they were coerced and unduly influenced in their decision to accept the settlement pay and to sign the waivers and quitclaims, the records of the case do not support this claim. The respondents' claims that they were in "dire need for cash" and that they would not be

[46] *Supra* note 11.

paid anything if they would not sign do not constitute the coercion nor qualify as the undue influence contemplated by law sufficient to invalidate a waiver and quitclaim,[47] particularly in the circumstances attendant in this case. The records show that the respondents, along with their other fellow seafarers, served as each other's witnesses when they agreed and signed their respective waivers and quitclaims.

Sixth, the respondents' voluntary and knowing conformity to the settlement pay was proved not only by the waiver and quitclaim, but by the letters of acceptance and the vouchers evidencing payment. With these documents on record, the burden shifts to the respondents to prove coercion and undue influence other than through their bare self-serving claims. No such evidence appeared on record at any stage of the proceedings.

In these lights and in the absence of any evidence showing that fraud, deception or misrepresentation attended the execution of the waiver and quitclaim, we are sufficiently convinced that a valid transaction took place. **Consequently, we find that the CA erroneously imputed grave abuse of discretion in misreading the submitted evidence, and in relying on the May 25, 2005 agreement and on Section 10 of R.A. No. 8042.**

The respondents are entitled to nominal damages for failure of Van Doorn to observe the procedural requisites for the termination of employment under Article 283 of the Labor Code

As a final note, we observe that while Van Doorn has a just and valid cause to terminate the respondents' employment, it failed to meet the requisite procedural safeguards provided under Article 283 of the Labor Code. In the termination of employment

[47] See *Aujero v. Philippine Communications Satellite Corporation, supra* note 44, at 483-484.

under Article 283, Van Doorn, as the employer, is required to serve a written notice to the respondents and to the DOLE of the intended termination of employment at least one month prior to the cessation of its fishing operations. Poseidon could have easily filed this notice, in the way it represented Van Doorn in its dealings in the Philippines. While this omission does not affect the validity of the termination of employment, it subjects the employer to the payment of indemnity in the form of nominal damages.[48]

Consistent with our ruling in *Jaka Food Processing Corporation v. Pacot,*[49] we deem it proper to award the respondents nominal damages in the amount of ₱30,000.00 as indemnity for the violation of the required statutory procedures. Poseidon shall be solidarily liable to the respondents for the payment of these damages.[50]

WHEREFORE, in view of these considerations, we hereby **GRANT in PART** the petition and accordingly **REVERSE and SET ASIDE** the Decision dated September 30, 2008 and the Resolution dated February 11, 2009 of the Court of Appeals in CA-G.R. SP No. 98783. We **REINSTATE** the Resolution dated December 29, 2006 of the National Labor Relations Commission with the **MODIFICATION** that petitioner Poseidon International Maritime Services, Inc. is ordered to pay each of the respondents nominal damages in the amount of ₱30,000.00. Costs against the respondents.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[48] *International Management Services v. Logarta, supra* note 32, at 37; and *Marc II Marketing, Inc. v. Joson, supra* note 42, at 62.

[49] 494 Phil. 114, 120-122 (2005).

[50] Pursuant to R.A. No. 8042, Section 10.

FIRST DIVISION

[G.R. No. 189846. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMIL MORES,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; TO BE PRESENT, IT MUST BE ESTABLISHED THAT AT THE TIME OF THE ATTACK, THE VICTIM WAS NOT IN A POSITION TO DEFEND HIMSELF AND THAT THE OFFENDER CONSCIOUSLY ADOPTED THE PARTICULAR MEANS OF PRESENT.—** Article 14, Paragraph 16 of the Revised Penal Code states that "[t]here is treachery when the offender commits any of the crimes against the 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." It is long settled in jurisprudence that two elements must concur in order to establish treachery: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed. Thus, the essence of treachery is that the attack comes without warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. We agree with the appellate court that the manner by which appellant deliberately rolled the grenade on the ground towards the dance floor packed with unsuspecting revelers, leaving one dead and scores wounded in the aftermath of the sudden blast was accompanied with treachery. Appellant's unexpected action which was immediately followed by the grenade's lethal explosion left the victims with utterly no chance to escape the blast area nor to find protective cover. Though appellant stood a short distance away, he knowingly positioned himself safely from the reach of the grenade's destructive force. From the foregoing, we can confidently conclude that treachery, as correctly pointed out by both the trial court and the Court of Appeals, was present in the commission of the crime charged.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE CREDIBILITY OF A WITNESS IS IN ISSUE, THE FINDINGS OF FACT OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS ARE ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT, ESPECIALLY IF SUCH FINDINGS WERE AFFIRMED BY THE APPELLATE COURT.—** [C]ontrary to appellant's protestation, we find no cogent reason to question the veracity of the testimony of Famisaran as well as that of the other witnesses for the prosecution. We have reiterated in jurisprudence that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. In all, we concur with the trial court in setting aside the inconsequential differences in the prosecution's witnesses' testimonies and in pointing out that their testimonies actually corroborated each other as to rolling of a grenade onto the dance floor and their respective positions from the blast.

3. **ID.; ID.; NON-FLIGHT DOES NOT NECESSARILY CONNOTE INNOCENCE AND UNEXPLAINED FLIGHT IS INDICATIVE OF GUILT.—** [W]e cannot subscribe to appellant's theory that his continued presence at the vicinity of the Municipality of Roxas right after the grenade throwing incident negates his guilt of the crime charged and that his absence in court proceedings subsequent to his arraignment should not be taken against him. We have elucidated on this point in one recent case wherein we held that non-flight does not necessarily connote innocence, to wit: Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee — a circumstance strongly illustrative of guilt — while others may remain in the same

vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community. [O]ur position on the effects of unexplained flight on the guilt or innocence of an accused remains unchanged. In *People v. Camat*, we reiterated the jurisprudential doctrine that flight is indicative of guilt in this manner: Flight in criminal law is the **evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings**. In one case, this Court had stated that it is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as a lion.

4. **CRIMINAL LAW; COMPLEX CRIME OF MURDER WITH MULTIPLE ATTEMPTED MURDER; PROPER PENALTY.—** [W]e have no other recourse but to sustain appellant's conviction for the complex crime of Murder with Multiple Attempted Murder. As correctly explained by the Court of Appeals, the single act of pitching or rolling the hand grenade on the floor of the gymnasium which resulted in the death of Ramie Balasa (Balasa) and injuries to other victims constituted a complex crime under Article 48 of the Revised Penal Code which states that when a single act constitutes two or more grave or less grave felonies, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. The penalty for the most serious crime of Murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to DEATH. Thus, applying Article 48, the death penalty should be imposed. However, pursuant to Republic Act No. 9346, the proper sentence therefore is *reclusion perpetua* without eligibility for parole.

5. **ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** Also in line with current jurisprudence, we increase the award of civil indemnity to the heirs of the deceased Balasa on account of his murder by appellant from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00). We likewise increase the award of exemplary damages from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00). Moreover, moral damages should also be awarded in the amount of Fifty Thousand Pesos (₱50,000.00).

With regard to the instances of Attempted Murder, appellant is ordered to pay Forty Thousand Pesos (₱40,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages to each victim.

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.*:

Herein appellant Ramil Mores seeks the review of the Decision[1] dated August 10, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01362, entitled *People of the Philippines v. Ramil Mores*, which affirmed with modification the Decision[2] dated September 24, 1998 of the Regional Trial Court (RTC) of Oriental Mindoro, Branch 43 in Criminal Case No. R-632. The trial court found appellant guilty beyond reasonable doubt of the complex crime of Murder with Multiple Attempted Murder.

The pertinent portion of the Amended Information[3] charging appellant and his co-accused Delio Famor (Famor) with the commission of the aforementioned felony reads:

That on or about the 24th day of January, 1994 at around 9:00 o'clock in the evening, at Multi-Purpose Gymnasium, at [B]arangay [B]agumbayan, [M]unicipality of Roxas, [P]rovince of Or. Mindoro, [P]hilippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, conspiring, confederating and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously toss/hurl a live hand grenade at the center of the dancing hall wherein townsfolks are having a Farewell

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Celia C. Librea-Leagogo and Antonio L. Villamor, concurring.

[2] CA *rollo*, pp. 25-42.

[3] Records, p. 105.

Ball in connection with the town fiesta celebration, inflicting upon Ramie Balasa mortal wounds causing his death and injuries to Delfa Ylanan, Harold Fetalco, Noel Faminialagao, Haynee Lizza Morota, Johnelyn Sinel, Arcel Morillo, Ronald Manalo, Mutia De Leon, Elizabeth Magpantay, Romeo Ibabao, Joy Gabayno, Manny Balasa, Marilyn Ibabao and Mayra Suarez, thus performing all the acts of execution necessary to produce the felony directly by overt acts, but nevertheless did not produce it by reason of causes not the will of perpetrators.

That in the commission of the crime, the qualifying circumstances of treachery, evident premeditation and nocturnity are attendant.

At their arraignment, appellant and Famor pleaded not guilty to the charge against them.[4] Thereafter, trial on the merits commenced. While trial was on-going, appellant, who had previously been granted bail, failed to appear during two hearing dates. Thus, the bail bond that he posted was forfeited, a bench warrant was issued against him and he was tried *in absentia.* Only Famor was able to present evidence on his defense.

The testimonies of the prosecution witnesses were summarized in the trial court's assailed Decision dated September 24, 1998 in this manner:

The prosecution's evidence tends to show the following: At about 6:00 p.m. of January 24, 1994, Daryl Famisaran was chatting with his friends at the Madugo [B]ridge. While they were conversing, (appellant) passed by, stopped before them and with a grenade in his hand, talked to them in this wise: "Gusto nyo pasabugin ko ito?" ("Do you want me to explode this"). After (appellant) had left, they immediately dispersed. In the evening of the same date, at about 9:00 p.m., he (Daryl) was at Roxas Gymnasium where a ball was being held. He was then standing on the second bench from the ground floor on the right side of the stadium near the entrance. To his right was Margie Labatete and to the right of Labatete was Rey Raymundo (TSN, September 7, 1994, p. 12). There were many persons inside the gym. From their place up to the edge of the dance floor going towards the inner portion of the gymnasium was a distance of about twenty-five meters (25m) filled up with rows of chairs and tables.

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[4] *Id.* at 117.

While the dancing was going on, Daryl saw again (appellant) at a distance of about five (5) armslength on the same row or line from them. (Appellant) was then with accused Delio Famor and they were whispering to each other. In between him and the two (2) accused were persons sitting on the rows of chairs and spectators (TSN, September 7, 1994, p. 10). He could no longer tell what Famor was wearing because his view of him was covered by (appellant). It was at this point that he saw (appellant) pulled out a round object, which Daryl knew to be a grenade, from (appellant's) left pocket, transferred it to his right hand and then threw it on the floor as if rolling a ball (TSN, Ibid, [p]p. 6-7). Then, a commotion ensued and he heard outcries. He looked for his companions and saw one Nonoy Acebuque and assisted him in going out of the gymnasium.

The narrative of Daryl Famisaran regarding the 6:00 p.m. incident of January 24, 1994 at Madugo [B]ridge where (appellant) while holding a handgrenade uttered "Gusto ninyo pasabugin ko ito" in their presence was corroborated by Esteban Galaran, Jr. According to Esteban, he knew (appellant) and accused Famor because they were former members of Civilian Armed Force Geographical Unit (hereinafter called CAFGU for brevity). At about 6:00 p.m. of January 24, 1994, he was at Madugo [B]ridge with Daryl Famisaran, Jomer Fabiletante and Francisco Depuno. While they were [seated] on the railings of the bridge, (appellant) and Famor passed by. Then, (appellant) pulled out an object from his pocket, raised it and uttered in the vernacular "Gusto ninyo pasabugin ko ito?" Thereafter, (appellant) proceeded to the rice mill and they also left the place (TSN, September 8, 1994, pp. 3-4). In the evening of the same date, Esteban stayed at his house which is about half a kilometer from the gymnasium. He came to know later on from Rey Raymundo that a grenade exploded at the Roxas Gymnasium that evening.

Also present at the Roxas Gymnasium during the ball as of the time mentioned by Daryl Famisaran the explosion occurred were witnesses Delfa Ylanan, Myra Suarez and Noel Faminialagao.

According to Delfa Ylanan, she was then with Ramy Balasa, Manny Balasa and Malyn Balasa at the gymnasium witnessing the on-going ball. They were in front of a table and in front of them separated by the table was Orpha Famisaran who was about two (2) meters from them. Then, she saw an object with the size of her fist rolled in front of them towards the direction of Orpha. The latter peeped under the table and she kicked the object. At that instance, Orpha's back

was in front of them while in front of Orpha was another table. She claimed that the object even hit the leg of the table of Orpha (TSN, September 8, 1994, p. 11). After Orpha had kicked the object there was an explosion and a commotion ensued. She felt her feet getting hot and so, she asked for assistance from her companion Ramy (also spelled Ramie) Balasa. Ramy was not able to help her because he suddenly fell down such that she instead assisted Ramy and they brought him to Dr. Comia's clinic. Ramy Balasa was later on transferred to Roxas District Hospital where he died.

Myra Suarez was on the dance floor with partner Louie Faina immediately before the explosion. They were dancing at the right side of the stadium facing the stage when something exploded under the table at their back at a distance of about two (2) armslength from them. She was wounded at the back for which she was treated at Roxas District Hospital for a day and then she was transferred to UST Hospital where she was confined for four (4) days.

Noel Faminialagao was also dancing when the explosion occurred. They were then at the right side of the gymnasium facing the stage at a distance of about ten (10) meters from the place of the explosion. He sustained injury at the back of his right leg for which he was treated at Roxas District Hospital for two (2) days.

When he heard the explosion, SPO2 Walfredo Lafuente was at his house at Fabella Village which is about two hundred (200) meters from the gymnasium. He immediately proceeded to the gymnasium arriving thereat approximately twelve (12) to fifteen (15) minutes from the time he heard the explosion. While walking towards the gymnasium, SPO2 Lafuente met accused Delio Famor near the store of Aling Norbing Faminialagao which is about fifty (50) meters from the gymnasium. Famor was then with (appellant) and another unidentified person according to Lafuente. He asked Famor what happened to which the latter replied that something exploded. In his estimate, Lafuente met Famor about ten (10) minutes from the time he heard the explosion. He proceeded to the plaza and immediately conducted investigation thereat with the other members of the Roxas PNP composed of Chief of Police Arnulfo Sison, Diego Falseso and other members whom he could no longer recall. In the middle of the gym or what he called plaza, they recovered metal fragments and lever of a grenade with Serial No. UM-204-A-2 which were placed inside two (2) separate envelopes accordingly marked as Exhibits "I" and "J".

Dr. Efren Faustino who is then the OIC of Roxas District Hospital was at the said hospital in the evening of January 24, 1994 when according to him there was a steady stream of vehicles with several patients with multiple injuries coming to the hospital and that they could hardly cope with the injured persons as they were only two (2) doctors at the said hospital. These persons who came to the hospital informed him that there was a grenade blast in the municipal plaza of Roxas. In his (Dr. Faustino's) estimate, there were about forty (40) persons who were treated at the hospital of shrapnel injuries but some of them, they were not able to record or document for lack of time to write that night. In due course, he identified about twenty-four (24) medico-legal certificates issued by him which were marked in evidence as Exhibits "E", "E-1" to "E-23" (Records, pp. 217-240). He likewise opined that all these injuries or wounds treated by him which were the subject of the medical certificates he issued, were caused by blasting. He also attended to one Ramie Balasa who sustained a wound on the chest and on the left leg. When they opened the chest of Ramie Balasa they found a shrapnel embedded at the right anterior wall of the heart causing a blood hemorrhage which caused his death. He likewise identified the necropsy report on the cadaver of Ramie Balasa which was marked as Exhibit "F" and the death certificate of the victim issued by him which was accordingly marked as Exhibit "G". According to him, the cause of death of Ramie Balasa is hypovolemic shock secondary to massive blood loss secondary to shrapnel wound or in layman's language massive loss of blood (TSN, October 1, 1996, p. 18).

The aforementioned incident was investigated by Roxas PNP Police Investigator Edgar Valencia and the investigators of the CIS of Oriental Mindoro. According to Police Investigator Valencia, when he arrived at the gymnasium, Police Officers Renato Cruz and Walfredo Lafuente were already there. They immediately secured the area and told the people to step out of the gymnasium. They scoured the area and found out that the explosion occurred at the right side of the gymnasium if one would enter it on the northern side and that the tables inside the gymnasium were hit by the explosion. One of his companions likewise found a "pin" of a grenade pointing to the safety lever marked as Exhibit "J". They were not able to determine the source of the grenade on the basis of the metal fragments and the metal lever although they referred them to the CIS for that purpose. Neither did they refer them to a crime laboratory for examination. To his

recollection, several persons were wounded and one (1) died as a result of the grenade explosion.[5]

On the other hand, the trial court summed the defense witnesses' testimonies as follows:

> [A]ccused Delio Famor for his part interposed the defense of denial and alibi. He claimed that in the evening of January 24, 1994 he slept early at his house with his wife and their two-year old child. His house was located at Fabella Village just beside the house of a certain Boy Cruz and estimated to be one hundred (100) meters from the gymnasium. At about 9:00 in the evening he was still asleep when his wife Concepcion Famor woke him up. She told him that there was an explosion from the direction of Camp Gozar. At that time, he was a member of CAFGU assigned at Camp Gozar. He stood up and waited if something untoward will happen because he initially thought that there was an NPA raid. After a while, he put on a t-shirt and went out of the house with his wife. They were many persons around and one of them told him that something exploded at the gymnasium. He proceeded to the Shell station near Camp Gozar. On the way, he met Rey Raymundo. He even asked Rey where did the explosion come from who answered that it was at the plaza. Near the station, he met Sgt. Paraoan, their First Sergeant at Camp Gozar. He (Sgt. Paraoan) borrowed a vehicle from the Shell station and he joined Sgt. Paraoan looking for the latter's children who also attended the ball. They found them at the hospital because they brought there a cousin who was wounded in the explosion. Thereafter, he returned to his house. He denied the testimony of Daryl Famisaran that immediately before the explosion he was with (appellant) and about five (5) armslength from Daryl and that they were whispering to each other when (appellant) pulled out a grenade from his pocket and then pitched it on the floor towards the dancing area. He likewise denied the statement of Esteban Galaran, Jr. that at about 6:00 p.m. of January 24, 1994 he was with (appellant) at Madugo [B]ridge when the latter holding a hand grenade uttered, "Gusto ninyo pasabugin ko ito?"
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> Accused Delio Famor further claimed that as a member of CAFGU he was seriously wounded and even showed his lengthy scars in his abdomen and forearm, in an encounter with NPA Unit at Barangay

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[5] CA *rollo*, pp. 28-31.

Batangan, Bongabong, Oriental Mindoro and could have been an awardee in that year were it not for his involvement in this case. He further testified that when he was invited by the CIS operatives, he was brought to Canlubang, Laguna where they subjected him to electric shocks and water treatments, and he told them that even if they would kill him, he cannot tell them anything because he knew nothing of the crime being imputed against him. After five (5) days he was brought to the provincial jail at Roxas but he did not bother to file a case against his tormentors.

The version narrated by accused Famor was corroborated by his wife Concepcion and in part by Rey Raymundo. According to Rey Raymundo, in the evening of January 24, 1994, he was at Roxas Gymnasium where there was an on-going ball-dance. Initially, he was with his niece Hayneeliza Morota but later on he was joined by Daryl Famisaran and Margie Labatete. They were then at the western side of the gymnasium (obviously right side) with the northern entrance as a point of reference. Before the explosion there was crashing sound similar to that produced by a glass or bottle hitting the floor near the table occupied by his cousin Elwood and a certain Mutya and Orpha. A few seconds thereafter, there was an explosion. The lights at the stadium went off and in a few seconds the lights returned. The table of Orpha was about two (2) meters from their place. He did not see (appellant) nor Delio Famor inside the gymnasium. After the lights had returned, he saw Hayneeliza bloodied in the face and so he assisted her in going outside the gymnasium. Thereafter, they saw a jeepney with familiar faces on board. He requested them to bring Hayneeliza to the hospital while he ran towards his house. Along the way, he met Delio Famor who even asked him where the explosion was. He claimed to have spent the sum of ₱16,000.00 in connection with the treatment of his injured eye.[6]

At the conclusion of court proceedings, the trial court convicted appellant for the felony of Murder with Multiple Attempted Murder. However, it acquitted co-accused Famor on the ground that there was a paucity of evidence to establish that Famor was appellant's co-conspirator in the commission of the criminal act of which both of them were charged. The dispositive portion of the assailed September 24, 1998 Decision of the trial court reads:

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[6] *Id.* at 31-32.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1) The court finds the accused Ramil Mores who was tried in absentia guilty beyond reasonable doubt of the complex crime of Murder with Multiple Attempted Murder and he is hereby sentenced to suffer the supreme penalty of DEATH to be executed in accordance with existing law. And as he is at large, let an alias warrant of arrest be issued for his apprehension. But, in accordance with the principle laid down in the case of People vs. Esparas, et al., G.R. No. 120034, August 30, 1996 that the automatic appeal of a death sentence still applies to a death convict who escaped, the Clerk of Court of this Court, Atty. Mariano S. Familara III is directed to transmit to the Honorable Supreme Court the complete records of the case for review.

(2) Accused Ramil Mores is also ordered to pay the heirs of the deceased Ramie Balasa compensatory damages in the amount of ₱50,000.00 and the sum of ₱6,000.00 to Myra Suarez as actual damages;

(3) For failure of the prosecution to establish the guilt of the accused Delio Famor beyond reasonable doubt, the said accused is ACQUITTED of the charge of Murder with Multiple Attempted Murder. Being a detention prisoner, the said accused is hereby ordered released from confinement unless he is being detained on some other charge or charges or that there is an order from other court to the contrary, without pronouncement as to costs.[7]

In view of the death penalty handed down by the trial court, appellant's case was automatically elevated to this Court for re-examination; however, in conformity with the rule we laid down in *People v. Mateo*,[8] the matter was remanded to the Court of Appeals for intermediate review.

Thereafter, the Court of Appeals rendered judgment affirming with modification the trial court's ruling. The dispositive portion of the assailed August 10, 2009 Decision of the Court of Appeals reads:

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[7] *Id.* at 42.

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

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The assailed Decision dated October 11, 2007 is **AFFIRMED** with **MODIFICATION**, as follows:

(1) Appellant Ramil Mores is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole;

(2) Appellant Ramil Mores is hereby ordered to pay the heirs of Ramie Balasa the following:

(a) ₱50,000.00 as civil indemnity;
(b) ₱25,000.00 as exemplary damages;
(c) ₱20,000.00 as temperate damages;

(3) Appellant Ramil Mores is hereby ordered to pay Myra Suarez ₱5,000.00 as temperate damages.[9]

Since Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) was already in force when the Court of Appeals rendered judgment, the appellate court correctly modified the original penalty of death to *reclusion perpetua* without eligibility for parole.

Hence, Mores filed this appeal wherein both prosecution and defense counsels merely adopted their briefs with the appellate court. Appellant reiterated the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THE COMMISSION OF THE CRIME CHARGED.

II

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES.

III

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[10]

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[9] *Rollo*, p. 17.

[10] CA *rollo*, p. 66.

In connection with the first assigned error, appellant argues that the element of treachery, which qualified his felony to Murder, is not present in this case. Appellant maintains that "there is no evidence showing that [he] consciously adopted the method of attack (grenade throwing) directly and especially to facilitate the perpetration of the killing without danger to himself."[11] He insists that the act of throwing the grenade, as alleged by the prosecution, was made at the spur of the moment and the short distance between the explosion and his alleged location negates any sense of concern for his own well-being which serves to belie any treacherous intent on his part.

As for the second and third assigned errors which were discussed jointly, appellant contends that since his co-accused Famor purportedly successfully proved his alibi, then it follows that appellant should also be acquitted. Appellant argues that since the prosecution insists that both he and Famor were together when the grenade throwing incident occurred then the acquittal of Famor on the basis that he was not present at the crime scene totally destroys the prosecution's theory of the case. Thus, appellant should be exonerated from any wrongdoing.

Appellant likewise claimed that the testimonies of the prosecution witnesses were fraught with inconsistencies and should not have been given credit by the trial court.

Furthermore, appellant asserts that flight must not always be attributed to one's consciousness of guilt. Although it is undisputed that, after his arraignment, appellant had stopped appearing in court and up to this day remains at large, appellant points out that he never left the vicinity of the crime scene and was, in fact, seen by one of the prosecution witnesses, to be near that area 10 minutes after the explosion occurred. If he was indeed the perpetrator of the grisly crime charged, appellant argues that he could have just left town that very evening in order to insure non-apprehension.[12]

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[11] *Id.* at 72.

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

We are not persuaded and, thus, sustain appellant's conviction.

Article 14, Paragraph 16 of the Revised Penal Code states that "[t]here is treachery when the offender commits any of the crimes against the 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." It is long settled in jurisprudence that two elements must concur in order to establish treachery: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed.[13] Thus, the essence of treachery is that the attack comes without warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[14]

We agree with the appellate court that the manner by which appellant deliberately rolled the grenade on the ground towards the dance floor packed with unsuspecting revelers, leaving one dead and scores wounded in the aftermath of the sudden blast was accompanied with treachery. Appellant's unexpected action which was immediately followed by the grenade's lethal explosion left the victims with utterly no chance to escape the blast area nor to find protective cover. Though appellant stood a short distance away, he knowingly positioned himself safely from the reach of the grenade's destructive force. From the foregoing, we can confidently conclude that treachery, as correctly pointed out by both the trial court and the Court of Appeals, was present in the commission of the crime charged.

With regard to appellant's contention that the acquittal of the co-accused Famor merits a similar acquittal for himself, we rule that appellant erred in his appreciation of the actual ground for Famor's acquittal as well as the effect of such exoneration

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[13] *People v. Angelio and Olaso*, G.R. No. 197540, February 27, 2012, 667 SCRA 102, 110.

[14] *People v. Cabtalan and Cabrillas*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 186-187.

on appellant's own criminal culpability. Appellant is grossly mistaken in his conclusion that Famor was acquitted because the trial court believed his alibi. Nothing more could be farther from the truth. Even a cursory reading of the assailed September 24, 1998 Decision of the trial court would reveal that Famor's acquittal stemmed from the prosecution's inability to prove that Famor was a co-conspirator of appellant in the commission of the dastardly act which is the subject of this criminal case. In other words, the trial court did not exonerate Famor because his alibi was confirmed. He was adjudged not guilty of the crime charged because his proximity and whispered communications to appellant moments before the grenade throwing incident occurred was deemed by the trial court as insufficient evidence to establish conspiracy between him and appellant. Thus, appellant and Famor's presence in the crime scene as testified to by witness Daryl Famisaran (Famisaran) was never doubted by the trial court.

Furthermore, contrary to appellant's protestation, we find no cogent reason to question the veracity of the testimony of Famisaran as well as that of the other witnesses for the prosecution. We have reiterated in jurisprudence that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[15] In all, we concur with the trial court in setting aside the inconsequential differences in the prosecution's witnesses' testimonies and in pointing out that their testimonies actually corroborated each other as to rolling of a grenade onto the dance floor and their respective positions from the blast.

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[15] *People v. Adallom*, G.R. No. 182522, March 7, 2012, 667 SCRA 652, 670-671.

Finally, we cannot subscribe to appellant's theory that his continued presence at the vicinity of the Municipality of Roxas right after the grenade throwing incident negates his guilt of the crime charged and that his absence in court proceedings subsequent to his arraignment should not be taken against him. We have elucidated on this point in one recent case wherein we held that non-flight does not necessarily connote innocence, to wit:

> Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee — a circumstance strongly illustrative of guilt — while others may remain in the same vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community.[16] (Citation omitted.)

Moreover, our position on the effects of unexplained flight on the guilt or innocence of an accused remains unchanged. In *People v. Camat*,[17] we reiterated the jurisprudential doctrine that flight is indicative of guilt in this manner:

> Flight in criminal law is the **evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings**. In one case, this Court had stated that it is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as a lion. (Emphasis supplied, citations omitted.)

From the foregoing, we have no other recourse but to sustain appellant's conviction for the complex crime of Murder with Multiple Attempted Murder. As correctly explained by the Court of Appeals, the single act of pitching or rolling the hand grenade on the floor of the gymnasium which resulted in the death of Ramie Balasa (Balasa) and injuries to other victims constituted

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[16] *People v. Asilan*, G.R. No. 188322, April 11, 2012, 669 SCRA 405, 419.

[17] G.R. No. 188612, July 30, 2012, 677 SCRA 640, 667.

a complex crime under Article 48 of the Revised Penal Code which states that when a single act constitutes two or more grave or less grave felonies, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. The penalty for the most serious crime of Murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to DEATH. Thus, applying Article 48, the death penalty should be imposed. However, pursuant to Republic Act No. 9346, the proper sentence therefore is *reclusion perpetua* without eligibility for parole.

Also in line with current jurisprudence,[18] we increase the award of civil indemnity to the heirs of the deceased Balasa on account of his murder by appellant from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00). We likewise increase the award of exemplary damages from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00). Moreover, moral damages should also be awarded in the amount of Fifty Thousand Pesos (₱50,000.00). With regard to the instances of Attempted Murder, appellant is ordered to pay Forty Thousand Pesos (₱40,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages to each victim.[19]

WHEREFORE, premises considered, the Decision dated August 10, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01362 convicting appellant Ramil Mores for murder with multiple attempted murder for which he is to suffer the penalty of *reclusion perpetua* without eligibility for parole is hereby **AFFIRMED** with **MODIFICATIONS** that:

(1) Appellant Ramil Mores is ordered to pay the heirs of the deceased Ramie Balasa Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages;

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[18] *People v. Cabtalan and Cabrillas*, *supra* note 14 at 196.

[19] *People v. Camat, supra* note 17 at 671.

(2) Appellant Ramil Mores is ordered to pay each victim of ATTEMPTED MURDER, Forty Thousand Pesos (₱40,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(3) Appellant Ramil Mores is further ordered to pay the private offended parties or their heirs interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191267. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONICA MENDOZA Y TRINIDAD,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DRUGS; ELEMENTS; ESTABLISHED.—** The Court finds the prosecutor's evidence credible and sufficient to convict the accused-appellant of illegal sale of dangerous drugs and possession of the same in violation of Section 5 and Section 11, Article II of Republic Act (RA) No. 9165, of the Comprehensive Dangerous Drugs Act of 2002. It is significant to reiterate and emphasize that the elements necessary for the prosecution of illegal sale of drugs, like *shabu*, were convincingly

established. These are: (1) the identity of the buyer and the seller, the object and consideration, and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. After a thorough and painstaking review of evidence on record, the Court affirms the conviction of accused-appellant. Indeed, the prosecution has presented sufficient proof of her guilt beyond reasonable doubt: that on May 15, 2004, PO2 dela Cruz, the designated poseur-buyer in the buy-bust operation was able to purchase from the accused-appellant 0.03 gram of Methamphetamine Hydrochloride or *shabu*, in consideration of Php200.00 pesos. The buy-bust money was recovered from accused-appellant's possession after she was arrested.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST OF AN ACCUSED CAUGHT *IN FLAGRANTE DELICTO*, REQUISITES TO BE VALID.—** The warrantless arrest conducted on accused-appellant was valid. Section 5, Rule 113 of the Rules of Criminal Procedure enumerates the situations when a person may be arrested without a warrant, thus: "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; x x x. Paragraph (a) of Section 5, is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* 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. In the instant case, the prosecution completely and fully established that accused-appellant was arrested *in flagrante delicto*.

3. **ID.; ID.; ID.; ACCUSED-APPELLANT IS ESTOPPED FROM ASSAILING THE LEGALITY OF HER ARREST AS SHE IS DEEMED TO HAVE WAIVED ANY IRREGULARITY, THAT MAY HAVE TAINTED HER ARREST WHEN SHE FAILED TO RAISE ANY OBJECTION TO THE MANNER OF HER ARREST BEFORE ARRAIGNMENT.—** [A]ccused-

appellant failed to raise any objection to the manner of her arrest before arraignment. In fact, she participated in the trial. She even took the witness stand and testified in her own behalf. She is now estopped from assailing the legality of her arrest as she waived any irregularity, if any, that may have tainted her arrest.

4. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DRUGS; ACCUSED-APPELLANT'S DEFENSE OF FRAME-UP CANNOT STAND AGAINST THE TESTIMONY OF THE POLICE, SUPPORTED BY EVIDENCE OF *CORPUS DELICTI*.—** [T]he proof of an *in flagrante delicto* arrest, removes whatever credibility there may have been about the testimony of the accused-appellant of the alleged circumstances that made her go with the police to the DEU unit. Her version that she was a frame-up victim cannot stand against the testimony of the police, supported by evidence of *corpus delicti.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This is an appeal by Monica Mendoza y Trinidad (accused-appellant) from the Decision[1] dated August 28, 2009 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03426. The CA affirmed the Decision[2] rendered by the Regional Trial Court (RTC), Branch 64, Makati City in Criminal Case Nos. 04-2068 and 04-2069 convicting accused-appellant of violating Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza, concurring. *Rollo*, pp. 97-115.

[2] Penned by Judge Gina M. Bibat-Palamos. Id at 52-57.

The two separate informations filed against accused-appellant read thus:

Criminal Case No. 04-2068:

"That on or about the 15th day of May 2004 in the City of Makati, Metro Manila, Philippines, and a place 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 Methamphetamine Hydrochloride (*shabu*), weighing zero point zero three (0.03) gram, which is a dangerous drug, in consideration of two hundred (Php200.00) pesos, in violation of the above-cited law."

Criminal Case No. 04-2069:

"That on or about the 15th day of May 2004 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without corresponding license or prescription, did then and there willfully, feloniously have in his possession, direct custody and control zero point zero eight (0.08) gram of Methamphetamine Hydrochloride (*shabu*), which is a dangerous drug, in violation of the above-cited law."

After arraignment and pre-trial were conducted by the trial court, a joint trial on the merits ensued.

The prosecution presented as witnesses PO2 Joseph dela Cruz (PO2 dela Cruz) and PO2 Wilfredo Sangel (PO2 Sangel), both operatives of the Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF).

PO2 dela Cruz testified that on May 15, 2004 at about 8:15 in the evening, their confidential informant arrrived at their office reporting that a certain alias Monica, who turned out to be accused-appellant, was involved in the rampant sale of illegal drugs along PNR South Compound, Brgy. Pio del Pilar, Makati City. Their Action Officer, SPO4 Arsenio Mangulabnan formed a buy-bust team led by SPO1 Jose Magallanes to effect the arrest of accused-appellant. A briefing was conducted regarding the anti-narcotics operation and PO2 dela Cruz was designated as poseur-buyer. He was tasked to buy Php200.00 worth of *shabu* from accused-appellant. Two (2) pieces of one hundred

peso bills were provided and marked with "AMM" for use in the buy-bust operation. Coordination with the Philippine Drug Enforcement Agency (PDEA) was made and PDEA Control No. 150504-02 was given to the team. The team then proceeded to the area of operation, i.e., at the PNR South Compound, Brgy, Pio del Pilar, Makati City to conduct the buy-bust operation.

PO2 dela Cruz further testified that upon arrival at the said area the informant accompanied him to where accused-appellant was. The rest of the team positioned themselves strategically within the perimeter. Thereafter the informant introduced him to accused-appellant as a person in need of *shabu*. At this instance, he conveyed his intentions of buying two hundred (Php200.00) pesos worth of *shabu* to accused-appellant. He then gave the Php200.00 pesos buy-bust money to accused-appellant who in turn, gave one plastic sachet containing suspected *shabu* to him. The transaction having been consummated, he then made a motion of giving a high five to accused-appellant which was the pre-arranged signal for the rest of the back-up team. Operations back-up PO2 Sangel then approached the area of transaction, introduced himself as a police officer and placed accused-appellant under arrest. Accused-appellant was apprised of the nature of the arrest and of her constitutional rights.

PO2 dela Cruz continued that at the area of transaction, a search conducted after the arrest which resulted in the recovery of the buy-bust money and five (5) other plastic sachets containing suspected *shabu*. He was just very near PO2 Sangel when the sachets of *shabu* were taken from accused-appellant. He accordingly marked the pieces of evidence recovered from accused-appellant. Likewise marked was the *shabu* subject matter of the sale transaction. Accused-appellant was thereafter brought to the office of the SAID-SOTF, where she was turned over to the investigator on duty. Afterwards, the items seized were brought to the PNOC Crime Laboratory Office for examination. The laboratory examination on the specimens submitted yielded positive result for the presence of a dangerous drug Methamphetamine Hydrochloride. He maintained that the operation was properly coordinated with the PDEA.

PO2 Sangel corroborated the testimony of PO2 dela Cruz mainly with respect to the buy-bust operation against herein accused-appellant. He declared that he was about seven (7) to ten (10) meters away from the place of transaction. After the pre-arranged signal was given by PO2 dela Cruz, he, together with the team, proceeded to the accused-appellant to arrest her. After accused-appellant was arrested, she was ordered to empty her short pants and five (5) pieces of plastic sachets containing *shabu* were found and confiscated together with the marked money in the amount of Php200.00. Thereafter, PO2 dela Cruz placed the marking on the seized items at the place of transaction. The accused-appellant was then brought to the SAID-SOTF of the Makati Police for investigation while the seized items were brought to the PNP Crime Laboratory Office for laboratory examination.

Accused-appellant for her part, denied the charges against her. She denied that she was caught selling *shabu* and that she was caught in possession of the same. She maintained that on May 15, 2004 at around 4:00 o"clock in the afternoon, she was at the back of her house at PNR Compound, P. Medina Street, Brgy. Pio del Pilar, Makati City hanging clothes when a kid named Totoy, told her that police officers were looking for her. Upon learning that police officers were looking for her she went home. There she saw PO2 Sangel together with other police officers. She knew PO2 Sangel because her live-in partner would give half of his earnings to his dispatcher the same to be given to PO2 Sangel otherwise, the latter would not allow them to park their vehicles for passengers. She approached PO2 Sangel and asked if they needed something from her. PO2 Sangel told her to go with them. The accused-appellant dressed up and went with the policemen thinking that the reason she was asked to go with them because of the murder case of Jun Riles filed against Jonathan Lesaca and Alfredo Lesaca before the RTC (Branch 138) where she was a star witness.

Accused-appellant was brought to the office of the Drug Enforcement Unit (DEU). At the office of the DEU, Bobot Mangulabnan talked to her. Bobot Mangulabnan told her that

she was stubborn as he once told her not to meddle with the case of her friend Jun Riles or else something will happen to her. She was then asked if she knew Edwin Kerabu (Kerabu) and she said she knew him because he was her neighbor. She was asked if she knew where to find Kerabu. She told them that she usually sees this Kerabu in front of the "*binggohan.*" Afterwards she was brought to the place where she was referring to.

Accused-appellant was left inside the vehicle for about thirty (30) minutes and thereafter she saw the police officers with Kerabu. He was brought inside the vehicle. There Kerabu was asked if he had *shabu* and he replied that he did not have any. He was frisked and the police officers were able to recover from his pocket white substance suspected to be *shabu*. Accused-appellant and Kerabu were both brought back to the office of the DEU.

At the DEU, accused-appellant Monica Mendoza wanted to go home but she was not permitted by the police officers. She was made to stay and she was surprised that the DEU filed charges against her. She was brought to a place where she underwent drug testing. She was made to urinate in a bottle. After the drug test, she was brought back to the office of the DEU where she was detained. She was then brought to the fiscal's office where she learned of the charges filed against her. At the fiscal's office she was made to sign a document.

The RTC, found the evidence of the prosecution sufficient to prove the guilt of accused-appellant for the crimes charged beyond reasonable doubt. Thus, judgment was rendered as follows:

1. In Criminal Case No. 04-2068, the accused Monica Mendoza y Trinidad is found GUILTY of the charge for violation of Section 5, Article II. R.A. No. 9165 and sentences her to suffer life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00);

2. In Criminal Case No. 04-2069, the accused Monica Mendoza y Trinidad is found GUILTY of the charge for violation of Section 11,

Article II, R.A. No. 9165 and is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum, pursuant to the Indeterminate Sentence Law and to pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00).

Accused-appellant appealed the trial court's decision to the CA, where she raised a lone assigned error, to wit:

"THE TRIAL COURT GRAVELY ERRED IN ADMITTING IN EVIDENCE THE SEIZED DANGEROUS DRUGS DESPITE BEING THE PRODUCTS OF AN UNLAWFUL ARREST"

The CA, in a Decision promulgated on August 28, 2009, dismissed the appeal and affirmed *in toto* the trial court's convictions.

Hence, the present appeal.

Again, accused-appellant interposes the same lone assigned error she raised before the CA.

We dismiss the appeal.

The Court finds the prosecutor's evidence credible and sufficient to convict the accused-appellant of illegal sale of dangerous drugs and possession of the same in violation of Section 5 and Section 11, Article II of Republic Act (RA) No. 9165, of the Comprehensive Dangerous Drugs Act of 2002.

It is significant to reiterate and emphasize that the elements necessary for the prosecution of illegal sale of drugs, like *shabu*, were convincingly established. These are: (1) the identity of the buyer and the seller, the object and consideration, and (2) the delivery of the thing sold and the payment therefor.

What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[3]

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[3] *People of the Philippines v. Bernardo F. Nicolas*, G.R. 170234, February 8, 2007, 515 SCRA 188; *People of the Philippines v. Jason Curillon Hambora*, G.R.198701, December 10, 2012, 687 SCRA 653.

After a thorough and painstaking review of evidence on record, the Court affirms the conviction of accused-appellant. Indeed, the prosecution has presented sufficient proof of her guilt beyond reasonable doubt: that on May 15, 2004, PO2 dela Cruz, the designated poseur-buyer in the buy-bust operation was able to purchase from the accused-appellant 0.03 gram of Methamphetamine Hydrochloride or *shabu*, in consideration of Php200.00 pesos. The buy-bust money was recovered from accused-appellant's possession after she was arrested.

The PNP crime laboratory affirmed that the white crystalline substance contained in the plastic sachet bought from accused-appellant was Methamphetamine Hydrochloride or *shabu*. The plastic sachet marked with "MMT" (which stands for Monica Mendoza y Trinidad) was identified to be the same plastic sachet that he purchased from the accused-appellant. The marking in the said sachet bought from accused-appellant are known to bear the same marking existing in the plastic sachet examined by the forensic chemist. Proof that the plastic sachet bought from accused-appellant and the one delivered from laboratory examination are one and the same.

PO2 dela Cruz gave a detailed account on how the buy-bust operation against accused-appellant took place; that is, from the initial transaction to the eventual delivery of the *shabu*.

Accused-appellant alleged that the trial court erred in appreciating the evidence presented by the prosecution as they were seized as a result of an unlawful arrest. She insists that a valid warrant should have been secured first before they proceeded to arrest her.

This argument is totally faulty and is without even an iota of credibility. The warrantless arrest conducted on accused-appellant was valid. Section 5, Rule 113 of the Rules of Criminal Proceedure enumerates the situations when a person may be arrested without a warrant, thus:

"SEC. 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgement or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

Paragraph (a) of Section 5, is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* 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.[4]

In the instant case, the prosecution completely and fully established that accused-appellant was arrested *in flagrante delicto*.

At any rate, accused-appellant failed to raise any objection to the manner of her arrest before arraignment. In fact, she participated in the trial. She even took the witness stand and testified in her own behalf. She is now estopped from assailing the legality of her arrest as she waived any irregularity, if any, that may have tainted her arrest.

Significantly, the proof of an *in flagrante delicto* arrest, removes whatever credibility there may have been about the testimony of the accused-appellant of the alleged circumstances that made her go with the police to the DEU unit. Her version that she was a frame-up victim cannot stand against the testimony of the police, supported by evidence of *corpus delicti*.

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[4] *People v. Laquiro*, Jr., G.R. 128587, March 16, 2007, 518 SCRA 393; *Zalameda v. People*, G.R. 183656, September 4, 2009, 598 SCRA 537.

WHEREFORE, in view of the foregoing, the Decision appealed from, finding accused-appellant Monica Mendoza guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194362. June 26, 2013]

PHILIPPINE HAMMONIA SHIP AGENCY, INC. (now known as BSM CREW SERVICE CENTRE PHILIPPINES, INC.) and DORCHESTER MARINE LTD., *petitioners, vs*. **EULOGIO V. DUMADAG,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW; CONTROVERSY ARISING FROM THE APPLICATION OF LAW AND JURISPRUDENCE ON THE CONFLICTING DISABILITY ASSESSMENTS OF THE TWO SETS OF PHYSICIANS INVOLVES A QUESTION OF LAW.—** For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties or any of them. Otherwise stated, there is a question of law when the issue arises as to what the law is on a certain state of facts; there is a question of fact when the issue involves the

truth or falsehood of alleged facts. In the present case, the controversy arises not from the findings made by Dumadag's physicians which contradict the fit-to-work certification of the company-designated physician; it arises from the application of the law and jurisprudence on the conflicting assessments of the two sets of physicians. We thus find no procedural obstacle in our review of the case.

2. **LABOR AND SOCIAL LEGISLATION; SEAFARERS; THE POEA-SEC AND THE CBA, OF WHICH THE SEAFARER AND THE VESSEL OWNER ARE BOTH SIGNATORIES, GOVERN THEIR EMPLOYMENT RELATIONSHIP AND ARE THE LAW BETWEEN THEM AND AS SUCH, THEY ARE BOUND BY THEIR TERMS AND CONDITIONS.—** In *Vergara v. Hammonia Maritime Services, Inc.,* the Court said: "the Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seaman." In this case, Dumadag and the petitioners entered into a contract in accordance with the POEA-SEC. They also had a CBA. x x x. The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,* the Court said: "The POEA Contract, of which the parties are both signatories, **is the law between them and as such, its provisions bind both of them**." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued her fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the

mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.

3. **ID.; LABOR RELATIONS; APPEALS; RULINGS OF THE LABOR TRIBUNALS RENDERED IN TOTAL DISREGARD OF THE LAW BETWEEN THE PARTIES CONSTITUTE GRAVE ABUSE OF DISCRETION.—** The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits. **We find the rulings of the labor authorities seriously flawed** as they were rendered **in total disregard of the law between the parties** – the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.**

4. **ID.; SEAFARERS; DISABILITY BENEFITS; FAILURE OF THE SEAFARER TO COMPLY WITH THE CONFLICT RESOLUTION PROCEDURE UNDER THE POEA-SEC AND THE CBA IS FATAL TO HIS DISABILITY BENEFITS CLAIM.—** [D]umadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a third doctor **as was his duty**. He offered no reason that could have prevented him from following the procedure. Before he filed his

complaint, or between July 19, 2007, when he came home *upon completion of his contract*, and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. We, therefore, find it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion. Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 — whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)* and similar other cases, or sustained the opinion of the seafarer's chosen physician as in *HFS Philippines, Inc. v. Pilar,* cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court. Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.,* the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."

APPEARANCES OF COUNSEL

Del Rosario Del Rosario for petitioners.
Rolando B. Go, Jr. for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] seeking to nullify the decision[2] dated August 31, 2010 and the resolution[3] dated November 2, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 111582.

The Antecedents

On February 12, 2007, the Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), in behalf of its principal, Dorchester Marine Ltd. (*petitioners*), hired respondent Eulogio V. Dumadag for four months as Able Bodied Seaman for the vessel *Al Hamra*, pursuant to the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). Dumadag was to receive a monthly salary of US$558.00, plus other benefits. Before he boarded the vessel *Al Hamra*, Dumadag underwent a pre-employment medical examination and was declared fit to work.

Sometime in May 2007, while on board the vessel, Dumadag complained of difficulty in sleeping and changes in his body temperature. On May 18, 2007, a physician at the Honmoku Hospital in Yokohama, Japan examined him. He also underwent ultra-sonographic, blood and ECG examinations and was found to be normal and "fit for duty," but was advised to have bed rest for two to three days.[4] Thereafter, Dumadag complained of muscle stiffness in his entire body. On June 20, 2007, he was again subjected to blood tests, urinalysis and uric laboratory

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[1] *Rollo*, pp. 28-67; filed pursuant to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino; *id.* at 13-23.

[3] *Id.* at 25-26.

[4] *Id.* at 156.

procedures in Japan. He was found "fit for light duty for 5-7 days."[5]

On July 19, 2007, his contract completed, Dumadag returned to the Philippines. Allegedly, upon his request, the agency referred him to the company-designated physician, Dr. Wilanie Romero-Dacanay of the Metropolitan Medical Center (*MMC*), for medical examination. At the MMC, Dumadag underwent baseline laboratory tests revealing "normal complete blood count, creatinine, sodium, potassium, calcium and elevated creatinine kinase."[6] He was also subjected to thyroid function tests that likewise showed normal results. Further, he underwent psychological tests and treatment. He was assessed on August 6, 2007 to have "Adjustment Disorder with Mixed Anxiety and Depressed Mood," "Hypercreatinine Phospokinase," and "right Carpal Tunnel Syndrome."[7] He was subsequently declared "fit to resume sea duties as of November 6, 2007" by the company-designated specialist.[8] The petitioners shouldered Dumadag's medical expenses, professional fees and physical therapy sessions with the company-designated physician.

Dumadag was not rehired by the petitioners. He claimed that he applied for employment with other manning agencies, but was unsuccessful.

On December 5, 2007, Dumadag consulted Dr. Frederic F. Diyco, an orthopedic surgeon at the Philippine Orthopedic Center, who certified that he was suffering from Carpal Tunnel Syndrome of the right wrist. Dr. Diyco gave him a temporary partial disability assessment.[9] On January 8, 2008, Dumadag saw Dr. Ma. Ciedelle M.N. Paez-Rogacion, specializing in family medicine and

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[5] *Id.* at 157.

[6] *Id.* at 160.

[7] *Id.* at 161.

[8] *Id.* at 166; Dr. Dacanay's report citing the opinion of a neurologist and physiatrist.

[9] *Id.* at 205.

psychiatry. Dr. Rogacion evaluated him to be suffering from minor depression.[10]

On March 8, 2008, Dumadag again sought medical advice from Dr. Ariel C. Domingo, a family health and acupuncture physician. Dr. Domingo found him to be still suffering from adjustment disorder, with mixed anxiety and in a depressed mood, hypercreatinine phospokinase and carpal tunnel syndrome. He assessed Dumadag to be "unfit to work."[11] Further, or on April 13, 2008, Dumadag consulted Dr. Nicanor F. Escutin, an orthopedic surgeon, who certified that he had generalized muscular weakness and that "he cannot perform nor function fully all his previous activities."[12] Dr. Escutin declared Dumadag unfit for sea duty in whatever capacity and gave him a permanent total disability assessment.[13]

After his consultations with the four physicians, Dumadag filed a claim for permanent total disability benefits, reimbursement of medical expenses, sickness allowance and attorney's fees against the petitioners.

The Compulsory Arbitration Decisions

In a decision dated February 27, 2009,[14] Labor Arbiter (*LA*) Eduardo J. Carpio found merit in the complaint and ordered the petitioners, jointly and severally, to pay Dumadag US$82,500.00 in permanent total disability benefits, plus 10% attorney's fees. LA Carpio declared:

> The assessment of the company physician is highly doubtful in the face of the continuing inability of complainant to work for more than a year already, coupled with the fact that his own designated physicians have found that complainant was far from being "fit" to

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[10] *Id.* at 206.

[11] *Id.* at 207.

[12] *Id.* at 208.

[13] *Ibid.*

[14] *Id.* at 313-322.

return to his work as Able-bodied seaman. Despite the company doctor's claim, complainant was found by his physicians to be still suffering from depression and had muscle damage on his upper and lower extremities, resulting in pain in his right hand and generalized muscle weakness, for which reason he was declared unfit for sea duty. In contrast to the said findings, the company doctor failed to substantiate her conclusion that complainant is "fit to work."[15]

LA Carpio noted that the petitioners suddenly stopped rehiring Dumadag despite the fact that they had continuously employed him for at least fifteen (15) times for the last 15 years. He viewed this as the most convincing proof that Dumadag's inability to work was due to the illness he contracted in the course of his last employment.

On appeal by the petitioners, the National Labor Relations Commission (*NLRC*), in a resolution dated July 30, 2009, affirmed LA Carpio's decision.[16] On September 28, 2009, it denied the petitioners' motion for reconsideration.[17] The petitioners then elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court, contending that the NLRC gravely abused its discretion in disregarding the "fit-to-work" assessment of the company-designated physician.

The Assailed CA Decision

The CA denied the petition in its decision of August 31, 2010.[18] It upheld the NLRC rulings *in toto*. It **found no grave abuse of discretion** on the part of the NLRC when it sustained LA Carpio's award of permanent total disability benefits to Dumadag on the basis of the findings of the physicians of his choice. Also, as LA Carpio and the NLRC did, it noted that Dumadag was not rehired by the petitioners after he was declared fit to work by the company-designated physician and neither

[15] *Id.* at 321.

[16] *Id.* at 129-134.

[17] *Id.* at 136-137.

[18] *Supra* note 2.

was he able to secure employment through other manning agencies.

The petitioners moved for reconsideration, but the CA denied the motion in its resolution of November 2, 2010.[19] Hence, the petition.

The Petition

The petitioners contend that the CA committed serious errors and grave abuse of discretion in: (1) ruling that Dumadag is entitled to permanent total disability benefits based solely on the findings of his personal physicians; (2) disregarding the procedure in the POEA-SEC in disputing the assessment of the company-designated physician; (3) adopting the NLRC ruling that the non-rehiring of Dumadag is proof that his inability to work was due to the illness he contracted during his last employment; and (4) affirming the award of attorney's fees despite the fact that their denial of his claim was in good faith and based on just and valid grounds.

The petitioners stress, with respect to the first assignment of error, that under Section 20(B)(2) of the POEA-SEC and under the parties' Collective Bargaining Agreement (*CBA*), it is the company-designated physician who determines the seafarer's degree of disability or his fitness to work. They point out in this respect that not only is the company-designated physician entrusted with the task of assessing the seafarer's fitness to work or the degree of his disability, but more importantly, he or she is the one who examines and treats the seafarer, thus lending accuracy to his or her evaluation.

The petitioners question the CA's reliance on *HFS Philippines, Inc. v. Pilar*[20] in affirming Dumadag's award based solely on the findings of his physicians. They maintain that although the Court's ruling in *HFS Philippines* recognized the prerogative

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[19] *Supra* note 3.

[20] G.R. No. 168716, April 16, 2009, 585 SCRA 315.

of the seafarer to dispute the company-designated physician's report by seasonably consulting another doctor, the contrary medical report shall be evaluated first by the labor tribunal and the court based on its inherent merit. The CA, the petitioners point out, failed to evaluate the merit of the reports of Dumadag's physicians.

The petitioners argue that a careful analysis of the reports presented by both parties would readily show that the company-designated physician's report deserves more credence as these physicians arrived at their results after extensive examination and treatment of Dumadag. On the other hand, an evaluation of the reports of Dumadag's doctors reveals that they were inaccurate and unreliable as they were mere reiterations of the company-designated doctor's diagnoses.

On a related matter, the petitioners fault the CA in disregarding the procedure in the POEA-SEC in the resolution of disability claims *vis-a-vis* the seafarer's disability rating or fitness to work. Citing *Vergara v. Hammonia Maritime Services, Inc.,*[21] they posit that although Dumadag has the right to contest the assessment of the company-designated physician, the findings of his doctors are not binding as the POEA-SEC and even the parties' CBA expressly provide that the parties may agree to consult a third doctor whose opinion shall be binding on them. They submit that since Dumadag failed to observe the procedure, the finding of the company specialist that he is fit to work should be upheld.

With respect to Dumadag's non-hiring, the petitioners submit that the CA gravely abused its discretion when it held that the fact that they did not rehire him is the most convincing proof that his inability to work was due to his illness. They contend that being a seafarer, Dumadag is a contractual employee whose employment is terminated upon the contract's expiration; his non-rehiring should not be taken against them as it is their prerogative to hire or not to hire him. Moreover, Dumadag did not present any evidence to establish his allegation that he was

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[21] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

not rehired because of his illness; neither was there a showing that he was deprived of the opportunity to work.

Finally, the petitioners lament the CA's award of attorney's fees to Dumadag, arguing that the denial of his claim was in good faith and based on valid grounds.

The Case for Dumadag

As required by the Court,[22] Dumadag filed his Comment on the petition on April 25, 2011,[23] praying that the petition be dismissed on the following grounds: (1) it raises only questions of fact, in violation of Rule 45 of the Rules of Court; and (2) the CA's award of disability benefits to him is in accord with the evidence.

Dumadag submits that inasmuch as the petition involves an inquiry into the findings of four independent physicians which formed the basis of the rulings of the LA, the NLRC and the CA, it is clear that the petitioners are raising solely factual issues which is not allowed in an appeal by *certiorari*. He avers that should the Court review the facts of the case nonetheless, the petition must fail for lack of merit. He argues that the CA committed no error in upholding the medical opinions of his chosen physicians over the biased and erroneous certification of the company-designated physician.

He bewails the petitioners' attempt to discredit the medical certificates issued by the physicians he consulted. He stresses that the real test that should be applied in his case is whether he had lost his earning capacity due to his injury while employed with the petitioners. He laments that while the company doctor peremptorily declared that he was fit to resume sea duties as of November 6, 2007, he was never again able to have himself employed as a seaman in any capacity.

Dumadag argues that the opinion of the company doctor is not binding and cannot be the sole basis of whether he is entitled

[22] *Rollo*, p. 621; Resolution dated January 26, 2011.

[23] *Id.* at 625-677.

to disability benefits or not, especially considering that the opinions of company physicians are generally self-serving and biased in favor of the company. Further, he maintains that the mere fact that there is no "third opinion" from a doctor appointed by the parties does not automatically mean that the opinion of the company doctor will prevail over that of his chosen physicians. He insists that in case of discrepancy between the certification of the company-designated physician and that of the seaman's doctor, the finding favorable to the seaman should be followed as the Court emphasized in *HFS Philippines, Inc. v. Pilar.*[24] He adds that as a result of his injury, he has become disabled, such that he could not find gainful employment almost four years after his last disembarkation.

Lastly, Dumadag argues that he is entitled to attorney's fees as he was compelled to litigate because of the petitioners' refusal to heed his demand for disability benefits.

Our Ruling

The procedural issue

Dumadag asks that the petition be dismissed outright for raising only questions of fact and not of law, in violation of the rules.[25]

We find Dumadag's position untenable. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties or any of them. Otherwise stated, there is a question of law when the issue arises as to what the law is on a certain state of facts; there is a question of fact when the issue involves the truth or falsehood of alleged facts.[26] In the present case, the controversy arises not from the findings made by Dumadag's physicians which contradict the fit-to-work certification of the company-designated physician; it arises from the application of the law and jurisprudence on the conflicting assessments of the two

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[24] *Supra* note 20.

[25] RULES OF COURT, Rule 45, Section 1.

[26] *Tamondong v. Court of Appeals*, 486 Phil. 729, 739 (2004).

sets of physicians. We thus find no procedural obstacle in our review of the case.

The merits of the case

Fit-to-work assessment of the company-designated physician versus unfit-to-work certification of the seafarer's chosen physicians

We are confronted, once again, with the question of whose disability assessment should prevail in a maritime disability claim — the fit-to-work assessment of the company-designated physician or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work. A related question immediately follows — how are the conflicting assessments to be resolved?

In Vergara *v. Hammonia Maritime Services, Inc.,*[27] the Court said: "the Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seaman."[28]

In this case, Dumadag and the petitioners entered into a contract in accordance with the POEA-SEC. They also had a CBA. Dumadag's claim for disability compensation could have been resolved bilaterally had the parties observed the procedure laid down in the POEA-SEC and in their CBA.

Section 20(B)(3) of the POEA-SEC provides:

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[27] *Supra* note 21.

[28] *Id.* at 623-625.

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.

x x x x x x x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. [emphasis ours]

On the other hand, the CBA between the Associated Marine Officers' and Seamen's Union of the Philippines and Dumadag's employer, the Dorchester Marine Ltd.,[29] states:

The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. **If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties.**[30] (emphasis ours)

The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,*[31] the Court said: "The POEA Contract, of which the parties are both signatories, **is the law between them and as such, its provisions bind both of them**." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the

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[29] *Rollo*, pp. 191-196.

[30] *Id.* at 193.

[31] G.R. No. 179802, November 14, 2008, 571 SCRA 239, 248; emphasis ours.

company-designated physician, issued her fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.

Dumadag's non-compliance with the mandated procedure under the POEA-SEC and the CBA militates against his claim

The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits.

We find the rulings of the labor authorities seriously flawed as they were rendered **in total disregard of the law between the parties** — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold**

the law. <u>For affirming the labor tribunals, the CA committed the same jurisdictional error</u>.

As we earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a third doctor **as was his duty**.[32] He offered no reason that could have prevented him from following the procedure. Before he filed his complaint, or between July 19, 2007, when he came home *upon completion of his contract*, and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. We, therefore, find it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion.

Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 — whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)*[33] and similar other cases, or sustained the opinion of the seafarer's chosen physician as in *HFS Philippines, Inc. v. Pilar,*[34] cited by the CA, and other cases similarly resolved. The third-doctor-referral provision

[32] POEA-SEC, Section 1(B.1).

[33] G.R. No. 186180, March 22, 2010, 616 SCRA 362.

[34] *Supra* note 20.

of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.,*[35] the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."

On a different plane, Dumadag cannot insist that the "favorable" reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only a day (or shorter) on four different dates between December 5, 2007 and April 13, 2008. Moreover, we point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists. Under the circumstances, we cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians.

Finally, we find the pronouncement that Dumadag's non-hiring by the petitioners as the most convincing proof of his illness or disability without basis. There is no evidence on record showing that he sought re-employment with the petitioners or that it was a matter of course for the petitioners to re-hire him after the expiration of his contract. Neither is there evidence on Dumadag's claim that he applied with other manning agencies, but was turned down due to his illness.

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[35] G.R. No. 194677, April 18, 2012, 670 SCRA 271, 284.

All told, we find the petition meritorious.

WHEREFORE, premises considered, we hereby **GRANT** the petition and **SET ASIDE** the assailed decision and resolution of the Court of Appeals. The complaint is hereby **DISMISSED**. Costs against respondent Eulogio V. Dumadag.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 196049. June 26, 2013]

MINORU FUJIKI, *petitioner, vs.* **MARIA PAZ GALELA MARINAY, SHINICHI MAEKARA, LOCAL CIVIL REGISTRAR OF QUEZON CITY, and THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION, SATISFACTION AND EFFECT; FOREIGN JUDGMENT; THE RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES (A.M. NO. 02-11-10-SC) DOES NOT APPLY IN A PETITION TO RECOGNIZE A FOREIGN JUDGMENT RELATING TO THE STATUS OF A MARRIAGE WHERE ONE OF THE PARTIES IS A CITIZEN OF FOREIGN COUNTRY.— The Rule on Declaration of Absolute Nullity of Void Marriages and

Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. Moreover, in Juliano-Llave v. Republic, this Court held that the rule in A.M. No. 02- 11-10-SC that only the husband or wife can file a declaration of nullity or annulment of marriage "does not apply if the reason behind the petition is bigamy."

2. **ID.; ID.; ID.; ID.; TO RECOGNIZE A FOREIGN JUDGMENT RELATING TO THE STATUS OF A MARRIAGE WHERE ONE OF THE PARTIES IS A CITIZEN OF A FOREIGN COUNTRY, THE FOREIGN JUDGMENT MUST BE PROVEN AS A FACT UNDER THE RULES OF COURT; FOREIGN JUDGMENT HOW PROVED.—** For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court. Petitioner may prove the Japanese Family Court judgment through (1) an official publication or (2) a certification or copy attested by the officer who has custody of the judgment. If the office which has custody is in a foreign country such as Japan, the certification may be made by the proper diplomatic or consular officer of the Philippine foreign service in Japan and authenticated by the seal of office.

3. **ID.; ID.; ID.; ID.; THE PURPOSE OF RECOGNIZING FOREIGN JUDGMENTS IS TO LIMIT REPETITIVE LITIGATION ON CLAIMS AND ISSUES. IF EVERY JUDGMENT OF A FOREIGN COURT WERE REVIEWABLE ON THE MERITS, THE PLAINTIFF WOULD BE FORCED BACK ON HIS ORIGINAL CAUSE OF ACTION, RENDERING IMMATERIAL THE PREVIOUSLY CONCLUDED LITIGATION.—** To hold that A.M. No. 02-11-10-SC applies to a petition for recognition of foreign judgment would mean that the trial court and the parties should follow its provisions, including the form and contents of the petition, the service of summons, the investigation of the public prosecutor, the setting of pre-trial,

the trial and the judgment of the trial court. This is absurd because it will litigate the case anew. It will defeat the purpose of recognizing foreign judgments, which is "to limit repetitive litigation on claims and issues." The interpretation of the RTC is tantamount to relitigating the case on the merits. In Mijares v. Rañada, this Court explained that "[i]f every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation."

4. **ID.; ID.; ID.; ID.; TO EXTEND THE EFFECT OF A FOREIGN JUDGMENT IN THE PHILIPPINES, PHILIPPINE COURTS MUST DETERMINE IF THE FOREIGN JUDGMENT IS CONSISTENT WITH DOMESTIC PUBLIC POLICY AND OTHER MANDATORY LAWS.—** A foreign judgment relating to the status of a marriage affects the civil status, condition and legal capacity of its parties. However, the effect of a foreign judgment is not automatic. To extend the effect of a foreign judgment in the Philippines, Philippine courts must determine if the foreign judgment is consistent with domestic public policy and other mandatory laws. Article 15 of the Civil Code provides that "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." This is the rule of lex nationalii in private international law. Thus, the Philippine State may require, for effectivity in the Philippines, recognition by Philippine courts of a foreign judgment affecting its citizen, over whom it exercises personal jurisdiction relating to the status, condition and legal capacity of such citizen.

5. **ID.; ID.; ID.; ID.; A PETITION TO RECOGNIZE A FOREIGN JUDGMENT DECLARING A MARRIAGE VOID DOES NOT REQUIRE RELITIGATION OF THE CASE UNDER A PHILIPPINE COURT AS IF IT WERE A NEW PETITION FOR DECLARATION OF NULLITY OF MARRIAGE; THE PHILIPPINE COURTS CAN ONLY RECOGNIZE THE FOREIGN JUDGMENT AS A FACT ACCORDING TO THE RULES OF EVIDENCE.—** A petition to recognize a foreign judgment declaring a marriage void does not require relitigation under a Philippine court of the case as if it were a new petition for declaration of nullity of marriage. Philippine courts cannot presume to know the foreign laws under which the foreign

judgment was rendered. They cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state. Thus, Philippine courts can only recognize the foreign judgment **as a fact** according to the rules of evidence.

6. ID.; ID.; ID.; ID.; COURTS ARE NOT ALLOWED TO DELVE INTO THE MERITS OF A FOREIGN JUDGMENT. ONCE ADMITTED AND PROVEN IN A PHILIPPINE COURT, THE FOREIGN JUGMENT CAN ONLY BE REPELLED ON GROUND OF WANT OF JURISDICTION, WANT OF NOTICE TO THE PARTY, COLLUSION, FRAUD, OR CLEAR MISTAKEN OF LAW OR FACT.— Section 48(b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Moreover, Section 48 of the Rules of Court states that "the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, i.e., "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states.

7. ID.; ID.; ID.; ID.; PRIOR SPOUSE SHOULD BE ALLOWED TO SIMPLY PROVE AS A FACT UNDER THE RULES OF COURT THE FOREIGN JUDGMENT NULLIFYING HIS SPOUSE'S BIGAMOUS MARRIAGE, AS THE SAME IS FULLY CONSISTENT WITH PHILIPPINE PUBLIC POLICY.— Since 1922 in *Adong v. Cheong Seng Gee*, Philippine courts have recognized foreign divorce decrees between a Filipino and a foreign citizen if they are successfully proven under the rules of evidence. Divorce involves the dissolution of a marriage, but the recognition of a foreign divorce decree does not involve the extended procedure under A.M. No. 02- 11-10-SC or the rules of ordinary trial. While the Philippines does not have a divorce law, Philippine courts

may, however, recognize a foreign divorce decree under the second paragraph of Article 26 of the Family Code, to capacitate a Filipino citizen to remarry when his or her foreign spouse obtained a divorce decree abroad. There is therefore no reason to disallow Fujiki to simply prove as a fact the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy. While the Philippines has no divorce law, the Japanese Family Court judgment is fully consistent with Philippine public policy, as bigamous marriages are declared void from the beginning under Article 35(4) of the Family Code. Bigamy is a crime under Article 349 of the Revised Penal Code. Thus, Fujiki can prove the existence of the Japanese Family Court judgment in accordance with Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court.

8. ID.; ID.; ID.; ID.; THE RECOGNITION OF A FOREIGN JUDGMENT MAY BE MADE IN A SPECIAL PROCEEDING FOR CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY UNDER RULE 108 OF THE RULES OF COURT SINCE THE RECOGNITION ONLY REQUIRES PROOF OF FACT OF THE JUDGMENT.— Since the recognition of a foreign judgment only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court. Rule 1, Section 3 of the Rules of Court provides that "[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact." Rule 108 creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death or marriage, which the State has an interest in recording. As noted by the Solicitor General, in Corpuz v. Sto. Tomas this Court declared that "[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact."

9. ID.; ID.; ID.; ID.; BEING A REAL PARTY IN INTEREST, THE PRIOR SPOUSE HAS THE PERSONALITY TO FILE A PETITION TO RECOGNIZE A FOREIGN JUDGMENT

NULLIFYING HIS SPOUSE'S BIGAMOUS MARRIAGE AND JUDICIALLY DECLARE AS A FACT THE SUCH JUDGMENT IS EFFECTIVE IN THE PHILIPPINES, AND TO FILE A PETITION TO CANCEL THE ENTRY OF THE BIGAMOUS MARRIAGE IN THE CIVIL REGISTRY ON THE BASIS OF THE FOREIGN JUDGMENT.— Fujiki has the personality to file a petition to recognize the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy because the judgment concerns his civil status as married to Marinay. For the same reason he has the personality to file a petition under Rule 108 to cancel the entry of marriage between Marinay and Maekara in the civil registry on the basis of the decree of the Japanese Family Court. There is no doubt that the prior spouse has a personal and material interest in maintaining the integrity of the marriage he contracted and the property relations arising from it. There is also no doubt that he is interested in the cancellation of an entry of a bigamous marriage in the civil registry, which compromises the public record of his marriage. The interest derives from the substantive right of the spouse not only to preserve (or dissolve, in limited instances) his most intimate human relation, but also to protect his property interests that arise by operation of law the moment he contracts marriage. These property interests in marriage include the right to be supported "in keeping with the financial capacity of the family" and preserving the property regime of the marriage. x x x. When the right of the spouse to protect his marriage is violated, the spouse is clearly an injured party and is therefore interested in the judgment of the suit. Juliano-Llave ruled that the prior spouse "is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse." Being a real party in interest, the prior spouse is entitled to sue in order to declare a bigamous marriage void. For this purpose, he can petition a court to recognize a foreign judgment nullifying the bigamous marriage and judicially declare as a fact that such judgment is effective in the Philippines. Once established, there should be no more impediment to cancel the entry of the bigamous marriage in the civil registry.

10. ID.; ID.; ID.; ID.; A RECOGNITION OF A FOREIGN JUDGMENT IS NOT AN ACTION TO NULLIFY A

MARRIAGE BUT AN ACTION FOR PHILIPPINE COURTS TO RECOGNIZE THE EFFECTIVITY OF A FOREIGN JUDGMENT, WHICH PRESUPPOSES A CASE WHICH WAS ALREADY TRIED AND DECIDED UNDER FOREIGN LAW.— [A] petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11- 10-SC and other related laws. Among these safeguards are the requirement of proving the limited grounds for the dissolution of marriage, support pendente lite of the spouses and children, the liquidation, partition and distribution of the properties of the spouses, and the investigation of the public prosecutor to determine collusion. A direct action for declaration of nullity or annulment of marriage is also necessary to prevent circumvention of the jurisdiction of the Family Courts under the Family Courts Act of 1997 (Republic Act No. 8369), as a petition for cancellation or correction of entries in the civil registry may be filed in the Regional Trial Court "where the corresponding civil registry is located." In other words, a Filipino citizen cannot dissolve his marriage by the mere expedient of changing his entry of marriage in the civil registry. However, this does not apply in a petition for correction or cancellation of a civil registry entry based on the recognition of a foreign judgment annulling a marriage where one of the parties is a citizen of the foreign country. There is neither circumvention of the substantive and procedural safeguards of marriage under Philippine law, nor of the jurisdiction of Family Courts under R.A. No. 8369. A recognition of a foreign judgment is not an action to nullify a marriage. It is an action for Philippine courts to recognize the effectivity of a foreign judgment, **which presupposes a case which was already tried and decided under foreign law.** The procedure in A.M. No. 02-11-10-SC does not apply in a petition to recognize a foreign judgment annulling a bigamous marriage where one of the parties is a citizen of the foreign country. Neither can R.A. No. 8369 define the jurisdiction of the foreign court.

11. ID.; ID.; ID.; ID.; THE RECOGNITION OF A FOREIGN JUDGMENT NULLIFYING A BIGAMOUS MARRIAGE IS WITHOUT PREJUDICE TO A CRIMINAL PROSECUTION

FOR BIGAMY UNDER THE REVISED PENAL CODE.— Under the second paragraph of Article 26 of the Family Code, Philippine courts are empowered to correct a situation where the Filipino spouse is still tied to the marriage while the foreign spouse is free to marry. Moreover, notwithstanding Article 26 of the Family Code, Philippine courts already have jurisdiction to extend the effect of a foreign judgment in the Philippines to the extent that the foreign judgment does not contravene domestic public policy. A critical difference between the case of a foreign divorce decree and a foreign judgment nullifying a bigamous marriage is that bigamy, as a ground for the nullity of marriage, is fully consistent with Philippine public policy as expressed in Article 35(4) of the Family Code and Article 349 of the Revised Penal Code. The Filipino spouse has the option to undergo full trial by filing a petition for declaration of nullity of marriage under A.M. No. 02-11-10-SC, but this is not the only remedy available to him or her. Philippine courts have jurisdiction to recognize a foreign judgment nullifying a bigamous marriage, without prejudice to a criminal prosecution for bigamy. x x x. [T]he recognition of a foreign judgment nullifying a bigamous marriage is without prejudice to prosecution for bigamy under Article 349 of the Revised Penal Code. The recognition of a foreign judgment nullifying a bigamous marriage is not a ground for extinction of criminal liability under Articles 89 and 94 of the Revised Penal Code. Moreover, under Article 91 of the Revised Penal Code, "[t]he term of prescription [of the crime of bigamy] shall not run when the offender is absent from the Philippine archipelago."

12. **ID.; ID.; ID.; ID.; IN A FOREIGN JUDGMENT RELATING TO THE STATUS OF A MARRIAGE INVOLVING A CITIZEN OF A FOREIGN COUNTRY, PHILIPPINE COURTS ONLY DECIDE WHETHER TO EXTEND ITS EFFECT TO THE FILIPINO PARTY, UNDER THE RULE OF LEX NATIONALII.—** In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law. They cannot decide on the "family rights and duties, or on the status, condition and legal capacity" of the foreign citizen who is a party to the foreign judgment. Thus, Philippine courts are limited to the question of whether to extend the effect of a foreign

judgment in the Philippines. In a foreign judgment relating to the status of a marriage involving a citizen of a foreign country, Philippine courts only decide whether to extend its effect to the Filipino party, under the rule of lex nationalii expressed in Article 15 of the Civil Code.

13. ID.; ID.; ID.; ID.; IN THE ABSENCE OF INCONSISTENCY WITH PUBLIC POLICY OR ADEQUATE PROOF OF EXTRINSIC GROUND TO REPEL THE JUDGMENT, PHILIPPINE COURTS SHOULD, BY DEFAULT, RECOGNIZE THE FOREIGN JUDGMENT AS PART OF THE COMITY OF NATIONS; THE RECOGNITION OF THE FOREIGN JUDGMENT NULLIFYING A BIGAMOUS JUDGMENT IS A SUBSEQUENT EVENT THAT ESTABLISHES A NEW STATUS, RIGHT AND FACT THAT NEEDS TO BE REFLECTED IN CIVIL REGISTRY.— For this purpose, Philippine courts will only determine (1) whether the foreign judgment is inconsistent with an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, i.e. want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. If there is neither inconsistency with public policy nor adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations. Section 48(b), Rule 39 of the Rules of Court states that the foreign judgment is already "presumptive evidence of a right between the parties." Upon recognition of the foreign judgment, this right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry. The recognition of the foreign judgment nullifying a bigamous marriage is a subsequent event that establishes a new status, right and fact that needs to be reflected in the civil registry. Otherwise, there will be an inconsistency between the recognition of the effectivity of the foreign judgment and the public records in the Philippines.

APPEARANCES OF COUNSEL

Lorenzo U. Padilla for petitioner.
The Solicitor General for respondents.

DECISION

CARPIO, *J.*:

The Case

This is a direct recourse to this Court from the Regional Trial Court (RTC), Branch 107, Quezon City, through a petition for review on *certiorari* under Rule 45 of the Rules of Court on a pure question of law. The petition assails the Order[1] dated 31 January 2011 of the RTC in Civil Case No. Q-11-68582 and its Resolution dated 2 March 2011 denying petitioner's Motion for Reconsideration. The RTC dismissed the petition for "Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage)" based on improper venue and the lack of personality of petitioner, Minoru Fujiki, to file the petition.

The Facts

Petitioner Minoru Fujiki (Fujiki) is a Japanese national who married respondent Maria Paz Galela Marinay (Marinay) in the Philippines[2] on 23 January 2004. The marriage did not sit well with petitioner's parents. Thus, Fujiki could not bring his wife to Japan where he resides. Eventually, they lost contact with each other.

In 2008, Marinay met another Japanese, Shinichi Maekara (Maekara). Without the first marriage being dissolved, Marinay and Maekara were married on 15 May 2008 in Quezon City, Philippines. Maekara brought Marinay to Japan. However, Marinay allegedly suffered physical abuse from Maekara. She left Maekara and started to contact Fujiki.[3]

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[1] Penned by Judge Jose L. Bautista Jr.

[2] In Pasay City, Metro Manila.

[3] *See rollo*, p. 88; Trial Family Court Decree No. 15 of 2009, Decree of Absolute Nullity of Marriage between Maria Paz Galela Marinay and Shinichi Maekara dated 18 August 2010. Translated by Yoshiaki Kurisu, Kurisu Gyoseishoshi Lawyer's Office (*see rollo*, p. 89).

Fujiki and Marinay met in Japan and they were able to reestablish their relationship. In 2010, Fujiki helped Marinay obtain a judgment from a family court in Japan which declared the marriage between Marinay and Maekara void on the ground of bigamy.[4] On 14 January 2011, Fujiki filed a petition in the RTC entitled: "Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage)." Fujiki prayed that (1) the Japanese Family Court judgment be recognized; (2) that the bigamous marriage between Marinay and Maekara be declared void *ab initio* under Articles 35(4) and 41 of the Family Code of the Philippines;[5] and (3) for the RTC to direct the Local Civil Registrar of Quezon City to annotate the Japanese Family Court judgment on the Certificate of Marriage between Marinay and Maekara and to endorse such annotation to the Office of the Administrator and Civil Registrar General in the National Statistics Office (NSO).[6]

The Ruling of the Regional Trial Court

A few days after the filing of the petition, the RTC immediately issued an Order dismissing the petition and withdrawing the case from its active civil docket.[7] The RTC cited the following

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[4] *Id.*

[5] FAMILY CODE OF THE PHILIPPINES (E.O. No. 209 as amended):

Art. 35. The following marriages shall be void from the beginning:

x x x x

(4) Those bigamous or polygamous marriages not falling under Article 41;

x x x x

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

[6] *Rollo*, pp. 79-80.

[7] The dispositive portion stated:

provisions of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC):

Sec. 2. Petition for declaration of absolute nullity of void marriages. –

(a) *Who may file.* – A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife.

x x x x x x x x x

Sec. 4. *Venue.* – The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner. x x x

The RTC ruled, without further explanation, that the petition was in "gross violation" of the above provisions. The trial court based its dismissal on Section 5(4) of A.M. No. 02-11-10-SC which provides that "[f]ailure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition."[8] Apparently, the RTC took the view that only "the

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WHEREFORE, the instant case is hereby ordered DISMISSED and WITHDRAWN from the active civil docket of this Court. The RTC-OCC, Quezon City is directed to refund to the petitioner the amount of One Thousand Pesos (₱1,000) to be taken from the Sheriff's Trust Fund.

[8] *Rollo*, pp. 44-45. Section 5 of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) provides:

Sec. 5. Contents and form of petition. – (1) The petition shall allege the complete facts constituting the cause of action.

(2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action.

(3) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the

husband or the wife," in this case either Maekara or Marinay, can file the petition to declare their marriage void, and not Fujiki.

Fujiki moved that the Order be reconsidered. He argued that A.M. No. 02-11-10-SC contemplated ordinary civil actions for declaration of nullity and annulment of marriage. Thus, A.M. No. 02-11-10-SC does not apply. A petition for recognition of foreign judgment is a special proceeding, which "seeks to establish a status, a right or a particular fact,"[9] and not a civil action which is "for the enforcement or protection of a right, or the prevention or redress of a wrong."[10] In other words, the petition in the RTC sought to establish (1) the status and concomitant rights of Fujiki and Marinay as husband and wife and (2) the fact of the rendition of the Japanese Family Court judgment declaring the marriage between Marinay and Maekara as void on the ground of bigamy. The petitioner contended that the Japanese judgment was consistent with Article 35(4) of the Family Code of the Philippines[11] on bigamy and was therefore entitled to recognition by Philippine courts.[12]

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petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

(4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

[9] RULES OF COURT, Rule 1, Sec. 3(c). *See rollo*, pp. 55-56 (Petitioner's Motion for Reconsideration).

[10] RULES OF COURT, Rule 1, Sec. 3(a).

[11] FAMILY CODE (E.O. No. 209 as amended), Art. 35. The following marriages shall be void from the beginning:

x x x x

(4) Those bigamous or polygamous marriages not falling under Article 41;

x x x x x x x x x

[12] *Rollo*, p. 56.

In any case, it was also Fujiki's view that A.M. No. 02-11-10-SC applied only to void marriages under Article 36 of the Family Code on the ground of psychological incapacity.[13] Thus, Section 2(a) of A.M. No. 02-11-10-SC provides that "a petition for declaration of absolute nullity of void marriages may be filed solely by the husband or the wife." To apply Section 2(a) in bigamy would be absurd because only the guilty parties would be permitted to sue. In the words of Fujiki, "[i]t is not, of course, difficult to realize that the party interested in having a bigamous marriage declared a nullity would be the husband in the prior, pre-existing marriage."[14] Fujiki had material interest and therefore the personality to nullify a bigamous marriage.

Fujiki argued that Rule 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court is applicable. Rule 108 is the "procedural implementation" of the Civil Register Law (Act No. 3753)[15] in relation to Article 413 of the Civil Code.[16] The Civil Register Law imposes a duty on the "successful petitioner for divorce or annulment of marriage to send a copy of the final decree of the court to the local registrar of the municipality where the dissolved or annulled marriage was solemnized."[17] Section 2 of Rule 108 provides that entries in

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[13] FAMILY CODE, Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[14] *Rollo*, p. 68.

[15] Enacted 26 November 1930.

[16] CIVIL CODE, Art. 413. All other matters pertaining to the registration of civil status shall be governed by special laws.

[17] Act No. 3753, Sec. 7. *Registration of marriage*. - All civil officers and priests or ministers authorized to solemnize marriages shall send a copy of each marriage contract solemnized by them to the local civil registrar within the time limit specified in the existing Marriage Law.

In cases of divorce and annulment of marriage, it shall be the duty of the successful petitioner for divorce or annulment of marriage to send a copy of the final decree of the court to the local civil registrar of the municipality where the dissolved or annulled marriage was solemnized.

the civil registry relating to "marriages," "judgments of annulments of marriage" and "judgments declaring marriages void from the beginning" are subject to cancellation or correction.[18] The petition in the RTC sought (among others) to annotate the judgment of the Japanese Family Court on the certificate of marriage between Marinay and Maekara.

Fujiki's motion for reconsideration in the RTC also asserted that the trial court "gravely erred" when, on its own, it dismissed the petition based on improper venue. Fujiki stated that the RTC may be confusing the concept of venue with the concept of jurisdiction, because it is lack of jurisdiction which allows a court to dismiss a case on its own. Fujiki cited *Dacoycoy v. Intermediate Appellate Court*[19] which held that the "trial court cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case."[20] Moreover, petitioner alleged that the trial court should not have "immediately dismissed" the petition under Section 5

In the marriage register there shall be entered the full name and address of each of the contracting parties, their ages, the place and date of the solemnization of the marriage, the names and addresses of the witnesses, the full name, address, and relationship of the minor contracting party or parties or the person or persons who gave their consent to the marriage, and the full name, title, and address of the person who solemnized the marriage.

In cases of divorce or annulment of marriages, there shall be recorded the names of the parties divorced or whose marriage was annulled, the date of the decree of the court, and such other details as the regulations to be issued may require.

[18] RULES OF COURT, Rule 108, Sec. 2. *Entries subject to cancellation or correction.* — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (1) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

[19] 273 Phil. 1 (1991).

[20] *Id.* at 7. *See rollo*, pp. 65 and 67.

of A.M. No. 02-11-10-SC because he substantially complied with the provision.

On 2 March 2011, the RTC resolved to deny petitioner's motion for reconsideration. In its Resolution, the RTC stated that A.M. No. 02-11-10-SC applies because the petitioner, in effect, prays for a decree of absolute nullity of marriage.[21] The trial court reiterated its two grounds for dismissal, *i.e.* lack of personality to sue and improper venue under Sections 2(a) and 4 of A.M. No. 02-11-10-SC. The RTC considered Fujiki as a "third person"[22] in the proceeding because he "is not the husband in the decree of divorce issued by the Japanese Family Court, which he now seeks to be judicially recognized, x x x."[23] On the other hand, the RTC did not explain its ground of impropriety of venue. It only said that "[a]lthough the Court cited Sec. 4 (Venue) x x x as a ground for dismissal of this case[,] it should be taken together with the other ground cited by the Court x x x which is Sec. 2(a) x x x."[24]

The RTC further justified its *motu proprio* dismissal of the petition based on *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental.*[25] The Court in *Braza* ruled that "[i]n a special proceeding for correction of entry under Rule 108 (Cancellation or Correction of Entries in the Original Registry), the trial court has no jurisdiction to nullify marriages x x x."[26] *Braza* emphasized that the "validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through a collateral attack such as [a] petition [for correction of entry] x x x."[27]

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[21] *Rollo*, p. 47.

[22] *Id.* at 46.

[23] *Id.* at 48.

[24] *Id.*

[25] G.R. No. 181174, 4 December 2009, 607 SCRA 638.

[26] *Id.* at 641.

[27] *Id.* at 643.

The RTC considered the petition as a collateral attack on the validity of marriage between Marinay and Maekara. The trial court held that this is a "jurisdictional ground" to dismiss the petition.[28] Moreover, the verification and certification against forum shopping of the petition was not authenticated as required under Section 5[29] of A.M. No. 02-11-10-SC. Hence, this also warranted the "immediate dismissal" of the petition under the same provision.

The Manifestation and Motion of the Office of the Solicitor General and the Letters of Marinay and Maekara

On 30 May 2011, the Court required respondents to file their comment on the petition for review.[30] The public respondents, the Local Civil Registrar of Quezon City and the Administrator and Civil Registrar General of the NSO, participated through the Office of the Solicitor General. Instead of a comment, the Solicitor General filed a Manifestation and Motion.[31]

The Solicitor General agreed with the petition. He prayed that the RTC's "pronouncement that the petitioner failed to

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[28] *See rollo*, p. 49.

[29] Section 5 of A.M. No. 02-11-10-SC states in part:

Contents and form of petition. – x x x

x x x x x x x x x

(3) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

x x x x x x x x x

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

[30] Resolution dated 30 May 2011. *Rollo*, p. 105.

[31] Under Solicitor General Jose Anselmo I. Cadiz.

comply with x x x A.M. No. 02-11-10-SC x x x be set aside" and that the case be reinstated in the trial court for further proceedings.[32] The Solicitor General argued that Fujiki, as the spouse of the first marriage, is an injured party who can sue to declare the bigamous marriage between Marinay and Maekara void. The Solicitor General cited *Juliano-Llave v. Republic*[33] which held that Section 2(a) of A.M. No. 02-11-10-SC does not apply in cases of bigamy. In *Juliano-Llave,* this Court explained:

> [t]he subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void and thus, in such circumstance, the "injured spouse" who should be given a legal remedy is the one in a subsisting previous marriage. The latter is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse. The subsequent marriage will always be a reminder of the infidelity of the spouse and the disregard of the prior marriage which sanctity is protected by the Constitution.[34]

The Solicitor General contended that the petition to recognize the Japanese Family Court judgment may be made in a Rule 108

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[32] *Rollo*, p. 137. The "Conclusion and Prayer" of the "Manifestation and Motion (In Lieu of Comment)" of the Solicitor General stated:

In fine, the court a quo's pronouncement that the petitioner failed to comply with the requirements provided in A.M. No. 02-11-10-SC should accordingly be set aside. It is, thus, respectfully prayed that Civil Case No. Q-11-68582 be reinstated for further proceedings.

Other reliefs, just and equitable under the premises are likewise prayed for.

[33] G.R. No. 169766, 30 March 2011, 646 SCRA 637.

[34] *Id.* at 656. Quoted in the Manifestation and Motion of the Solicitor General, pp. 8-9. *See rollo*, pp. 132-133.

proceeding.[35] In *Corpuz v. Santo Tomas*,[36] this Court held that "[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact."[37] While *Corpuz* concerned a foreign divorce decree, in the present case the Japanese Family Court judgment also affected the civil status of the parties, especially Marinay, who is a Filipino citizen.

The Solicitor General asserted that Rule 108 of the Rules of Court is the procedure to record "[a]cts, events and judicial decrees concerning the civil status of persons" in the civil registry as required by Article 407 of the Civil Code. In other words, "[t]he law requires the entry in the civil registry of judicial decrees that produce legal consequences upon a person's legal capacity and status x x x."[38] The Japanese Family Court judgment directly bears on the civil status of a Filipino citizen and should therefore be proven as a fact in a Rule 108 proceeding.

Moreover, the Solicitor General argued that there is no jurisdictional infirmity in assailing a void marriage under Rule 108, citing *De Castro v. De Castro*[39] and *Niñal v. Bayadog*[40] which declared that "[t]he validity of a void marriage may be collaterally attacked."[41]

Marinay and Maekara individually sent letters to the Court to comply with the directive for them to comment on the petition.[42] Maekara wrote that Marinay concealed from him the fact that she was previously married to Fujiki.[43] Maekara also denied

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[35] *Rollo*, p. 133.

[36] G.R. No. 186571, 11 August 2010, 628 SCRA 266.

[37] *Id.* at 287.

[38] *Rollo*, p. 133.

[39] G.R. No. 160172, 13 February 2008, 545 SCRA 162.

[40] 384 Phil. 661 (2000).

[41] *De Castro v. De Castro*, *supra* note 39 at 169.

[42] *Supra* note 30.

[43] *See rollo*, p. 120.

that he inflicted any form of violence on Marinay.[44] On the other hand, Marinay wrote that she had no reason to oppose the petition.[45] She would like to maintain her silence for fear that anything she say might cause misunderstanding between her and Fujiki.[46]

The Issues

Petitioner raises the following legal issues:

(1) Whether the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) is applicable.

(2) Whether a husband or wife of a prior marriage can file a petition to recognize a foreign judgment nullifying the subsequent marriage between his or her spouse and a foreign citizen on the ground of bigamy.

(3) Whether the Regional Trial Court can recognize the foreign judgment in a proceeding for cancellation or correction of entries in the Civil Registry under Rule 108 of the Rules of Court.

The Ruling of the Court

We grant the petition.

The Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. Moreover, in *Juliano-Llave v. Republic*,[47] this Court held that the rule in A.M. No. 02-11-10-SC that only the husband or wife can file a declaration of nullity

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[44] *Id.*

[45] *See rollo*, p. 146.

[46] *Id.*

[47] *Supra* note 33.

or annulment of marriage "does not apply if the reason behind the petition is bigamy."[48]

I.

For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court.[49] Petitioner may prove the Japanese Family Court judgment through (1) an official publication or (2) a certification or copy

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[48] *Supra* note 33 at 655.

[49] RULES OF COURT, Rule 132, Sec. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Sec. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Rule 39, Sec. 48. *Effect of foreign judgments or final orders.* — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order, is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

attested by the officer who has custody of the judgment. If the office which has custody is in a foreign country such as Japan, the certification may be made by the proper diplomatic or consular officer of the Philippine foreign service in Japan and authenticated by the seal of office.[50]

To hold that A.M. No. 02-11-10-SC applies to a petition for recognition of foreign judgment would mean that the trial court and the parties should follow its provisions, including the form and contents of the petition,[51] the service of summons,[52] the investigation of the public prosecutor,[53] the setting of pre-trial,[54] the trial[55] and the judgment of the trial court.[56] This is absurd because it will litigate the case anew. It will defeat the purpose of recognizing foreign judgments, which is "to limit repetitive litigation on claims and issues."[57] The interpretation of the RTC is tantamount to relitigating the case on the merits. In *Mijares v. Rañada,*[58] this Court explained that "[i]f every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation."[59]

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

[50] *See* RULES OF COURT, Rule 132, Sec. 24-25. *See also Corpuz v. Santo Tomas, supra* note 36 at 282.

[51] A.M. No. 02-11-10-SC, Sec. 5.

[52] *Id.*, Sec. 6.

[53] *Id.*, Sec. 9.

[54] *Id.*, Sec. 11-15.

[55] *Id.*, Sec. 17-18.

[56] *Id.*, Sec. 19 and 22-23.

[57] *Mijares v. Rañada*, 495 Phil. 372, 386 (2005) citing EUGENE SCOLES & PETER HAY, CONFLICT OF LAWS 916 (2nd ed., 1982).

[58] *Id.*

[59] *Id.* at 386.

A foreign judgment relating to the status of a marriage affects the civil status, condition and legal capacity of its parties. However, the effect of a foreign judgment is not automatic. To extend the effect of a foreign judgment in the Philippines, Philippine courts must determine if the foreign judgment is consistent with domestic public policy and other mandatory laws.[60] Article 15 of the Civil Code provides that "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." This is the rule of *lex nationalii* in private international law. Thus, the Philippine State may require, for effectivity in the Philippines, recognition by Philippine courts of a foreign judgment affecting its citizen, over whom it exercises personal jurisdiction relating to the status, condition and legal capacity of such citizen.

A petition to recognize a foreign judgment declaring a marriage void does not require relitigation under a Philippine court of the case as if it were a new petition for declaration of nullity of marriage. Philippine courts cannot presume to know the foreign laws under which the foreign judgment was rendered. They cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state. Thus, Philippine courts can only recognize the foreign judgment **as a fact** according to the rules of evidence.

Section 48(b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Moreover, Section 48 of the Rules of Court states that "the judgment or final order may be repelled by evidence of a want of jurisdiction,

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[60] CIVIL CODE, Art. 17. x x x

x x x x x x x x x

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

want of notice to the party, collusion, fraud, or clear mistake of law or fact." Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations,[61] as well as respecting the jurisdiction of other states.[62]

Since 1922 in *Adong v. Cheong Seng Gee,*[63] Philippine courts have recognized foreign divorce decrees between a Filipino and a foreign citizen if they are successfully proven under the rules of evidence.[64] Divorce involves the dissolution of a marriage, but the recognition of a foreign divorce decree does not involve the extended procedure under A.M. No. 02-11-10-SC or the rules of ordinary trial. While the Philippines does not have a divorce law, Philippine courts may, however, recognize a foreign divorce decree under the second paragraph of Article 26 of the Family Code, to capacitate a Filipino citizen to remarry when his or her foreign spouse obtained a divorce decree abroad.[65]

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[61] *Mijares v. Rañada, supra* note 57 at 386. "Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes, and – in a larger sense – to promote what Lord Coke in the Ferrer's Case of 1599 stated to be the goal of all law: 'rest and quietness.'" (Citations omitted)

[62] *Mijares v. Rañada, supra* note 57 at 382. "The rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries." (Citations omitted)

[63] 43 Phil. 43 (1922).

[64] *Corpuz v. Sto. Tomas,* G.R. No. 186571, 11 August 2010, 628 SCRA 266, 280; *Garcia v. Recio*, 418 Phil. 723 (2001); *Adong v. Cheong Seng Gee*, *supra*.

[65] FAMILY CODE, Art. 26. x x x

There is therefore no reason to disallow Fujiki to simply prove as a fact the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy. While the Philippines has no divorce law, the Japanese Family Court judgment is fully consistent with Philippine public policy, as bigamous marriages are declared void from the beginning under Article 35(4) of the Family Code. Bigamy is a crime under Article 349 of the Revised Penal Code. Thus, Fujiki can prove the existence of the Japanese Family Court judgment in accordance with Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court.

II.

Since the recognition of a foreign judgment only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court. Rule 1, Section 3 of the Rules of Court provides that "[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact." Rule 108 creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death or marriage,[66]

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

[66] Act No. 3753, Sec. 1. *Civil Register.* — A civil register is established for recording the civil status of persons, in which shall be entered: (a) births; (b) deaths; (c) marriages; (d) annulments of marriages; (e) divorces; (f) legitimations; (g) adoptions; (h) acknowledgment of natural children; (i) naturalization; and (j) changes of name.

Cf. RULES OF COURT, Rule 108, Sec. 2. *Entries subject to cancellation or correction.* — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k)

which the State has an interest in recording. As noted by the Solicitor General, in *Corpuz v. Sto. Tomas* this Court declared that "[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact."[67]

Rule 108, Section 1 of the Rules of Court states:

> Sec. 1. *Who may file petition.* — Any person **interested** in any **act, event, order or decree** concerning the **civil status of persons which has been recorded in the civil register,** may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located. (Emphasis supplied)

Fujiki has the personality to file a petition to recognize the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy because the judgment concerns his civil status as married to Marinay. For the same reason he has the personality to file a petition under Rule 108 to cancel the entry of marriage between Marinay and Maekara in the civil registry on the basis of the decree of the Japanese Family Court.

There is no doubt that the prior spouse has a personal and material interest in maintaining the integrity of the marriage he contracted and the property relations arising from it. There is also no doubt that he is interested in the cancellation of an entry of a bigamous marriage in the civil registry, which compromises the public record of his marriage. The interest derives from the substantive right of the spouse not only to preserve (or dissolve, in limited instances[68]) his most intimate human relation, but also to protect his property interests that

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election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

[67] *Corpuz v. Sto. Tomas*, *supra* note 36 at 287.

[68] Family Code, Art. 35-67.

arise by operation of law the moment he contracts marriage.[69] These property interests in marriage include the right to be supported "in keeping with the financial capacity of the family"[70] and preserving the property regime of the marriage.[71]

Property rights are already substantive rights protected by the Constitution,[72] but a spouse's right in a marriage extends further to relational rights recognized under Title III ("Rights and Obligations between Husband and Wife") of the Family Code.[73] A.M. No. 02-11-10-SC cannot "diminish, increase, or modify" the substantive right of the spouse to maintain the integrity of his marriage.[74] In any case, Section 2(a) of A.M. No. 02-11-10-SC preserves this substantive right by limiting the personality to sue to the husband or the wife of the union recognized by law.

Section 2(a) of A.M. No. 02-11-10-SC does not preclude a spouse of a subsisting marriage to question the validity of a subsequent marriage on the ground of bigamy. On the contrary, when Section 2(a) states that "[a] petition for declaration of absolute nullity of void marriage may be filed **solely by the**

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[69] FAMILY CODE, Art. 74-148.

[70] FAMILY CODE, Art. 195 in relation to Art. 194.

[71] *See supra* note 69.

[72] CONSTITUTION, Art. III, Sec. 1: "No person shall be deprived of life, liberty, or property without due process of law x x x."

[73] FAMILY CODE, Art. 68-73.

[74] CONSTITUTION, Art. VIII, Sec. 5(5). The Supreme Court shall have the following powers:

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(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, **and shall not diminish, increase, or modify substantive rights.** x x x

x x x x (Emphasis supplied)

husband or the wife"[75] it refers to the husband or the wife of the subsisting marriage. Under Article 35(4) of the Family Code, bigamous marriages are void from the beginning. Thus, the parties in a bigamous marriage are neither the husband nor the wife under the law. The husband or the wife of the prior subsisting marriage is the one who has the personality to file a petition for declaration of absolute nullity of void marriage under Section 2(a) of A.M. No. 02-11-10-SC.

Article 35(4) of the Family Code, which declares bigamous marriages void from the beginning, is the civil aspect of Article 349 of the Revised Penal Code,[76] which penalizes bigamy. Bigamy is a public crime. Thus, anyone can initiate prosecution for bigamy because any citizen has an interest in the prosecution and prevention of crimes.[77] If anyone can file a criminal action which leads to the declaration of nullity of a bigamous marriage,[78] there is more reason to confer personality to sue on the husband or the wife of a subsisting marriage. The prior spouse does not only share in the public interest of prosecuting and preventing crimes, he is also personally interested in the purely civil aspect of protecting his marriage.

When the right of the spouse to protect his marriage is violated, the spouse is clearly an injured party and is therefore interested

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[75] Emphasis supplied.

[76] REVISED PENAL CODE (Act No. 3815, as amended), Art. 349. *Bigamy*. - The penalty of *prisión mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

[77] *See* III RAMON AQUINO, THE REVISED PENAL CODE (1997), 518.

[78] RULES OF COURT, Rule 111, Sec. 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

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in the judgment of the suit.[79] *Juliano-Llave* ruled that the prior spouse "is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse."[80] Being a real party in interest, the prior spouse is entitled to sue in order to declare a bigamous marriage void. For this purpose, he can petition a court to recognize a foreign judgment nullifying the bigamous marriage and judicially declare as a fact that such judgment is effective in the Philippines. Once established, there should be no more impediment to cancel the entry of the bigamous marriage in the civil registry.

III.

In *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, this Court held that a "trial court has no jurisdiction to nullify marriages" in a special proceeding for cancellation or correction of entry under Rule 108 of the Rules of Court.[81] Thus, the "validity of marriage[] x x x can be questioned only in a direct action" to nullify the marriage.[82] The RTC relied on *Braza* in dismissing the petition for recognition of foreign judgment as a collateral attack on the marriage between Marinay and Maekara.

Braza is not applicable because *Braza* does not involve a recognition of a foreign judgment nullifying a bigamous marriage where one of the parties is a citizen of the foreign country.

To be sure, a petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to

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[79] *Cf.* RULES OF COURT, Rule 3, Sec. 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[80] *Juliano-Llave v. Republic*, *supra* note 33.

[81] *Supra* note 25.

[82] *Supra* note 25.

invalidate a marriage. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. Among these safeguards are the requirement of proving the limited grounds for the dissolution of marriage,[83] support *pendente lite* of the spouses and children,[84] the liquidation, partition and distribution of the properties of the spouses,[85] and the investigation of the public prosecutor to determine collusion.[86]

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[83] *See supra* note 68.

[84] FAMILY CODE, Art. 49. During the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the Court shall provide for the support of the spouses and the custody and support of their common children. The Court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain as provided to in Title IX. It shall also provide for appropriate visitation rights of the other parent.

Cf. RULES OF COURT, Rule 61.

[85] FAMILY CODE, Art. 50. The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared *ab initio* or annulled by final judgment under Articles 40 and 45.

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of third presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

A.M. No. 02-11-10-SC, Sec. 19. *Decision.*– (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

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[86] FAMILY CODE, Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

A direct action for declaration of nullity or annulment of marriage is also necessary to prevent circumvention of the jurisdiction of the Family Courts under the Family Courts Act of 1997 (Republic Act No. 8369), as a petition for cancellation or correction of entries in the civil registry may be filed in the Regional Trial Court "where the corresponding civil registry is located."[87] In other words, a Filipino citizen cannot dissolve his marriage by the mere expedient of changing his entry of marriage in the civil registry.

However, this does not apply in a petition for correction or cancellation of a civil registry entry based on the recognition of a foreign judgment annulling a marriage where one of the parties is a citizen of the foreign country. There is neither circumvention of the substantive and procedural safeguards of marriage under Philippine law, nor of the jurisdiction of Family Courts under R.A. No. 8369. A recognition of a foreign judgment is not an action to nullify a marriage. It is an action for Philippine courts to recognize the effectivity of a foreign judgment, **which presupposes a case which was already tried and decided under foreign law.** The procedure in A.M. No. 02-11-10-SC does not apply in a petition to recognize a foreign judgment annulling a bigamous marriage where one of the parties is a

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In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

A.M. No. 02-11-10-SC, Sec. 9. *Investigation report of public prosecutor.* — (1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

(2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

[87] RULES OF COURT, Rule 108, Sec. 1.

citizen of the foreign country. Neither can R.A. No. 8369 define the jurisdiction of the foreign court.

Article 26 of the Family Code confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. The second paragraph of Article 26 of the Family Code provides that "[w]here a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law." In *Republic v. Orbecido*,[88] this Court recognized the legislative intent of the second paragraph of Article 26 which is "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse"[89] under the laws of his or her country. The second paragraph of Article 26 of the Family Code only authorizes Philippine courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce. Philippine courts cannot try the case on the merits because it is tantamount to trying a case for divorce.

The second paragraph of Article 26 is only a corrective measure to address the anomaly that results from a marriage between a Filipino, whose laws do not allow divorce, and a foreign citizen, whose laws allow divorce. The anomaly consists in the Filipino spouse being tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. The correction is made by extending in the Philippines the effect of the foreign divorce decree, which is already effective in the country where it was rendered. The second paragraph of Article 26 of the Family Code is based on this Court's decision in *Van Dorn v. Romillo*[90] which declared that the Filipino spouse "should not

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[88] 509 Phil. 108 (2005).

[89] *Id.* at 114.

[90] 223 Phil. 357 (1985).

be discriminated against in her own country if the ends of justice are to be served."[91]

The principle in Article 26 of the Family Code applies in a marriage between a Filipino and a foreign citizen who obtains a foreign judgment nullifying the marriage on the ground of bigamy. The Filipino spouse may file a petition abroad to declare the marriage void on the ground of bigamy. The principle in the second paragraph of Article 26 of the Family Code applies because the foreign spouse, after the foreign judgment nullifying the marriage, is capacitated to remarry under the laws of his or her country. If the foreign judgment is not recognized in the Philippines, the Filipino spouse will be discriminated—the foreign spouse can remarry while the Filipino spouse cannot remarry.

Under the second paragraph of Article 26 of the Family Code, Philippine courts are empowered to correct a situation where the Filipino spouse is still tied to the marriage while the foreign spouse is free to marry. Moreover, notwithstanding Article 26 of the Family Code, Philippine courts already have jurisdiction to extend the effect of a foreign judgment in the Philippines to the extent that the foreign judgment does not contravene domestic public policy. A critical difference between the case of a foreign divorce decree and a foreign judgment nullifying a bigamous marriage is that bigamy, as a ground for the nullity of marriage, is fully consistent with Philippine public policy as expressed in Article 35(4) of the Family Code and Article 349 of the Revised Penal Code. The Filipino spouse has the option to undergo full trial by filing a petition for declaration of nullity of marriage under A.M. No. 02-11-10-SC, but this is not the only remedy available to him or her. Philippine courts have jurisdiction to recognize a foreign judgment nullifying a bigamous marriage, without prejudice to a criminal prosecution for bigamy.

In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law. They cannot decide on the "family

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[91] *Id.* at 363.

rights and duties, or on the status, condition and legal capacity" of the foreign citizen who is a party to the foreign judgment. Thus, Philippine courts are limited to the question of whether to extend the effect of a foreign judgment in the Philippines. In a foreign judgment relating to the status of a marriage involving a citizen of a foreign country, Philippine courts only decide whether to extend its effect to the Filipino party, under the rule of *lex nationalii* expressed in Article 15 of the Civil Code.

For this purpose, Philippine courts will only determine (1) whether the foreign judgment is inconsistent with an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, *i.e.* want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. If there is neither inconsistency with public policy nor adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations. Section 48(b), Rule 39 of the Rules of Court states that the foreign judgment is already "presumptive evidence of a right between the parties." Upon recognition of the foreign judgment, this right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry. The recognition of the foreign judgment nullifying a bigamous marriage is a subsequent event that establishes a new status, right and fact[92] that needs to be reflected in the civil registry. Otherwise, there will be an inconsistency between the recognition of the effectivity of the foreign judgment and the public records in the Philippines.

However, the recognition of a foreign judgment nullifying a bigamous marriage is without prejudice to prosecution for bigamy under Article 349 of the Revised Penal Code.[93] The recognition of a foreign judgment nullifying a bigamous marriage is not a

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[92] *See* RULES OF COURT, Rule 1, Sec. 3(c).

[93] *See* RULES OF COURT, Rule 72, Sec. 2. *Applicability of rules of civil actions.* — In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

ground for extinction of criminal liability under Articles 89 and 94 of the Revised Penal Code. Moreover, under Article 91 of the Revised Penal Code, "[t]he term of prescription [of the crime of bigamy] shall not run when the offender is absent from the Philippine archipelago."

Since A.M. No. 02-11-10-SC is inapplicable, the Court no longer sees the need to address the questions on venue and the contents and form of the petition under Sections 4 and 5, respectively, of A.M. No. 02-11-10-SC.

WHEREFORE, we **GRANT** the petition. The Order dated 31 January 2011 and the Resolution dated 2 March 2011 of the Regional Trial Court, Branch 107, Quezon City, in Civil Case No. Q-11-68582 are **REVERSED** and **SET ASIDE**. The Regional Trial Court is **ORDERED** to **REINSTATE** the petition for further proceedings in accordance with this Decision.

SO ORDERED.

Brion, del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

Rule 111, Sec. 2. *When separate civil action is suspended.* — x x x

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

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.

FIRST DIVISION

[G.R. No. 197363. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMAN ZAFRA y SERRANO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIVIAL AND INSIGNIFICANT DISCREPANCIES WHICH WERE IMMEDIATELY CLARIFIED UPON FURTHER QUESTIONING WILL WARRANT NEITHER THE REJECTION OF THE TESTIMONY OF THE WITNESS NOR THE REVERSAL OF THE JUDGMENT.—** This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness. The inconsistencies Zafra are referring to are frivolous matters, which merely confused AAA when she was being questioned. Those matters are inconsequential and do not even pertain to AAA's ordeal. Thus, such trivial and insignificant discrepancies, which in this case were immediately clarified upon further questioning, will warrant neither the rejection of her testimony nor the reversal of the judgment.
2. **ID.; ID.; ID.; THE FAILURE OF COMPLAINANT TO DISCLOSE HER DEFILEMENT WITHOUT LOSS OF TIME TO PERSONS CLOSE TO HER OR TO REPORT THE MATTER TO THE AUTHORITIES DOES NOT PERFORCE WARRANT THE CONCLUSION THAT SHE WAS NOT SEXUALLY MOLESTED AND THAT HER CHARGES AGAINST THE ACCUSED ARE ALL BASELESS, UNTRUE AND FABRICATED.—** It is not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant. A rape charge only becomes doubtful when the victim's inaction or delay in reporting the crime is unreasonable or unexplained. In the case at bar, AAA testified that she did not immediately report the crime because she was afraid of her father, that her mother would not side

with her even though she was aware of what Zafra was doing to her, and the rumors that might spread once word of what her father had been doing to her comes out. It must be noted that AAA was only a young girl when Zafra started molesting her. It is but natural that she factor in her decisions how her father and mother would react. Furthermore, it is settled jurisprudence that delay in filing a complaint for rape is not an indication of falsehood, *viz*: The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

3. ID.; ID.; ID.; ALTHOUGH THE CONDUCT OF THE VICTIM AFTER THE ALLEGED SEXUAL ASSAULT IS TENDS TO ESTABLISH THE TRUTH OR FALSITY OF THE CHARGE OF RAPE, SUFFICE IT TO SAY THAT THERE IS NO ONE STANDARD REACTION THAT CAN BE EXPECTED FROM A VICTIM OF A CRIME SUCH AS RAPE.— Anent AAA's behavior after the rapes, suffice it to say that there is no one standard reaction that can be expected from a victim of a crime such as rape. Elucidating on this point, this Court, in *People v. Saludo*, held: Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. And although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or

startling experience, each situation being different and dependent on the various circumstances prevailing in each case.

4. **CRIMINAL LAW; RAPE; THE ABSENCE OF EXTERNAL SIGNS OR PHYSICAL INJURIES DOES NOT NEGATE THE COMMISSION OF THE CRIME OF RAPE.—** "Not all blows leave marks." The worst blow was that inflicted on AAA's psyche and dignity, which may have left an indelible though invisible mark. Thus, the fact that Dr. Nulud found no external physical signs of injury on AAA's thighs, contrary to her statement that she was hit there by Zafra, does not invalidate her claim that Zafra raped her that day and that he punched her thighs whenever she resisted. Expounding on a similar argument, this Court, in *People v. Rabanes*, held: While the victim testified that she was slapped many times by the accused-appellant, which caused her to become unconscious, the doctor found no trace or injury on her face. **The absence of any injury or hematoma on the face of the victim does not negate her claim that she was slapped.** Dr. Lao also testified that if the force was not strong enough or if the patient's skin is normal, as compared to other patients where even a slight rubbing of their skin would cause a blood mark, no hematoma will result. But, even granting that there were no extra-genital injuries on the victim, **it had been held that the absence of external signs or physical injuries does not negate the commission of the crime of rape.** The same rule applies even though no medical certificate is presented in evidence. **Proof of injuries is not necessary because this is not an essential element of the crime**. It has been ruled, in a long line of cases, that "absence of external signs of physical injuries does not negate rape." The doctrine is thus well-entrenched in our jurisprudence, and the Court of Appeals correctly applied it.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE INCONSISTENCIES IN A RAPE VICTIM'S TESTIMONY DO NOT IMPAIR HER CREDIBILITY, ESPECIALLY IF THE INCONSISTENCIES REFER TO TRIVIAL MATTERS THAT DO NOT ALTER THE ESSENTIAL FACT OF THE COMMISSION OF RAPE.—** This Court has been regular in its declaration that "[i]nconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission

of rape." Thus, Zafra's attempt to discredit AAA's testimony that he raped her on December 14, 2001 must ultimately fail for his failure to show solid grounds on which to impeach it. Besides, the task of evaluating the credibility of the witnesses and their testimonies is best left to the RTC, which had the opportunity to scrutinize the witnesses directly during the trial.

6. **ID.; ID.; ID.; THE RAPE VICTIM'S CREDIBILITY CANNOT BE DIMINISHED OR TAINTED BY IMPUTATION OF ILL MOTIVES FOR IT IS HIGHLY UNTHINKABLE FOR THE VICTIM TO FALSELY ACCUSE HER FATHER SOLELY BY REASON OF ILL MOTIVE OR GRUDGE.—** AAA's credibility cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge. In the case, x x x of *People v. Melivo*, x x x this Court therein held: These allegations, we stated earlier, are not enough to overcome the fact that the consequences of filing a case of rape are so serious that an ordinary woman would have second thoughts about filing charges against her assailant. It takes much more for a sixteen year old lass to fabricate a story of rape, have her private parts examined, subject herself to the indignity of a public trial and endure a lifetime of ridicule. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for the most of his remaining life to jail and drag herself and the rest of her family to a lifetime of shame.

7. **ID.; ID.; DEFENSE OF DENIAL; WILL ONLY PROSPER UPON THE PRESENTATION OF CLEAR AND CONVINCING EVIDENCE SUBSTANTIATING IT.—** Zafra's defense of denial must necessarily fail. It is a well-settled doctrine that such defense will only prosper upon the presentation of clear and convincing evidence substantiating it. Otherwise, it is a self-serving assertion that deserves no weight in law, and which cannot prevail over the positive, candid, and categorical testimony of the complainant.

8. **ID.; ID.; RETRACTIONS ARE LOOK UPON WITH CONSIDERABLE DISFAVOR BECAUSE THEY ARE GENERALLY UNRELIABLE; RATIONALE.—** Courts look upon retractions with considerable disfavor because they are

generally unreliable. To explain the rationale for rejecting recantations, this Court, in *People v. Alejo*, quoting Chief Justice Reynato S. Puno, held: Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. x x x. The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. Moreover, there is always the probability that they will later be repudiated and there would never be an end to criminal litigation. It would also be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. x x x. In the case at bar, AAA's retractions were not even in an Affidavit of Desistance. They were written on mere scraps of paper, and in different handwritings. This Court agrees with both lower courts that if the notes were genuine, they should have been authenticated according to the rules on evidence. If it were true that AAA wanted to withdraw the case against her father, she should have approached the prosecutor and expressed her desire to do so. Moreover, she should have taken the witness stand once more to attest to her alleged letters. It is worthy to note that in her alleged recantations, AAA enumerated, as reasons for her filing this complaint, the same exact defenses Zafra presented before the court.

9. **CRIMINAL LAW; QUALIFIED RAPE; IMPOSABLE PENALTY.—** First of all, Zafra must be reminded that one of the facts he stipulated on during the pre-trial was his relationship with AAA, *i.e.*, he admitted that AAA is his daughter. Second, the birth certificate, which was submitted to the court was not only proof of AAA's minority, but was also proof of her filiation. Lastly, this objection was never brought up during the trial of the case. In fact, Zafra constantly referred to AAA as his daughter during his testimony. As the rape was qualified by the circumstances of AAA's minority and Zafra's paternity, the RTC was correct in imposing the penalty of death under Article 266-B(1) of the Revised Penal Code. However, as the Court of Appeals stated, Republic Act No. 9346, which took

effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Zafra in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— While the Court affirms the award of civil indemnity and moral damages, each in the amount of ₱75,000.00, the Court increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00, and further subjects the indemnity and damages awarded to interest at the rate of six percent per annum from the date of finality of this judgment until fully paid, in line with prevailing jurisprudence.

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.*:

Accused-appellant ROMAN ZAFRA y SERRANO (Zafra) is now before Us on review after the Court of Appeals, in its June 29, 2010 Decision[1] in **CA-G.R. CR.-H.C. No. 01921**, affirmed with modification the January 20, 2006 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 159, in Criminal Case No. 122297-H, wherein he was found guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353.[3]

On December 19, 2001, an Information[4] was filed before the RTC, charging Zafra with the crime of qualified rape of his minor daughter. The accusatory portion of the Information reads:

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Elihu A. Ybañez, concurring.

[2] CA *rollo*, pp. 8-16.

[3] Also known as The Anti-Rape Law of 1997.

[4] Records, p. 1.

On or about December 14, 2001, in Pasig City and within the jurisdiction of this Honorable Court, the accused, who is then a father of the complainant, did then and there willfully, unlawfully and feloniously had sexual intercourse with one [AAA[5]], 17 years old, a minor, against her will and consent.

Zafra pleaded not guilty to the charge upon his arraignment on February 4, 2002.[6] Thereafter, the parties held their pre-trial conference, wherein they stipulated on the facts that AAA was the daughter of Zafra, and that she was only 17 years old on December 14, 2001.[7]

The contradicting versions of the parties, as culled from the records of the case, are as follows:

Version of the Prosecution

AAA testified that her father, Zafra, started molesting her when she was around 13 or 14 years old. He used to insert his finger in her vagina and mash her breasts, which progressed into actual sexual intercourse when she was about 15. AAA claimed that her mother knew what her father was doing to her but did nothing to stop it. Aside from her best friend in school, AAA told no one about her ordeal for fear of her father, that her mother would not side with her, and that rumors about her would spread. Sometime in November 2001 however, she moved to her aunt's house, after she was again raped by Zafra.[8]

On December 14, 2001, her brother went to her aunt's house to tell AAA that Zafra had some chores for her. AAA followed her brother to their house, where she found Zafra, who asked

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[5] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[6] Records, p. 17.

[7] *Id.* at 27-28.

[8] TSN, June 11, 2002, pp. 5, 15-26,

her to fix the beddings and wash the dishes. When her brother left the house, Zafra instructed AAA to get his dirty clothes in his room. AAA did as she was told, but Zafra went inside the room and locked the door just as she was about to go out. At this point, AAA dropped the dirty clothes and ran towards the door but Zafra grabbed her and made her lie on the bed. AAA struggled but her protests were met with slaps and punches. Zafra then removed both their lower garments, spat on his hand, put the saliva on his penis, and then inserted his finger into AAA's vagina. Thereafter, Zafra inserted his penis in AAA's vagina and held her breast. After Zafra ejaculated, he wiped his penis with a towel. AAA in turn wiped the semen off her abdomen, and while she was dressing up, Zafra warned her against telling anybody of what happened. AAA immediately picked up the dirty clothes on the floor and went out the room.[9]

After having lunch with her mother, who arrived while she was doing the laundry, she returned to her aunt's house. At her aunt's house, her mother asked her *"inulit na naman ng tatay mo, ano*?"[10] to which, she replied yes. Her mother told her that they would file a complaint, then went back to their house, got the linen in her father's room, then soaked it in water. Just as AAA was about to leave her aunt's house, her mother arrived and asked her where she was headed. AAA said she was going to file a complaint against her father. AAA's mother accompanied her but was prodding her not to file any complaint. AAA however proceeded to file the complaint, and was subjected to a medical examination on the same day.[11]

After examining AAA, Dr. Voltaire P. Nulud in his Medico-Legal Report No. M-3278-01[12] concluded as follows:

> Subject is in non-virgin state physically.
> There are no external signs of application of any form of physical trauma.

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[9] *Id.* at 5-10.

[10] *Id.* at 10.

[11] *Id.* at 10-11.

[12] Records, p. 73.

Version of the Defense

Zafra denied the charge against him and claimed that it was filed as an act of retaliation by his wife. Zafra said that he and his wife fought about one of the rooms he was renting out because he would not acquiesce to renting it out to his sister-in-law and parents-in-law free of charge. In the meantime, Zafra learned that AAA was not attending school. This prompted him to scold her, but because his parents-in-law protected her, Zafra went to the extent of driving AAA and his parents-in-law out of the house. When this happened, Zafra's wife threatened to send him to jail. In fact, she had him arrested twice on drug charges but he was released for lack of evidence for the first charge, and on bail for the second charge. A few days later, he was again arrested, this time, on a rape charge against his daughter.[13]

As proof of his defense, Zafra presented letters from AAA wherein she admitted to fabricating the charge against her father because he and her mother fought, and because he drove all of them out of his house. She also admitted therein to having worked at a beer house and prostituting herself.[14]

Ruling of the RTC

On January 20, 2006, the RTC rendered its Decision, giving credence to the prosecution's version, found Zafra guilty of qualified rape of his minor daughter, and sentenced him to death, in this manner:

> **WHEREFORE,** in view of the foregoing, this Court finds the accused **ROMAN ZAFRA Y SERRANO GUILTY** beyond reasonable doubt of the crime of rape Under Art. 266-A of the Revised Penal Code as Amended by [Republic Act No.] 8353 and hereby sentences the said accused to suffer the supreme penalty of **DEATH and** to indemnify the victim the amount[s] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[15]

[13] TSN, October 12, 2004, pp. 3-6.

[14] Records, pp. 147-149.

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

Zafra appealed[16] to the Court of Appeals, imputing error on the part of the RTC for relying on AAA's inconsistent testimony and thereafter convicting him despite the prosecution's failure to rebut the presumption that he is innocent.

Ruling of the Court of Appeals

On June 29, 2010, the Court of Appeals affirmed the RTC's Decision, modifying the amount of moral damages awarded and the imposable penalty, to wit:

> **WHEREFORE**, the appeal is **DENIED** for lack of merit. The Decision dated January 20, 2006 of the Regional Trial Court of Pasig City, Branch 159 in Criminal Case No. 122297-H which found Roman Zafra y Serrano guilty of raping his own minor daughter is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of death is reduced to **RECLUSION PERPETUA WITHOUT ELIGIBILITY FOR PAROLE**, in accordance with Sections 2 and 3 of Republic Act No. 9346. The award of **MORAL DAMAGES** is also **INCREASED** from ₱50,000.00 to ₱75,000.00.[17]

Issues

Undaunted, Zafra is now before this Court,[18] with the same[19] assignment of errors he presented before the Court of Appeals, *viz*:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S HIGHLY INCONSISTENT AND UNREALISTIC TESTIMONY.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF

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[16] *Id.* at 24-44.

[17] *Rollo*, p. 17.

[18] *Id.* at 19-21.

[19] *Id.* at 49-51.

THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

III

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UNDER THE CIRCUMSTANCES.[20]

As stipulated by the parties during the pre-trial, Zafra does not contest the facts that AAA is his biological daughter and was only 17 years old on December 14, 2001, the time the last rape occurred. What Zafra challenges is his conviction in light of the evidence the prosecution submitted during his trial.

Zafra attacks the credibility of AAA for being inconsistent. He claims that during AAA's testimony, she was so confused that she contradicted her own statements. Zafra also emphasizes the fact that prior to December 14, 2001, AAA acted as if nothing had happened at all. Zafra claims that the fact that she did not stay away from him despite the alleged incidents of rape belie her claim of sexual abuse. In support of his argument, Zafra points out the fact that AAA did not sustain any external physical marks, as shown by the medico-legal findings, despite her testimony that on December 14, 2001, Zafra punched her thighs whenever she resisted him. [21]

Ruling and Discussion

The present appeal is devoid of merit.

Zafra was charged with Rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

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[20] CA *rollo*, pp. 26-27.

[21] *Id.* at 33-37.

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

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

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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

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

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

Credibility of AAA

Zafra is trying to discredit AAA by enumerating several points against her, to wit:

1. Zafra claims that AAA's inconsistent and contradictory testimony is a clear indication that she merely concocted her story of rape.[22]

This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial

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[22] *Id.* at 35.

account has never been used as a standard in testing the credibility of a witness.[23] The inconsistencies Zafra are referring to are frivolous matters, which merely confused AAA when she was being questioned. Those matters are inconsequential and do not even pertain to AAA's ordeal. Thus, such trivial and insignificant discrepancies, which in this case were immediately clarified upon further questioning, will warrant neither the rejection of her testimony nor the reversal of the judgment.[24]

2. Zafra insists that AAA's actions, of not immediately reporting that she was raped and returning to their house, belie her claim of sexual abuse.[25]

It is not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant. A rape charge only becomes doubtful when the victim's inaction or delay in reporting the crime is unreasonable or unexplained.[26] In the case at bar, AAA testified that she did not immediately report the crime because she was afraid of her father, that her mother would not side with her even though she was aware of what Zafra was doing to her, and the rumors that might spread once word of what her father had been doing to her comes out. It must be noted that AAA was only a young girl when Zafra started molesting her. It is but natural that she factor in her decisions how her father and mother would react. Furthermore, it is settled jurisprudence that delay in filing a complaint for rape is not an indication of falsehood, *viz*:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense

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[23] *People v. Cabungan,* G.R. No. 189355, January 23, 2013.

[24] *Id.*

[25] CA *rollo*, pp. 35-36.

[26] *People v. Cabungan, supra* note 23.

is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[27] (Citations omitted.)

Anent AAA's behavior after the rapes, suffice it to say that there is no one standard reaction that can be expected from a victim of a crime such as rape. Elucidating on this point, this Court, in *People v. Saludo*,[28] held:

Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. And although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case. (Citations omitted.)

3. Zafra avers that AAA's allegation that he punched her several times on her thighs is contradictory to the medico-legal findings, which showed no external physical marks of trauma on AAA.[29]

"Not all blows leave marks."[30] The worst blow was that inflicted on AAA's psyche and dignity, which may have left an indelible though invisible mark. Thus, the fact that Dr. Nulud

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[27] *People v. Gecomo*, 324 Phil. 297, 314-315 (1996).

[28] G.R. No. 178406, April 6, 2011, 647 SCRA 374, 394.

[29] CA *rollo*, pp. 36-37.

[30] *People v. Paringit*, G.R. No. 83947, September 13, 1990, 189 SCRA 478, 487.

found no external physical signs of injury on AAA's thighs, contrary to her statement that she was hit there by Zafra, does not invalidate her claim that Zafra raped her that day and that he punched her thighs whenever she resisted. Expounding on a similar argument, this Court, in *People v. Rabanes*,[31] held:

> While the victim testified that she was slapped many times by the accused-appellant, which caused her to become unconscious, the doctor found no trace or injury on her face. **The absence of any injury or hematoma on the face of the victim does not negate her claim that she was slapped.** Dr. Lao also testified that if the force was not strong enough or if the patient's skin is normal, as compared to other patients where even a slight rubbing of their skin would cause a blood mark, no hematoma will result. But, even granting that there were no extra-genital injuries on the victim, **it had been held that the absence of external signs or physical injuries does not negate the commission of the crime of rape.** The same rule applies even though no medical certificate is presented in evidence. **Proof of injuries is not necessary because this is not an essential element of the crime**. (Citations omitted, emphases added.)

It has been ruled, in a long line of cases,[32] that "absence of external signs of physical injuries does not negate rape."[33] The doctrine is thus well-entrenched in our jurisprudence, and the Court of Appeals correctly applied it.[34]

This Court has been regular in its declaration that "[i]nconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape."[35] Thus, Zafra's attempt to discredit AAA's testimony

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[31] G.R. No. 93709, May 8, 1992, 208 SCRA 768, 776-777.

[32] *People v. Casipit*, G.R. No. 88229, May 31, 1994, 232 SCRA 638, 642; *People v. Barcelona*, G.R. No. 82589, October 31, 1990, 191 SCRA 100, 105; *People v. Alfonso*, 237 Phil. 467, 479 (1987); *People v. Juntilla*, 373 Phil. 351, 365 (1999); *People v. Davatos*, G.R. No. 93322, February 4, 1994, 229 SCRA 647, 652; *People v. Managaytay*, 364 Phil. 800, 807 (1999).

[33] *People v. Arnan*, G.R. No. 72608, June 30, 1993, 224 SCRA 37, 43.

[34] *Rollo*, p. 15.

[35] *People v. Boromeo,* G.R. No. 150501, June 3, 2004, 430 SCRA 533, 547.

that he raped her on December 14, 2001 must ultimately fail for his failure to show solid grounds on which to impeach it. Besides, the task of evaluating the credibility of the witnesses and their testimonies is best left to the RTC, which had the opportunity to scrutinize the witnesses directly during the trial, *viz*:

> It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.[36] (Citations omitted.)

Defenses of Improper Motive And Denial

Zafra's denial is coupled with the attribution of ill motive against AAA. He claims that AAA filed this case because he scolded her and because of his quarrel with his wife and in-laws.

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[36] *People v. Sapigao, Jr.,* G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.

AAA's credibility cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge.[37] In the case, for instance, of *People v. Melivo*,[38] wherein the accused claimed that the complainant, his 16-year old daughter, together with her mother, concocted the charge of rape in retaliation against his maintaining a mistress, and because his daughter bore a grudge against him,[39] this Court therein held:

> These allegations, we stated earlier, are not enough to overcome the fact that the consequences of filing a case of rape are so serious that an ordinary woman would have second thoughts about filing charges against her assailant. It takes much more for a sixteen year old lass to fabricate a story of rape, have her private parts examined, subject herself to the indignity of a public trial and endure a lifetime of ridicule. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for the most of his remaining life to jail and drag herself and the rest of her family to a lifetime of shame. (Citation omitted.)

Moreover, Zafra's claim that his wife wanted him in jail is contrary to AAA's testimony that her own mother, Zafra's wife, tried to dissuade her from filing this case against him.

Zafra's defense of denial must necessarily fail. It is a well-settled doctrine that such defense will only prosper upon the presentation of clear and convincing evidence substantiating it. Otherwise, it is a self-serving assertion that deserves no weight in law, and which cannot prevail over the positive, candid, and categorical testimony of the complainant.[40]

Defense of Retraction

Courts look upon retractions with considerable disfavor because they are generally unreliable. To explain the rationale for rejecting

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[37] *People v. Acala*, 366 Phil. 797, 814 (1999).

[38] 323 Phil. 412 (1996).

[39] *Id.* at 427-428.

[40] *People v. Dion*, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 135.

recantations, this Court, in *People v. Alejo*,[41] quoting Chief Justice Reynato S. Puno, held:

> Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. x x x. The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. Moreover, there is always the probability that they will later be repudiated and there would never be an end to criminal litigation. It would also be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.

Further propounding on retractions, usually contained in affidavits of desistance, we said in *People v. Alcazar*[42]:

> We have said in so many cases that **retractions are generally unreliable** and are looked upon with disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.
>
> Thus, we have declared that at most the **retraction is an afterthought which should not be given probative value**. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule would make a solemn trial a mockery and place the investigation at the mercy of unscrupulous

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[41] 458 Phil. 461, 474 (2003).

[42] G.R. No. 186494, September 15, 2010, 630 SCRA 622, 635-636.

witnesses. Because **affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable**. (Citation omitted.)

In the case at bar, AAA's retractions were not even in an Affidavit of Desistance. They were written on mere scraps of paper, and in different handwritings. This Court agrees with both lower courts that if the notes were genuine, they should have been authenticated according to the rules on evidence. If it were true that AAA wanted to withdraw the case against her father, she should have approached the prosecutor and expressed her desire to do so. Moreover, she should have taken the witness stand once more to attest to her alleged letters. It is worthy to note that in her alleged recantations, AAA enumerated, as reasons for her filing this complaint, the same exact defenses Zafra presented before the court.

Proper Penalty

Zafra, in his last assigned error, avers that assuming he was guilty, the penalty imposed upon him was wrong as the prosecution failed to prove the qualifying circumstance of his relationship to AAA. He claims that aside from AAA's testimony that Zafra is her father, the RTC had no other basis in appreciating the qualifying circumstance of relationship.[43]

First of all, Zafra must be reminded that one of the facts he stipulated on during the pre-trial was his relationship with AAA, *i.e.*, he admitted that AAA is his daughter.[44] Second, the birth certificate, which was submitted to the court was not only proof of AAA's minority, but was also proof of her filiation. Lastly, this objection was never brought up during the trial of the case. In fact, Zafra constantly referred to AAA as his daughter during his testimony.[45]

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[43] CA *rollo*, pp. 40-42.

[44] Records, p. 27.

[45] TSN, January 18, 2005.

As the rape was qualified by the circumstances of AAA's minority and Zafra's paternity, the RTC was correct in imposing the penalty of death under Article 266-B(1) of the Revised Penal Code. However, as the Court of Appeals stated, Republic Act No. 9346,[46] which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Zafra in lieu of the death penalty is *reclusion perpetua*,[47] without eligibility for parole.[48]

While the Court affirms the award of civil indemnity and moral damages, each in the amount of ₱75,000.00, the Court increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00,[49] and further subjects the indemnity and damages awarded to interest at the rate of six percent per annum from the date of finality of this judgment[50] until fully paid, in line with prevailing jurisprudence.

WHEREFORE, premises considered, the decision of the Court of Appeals in **CA-G.R. CR.-H.C. No. 01921**, is hereby **AFFIRMED with MODIFICATION**. Accused-appellant ROMAN ZAFRA y SERRANO is found **GUILTY** beyond reasonable doubt of the crime of qualified rape, and sentenced to *reclusion perpetua*, in lieu of death, without eligibility for parole. He is ordered to pay the victim AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, with interest at the rate of 6% per annum from the date of finality of this judgment. No costs.

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[46] An Act Prohibiting the Imposition of Death Penalty in the Philippines, June 24, 2006.

[47] Republic Act No. 9346, Section 2.

[48] *Id.*, Section 3.

[49] *People v. Miranda*, G.R. No. 176634, April 5, 2010, 617 SCRA 298, 316-317.

[50] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 199354. June 26, 2013]

WILSON T. GO, *petitioner, vs.* **BPI FINANCE CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL TO THE COURT OF APPEALS; MUST BE FILED WITHIN A PERIOD OF FIFTEEN DAYS, WHICH MAY BE EXTENDED UPON REQUEST OF THE PARTY SPECIFICALLY CITING REASON THEREFOR, AND ONLY AT THE DISCRETION OF THE COURT OF APPEALS, AND ON THE BASIS OF REASONS IT MAY FIND MERITORIOUS, BUT IN NO CASE TO EXCEED FIFTEEN DAYS, SAVE IN EXCEPTIONALLY MERITORIOUS CASES.—** The rule is clear that an appeal to the CA must be filed within a period of fifteen (15) days. While a further extension of fifteen (15) days may be requested, a specific request must be made with specifically cited reason for the request. The CA may grant the request only at its discretion and, by jurisprudence, only on the basis of reasons it finds meritorious. Under the requirements, it is clear that only fifteen (15) days may initially be requested, not the thirty (30) days Go requested. The petitioner cannot also assume that his motion has been granted if the CA did not immediately act. In fact, faced with the failure to act, the conclusion is that no favorable action had taken place and the motion had been denied. It is thus immaterial that the resolution granting the extension of time was only

issued four months later, although such late action is a response we cannot approve of. In any case, the late response cannot be used as an excuse to delay the filing of its pleading as a party cannot make any assumption on how his motion would be resolved. Precisely, a motion is submitted to the court for resolution and we cannot allow any assumption that it would be granted.

2. **ID.; ID.; THE PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PERMITTED BY LAW IS NOT ONLY MANDATORY, BUT JURISDICTIONAL, AND THE FAILURE TO PERFECT THAT APPEAL RENDERS THE JUDGMENT OF THE COURT FINAL AND EXECUTORY.—** The right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered. Contrary to Go's assertion, his appeal was not denied on a mere technicality. "The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory."

3. **ID.; ID.; EXTENSIONS OF TIME TO FILE A PETITION FOR REVIEW, POLICY THEREON; THE PARTY CANNOT SIMPLY DEMAND FOR A LONGER PERIOD, WITHOUT CITING THE REASON THEREFOR, FOR THE COURT'S CONSIDERATION AND APPLICATION OF DISCRETION.—** In *Lacsamana v. IAC,* the Court laid down the now established policy on extensions of time in order to prevent the abuse of this recourse. The Court said: *Beginning one month after the promulgation* of this Decision, ***an extension of only fifteen days*** for filing a petition for review may be granted by the Court of Appeals, save in exceptionally meritorious cases. The motion for extension of time must be filed and the corresponding docket fee paid within the reglementary period of appeal. We similarly ruled in *Videogram Regulatory Board v. Court of Appeals* where we said that the appellant "knew or ought to have known that, pursuant to the above rule, his motion for extension of time of thirty (30) days could be granted for only fifteen (15) days. There simply was no basis for assuming that the requested 30-day extension would be granted." As we

heretofore stressed, an extension of time to appeal is generally allowed only for fifteen (15) days. Go cannot simply demand for a longer period, without citing the reason therefor, for the court's consideration and application of discretion.

4. ID.; ID.; PETITIONS FOR REVIEW ON *CERTIORARI*; THE COURT RULE SOLELY ON QUESTIONS OF LAW.— [T]his Court rules only on questions of law in petitions for review on *certiorari* under Rule 45 of the Rules of Court. This Court is likewise bound by findings of fact of the lower courts in the absence of grave abuse of discretion, particularly where all three tribunals below have been unanimous in their factual findings. Thus, even on the merits, there is more than enough reason to deny the present petition.

APPEARANCES OF COUNSEL

Ricardo E. Aragones for petitioner.
Dabu and Associates for respondent.

D E C I S I O N

BRION, *J*.:

Before us is the petition for review on *certiorari,*[1] filed by Wilson Go under Rule 45 of the Rules of Court, assailing the resolutions dated May 4, 2010[2] and October 12, 2011[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 111800. The CA denied Go's petition for review for having been filed out of time.

The Antecedent Facts

BPI Finance Corporation (*BPI*), operating under the name BPI Express Credit Card, has been engaged in the business of

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[1] *Rollo*, pp. 11-32.

[2] *Id.* at 36. Penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Mario V. Lopez and Franchito N. Diamante.

[3] *Id.* at 37-39.

extending credit accommodations through the use of credit cards. Under the system, BPI agrees to extend credit accommodations to its cardholders for the purchase of goods and services from BPI's member establishments on the condition that the charges incurred shall be reimbursed by the cardholders to BPI upon proper billing.[4]

BPI filed a complaint for collection of sum of money before the Metropolitan Trial Court (*MeTC*), Branch 67, Makati City, against Go. The complaint alleged that Go was among the cardholders of BPI when he was the Executive Vice-President of Noah's Ark Merchandising and that Go incurred credit charges amounting to ₱77,970.91.[5]

Go denied the allegations, arguing that the BPI credit card was a company account and was issued to him because of his position as Executive Vice-President. He also stated that he had actually requested from BPI an updated statement of account, as well as supporting documents for purposes of accounting and verification, but BPI failed to comply.[6]

At the pre-trial, the parties agreed to the truth of the contents of the following:

1. Credit Card Application;
2. Letter dated February 16, 2000 [which was sent to Go at his] office address at Noah's Ark Merchandising;
3. Statements of Account dated February 20, 2000, May 20, 2000, April 20, 2000 and March 20, 2000.[7]

BPI also presented a witness who testified during trial that the BPI credit card belongs to Go. However, Go insisted that he cannot be held liable since he was only acting in behalf of the company. In his comment, he argued that the credit card

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[4] *Id.* at 45.

[5] *Ibid.*

[6] *Ibid.*

[7] *Id.* at 46.

application was a mere "pro forma" document unilaterally prepared by BPI; that the letter sent to his office address would prove that it was a company account; and that although the statements of account were not disputed, he alleged that he did not receive any demand letter from BPI.[8]

Go failed to present any evidence during the hearing. As a result, the MeTC declared that he had waived his right to present evidence. For this reason, the court deemed the case submitted for decision.[9]

On April 23, 2008, the MeTC rendered a decision[10] whose dispositive portion reads:

> WHEREFORE, the Court RENDERS judgment holding the defendant Wilson T. Go liable to pay plaintiff BPI Card Finance Corporation the following amounts:
>
> 1. ₱77,970.91 plus interest of 1% per month and penalty of 1% per month to be computed from May 23, 2000 until full payment;
> 2. 10% of the total amount due as attorney's fees; and
> 3. Cost of suit.[11]

The MeTC ruled that nothing in the credit card application states that the credit card was for the account of the company. The statement of account was addressed to Noah's Ark Merchandising simply because Go requested it. By preponderance of evidence, the MeTC found that BPI proved the existence of Go's debt.[12]

Go appealed the MeTC decision to the Regional Trial Court (*RTC*). In a decision dated September 4, 2009, the RTC fully affirmed the MeTC decision. Go filed a motion for reconsideration,

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[8] *Ibid.*

[9] *Id.* at 46.

[10] *Id.* at 45-48. Penned by Presiding Judge Rico Sebastian D. Liwanag.

[11] *Id.* at 47.

[12] *Ibid.*

which the RTC denied in an order dated November 16, 2009. Go's counsel received the denial of the motion for reconsideration on November 26, 2009.[13]

On December 10, 2009, Go filed before the CA a motion for extension of time for thirty (30) days, or up to January 10, 2009, within which to appeal. However, since January 10, 2010 was a Sunday, Go instead filed his petition for review on January 11, 2010.

On May 20, 2010, four months after the motion for extension of time was filed, the CA issued the disputed May 4, 2010 resolution, denying the petition for review:

> Petitioner's motion for extension of thirty (30) days is **PARTLY GRANTED**. Petitioner is granted "an additional period of 15 days only within which to file the petition for review." Considering that the Petition for Review was filed beyond the granted extension, the same is hereby **DENIED ADMISSION**.[14]

Go filed a motion for reconsideration which the CA also denied in a Resolution dated October 12, 2011. The CA explained that while the motion for extension of time was granted, only a period of fifteen (15) days was given, not the requested thirty (30) days. Hence, the last period to file the petition for review should have been on December 25, 2009, not on January 10, 2010 as Go had assumed. Since Go filed his petition for review after December 25, 2009, his filing was out of time.

<u>The Petition</u>

Go now questions the CA rulings before us. He posits that it was only on May 20, 2010, or four months after he filed his motion for extension of time, when he became aware that he had only been given an extension of 15 days. He also claims that he was denied due process on mere technicality, without resolving the petition based on the merits or the evidence presented.

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[13] *Id.* at 21.

[14] *Id.* at 36.

The Court's Ruling

We deny the petition for lack of merit.

Section 1, Rule 42 of the Rules of Court provides that:

> Section 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsidera-tion filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, ***the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.*** [emphasis, italics and underscore ours]

The rule is clear that an appeal to the CA must be filed within a period of fifteen (15) days. While a further extension of fifteen (15) days may be requested, a specific request must be made with specifically cited reason for the request. The CA may grant the request only at its discretion and, by jurisprudence, only on the basis of reasons it finds meritorious.

Under the requirements, it is clear that only fifteen (15) days may initially be requested, not the thirty (30) days Go requested. The petitioner cannot also assume that his motion has been granted if the CA did not immediately act. In fact, faced with the failure to act, the conclusion is that no favorable action had taken place and the motion had been denied. It is thus immaterial that the resolution granting the extension of time was only issued four months later, although such late action is a response we cannot approve of. In any case, the late response cannot be

used as an excuse to delay the filing of its pleading as a party cannot make any assumption on how his motion would be resolved. Precisely, a motion is submitted to the court for resolution and we cannot allow any assumption that it would be granted.

The right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.[15] Contrary to Go's assertion, his appeal was not denied on a mere technicality. "The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory."[16]

In *Lacsamana v. IAC,*[17] the Court laid down the now established policy on extensions of time in order to prevent the abuse of this recourse. The Court said:

> *Beginning one month after the promulgation* of this Decision, ***an extension of only fifteen days*** for filing a petition for review may be granted by the Court of Appeals, save in exceptionally meritorious cases.
>
> The motion for extension of time must be filed and the corresponding docket fee paid within the reglementary period of appeal.[18] (italics supplied; emphasis and underscore ours)

We similarly ruled in *Videogram Regulatory Board v. Court of Appeals*[19] where we said that the appellant "knew or ought to have known that, pursuant to the above rule, his motion for extension of time of thirty (30) days could be granted for only fifteen (15) days. There simply was no basis for assuming that

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[15] *Lebin v. Mirasol,* G.R. No. 164255, September 7, 2011, 657 SCRA 35, 44.

[16] *Demata v. Court of Appeals,* 363 Phil. 316, 323 (1999).

[17] 227 Phil. 606 (1986).

[18] *Id.* at 613.

[19] G.R. No. 106564, November 28, 1996, 265 SCRA 50, 57.

the requested 30-day extension would be granted." As we heretofore stressed, an extension of time to appeal is generally allowed only for fifteen (15) days. Go cannot simply demand for a longer period, without citing the reason therefor, for the court's consideration and application of discretion.

Additionally, this Court rules only on questions of law in petitions for review on *certiorari* under Rule 45 of the Rules of Court. This Court is likewise bound by findings of fact of the lower courts in the absence of grave abuse of discretion, particularly where all three tribunals below have been unanimous in their factual findings. Thus, even on the merits, there is more than enough reason to deny the present petition.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit. Costs against petitioner Wilson T. Go.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 199650. June 26, 2013]

J PLUS ASIA DEVELOPMENT CORPORATION, *petitioner, vs.* **UTILITY ASSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; DECISIONS OR AWARDS OF THE CONSTRUCTION

INDUSTRY ARBITRATION COMMISSION (CIAC) MAY BE APPEALED TO THE COURT OF APPEALS IN A PETITION FOR REVIEW; THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO REVIEW AWARDS OR DECISION OF THE CIAC IN CONSTRUCTION DISPUTES.— [W]e find no merit in petitioner's contention that with the institutionalization of alternative dispute resolution under Republic Act (R.A.) No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004, the CA was divested of jurisdiction to review the decisions or awards of the CIAC. Petitioner erroneously relied on the provision in said law allowing any party to a domestic arbitration to file in the Regional Trial Court (RTC) a petition either to confirm, correct or vacate a domestic arbitral award. We hold that R.A. No. 9285 did not confer on regional trial courts jurisdiction to review awards or decisions of the CIAC in construction disputes. On the contrary, Section 40 thereof expressly declares that confirmation by the RTC is not required, thus: **SEC. 40.** ***Confirmation of Award.*** – x x x. **A CIAC arbitral award need not be confirmed by the regional trial court to be executory as provided under E.O. No. 1008.** Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except on questions of law, which are appealable to the Supreme Court. With the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law.

2. **ID.; ID; MANNER AND MODE OF APPEALS FROM THE CIAC DECISIONS OR AWARDS; CIAC AWARDS NEED NOT BE CONFIRMED TO BE EXECUTORY.—** Petitioner misread the provisions of A.M. No. 07-11-08-SC (Special ADR Rules) promulgated by this Court and which took effect on October 30, 2009. Since R.A. No. 9285 explicitly excluded

CIAC awards from domestic arbitration awards that need to be confirmed to be executory, said awards are therefore not covered by Rule 11 of the Special ADR Rules, as they continue to be governed by EO No. 1008, as amended and the rules of procedure of the CIAC. The CIAC Revised Rules of Procedure Governing Construction Arbitration provide for the manner and mode of appeal from CIAC decisions or awards in Section 18 thereof, which reads: SECTION 18.2 ***Petition for review.*** — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; DEFAULT OR MORA; DEFINED; REQUISITES IN ORDER THAT THE DEBTOR MAY BE IN DEFAULT; ONE WHO CONTRACTS TO COMPLETE CERTAIN WORK WITHIN A CERTAIN TIME IS LIABLE FOR THE DAMAGE FOR NOT COMPLETING IT WITHIN SUCH TIME, UNLESS THE DELAY IS EXCUSED OR WAIVED.—** Default or *mora* on the part of the debtor is the delay in the fulfillment of the prestation by reason of a cause imputable to the former. It is the non-fulfillment of an obligation with respect to time. Article 1169 of the Civil Code provides: ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x It is a general rule that one who contracts to complete certain work within a certain time is liable for the damage for not completing it within such time, unless the delay is excused or waived. x x x. In this jurisdiction, the following requisites must be present in order that the debtor may be in default: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially or extrajudicially.

4. **ID.; ID.; CONTRACTS; THE VARIOUS STIPULATIONS OF A CONTRACT SHALL BE INTERPRETED TOGETHER, ATTRIBUTING TO THE DOUBTFUL ONES THAT SENSE WHICH MAY RESULT FROM ALL OF THEM TAKEN JOINTLY; THE WORK SCHEDULE APPROVED BY THE PETITIONER WAS INTENDED, NOT ONLY TO SERVE AS ITS BASIS FOR THE PAYMENT OF MONTHLY**

PROGRESS BILLINGS, BUT ALSO FOR EVALUATION OF THE PROGRESS OF WORK BY THE CONTRACTOR.— Article 1374 of the Civil Code requires that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. Here, the work schedule approved by petitioner was intended, not only to serve as its basis for the payment of monthly progress billings, but also for evaluation of the progress of work by the contractor. Article 13.01 (g) (iii) of the Construction Agreement provides that the contractor shall be deemed in default if, among others, it had delayed without justifiable cause the completion of the project "by more than thirty (30) calendar days *based on official work schedule* duly approved by the OWNER." Records showed that as early as April 2008, or within four months after Mabunay commenced work activities, the project was already behind schedule for reasons not attributable to petitioner.

5. **ID.; DAMAGES; LIQUIDATED DAMAGES; AS A PRECONDITION TO THE AWARD THEREOF, THERE MUST BE PROOF OF THE FACT OF DELAY IN THE PERFORMANCE OF THE OBLIGATION.—** Petitioner's claim against the Performance Bond included the liquidated damages provided in the Construction Agreement x x x. Liability for liquidated damages is governed by Articles 2226 to 2228 of the Civil Code x x x. A stipulation for liquidated damages is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. As a precondition to such award, however, there must be proof of the fact of delay in the performance of the obligation.

6. **ID.; ID.; ID.; WHERE A PARTY TO A BUILDING CONSTRUCTION CONTRACT FAILS TO COMPLY WITH THE DUTY IMPOSED BY THE TERMS OF THE CONTRACT, A BREACH RESULTS FOR WHICH AN ACTION MAY BE MAINTAINED TO RECOVER THE DAMAGES SUSTAINED THEREBY, AND A BREACH OCCURS WHERE THE CONTRACTOR INEXCUSABLY FAILS TO PERFORM SUBSTANTIALLY IN ACCORDANCE**

WITH THE TERMS OF THE CONTRACT.— Concededly, Article 12.01 of the Construction Agreement mentioned only the failure of the contractor to complete the project within the stipulated period or the extension granted by the owner. However, this will not defeat petitioner's claim for damages nor respondent's liability under the Performance Bond. Mabunay was clearly in default considering the dismal percentage of his accomplishment (32.38%) of the work he contracted on account of delays in executing the scheduled work activities and repeated failure to provide sufficient manpower to expedite construction works. x x x. [T]he contractor's default in this case pertains to his failure to substantially perform the work on account of tremendous delays in executing the scheduled work activities. Where a party to a building construction contract fails to comply with the duty imposed by the terms of the contract, a breach results for which an action may be maintained to recover the damages sustained thereby, and of course, a breach occurs where the contractor inexcusably fails to perform substantially in accordance with the terms of the contract.

7. **ID.; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; A STIPULATION ALLOWING THE CONFISCATION OF THE CONTRACTOR'S PERFORMANCE BOND IN CASE OF BREACH OF THE OBLIGATION PARTAKES OF THE NATURE OF A PENALTY CLAUSE AND SUCH STIPULATION IS STRICTLY BINDING UP THE OBLIGOR SO LONG AS THE SAME DOES NOT CONTRAVENE LAW, MORALS, OR PUBLIC ORDER.—** The plain and unambiguous terms of the Construction Agreement authorize petitioner to confiscate the Performance Bond to answer for all kinds of damages it may suffer as a result of the contractor's failure to complete the building. Having elected to terminate the contract and expel the contractor from the project site under Article 13 of the said Agreement, petitioner is clearly entitled to the proceeds of the bond as indemnification for damages it sustained due to the breach committed by Mabunay. Such stipulation allowing the confiscation of the contractor's performance bond partakes of the nature of a penalty clause. A penalty clause, expressly recognized by law, is an accessory undertaking to assume greater liability on the part of the obligor in case of breach of an

obligation. It functions to strengthen the coercive force of obligation and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. It is well-settled that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon the obligor.

8. **ID.; ID.; ID.; IF THE LANGUAGE OF THE BOND IS AMBIGUOUS OR UNCERTAIN, IT WILL BE CONSTRUED MOST STRONGLY AGAINST A COMPENSATED SURETY AND IN FAVOR OF THE OBLIGEES OR BENEFICIARIES UNDER THE BOND, FOR WHOSE BENEFIT IT WAS OSTENSIBLY EXECUTED.—** The appellate court correctly rejected this theory of respondent when it ruled that the Performance Bond guaranteed the full and faithful compliance of Mabunay's obligations under the Construction Agreement, and that nowhere in law or jurisprudence does it state that the obligation or undertaking by a surety may be apportioned. The pertinent portions of the Performance Bond provide: x x x. Whereas, said contract required said Principal to give a good and sufficient bond in the above-stated sum **to secure the full and faithful performance on his part of said contract.** x x x. While the above condition or specific guarantee is unclear, the rest of the recitals in the bond unequivocally declare that it secures the full and faithful performance of Mabunay's obligations under the Construction Agreement with petitioner. By its nature, a performance bond guarantees that the contractor will perform the contract, and usually provides that if the contractor defaults and fails to complete the contract, the surety can itself complete the contract or pay damages up to the limit of the bond. Moreover, the rule is that if the language of the bond is ambiguous or uncertain, it will be construed most strongly against a compensated surety and in favor of the obligees or beneficiaries under the bond, in this case petitioner as the Project Owner, for whose benefit it was ostensibly executed.

9. **ID.; ID.; INTEREST; IF A SURETY UPON DEMAND FAILS TO PAY, HE CAN BE HELD LIABLE FOR INTEREST, EVEN IF IN THUS PAYING, ITS LIABILITY BECOMES MORE THAN THE PRINCIPAL OBLIGATION THE LIABILITY FOR THE PAYMENT OF INTEREST IS NOT**

BECAUSE OF THE SURETYSHIP AGREEMENT ITSELF BUT BECAUSE OF THE DELAY IN PAYMENT OF ITS OBLIGATION UNDER THE SAID AGREEMENT.— The imposition of interest on the claims of petitioner is likewise in order. As we held in *Commonwealth Insurance Corporation v. Court of Appeals* x x x. As early as *Tagawa vs. Aldanese and Union Gurantee Co.* and reiterated in *Plaridel Surety & Insurance Co., Inc. vs. P.L. Galang Machinery Co., Inc.*, and more recently, in *Republic vs. Court of Appeals and R & B Surety and Insurance Company, Inc.*, we have sustained the principle that **if a surety upon demand fails to pay, he can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation. The increased liability is not because of the contract but because of the default and the necessity of judicial collection.** Petitioner's liability under the suretyship contract is different from its liability under the law. There is no question that as a surety, petitioner should not be made to pay more than its assumed obligation under the surety bonds. However, it is clear from the above-cited jurisprudence that petitioner's liability for the payment of interest is not by reason of the suretyship agreement itself but because of the delay in the payment of its obligation under the said agreement.

APPEARANCES OF COUNSEL

Nisce Mamuric Guinto Rivera & Alcantara Law Offices for petitioner.
Buñag & Lotilla Law Offices for respondent.

DECISION

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated January 27, 2011 and Resolution[2]

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[1] *Rollo,* pp. 57-68. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario concurring.

[2] *Id.* at 69-73.

dated December 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112808.

The Facts

On December 24, 2007, petitioner J Plus Asia Development Corporation represented by its Chairman, Joo Han Lee, and Martin E. Mabunay, doing business under the name and style of Seven Shades of Blue Trading and Services, entered into a Construction Agreement[3] whereby the latter undertook to build the former's 72-room condominium/hotel (Condotel Building 25) located at the Fairways & Bluewaters Golf & Resort in Boracay Island, Malay, Aklan. The project, costing ₱42,000,000.00, was to be completed within one year or 365 days reckoned from the first calendar day after signing of the Notice of Award and Notice to Proceed and receipt of down payment (20% of contract price). The ₱8,400,000.00 down payment was fully paid on January 14, 2008.[4] Payment of the balance of the contract price will be based on actual work finished within 15 days from receipt of the monthly progress billings. Per the agreed work schedule, the completion date of the project was December 2008.[5] Mabunay also submitted the required Performance Bond[6] issued by respondent Utility Assurance Corporation (UTASSCO) in the amount equivalent to 20% down payment or ₱8.4 million.

Mabunay commenced work at the project site on January 7, 2008. Petitioner paid up to the 7th monthly progress billing sent by Mabunay. As of September 16, 2008, petitioner had paid the total amount of ₱15,979,472.03 inclusive of the 20% down payment. However, as of said date, Mabunay had accomplished only 27.5% of the project.[7]

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[3] *Id.* at 87-99.

[4] *Id.* at 962-967.

[5] *Id.* at 101-103, 606.

[6] *Id.* at 184.

[7] *Id.* at 109.

In the Joint Construction Evaluation Result and Status Report[8] signed by Mabunay assisted by Arch. Elwin Olavario, and Joo Han Lee assisted by Roy V. Movido, the following findings were accepted as true, accurate and correct:

III] STATUS OF PROJECT AS OF 14 NOVEMBER 2008

1) After conducting a joint inspection and evaluation of the project to determine the actual percentage of accomplishment, the contracting parties, assisted by their respective technical groups, SSB assisted by Arch. Elwin Olavario and JPLUS assisted by Engrs. Joey Rojas and Shiela Botardo, concluded and agreed that **as of 14 November 2008, the project is only Thirty One point Thirty Nine Percent (31.39%) complete**.

2) Furthermore, the value of construction materials allocated for the completion of the project and currently on site has been determined and agreed to be ONE MILLION FORTY NINE THOUSAND THREE HUNDRED SIXTY FOUR PESOS AND FORTY FIVE CENTAVOS (₱1,049,364.45)

3) The additional accomplishment of SSB, reflected in its reconciled and consolidated 8th and 9th billings, is Three point Eighty Five Percent (3.85%) with a gross value of ₱1,563,553.34 amount creditable to SSB after deducting the withholding tax is ₱1,538,424.84

4) The unrecouped amount of the down payment is ₱2,379,441.53 after deducting the cost of materials on site and the net billable amount reflected in the reconciled and consolidated 8th and 9th billings. The uncompleted portion of the project is 68.61% with an estimated value per construction agreement signed is ₱27,880,419.52.[9] (Emphasis supplied.)

On November 19, 2008, petitioner terminated the contract and sent demand letters to Mabunay and respondent surety. As its demands went unheeded, petitioner filed a Request for

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[8] *Id.* at 109-110.

[9] *Id.* at 110.

Arbitration[10] before the Construction Industry Arbitration Commission (CIAC). Petitioner prayed that Mabunay and respondent be ordered to pay the sums of ₱8,980,575.89 as liquidated damages and ₱2,379,441.53 corresponding to the unrecouped down payment or overpayment petitioner made to Mabunay.[11]

In his Answer,[12] Mabunay claimed that the delay was caused by retrofitting and other revision works ordered by Joo Han Lee. He asserted that he actually had until April 30, 2009 to finish the project since the 365 days period of completion started only on May 2, 2008 after clearing the retrofitted old structure. Hence, the termination of the contract by petitioner was premature and the filing of the complaint against him was baseless, malicious and in bad faith.

Respondent, on the other hand, filed a motion to dismiss on the ground that petitioner has no cause of action and the complaint states no cause of action against it. The CIAC denied the motion to dismiss. Respondent's motion for reconsideration was likewise denied.[13]

In its Answer Ex Abundante Ad Cautelam With Compulsory Counterclaims and Cross-claims,[14] respondent argued that the performance bond merely guaranteed the 20% down payment and not the entire obligation of Mabunay under the Construction Agreement. Since the value of the project's accomplishment already exceeded the said amount, respondent's obligation under the performance bond had been fully extinguished. As to the claim for alleged overpayment to Mabunay, respondent contended that it should not be credited against the 20% down payment which was already exhausted and such application by petitioner

[10] *Id.* at 76-86.

[11] *Id.* at 82.

[12] *Id.* at 189-197.

[13] *Id.* at 115-121, 132-136, 163-164.

[14] Id at 165-183.

is tantamount to reviving an obligation that had been legally extinguished by payment. Respondent also set up a cross-claim against Mabunay who executed in its favor an Indemnity Agreement whereby Mabunay undertook to indemnify respondent for whatever amounts it may be adjudged liable to pay petitioner under the surety bond.

Both petitioner and respondent submitted their respective documentary and testimonial evidence. Mabunay failed to appear in the scheduled hearings and to present his evidence despite due notice to his counsel of record. The CIAC thus declared that Mabunay is deemed to have waived his right to present evidence.[15]

On February 2, 2010, the CIAC rendered its Decision[16] and made the following award:

> Accordingly, in view of our foregoing discussions and dispositions, the Tribunal hereby adjudges, orders and directs:
>
> 1. Respondents Mabunay and Utassco to jointly and severally pay claimant the following:
>
> a) ₱4,469,969.90, as liquidated damages, plus legal interest thereon at the rate of 6% per annum computed from the date of this decision up to the time this decision becomes final, and 12% per annum computed from the date this decision becomes final until fully paid, and
>
> b) ₱2,379,441.53 as unrecouped down payment plus interest thereon at the rate of 6% per annum computed from the date of this decision up to the time this decision becomes final, and 12% per annum computed from the date this decision becomes final until fully paid[.]
>
> It being understood that respondent Utassco's liability shall in no case exceed P8.4 million.
>
> 2. Respondent Mabunay to pay to claimant the amount of ₱98,435.89, which is respondent [Mabunay's] share in the arbitration

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[15] *Id.* at 211-212.

[16] *Id.* at 600-614.

cost claimant had advanced, with legal interest thereon from January 8, 2010 until fully paid.

3. Respondent Mabunay to indemnify respondent Utassco of the amounts respondent Utassco will have paid to claimant under this decision, plus interest thereon at the rate of 12% per annum computed from the date he is notified of such payment made by respondent Utassco to claimant until fully paid, and to pay Utassco ₱100,000.00 as attorney's fees.

SO ORDERED.[17]

Dissatisfied, respondent filed in the CA a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

In the assailed decision, the CA agreed with the CIAC that the specific condition in the Performance Bond did not clearly state the limitation of the surety's liability. Pursuant to Article 1377[18] of the Civil Code, the CA said that the provision should be construed in favor of petitioner considering that the obscurely phrased provision was drawn up by respondent and Mabunay. Further, the appellate court stated that respondent could not possibly guarantee the down payment because it is not Mabunay who owed the down payment to petitioner but the other way around. Consequently, the completion by Mabunay of 31.39% of the construction would not lead to the extinguishment of respondent's liability. The ₱8.4 million was a limit on the amount of respondent's liability and not a limitation as to the obligation or undertaking it guaranteed.

However, the CA reversed the CIAC's ruling that Mabunay had incurred delay which entitled petitioner to the stipulated liquidated damages and unrecouped down payment. Citing *Aerospace Chemical Industries, Inc. v. Court of Appeals*,[19] the appellate court said that not all requisites in order to consider the obligor or debtor in default were present in this case. It

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[17] *Id.* at 614 to 614-A.

[18] ART. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

[19] G.R. No. 108129, September 23, 1999, 315 SCRA 92.

held that it is only from December 24, 2008 (completion date) that we should reckon default because the Construction Agreement provided only for delay in the completion of the project and not delay on a monthly basis using the work schedule approved by petitioner as the reference point. Hence, petitioner's termination of the contract was premature since the delay in this case was merely speculative; the obligation was not yet demandable.

The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the instant petition for review is **GRANTED**. The assailed Decision dated 13 January 2010 rendered by the CIAC Arbitral Tribunal in CIAC Case No. 03-2009 is hereby **REVERSED and SET ASIDE**. Accordingly, the Writ of Execution dated 24 November 2010 issued by the same tribunal is hereby **ANNULLED and SET ASIDE**.
>
> SO ORDERED.[20]

Petitioner moved for reconsideration of the CA decision while respondent filed a motion for partial reconsideration. Both motions were denied.

The Issues

Before this Court petitioner seeks to reverse the CA insofar as it denied petitioner's claims under the Performance Bond and to reinstate in its entirety the February 2, 2010 CIAC Decision. Specifically, petitioner alleged that —

A. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE ALTERNATIVE DISPUTE RESOLUTION ACT AND THE SPECIAL RULES ON ALTERNATIVE DISPUTE RESOLUTION HAVE STRIPPED THE COURT OF APPEALS OF JURISDICTION TO REVIEW ARBITRAL AWARDS.

B. THE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE ARBITRAL AWARD ON AN ISSUE THAT WAS NOT RAISED IN THE ANSWER. NOT IDENTIFIED

[20] *Rollo,* p. 67.

IN THE TERMS OF REFERENCE, NOT ASSIGNED AS AN ERROR, AND NOT ARGUED IN ANY OF THE PLEADINGS FILED BEFORE THE COURT.

C. THE COURT OF APPEALS SERIOUSLY ERRED IN RELYING ON THE CASE OF *AEROSPACE CHEMICAL INDUSTRIES, INC. v. COURT OF APPEALS,* 315 SCRA 94, WHICH HAS NOTHING TO DO WITH CONSTRUCTION AGREEMENTS.[21]

Our Ruling

On the procedural issues raised, we find no merit in petitioner's contention that with the institutionalization of alternative dispute resolution under Republic Act (R.A.) No. 9285,[22] otherwise known as the Alternative Dispute Resolution Act of 2004, the CA was divested of jurisdiction to review the decisions or awards of the CIAC. Petitioner erroneously relied on the provision in said law allowing any party to a domestic arbitration to file in the Regional Trial Court (RTC) a petition either to confirm, correct or vacate a domestic arbitral award.

We hold that R.A. No. 9285 did not confer on regional trial courts jurisdiction to review awards or decisions of the CIAC in construction disputes. On the contrary, Section 40 thereof expressly declares that confirmation by the RTC is not required, thus:

SEC. 40. ***Confirmation of Award.*** – The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The confirmation of a domestic award shall be made by the regional trial court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC arbitral award need not be confirmed by the regional trial court to be executory as provided under E.O. No. 1008. (Emphasis supplied.)

[21] *Id.* at 23.

[22] Approved on April 2, 2004.

Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except on questions of law, which are appealable to the Supreme Court. With the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law.[23]

Petitioner misread the provisions of A.M. No. 07-11-08-SC (Special ADR Rules) promulgated by this Court and which took effect on October 30, 2009. Since R.A. No. 9285 explicitly excluded CIAC awards from domestic arbitration awards that need to be confirmed to be executory, said awards are therefore not covered by Rule 11 of the Special ADR Rules,[24] as they continue to be governed by EO No. 1008, as amended and the rules of procedure of the CIAC. The CIAC Revised Rules of Procedure Governing Construction Arbitration[25] provide for the manner and mode of appeal from CIAC decisions or awards in Section 18 thereof, which reads:

> SECTION 18.2 ***Petition for review***. — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

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[23] *Metro Construction, Inc. v. Chatham Properties, Inc.,* G.R. No. 141897, September 24, 2001, 365 SCRA 697, 718-719 & 794.

[24] A.M. No. 07-11-08-SC, effective October 30, 2009.

[25] As amended by CIAC Resolution Nos. 15-2006, 16-2006, 18-2006, 19-2006, 02-2007, 07-2007, 13-2007, 02-2008, and 03-2008, which took effect on December 15, 2005.

As to the alleged error committed by the CA in deciding the case upon an issue not raised or litigated before the CIAC, this assertion has no basis. Whether or not Mabunay had incurred delay in the performance of his obligations under the Construction Agreement was the very first issue stipulated in the Terms of Reference[26] (TOR), which is distinct from the issue of the extent of respondent's liability under the Performance Bond.

Indeed, resolution of the issue of delay was crucial upon which depends petitioner's right to the liquidated damages pursuant to the Construction Agreement. Contrary to the CIAC's findings, the CA opined that delay should be reckoned only after the lapse of the one-year contract period, and consequently Mabunay's liability for liquidated damages arises only upon the happening of such condition.

We reverse the CA.

Default or *mora* on the part of the debtor is the delay in the fulfillment of the prestation by reason of a cause imputable to the former. It is the non-fulfillment of an obligation with respect to time.[27]

Article 1169 of the Civil Code provides:

> ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> x x x x x x x x x

It is a general rule that one who contracts to complete certain work within a certain time is liable for the damage for not completing it within such time, unless the delay is excused or waived.[28]

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[26] *Rollo*, pp. 202-210.

[27] IV Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 101 (1987 ed.).

[28] 17 Am Jur 2d §387, p. 832.

The Construction Agreement provides in Article 10 thereof the following conditions as to completion time for the project

1. The CONTRACTOR shall complete the works called for under this Agreement within ONE (1) YEAR or 365 Days reckoned from the 1st calendar day after signing of the Notice of Award and Notice to Proceed and receipt of down payment.
2. In this regard the CONTRACTOR shall submit a detailed work schedule for approval by OWNER within Seven (7) days after signing of this Agreement and full payment of 20% of the agreed contract price. Said detailed work schedule shall follow the general schedule of activities and shall serve as basis for the evaluation of the progress of work by CONTRACTOR.[29]

In this jurisdiction, the following requisites must be present in order that the debtor may be in default: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially or extrajudicially.[30]

In holding that Mabunay has not *at all* incurred delay, the CA pointed out that the obligation to perform or complete the project was not yet demandable as of November 19, 2008 when petitioner terminated the contract, because the agreed completion date was still more than one month away (December 24, 2008). Since the parties contemplated delay in the completion of the entire project, the CA concluded that the failure of the contractor to catch up with schedule of work activities did not constitute delay giving rise to the contractor's liability for damages.

We cannot sustain the appellate court's interpretation as it is inconsistent with the terms of the Construction Agreement.

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[29] *Rollo,* p. 93.

[30] *Santos Ventura Hocorma Foundation, Inc. v. Santos,* 484 Phil. 447, 457 (2004), citing IV Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 102 (1987 ed.). See also *Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc.,* G.R. No. 140047, July 13, 2004, 434 SCRA 202, 218-219.

Article 1374 of the Civil Code requires that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. Here, the work schedule approved by petitioner was intended, not only to serve as its basis for the payment of monthly progress billings, but also for evaluation of the progress of work by the contractor. Article 13.01 (g) (iii) of the Construction Agreement provides that the contractor shall be deemed in default if, among others, it had delayed without justifiable cause the completion of the project "by more than thirty (30) calendar days *based on official work schedule* duly approved by the OWNER."[31]

Records showed that as early as April 2008, or within four months after Mabunay commenced work activities, the project was already behind schedule for reasons not attributable to petitioner. In the succeeding months, Mabunay was still unable to catch up with his accomplishment even as petitioner constantly advised him of the delays, as can be gleaned from the following notices of delay sent by petitioner's engineer and construction manager, Engr. Sheila N. Botardo:

April 30, 2008

Seven Shades of Blue
Boracay Island
Malay, Aklan

Attention : Mr. Martin Mabunay
General Manager

Thru : Engr. Reynaldo Gapasin

Project : Villa Beatriz

Subject : Notice of Delay

Dear Mr. Mabunay:

This is to formalize our discussion with your Engineers during our meeting last April 23, 2008 regarding the delay in the implementation

[31] *Rollo,* p. 94.

of major activities based on your submitted construction schedule. Substantial delay was noted in concreting works that affects your roof framing that should have been 40% completed as of this date. This delay will create major impact on your over-all schedule as the finishing works will all be dependent on the enclosure of the building.

In this regard, we recommend that you prepare a catch-up schedule and expedite the delivery of critical materials on site. We would highly appreciate if you could attend our next regular meeting so we could immediately address this matter. Thank you.

Very truly yours,

Engr. Sheila N. Botardo
Construction Manager – LMI/FEPI[32]

October 15, 2008

x x x x x x x x x

Dear Mr. Mabunay,

We have noticed continuous absence of all the Engineers that you have assigned on-site to administer and supervise your contracted work. For the past two (2) weeks[,] your company does not have a Technical Representative manning the jobsite considering the critical activities that are in progress and the delays in schedule that you have already incurred. In this regard, we would highly recommend the immediate replacement of your Project Engineer within the week.

We would highly appreciate your usual attention on this matter.

x x x x x x x x x[33]

November 5, 2008

x x x x

Dear Mr. Mabunay,

This is in reference to your discussion during the meeting with Mr. Joohan Lee last October 30, 2008 regarding the construction of the Field Office and Stock Room for Materials intended for Villa

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[32] *Id.* at 104.

[33] *Id.* at 106.

Beatriz use only. We understand that you have committed to complete it November 5, 2008 but as of this date there is no improvement or any ongoing construction activity on the said field office and stockroom.

We are expecting deliveries of Owner Supplied Materials very soon, therefore, this stockroom is badly needed. We will highly appreciate if this matter will be given your immediate attention.

Thank you.

x x x x x x x x x[34]

November 6, 2008

x x x x x x x x x

Dear Mr. Mabunay,

We would like to call your attention regarding the decrease in your manpower assigned on site. We have observed that for the past three (3) weeks instead of increasing your manpower to catch up with the delay it was reduced to only 8 workers today from an average of 35 workers in the previous months.

Please note that based on your submitted revised schedule you are already delayed by approximately 57% and this will worsen should you not address this matter properly.

We are looking forward for *[sic]* your cooperation and continuous commitment in delivering this project as per contract agreement.

x x x x x x x x x[35]

Subsequently, a joint inspection and evaluation was conducted with the assistance of the architects and engineers of petitioner and Mabunay and it was found that as of November 14, 2008, the project was only 31.39% complete and that the uncompleted portion was 68.61% with an estimated value per Construction Agreement as ₱27,880,419.52. Instead of doubling his efforts

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[34] *Id.* at 107.

[35] *Id.* at 108.

as the scheduled completion date approached, Mabunay did nothing to remedy the delays and even reduced the deployment of workers at the project site. Neither did Mabunay, at anytime, ask for an extension to complete the project. Thus, on November 19, 2008, petitioner advised Mabunay of its decision to terminate the contract on account of the tremendous delay the latter incurred. This was followed by the claim against the Performance Bond upon the respondent on December 18, 2008.

Petitioner's claim against the Performance Bond included the liquidated damages provided in the Construction Agreement, as follows:

ARTICLE 12 – LIQUIDATED DAMAGES:

12.01 Time is of the essence in this Agreement. Should the CONTRACTOR **fail to complete the PROJECT within the period stipulated herein or within the period of extension granted by the OWNER, plus One (1) Week grace period**, without any justifiable reason, the CONTRACTOR hereby agrees —

a. The CONTRACTOR shall pay the OWNER liquidated damages equivalent to One Tenth of One Percent (1/10 of 1%) of the Contract Amount for each day of delay after any and all extensions and the One (1) week Grace Period until completed by the CONTRACTOR.

b. The CONTRACTOR, even after paying for the liquidated damages due to unexecuted works and/or delays shall not relieve it of the obligation to complete and finish the construction.

Any sum which maybe payable to the OWNER for such loss may be deducted from the amounts retained under Article 9 or retained by the OWNER when the works called for under this Agreement have been finished and completed.

Liquidated Damage[s] payable to the OWNER shall be automatically deducted from the contractors collectibles without prior consent and concurrence by the CONTRACTOR.

12.02 To give full force and effect to the foregoing, the CONTRACTOR hereby, without necessity of any further act and deed, authorizes the OWNER to deduct any amount that may be due under Item (a) above, from any and all money or amounts due or which

will become due to the CONTRACTOR by virtue of this Agreement and/or to collect such amounts from the Performance Bond filed by the CONTRACTOR in this Agreement.[36] (Emphasis supplied.)

Liability for liquidated damages is governed by Articles 2226 to 2228 of the Civil Code, which provide:

ART. 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

ART. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

ART. 2228. When the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

A stipulation for liquidated damages is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach.[37] The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project.[38] As a precondition to such award, however, there must be proof of the fact of delay in the performance of the obligation.[39]

Concededly, Article 12.01 of the Construction Agreement mentioned only the failure of the contractor to complete the

[36] *Id.* at 93-94.

[37] *Atlantic Erectors, Inc. v. Court of Appeals,* G.R. No. 170732, October 11, 2012, 684 SCRA 55, 65, citing *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation*, G.R. No. 180898, April 18, 2012, 670 SCRA 166, 177 and *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 269.

[38] *Id.*, citing *H.L. Carlos Construction, Inc. v. Marina Properties Corporation,* 466 Phil. 182, 205 (2004).

[39] *Id.*, citing *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.,* G.R. No. 168074, September 26, 2008, 566 SCRA 473, 489.

project within the stipulated period or the extension granted by the owner. However, this will not defeat petitioner's claim for damages nor respondent's liability under the Performance Bond. Mabunay was clearly in default considering the dismal percentage of his accomplishment (32.38%) of the work he contracted on account of delays in executing the scheduled work activities and repeated failure to provide sufficient manpower to expedite construction works. The events of default and remedies of the Owner are set forth in Article 13, which reads:

ARTICLE 13 – DEFAULT OF CONTRACTOR:

13.01 Any of the following shall constitute an Event of Default on the [part] of the CONTRACTOR.

x x x x x x x x x

g. In case the CONTRACTOR has done any of the following:

(i.) has abandoned the Project

(ii.) without reasonable cause, has failed to commence the construction or has suspended the progress of the Project for twenty-eight days

(iii.) without justifiable cause, **has delayed the completion of the Project by more than thirty (30) calendar days based on official work schedule duly approved by the OWNER**

(iv.) despite previous written warning by the OWNER, is **not executing the construction works in accordance with the Agreement** or is **persistently or flagrantly neglecting to carry out its obligations under the Agreement**.

(v.) has, to the detriment of good workmanship or in defiance of the Owner's instructions to the contrary, sublet any part of the Agreement.

13.02 If the CONTRACTOR has committed any of the above reasons cited in Item 13.01, the OWNER may after giving fourteen (14) calendar days notice in writing to the CONTRACTOR, enter upon the site and expel the CONTRACTOR therefrom without voiding this Agreement, or releasing the CONTRACTOR from any of its obligations, and liabilities under this Agreement. Also without diminishing or affecting the rights and powers conferred on the

OWNER by this Agreement and the OWNER may himself complete the work or may employ any other contractor to complete the work. If the OWNER shall enter and expel the CONTRACTOR under this clause, the OWNER shall be entitled to **confiscate the performance bond of the CONTRACTOR to compensate for all kinds of damages the OWNER may suffer.** All expenses incurred to finish the Project shall be charged to the CONTRACTOR and/or his bond. Further, the OWNER shall not be liable to pay the CONTRACTOR until the cost of execution, damages for the delay in the completion, if any, and all; other expenses incurred by the OWNER have been ascertained which amount shall be deducted from any money due to the CONTRACTOR on account of this Agreement. The CONTRACTOR will not be compensated for any loss of profit, loss of goodwill, loss of use of any equipment or property, loss of business opportunity, additional financing cost or overhead or opportunity losses related to the unaccomplished portions of the work.[40] (Emphasis supplied.)

As already demonstrated, the contractor's default in this case pertains to his failure to substantially perform the work on account of tremendous delays in executing the scheduled work activities. Where a party to a building construction contract fails to comply with the duty imposed by the terms of the contract, a breach results for which an action may be maintained to recover the damages sustained thereby, and of course, a breach occurs where the contractor inexcusably fails to perform substantially in accordance with the terms of the contract.[41]

The plain and unambiguous terms of the Construction Agreement authorize petitioner to confiscate the Performance Bond to answer for all kinds of damages it may suffer as a result of the contractor's failure to complete the building. Having elected to terminate the contract and expel the contractor from the project site under Article 13 of the said Agreement, petitioner is clearly entitled to the proceeds of the bond as indemnification for damages it sustained due to the breach committed by Mabunay. Such stipulation allowing the confiscation of the contractor's performance bond partakes of the nature of a penalty clause. A

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[40] *Rollo,* pp. 94-95.

[41] 13 Am Jur 2d §72, p. 73.

penalty clause, expressly recognized by law, is an accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation. It functions to strengthen the coercive force of obligation and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. It is well-settled that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon the obligor.[42]

Respondent, however, insists that it is not liable for the breach committed by Mabunay because by the terms of the surety bond it issued, its liability is limited to the performance by said contractor to the extent equivalent to 20% of the down payment. It stresses that with the 32.38% completion of the project by Mabunay, its liability was extinguished because the value of such accomplishment already exceeded the sum equivalent to 20% down payment (₱8.4 million).

The appellate court correctly rejected this theory of respondent when it ruled that the Performance Bond guaranteed the full and faithful compliance of Mabunay's obligations under the Construction Agreement, and that nowhere in law or jurisprudence does it state that the obligation or undertaking by a surety may be apportioned.

The pertinent portions of the Performance Bond provide:

The conditions of this obligation are as follows:

> Whereas the JPLUS ASIA, requires the principal SEVEN SHADES OF BLUE CONSTRUCTION AND DEVELOPMENT, INC. to post a bond of the abovestated sum **to guarantee 20% down payment for the construction** of Building 25 (Villa Beatriz) 72-Room Condotel, The Lodgings inside Fairways and Bluewater, Boracay Island, Malay, Aklan.

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[42] *Suatengco v. Reyes,* G.R. No. 162729, December 17, 2008, 574 SCRA 187, 194, citing *Ligutan v. Court of Appeals*, G.R. No. 138677, February 12, 2002, 376 SCRA 560, 567-568.

Whereas, said contract required said Principal to give a good and sufficient bond in the above-stated sum **to secure the full and faithful performance on his part of said contract.**

It is a special provision of this undertaking that the liability of the surety under this bond shall in no case exceed the sum of ₱8,400,000.00 *Philippine Currency.*

Now, Therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements stipulated in said contract, then this obligation shall be null and void; otherwise to remain in full force and effect.[43] (Emphasis supplied.)

While the above condition or specific guarantee is unclear, the rest of the recitals in the bond unequivocally declare that it secures the full and faithful performance of Mabunay's obligations under the Construction Agreement with petitioner. By its nature, a performance bond guarantees that the contractor will perform the contract, and usually provides that if the contractor defaults and fails to complete the contract, the surety can itself complete the contract or pay damages up to the limit of the bond.[44] Moreover, the rule is that if the language of the bond is ambiguous or uncertain, it will be construed most strongly against a compensated surety and in favor of the obligees or beneficiaries under the bond, in this case petitioner as the Project Owner, for whose benefit it was ostensibly executed.[45]

The imposition of interest on the claims of petitioner is likewise in order. As we held in *Commonwealth Insurance Corporation v. Court of Appeals*[46]

Petitioner argues that it should not be made to pay interest because its issuance of the surety bonds was made on the condition that its liability shall in no case exceed the amount of the said bonds.

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[43] *Rollo,* p. 100.

[44] 17 Am Jur 2d §1, p. 192.

[45] 17 Am Jur 2d §3, p. 193.

[46] 466 Phil. 104 (2004).

We are not persuaded. Petitioner's argument is misplaced.

Jurisprudence is clear on this matter. As early as *Tagawa vs. Aldanese and Union Gurantee Co.* and reiterated in *Plaridel Surety & Insurance Co., Inc. vs. P.L. Galang Machinery Co., Inc.*, and more recently, in *Republic vs. Court of Appeals and R & B Surety and Insurance Company, Inc.*, we have sustained the principle that **if a surety upon demand fails to pay, he can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation. The increased liability is not because of the contract but because of the default and the necessity of judicial collection.**

Petitioner's liability under the suretyship contract is different from its liability under the law. There is no question that as a surety, petitioner should not be made to pay more than its assumed obligation under the surety bonds. However, it is clear from the above-cited jurisprudence that petitioner's liability for the payment of interest is not by reason of the suretyship agreement itself but because of the delay in the payment of its obligation under the said agreement.[47] (Emphasis supplied; citations omitted.)

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision dated January 27, 2011 and Resolution dated December 8, 2011 of the Court of Appeals in CA-G.R. SP No. 112808 are hereby **REVERSED** and **SET ASIDE.**

The Award made in the Decision dated February 2, 2010 of the Construction Industry Arbitration Commission is hereby **REINSTATED with the following MODIFICATIONS**:

"Accordingly, in view of our foregoing discussions and dispositions, the Tribunal hereby adjudges, orders and directs:

1) Respondent Utassco to pay to petitioner J Plus Asia Development Corporation the full amount of the Performance Bond, P8,400,000.00, pursuant to Art. 13 of the Construction Agreement dated December 24, 2007, with interest at the rate of 6% per annum computed from the date of the filing of the complaint until the finality of this decision, and 12% per annum computed from the date this decision becomes final until fully paid; and

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[47] *Id.* at 112-113.

2) Respondent Mabunay to indemnify respondent Utassco of the amounts respondent Utassco will have paid to claimant under this decision, plus interest thereon at the rate of 12% per annum computed from the date he is notified of such payment made by respondent Utassco to claimant until fully paid, and to pay Utassco P100,000.00 as attorney's fees.

SO ORDERED."

With the above modifications, the Writ of Execution dated November 24, 2010 issued by the CIAC Arbitral Tribunal in CIAC Case No. 03-2009 is hereby **REINSTATED and UPHELD**.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200507. June 26, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PETER LINDA y GEROLAGA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; 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.—** Settled are the rule 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," and that "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." Here, we see no reason to deviate from the findings of the trial court and the Court of Appeals.

2. **ID.; ID.; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; ABSENT IMPROPER MOTIVE ON THE PART OF THE BUY-BUST TEAM, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES OF THE POLICE OFFICERS MUST BE UPHELD.—** Corroborated by supporting documents, PO2 Bernabe rendered a clear and direct narration of the details of the buy-bust operation from the moment SPO1 Rodolfo Ramos organized the team, upon receipt of the information from the confidential informant, to the time the *shabu* was marked and turned over to the crime laboratory for examination. Absent any showing of ill-motive or bad faith on the part of the arresting officers, as in this case where accused-appellant testified that he did not know any of the members of the team, the doctrine of presumption of regularity in the performance of official duty finds application. This, we explained in *People v. Tion*: 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 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.

3. **CRIMINAL LAW; ILLEGAL SALE OF SHABU; ESSENTIAL REQUISTES; PRESENT.—** [W]e find that the essential

requisites for illegal sale of *shabu* were all present in the instant case. These are: "(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 has likewise complied with the following material requirements: (1) proof that the transaction or sale actually took place and (2) presentation in court of the *corpus delicti* as evidence." Thus, PO2 Bernabe testified that after he was introduced by the confidential informant to accused-appellant as a friend who wanted to buy *shabu*, he offered to buy and accused-appellant agreed to sell him drugs worth two hundred pesos (₱200.00). When accused-appellant received the marked money, he gave PO2 Bernabe a sachet of white crystalline substance, which, after its marking at the crime scene and upon submission to the laboratory, tested positive for *shabu*. Both the item subject of the sale and the marked money were presented in court.

4. **ID.; ID.; CHAIN OF CUSTODY NOT BROKEN.—** There is no iota of doubt that the integrity and evidentiary value of the seized item were preserved. The Letter-Request for Laboratory Examination shows that it was PO2 Bernabe who personally delivered to the crime laboratory the specimen that he earlier marked. Moreover, specifically stated in the Pre-Trial Order issued by the trial court was the fact that Reyes herself, the very chemist that examined the specimen, brought the same to the court. And, while the court dispensed with her testimony, the parties already stipulated on the material points she was supposed to testify on. Clearly, the chain of custody was not broken.

5. **ID.; ID.; DRUG PUSHING HAS BEEN COMMITTED WITH SO MUCH CASUALNESS EVEN BETWEEN TOTAL STRANGERS.—** We likewise reject the position of the defense that a drug peddler would not readily sell his wares to a stranger as we know for a fact that "drug pushing has been committed with so much casualness even between total strangers."

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE DEFENSE OF DENIAL, WHEN NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, IS NEGATIVE AND SELF-SERVING, AND CANNOT PREVAIL OVER THE AFFIRMATIVE STATEMENTS OF A CREDIBLE WITNESS.—** The last

argument of accused-appellant, that is, that "[i]t matters not that the defense is weak, what matters is that the prosecution prove the guilt of an accused beyond reasonable doubt," must also fail. *First*, the evidence for the prosecution was, in fact, sufficient to establish the guilt of accused-appellant beyond reasonable doubt. *Second*, the defense of denial, when not substantiated by clear and convincing evidence as in this case, is negative and self-serving, and cannot prevail over the affirmative statements of a credible witness.

7. **CRIMINAL LAW; ILLEGAL SALE OF SHABU; IMPOSABLE PENALTY.—** [W]e find that the prosecution has sufficiently established the guilt of the accused-appellant beyond reasonable doubt. The penalties imposed by the trial court and the Court of Appeals are, likewise, in order. Under Section 5, Article II of Republic Act No. 9165, the quantity of *shabu* is not material in the determination of the corresponding penalty therefor. A person found guilty thereof shall suffer 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). The Indeterminate Sentence Law 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." Considering the absence of any mitigating circumstance, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) were, thus, correctly imposed. These are within the period and range of the fine prescribed by law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, ***J*.:**

Before us for final review is the conviction of accused-appellant for illegal sale of *shabu*. The Court of Appeals affirmed

in toto[1] the decision of the trial court[2] sentencing him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The Facts

In an Information[3] dated 27 February 2008 docketed as Criminal Case No. 82-259718, accused-appellant was charged with violation of Section 5, Article II, Republic Act No. 9165[4] before the Regional Trial Court of Manila to which he pleaded not guilty.[5]

During pre-trial, Forensic Chemist Elisa G. Reyes (Reyes) brought with her the specimen she examined and other pertinent

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[1] CA *rollo*, pp. 71-86. Decision dated 14 June 2011 in CA-G.R. CR-HC No. 03888. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Sesinando E. Villon and Priscilla J. Baltazar-Padilla concurring.

[2] Records, pp. 28-32. Decision dated 15 April 2009 in Criminal Case No. 08-259718. Penned by Judge Alejandro G. Bijasa, Regional Trial Court, Branch 2, Manila.

[3] *Id.* at 1. The accusatory portion of the Information reads:

"That on or about February 22, 2008, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there wilfully, unlawfully and knowingly sell one (1) heat-sealed transparent plastic sachet containing zero point zero two zero (0.020) gram of white crystalline substance known as shabu, containing methylamphetamine hydrochloride, a dangerous drug."

[4] Section 5, Article II, R.A. 9165 provides:

"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 (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

"x x x x x x x x x"

[5] Records, pp.13-14. Pre-Trial Order dated 14 March 2008.

documents. These were marked as follows: Letter Request for Laboratory Examination (Exh. "A") stamped received by the Crime Laboratory (Exh. "A-1"); specimen with the following initials "PGL" (Exh. "B") together with a brown envelope (Exh. "B-1"); and Final Chemistry Report (Exh. "C") containing her Findings and Conclusions (Exh. "C-1") with the corresponding signatures appearing at the bottom of the Report (Exh. "C-2"). The parties thereafter stipulated on the qualification of Reyes, the genuineness and due execution of the documents, and the specimen, which she herself brought to the court. Further, the prosecution had the following marked in evidence: Affidavit of Apprehension (Exh. "D") with the signatures of the arresting officers (Exh. "D-1"); the Coordination Form (Exh. "E") and a machine copy of the buy bust money (Exh. "F").[6]

On trial, the prosecution presented PO2[7] Archie Bernabe[8] (PO2 Bernabe) of the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOG), Manila Police District. The defense, on the other hand, relied on the sole testimony of accused-appellant.[9]

The prosecution summarized its version of the incident in the following manner:

> On February 22, 2008, the team of SPO1 Rodolfo Ramos received a reliable information from a confidential informant regarding the illegal drug activity of x x x [accused-appellant] along Ma. Orosa Street, Malate, Manila. Thus, SPO1 Ramos ordered his team to conduct a buy-bust operation on appellant and designated PO2 Archie Bernabe as poseur-buyer, who was given two (2) P100 bills as buy-bust money. The money was then marked as "DAID" and a coordination with the Philippine Drug Enforcement Agency (PDEA) was made.
>
> After the preparation, the team, together with the confidential informant, proceeded to the target area. Upon arrival, appellant

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[6] *Id.* at 13.

[7] He was referred to as PO1 Archie Bernabe instead of PO2 Archie Bernabe in some of the documents on pages 3, 5, 7, 17 and 19 of the records.

[8] TSN, 5 March 2009.

[9] TSN, 19 March 2009.

approached PO2 Bernabe and the informant who is known to appellant. The informant and the appellant talked to each other while PO2 Bernabe stayed two (2) meters away. Afterwards, the informant called PO2 Bernabe and introduced him to appellant as a friend who is buying "shabu." PO2 Bernabe told the appellant that he was buying the illegal drug worth "₱200." Appellant answered "wala pong problema" and accepted the buy-bust money tendered by PO2 Bernabe. The former then handed to the latter one transparent plastic sachet containing white crystalline substance with the resemblance of "shabu." Thereafter, PO2 Bernabe arrested appellant and introduced himself as police officer. The other members of the team arrived at the scene. PO2 Bernabe informed appellant of his constitutional rights and marked the plastic sachet with the letters "PGL" from the initials of the appellant. The former frisked appellant and recovered the marked money form the latter. When the substance was examined by Forensic Chemist Elisa G. Reyes, the white crystalline substance tested positive for methylamphetamine hydrochloride.[10]

The defense, on the other hand, countered that:

On 22 February 2008, Peter Linda was doing nothing when suddenly, several persons entered the house and went upstairs looking for his parents, Lorenzo Linda and Marlita Linda. He told them that his parents were no longer living there. Afterward[s], he was told to go with the police. At the precinct, he was asked again the whereabouts of his parents but he reiterated his earlier reply. He was then frisked but nothing was recovered from him. He was not informed of the charges, only knowing it in court.[11]

After trial, the court convicted accused-appellant of the crime charged.[12] On appeal, the Court of Appeals affirmed the decision *in toto.*[13]

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[10] CA *rollo*, pp. 72-73. Decision dated 14 June 2011 of the Court of Appeals quoting the Brief for the Plaintiff-Appellee, *id.* at 46-47.

[11] *Id.* at 73 quoting the Brief for the Accused-Appellant, *id.* at 25.

[12] Records, pp. 28-32. Decision dated 15 April 2009.

The dispositive portion of the Decision reads:

WHEREFORE, from the foregoing, judgment is hereby rendered, finding accused, Peter Linda y Gerolaga, **GUILTY,** beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine

Before us, both parties manifested that they will no longer file their respective supplemental briefs.[14] We, thus, re-examine the arguments of the defense before the Court of Appeals, to wit: (1) that the chain of custody was broken; (2) that it is hard to believe that one would readily sell drugs to a stranger; (3) that since the warrantless arrest is invalid, the item seized is inadmissible in evidence; and (4) that notwithstanding that the defense of denial is inherently weak, it must be given credence when the prosecution fails to prove his guilt beyond reasonable doubt.[15]

Our Ruling

The appeal is bereft of merit.

We first ascertain the credibility of the testimony of the prosecution witness.

Settled are the rule 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,"[16] and that "the determination by the trial court of the credibility of witnesses, when affirmed by

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of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

[13] CA *rollo*, p. 85. Decision dated 14 June 2011.

[14] *Rollo*, pp. 28-31. Manifestation (In Lieu of Supplemental Brief) dated 7 May 2012 filed by Office of the Solicitor General. *Id.* at 32-35. Accused-Appellant's Manifestation (In Lieu of Supplemental Brief) dated 3 April 2012.

[15] CA *rollo*, pp. 25-28. Brief for the Accused-Appellant.

[16] *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 (2001).

the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."[17]

Here, we see no reason to deviate from the findings of the trial court and the Court of Appeals. Corroborated by supporting documents,[18] PO2 Bernabe rendered a clear and direct narration of the details of the buy-bust operation from the moment SPO1 Rodolfo Ramos organized the team, upon receipt of the information from the confidential informant, to the time the *shabu* was marked[19] and turned over to the crime laboratory for examination.[20]

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[17] *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.

[18] Records, pp. 3-8. Exhibits "A," "C" to "F."

[19] Pertinent portions of his testimony reads:

ASST. CITY PROS. YAP:

Q Police Officer Bernabe, could you tell the Court where were you on February 22, 2008?

THE WITNESS:

A We were conducting a buy bust operation, sir.

Q Where?

A Along Ma. Orosa Street, Malate, Manila, sir.

Q Tell us, who ordered you to be there at Ma. Orosa?

A Our team leader, sir, he designated me as poseur buyer.

Q Who was the team leader?

A SPO1 Rodolfo Ramos, sir.

Q What was the nature of the operation?

A Buy bust operation, sir.

Q Now, who was the subject person?

A One alias Peter, sir.

Q What was this Peter reported[ly] doing then per information?

A The confidential informant [C.I.] furnished information regarding the illegal selling of shabu of one alias Peter somewhere in Ma. Orosa St., Malate, Manila, sir.

x x x x x x x x x

Absent any showing of ill-motive or bad faith on the part of the arresting officers, as in this case where accused-appellant testified

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Q Being the poseur buyer, what did you do prior to the jump-off, Mr. Witness?

A We prepared the buy bust money and the necessary documents, sir.

x x x x x x x x x

Q So, what other documents did you make, Mr. Witness?

x x x x

A Coordination to [Philippine Drug Enforcement Agency] PDEA, sir.

x x x x x x x x x

Q As far as you can recall, when was this coordination made?

x x x x

A Same date, sir, on February 22.

Q What time?

A On or about 9:00 p.m., sir.

x x x x x x x x x

Q With these requirements, what did the team do further, Mr. Witness?

A After preparing all the necessary documents and the buy bust money, we proceeded to the place, sir.

x x x x x x x x x

Q Now, tell us what happened, Mr. Witness?

A When we arrived at the area, our subject person saw us and approached us, sir.

Q What happened when he approached you?

A The suspect approached us because he knew the C.I., and then, the suspect and the C.I. talked to each other, sir.

x x x x x x x x x

Q So, what happened to their conversation?

A After a short while the confidential informant called me and introduced me to the suspect, sir.

Q How many were you then?

A The C.I. and myself, sir.

Q How [did] the C.I. [introduce] you to the suspect?

A I was introduced as a friend who will buy shabu, sir.

x x x x x x x x x

that he did not know any of the members of the team,[21] the doctrine of presumption of regularity in the performance of

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Q What happened next when you were introduced as a friend of the C.I.?

A I told to the (sic) suspect that I will buy worth P200.00 of shabu, sir.

x x x x x x x x x

Q What was the reply of the suspect?

A He uttered the words, "Wala pong problema."

Q So, what did you do next?

A I handed the buy bust money to the suspect, sir.

Q Did he receive the same, the buy bust money?

A Yes, sir.

Q So, what happened?

A After receiving the money, he handed to me the one (1) transparent plastic sachet, sir.

x x x x x x x x x

Q So, what happened next, Mr. Witness?

A After I received the illegal substance, I immediately effected the arrest of the suspect and introduced myself as police officer, sir.

Q So, what did you do further, Mr. Witness?

A After arresting the suspect my companions arrived. Then, I informed him of his constitutional rights. Afterwards, I put a marking on the evidence recovered as a result of the buy bust operation, sir.

Q Where?

A At the place, sir.

x x x x x x x x x

Q What standard operating procedure did you do after the arrest?

x x x x x x x x x

A I frisked the suspect, sir.

Q What was the result?

A I recovered the buy bust money, sir.

TSN, 5 March 2009, pp. 3-10.

[20] Records, p. 3. The Joint Affidavit of Apprehension, which PO2 Bernabe identified in court, reads in part:

"6. That, threafter, the above-named suspect was brought at the office for investigation while the evidence recovered was submitted [to] the MPDCLO for laboratory examination."

[21] TSN, 19 March 2009, p. 3.

official duty finds application. This, we explained in *People v. Tion*:[22]

> 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 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.[23] (Citations omitted; emphasis supplied)

By upholding the credibility of the testimony of the witness for the prosecution on the circumstances leading to the arrest of the accused-appellant, we cannot give credence to the contrary version of the defense that the warrantless arrest was made inside the house of the accused-appellant after the arresting officers failed to find his parents, whom he admitted were also involved in drug-related illegal activities.[24] The argument of the defense that the warrantless arrest was invalid and that the item seized is inadmissible in evidence must, therefore, fail.

Proceeding from the above, we find that the essential requisites for illegal sale of *shabu* were all present in the instant case. These are: "(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."[25] The prosecution

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[22] G.R. No. 172092, 16 December 2009, 608 SCRA 299.

[23] *Id.* at 316-317.

[24] TSN, 19 March 2009, p.5.

[25] *People v. Bautista*, G.R. No. 177320, 22 February 2012, 666 SCRA 518, 529 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

has likewise complied with the following material requirements: (1) proof that the transaction or sale actually took place and (2) presentation in court of the *corpus delicti* as evidence."[26]

Thus, PO2 Bernabe testified that after he was introduced by the confidential informant to accused-appellant as a friend who wanted to buy *shabu*, he offered to buy and accused-appellant agreed to sell him drugs worth two hundred pesos (₱200.00). When accused-appellant received the marked money, he gave PO2 Bernabe a sachet of white crystalline substance, which, after its marking at the crime scene and upon submission to the laboratory, tested positive for *shabu*. Both the item subject of the sale and the marked money were presented in court.

The defense now argues that the prosecution failed to establish with moral certainty the identity of the item seized because the chemist who examined the specimen did not take the witness stand. Neither did anyone allegedly testify on how the said specimen was delivered to the court.

The contentions are likewise unmeritorious.

There is no iota of doubt that the integrity and evidentiary value of the seized item were preserved. The Letter-Request for Laboratory Examination shows that it was PO2 Bernabe who personally delivered to the crime laboratory the specimen that he earlier marked.[27] Moreover, specifically stated in the Pre-Trial Order[28] issued by the trial court was the fact that Reyes herself, the very chemist that examined the specimen, brought the same to the court. And, while the court dispensed with her testimony, the parties already stipulated on the material points she was supposed to testify on. Clearly, the chain of custody was not broken.

627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

[26] *Id.* at 529-530.

[27] Records, p. 5.

[28] *Id.* at 13.

We likewise reject the position of the defense that a drug peddler would not readily sell his wares to a stranger as we know for a fact that "drug pushing has been committed with so much casualness even between total strangers."[29]

The last argument of accused-appellant, that is, that "[i]t matters not that the defense is weak, what matters is that the prosecution prove the guilt of an accused beyond reasonable doubt,"[30] must also fail. *First*, the evidence for the prosecution was, in fact, sufficient to establish the guilt of accused-appellant beyond reasonable doubt. *Second*, the defense of denial, when not substantiated by clear and convincing evidence as in this case, is negative and self-serving, and cannot prevail over the affirmative statements of a credible witness.[31]

All considered, we find that the prosecution has sufficiently established the guilt of the accused-appellant beyond reasonable doubt.

The penalties imposed by the trial court and the Court of Appeals are, likewise, in order.

Under Section 5, Article II of Republic Act No. 9165, the quantity of *shabu* is not material in the determination of the corresponding penalty therefor. A person found guilty thereof shall suffer 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).

The Indeterminate Sentence Law[32] 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

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[29] *People v. Bautista*, *supra* note 25 at 537.

[30] CA *rollo*, p. 28. Brief for the Accused-Appellant.

[31] *People v. De Vera*, G.R. No. 112006, 7 July 1997, 275 SCRA 87, 93 citing *People v. Belga*, G.R. Nos. 94376-77, 11 July 1996, 258 SCRA 583, 594 (1996); *Abadilla v. Tabiliran, Jr.*, A.M. No. MTJ-92-716, 25 October 1995, 249 SCRA 447.

[32] Act No. 4103.

not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same."[33]

Considering the absence of any mitigating circumstance, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) were, thus, correctly imposed. These are within the period and range of the fine prescribed by law.[34]

WHEREFORE, the Decision dated 14 June 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03888 is **AFFIRMED**, and, thereby the 15 April 2009 Decision of the Regional Trial Court in Criminal Case No. 08-259718 is hereby **AFFIRMED *in toto***.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 201251. June 26, 2013]

INTER-ORIENT MARITIME, INCORPORATED and/or TANKOIL CARRIERS, LIMITED, *petitioners, vs.* **CRISTINA CANDAVA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; 1996 POEA-SEC; EMPLOYEES' COMPENSATION; THE ILLNESS LEADING TO THE EVENTUAL DEATH OF SEAFARER NEED NOT BE SHOWN TO BE WORK-

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[33] Section 1, Act No. 4103, as amended.

[34] *People v. Sabadlab*, *supra* note 17 at 441.

RELATED IN ORDER TO BE COMPENSABLE, BUT MUST BE PROVEN TO HAVE BEEN CONTRACTED DURING THE TERM OF THE CONTRACT; NEITHER IS IT REQUIRED THAT THERE BE PROOF THAT THE WORKING CONDITIONS INCREASED THE RISK OF CONTRACTING THE DISEASE OR ILLNESS.— At the outset, it bears stressing that the employment of seafarers, including claims for death benefits, is governed by the contracts they sign at the time of their engagement. As long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract. The prevailing rule under the 1996 POEA-SEC was that the illness leading to the eventual death of seafarer need not be shown to be work-related in order to be compensable, but must be proven to have been ***contracted during the term of the contract***. Neither is it required that there be proof that the working conditions increased the risk of contracting the disease or illness. An injury or accident is said to arise "in the course of employment" when it takes place within the period of employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. A meticulous perusal of the records reveals that Joselito ***contracted his illness in the course of employment.*** It cannot also be denied that the same was aggravated during the same period. Thus, there was a ***clear causal connection between such illness and his eventual death***, making his death compensable. x x x. Joselito's Death Certificate stated respiratory failure as the immediate cause of his death, with pulmonary metastasis as antecedent cause. The underlying cause for his death was germ cell tumor which may be found, among others, in the testes and the center back wall of the abdominal cavity. The World Health Organization defines an underlying cause as the disease or injury ***that initiated the train of events leading directly to death***, or circumstances of the accident or violence that produced the fatal injury. Perforce, ***there existed a clear causal connection between Joselito's illness which he contracted during employment and his eventual death***.

2. ID.; ID.; A WORKER BRINGS WITH HIM POSSIBLE INFIRMITIES IN THE COURSE OF HIS EMPLOYMENT AND WHILE THE EMPLOYER IS NOT THE INSURER OF THE HEALTH OF THE EMPLOYEES, HE TAKES THEM AS HE FINDS THEM AND ASSUMES THE RISK OF LIABILITY; CONTRACT OF EMPLOYMENT DEEMED IMPLIEDLY RENEWAL WHERE THE SEAFARER WAS MADE TO CONTINUOUSLY SERVE ABOARD THE VESSEL BEYOND THE MAXIMUM ALLOWABLE PERIOD OF SERVICE WITHOUT THE BENEFIT OF A FORMAL CONTRACT OR BEING SUBJECTED TO ANOTHER PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME).— The Court cannot give credence to petitioners' claim that Joselito's death occurred beyond the term of his employment because his extended/ renewed contract was void for lack of POEA approval and thus, barred recognition of any rights and obligations arising therefrom. Such interpretation runs counter to the avowed policy of the State to give maximum aid and protection to labor, especially in the instant case where the lack of POEA approval was not Joselito's fault who was made to continuously serve aboard M/T Demetra ***beyond the maximum allowable period of service of twelve months without the benefit of a formal contract or being subjected to another pre-employment medical examination (PEME)***. Petitioners made such a scenario occur and should not benefit from their wrongful acts. Thus, the CA is correct in holding that there was an implied renewal of Joselito's contract of employment for another nine (9) months starting from the expiration of the allowable three (3) month extension on January 28, 2003, or for the period of January 29, 2003 up to October 28, 2003, with petitioners being deemed to have relied on Joselito's fitness based on his previous PEME and assumed the risk of liability for illness contracted during such extended term. In this regard, the Court has repeatedly held that a worker brings with him possible infirmities in the course of his employment and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability.

3. ID.; ID.; QUITCLAIMS, WAIVERS, OR RELEASES ARE LOOKED UPON WITH DISFAVOR AND ARE LARGELY

INEFFECTIVE TO BAR RECOVERY OF THE FULL MEASURE OF A WORKER'S RIGHTS, AND THE ACCEPTANCE OF BENEFITS THEREFROM DOES NOT AMOUNT TO ESTOPPEL, ESPECIALLY WHERE INSTEAD OF PROMOTING THE ORDERLY SETTLEMENT OF DISPUTES, THE EMPLOYER'S ACTS ENCOURAGED THE CIRCUMVENTION OF THE PROPER LEGAL PROCEDURES AND THE EVASION OF THE PAYMENT OF LEGITIMATE CLAIMS TO A SEAFARER SUCCUMBING TO A LIFE-THREATENING DISEASE; SETTLEMENTS ENTERED INTO BY THE EMPLOYEE WHICH ARE CONTRARY TO PUBLIC POLICY MUST BE STRUCK DOWN.— Neither may the execution of release documents in petitioners' favor detract from the compensability of Joselito's death. While the documents appear to have been executed voluntarily, they were the result of a pre-designated scheme to evade payment of disability benefits due to Joselito, whose medical condition gradually regressed despite the company designated physician's declaration that he was fit to work. Anent the release documents that Joselito executed in favor of petitioners, records show that Joselito's two (2) previous complaints were actually "walk-in settlements," thus explaining his actions of filing such complaints and eventual motions to dismiss, as well as the execution of release documents, all on the same day. Moreover, petitioners never traversed Cristina's assertion that the motion to dismiss and release document in connection with Joselito's second complaint were already signed and executed even before such complaint was filed and that respondent Inter-Orient's representatives actually accompanied Joselito in filing the same. The foregoing facts, coupled with Joselito's failing health, negate his voluntariness in executing his complaints, motions to dismiss, and release documents and give life to the truism that "necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them." Besides, as a rule, quitclaims, waivers, or releases are looked upon with disfavor and are largely ineffective to bar recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. This is especially true in this case where instead of promoting the orderly settlement of disputes,

petitioners' acts encouraged the circumvention of the proper legal procedures and the evasion of the payment of legitimate claims to a seafarer succumbing to a life-threatening disease. Therefore the settlements that Joselito entered into must be struck down for being contrary to public policy.

4. **ID.; ID.; THE MEDICAL REPORT ISSUED BY THE COMPANY DESIGNATED PHYSICIAN THAT THE SEAFARER WAS FIT TO WORK MAY BE DISREGARDED BY THE COURT WHERE EVIDENCE ON RECORD SHOWS THAT THE LATTER HAD IN FACT BEEN UNABLE TO ENGAGE IN HIS REGULAR WORK WITHIN THE ALLOWABLE PERIOD; THE SEAFARER'S DEATH IS COMPENSABLE WHERE THE SAME WAS CAUSED BY AN ILLNESS CONTRACTED IN THE COURSE OF HIS EMPLOYMENT.—** [D]espite the declaration of fitness that would have entitled him to reinstatement to his former position, Joselito was not provided work, apparently due to his worsening health. He was thus constrained to seek medical attention at his own expense and was continuously unable to work until his death. This only shows that his medical condition effectively barred his chances of being hired by other maritime employers and deployed abroad on an ocean-going vessel. In a number of cases, the Court disregarded the medical report issued by the company designated physician that the seafarer was fit to work in view of the evidence on record that the latter had in fact been unable to engage in his regular work within the allowable period, as in this case. In view of the foregoing, Joselito's death is compensable for having been caused by an illness duly established to have been contracted in the course of his employment.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Linsangan Linsangan & Linsangan Law Offices for respondent

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the October 21, 2011 Decision[2] dated and March 27, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 113342, which reversed and set aside the August 28, 2009 Decision[4] and December 21, 2009 Resolution[5] of the National Labor Relations Commission (NLRC), reinstating the April 28, 2006 Decision[6] of the Labor Arbiter (LA), granting respondent Cristina Candava's (Cristina) claim for death benefits.

The Facts

In January 2002, petitioner Inter-Orient Maritime Incorporated (Inter-Orient) hired Joselito C. Candava (Joselito) as an able-bodied seaman for its foreign principal, Tankoil Carriers Limited (Tankoil). Joselito was then deployed to M/T Demetra for a contract period of nine (9) months.[7] Despite expiration of his contract period on October 28, 2002, Joselito continued to work aboard the vessel due to the unavailability of a replacement and such work extension lasted until February 2003.

On February 13, 2003, he complained of significant pain in the abdominal region and was rushed to a hospital. Joselito was

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[1] *Rollo*, pp. 35-62.

[2] *Id.* at 70-86. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser, concurring.

[3] *Id.* at 106-107.

[4] CA *Rollo*, pp. 26-44. Docketed as NLRC CA No. 049654-06, penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo C. Go, concurring.

[5] *Id.* at 45-46.

[6] *Id.* at 158-161. Docketed as NLRC NCR Case No. (OFW-M) 04-01-00155-00, penned by Labor Arbiter Eduardo J. Carpio.

[7] *Id.* at 49.

diagnosed to be suffering from "direct inguinal hernia strangulated right" and "acute appendicitis." As such, he underwent two (2) medical procedures, namely right inguinal plasty and appendectomy, where the doctors further discovered that the tumor in Joselito's right inguinal canal "corresponded to a tumor formation dependent on the right testicle"[8] which appeared oncogenic. As a result thereof, Joselito was repatriated to Manila. Upon his arrival, the company designated physician examined Joselito and declared him fit to work. Nonetheless, his supplications for work were rejected.

On March 28, 2003, Joselito, accompanied by representatives of petitioner Inter-Orient, filed a complaint[9] for recovery of sick wages and reimbursement of medical expenses before the NLRC — National Capital Region (NLRC-NCR). However, on even date, Joselito sought for its dismissal[10] in consideration of the sum of ₱29,813.04 and in relation thereto, executed a Release of All Rights[11] and *Pagpapaubaya ng Lahat ng Karapatan*,[12] releasing Tankoil and Inter-Orient from any claim arising from the appendicitis and inguinal hernia he suffered.

A month later, Joselito was diagnosed to have suspected "malignant cells that may also be reactive mesothelial cells,"[13] and thereafter found to have testicular tumor[14] (cancer of the testes[15]), abdominal germ cell tumor,[16] metastatic carcinoma to the lungs and pleural effusion.[17] Thus, on August 11, 2003,

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[8] *Id.* at 68.

[9] *Id.* at 111-112.

[10] *Id.* at 113.

[11] *Id.* at 114-116.

[12] *Id.* at 120.

[13] *Id.* at 69.

[14] *Id.* at 70.

[15] *Rollo*, p. 16.

[16] CA *Rollo*, p. 74.

[17] *Id.* at 72.

Joselito, again accompanied by representatives from petitioner Inter-Orient, filed another complaint[18] for medical benefits before the NLRC — San Pablo City. Similarly, on even date, Joselito sought for the dismissal[19] of his complaint in consideration of the amount of ₱77,000.00 and executed a Receipt and Release,[20] releasing Tankoil and Inter-Orient from any claim arising from his employment. In both complaints, orders of dismissal were issued.

On October 9, 2003, Joselito passed away. His death certificate[21] listed the following causes:

Immediate Cause:	RESPIRATORY FAILURE
Antecedent Cause:	PULMONARY METASTASIS
Underlying Cause:	GERM CELL TUMOR
Other Significant Conditions Contributing to Death:	PNEUMONIA

Respondent Cristina sent a Letter[22] dated December 17, 2003 to petitioner Inter-Orient, demanding payment of death benefits but her pleas fell on deaf ears. As such, Cristina filed a complaint for death and other monetary benefits against petitioners before the NLRC-NCR.

In her complaint, respondent Cristina alleged that Joselito did not receive any sickness benefit or medical assistance from petitioners other than those subject of the release documents which were paid only after Joselito complied with the requirement of filing his complaints. While admitting that Joselito was not coerced into signing the release documents, Cristina averred that he was constrained by his physical and financial condition to accept the measly amount offered by petitioners. Further, Cristina claimed that Joselito's death was due to an illness

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[18] *Id.* at 121-122.

[19] *Id.* at 123.

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

[21] *Id.* at 76.

[22] *Id.* at 80-84.

contracted during the latter's employment and thus, she is entitled to death compensation, burial assistance, moral and exemplary damages, and attorney's fees.

For their part, petitioners claimed that Cristina's complaint is barred by *res judicata* or the filing of the two previous complaints by Joselito, which were dismissed upon his motion, and the accompanying release documents the latter executed.

The Ruling of the Labor Arbiter

In its Decision[23] dated April 28, 2006, the LA ruled in favor of Cristina, ordering petitioners to pay her US$50,000.00 as death benefits, US$7,000.00 as benefits to their minor son, Jerome Lester, US$1,000.00 as burial assistance, and ten percent (10%) of the total monetary award as attorney's fees.[24] The LA found that the release papers executed by Joselito during his lifetime cannot bar his heirs' right to receive death benefits and burial expenses which only arose and accrued upon his death.[25] Further, the LA opined that the payment of sickness wages and other benefits made by petitioners is an acknowledgement that his death was compensable.[26]

The Ruling of the NLRC

In its Decision[27] dated August 28, 2009, the NLRC reversed and set aside the LA's ruling, holding that Joselito did not die during the term of his contract with petitioners and that his illness was not proven to be work-related.[28] Nonetheless, the NLRC held that contrary to petitioners' claims, Cristina's complaint is not barred by *res judicata* considering the lack of

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[23] *Id.* at 158-161.

[24] *Id.* at 161.

[25] *Id.* at 160.

[26] *Id.* at 161.

[27] *Id.* at 26-44.

[28] *Id.* at 43.

identity of causes of action between Joselito's and Cristina's respective complaints.[29]

Cristina filed a Motion for Reconsideration dated October 9, 2009 but was denied in the NLRC's Resolution[30] dated December 21, 2009. Aggrieved, Cristina filed a Petition for *Certiorari*[31] dated March 4, 2010 with the CA.

The Ruling of the CA

In its Decision[32] dated October 21, 2011, the CA annulled and set aside the NLRC's ruling and reinstated that of the LA. It held that while the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) allows an employer to extend a seafarer's employment beyond the period stipulated if there was no replacement crew available, such extension should not exceed three (3) months. In Joselito's case, his original contract period expired sometime in October 2002 but petitioners extended his employment until February 2003, or for four (4) additional months. Thus, the CA deemed that there was an implied renewal of Joselito's employment contract for another nine (9) months starting from the expiration of the allowable three (3) month extension on January 28, 2003, or for the period of January 29, 2003 up to October 28, 2003. In view of this, Joselito's death on October 9, 2003 was within the term of his contract and thus, compensable.

Moreover, the CA noted that even though Joselito's illness was not listed in Section 32 of the Standard Employment Contract, petitioners nevertheless failed to rebut the disputable presumption that Joselito's illness is work-related.[33]

Petitioners sought for reconsideration but was denied in the CA's Resolution[34] dated March 27, 2012. Hence, this petition.

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[29] *Id.* at. 30-34.

[30] *Id.* at 45-46.

[31] *Id.* at 3-24.

[32] *Rollo,* pp. 70-86.

[33] *Id.* at 82-83.

[34] *Id.* at 106-107.

The Issue Before the Court

The pivotal issue raised for the Court's resolution is whether Joselito's death is compensable as to entitle Cristina to claim death benefits.

At this point, it should be noted that the compensability of Joselito's death should be resolved under the provisions of the 1996 POEA-SEC, which is the POEA-SEC in effect when petitioners employed him in January 2002. This is because the 2000 POEA-SEC which introduced amendments to the 1996 POEA-SEC initially took effect on June 25, 2000 but its implementation was suspended[35] and lifted only on June 5, 2002.[36]

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears stressing that the employment of seafarers, including claims for death benefits, is governed by the contracts they sign at the time of their engagement. As long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[37]

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[35] On September 12, 2000, POEA Administrator Renaldo A. Regalado issued Memorandum Circular No. 11, series of 2000, declaring, among others, that Section 20 (A), (B), and (D) of the 1996 POEA-SEC (on Compensation and Benefits for Death and for Injury or Illness) shall continue to be applied in view of the Temporary Restraining Order dated September 11, 2000 issued by the Court in G.R. Nos. 143476 and 144479 enjoining the effectivity of certain amendments introduced by the 2000 Standard Employment Contract.

[36] Through POEA Memorandum Circular No. 2, series of 2002.

[37] *Quizora v. Denholm Crew Management (Philippines), Inc.*, G.R. No. 185412, November 16, 2011, 660 SCRA 309, 318, citing *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA, 590, 596.

The prevailing rule under the 1996 POEA-SEC was that the illness leading to the eventual death of seafarer need not be shown to be work-related in order to be compensable, but must be proven to have been ***contracted during the term of the contract***. Neither is it required that there be proof that the working conditions increased the risk of contracting the disease or illness.[38] An injury or accident is said to arise "in the course of employment" when it takes place within the period of employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.[39] A meticulous perusal of the records reveals that Joselito ***contracted his illness in the course of employment.*** It cannot also be denied that the same was aggravated during the same period. Thus, there was a ***clear causal connection between such illness and his eventual death***, making his death compensable.

Verily, Joselito complained of significant pain in the abdominal region while aboard M/T Demetra and during the extended period of his employment. Upon undergoing different medical procedures, the doctors discovered that the tumor in Joselito's right inguinal canal "corresponded to a tumor formation dependent on the right testicle."[40] Despite the company designated physician's declaration that Joselito was fit to work, his condition continued to deteriorate as succeeding medical reports showed the presence of testicular as well as abdominal germ tumors.[41] His abdominal germ tumor, being in the midline portion of the body, the most common metastasis (spread) will be in the lungs.[42] This is supported by medical reports showing the presence of

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[38] *Remigio v. NLRC*, 521 Phil. 330 (2006), citing *Sealanes Marine Services, Inc. v. NLRC*, G.R. No. 84812, October 5, 1990, 190 SCRA 337, 346.

[39] *Sy v. Philippine Transmarine Carriers, Inc.*, G.R. No. 191740, February 11, 2013.

[40] CA *Rollo*, pp. 68.

[41] *Id.* at 70, 73-74.

[42] <http://www.lpch.org/DiseaseHealthInfo/HealthLibrary/oncology/gct.html> (visited June 20, 2013).

multiple pulmonary nodules, as well as reactive mesothelial cells,[43] which is consistent with the presence of metastatic tumor.[44] Thereafter, Joselito underwent thoracentesis[45] which further revealed malignant cells in his body.[46]

Moreover, Joselito's Death Certificate[47] stated respiratory failure as the immediate cause of his death, with pulmonary metastasis as antecedent cause. The underlying cause for his death was germ cell tumor which may be found, among others, in the testes and the center back wall of the abdominal cavity.[48] The World Health Organization defines an underlying cause as the disease or injury ***that initiated the train of events leading directly to death***, or circumstances of the accident or violence that produced the fatal injury.[49] Perforce, ***there existed a clear causal connection between Joselito's illness which he contracted during employment and his eventual death***.

The Court cannot give credence to petitioners' claim[50] that Joselito's death occurred beyond the term of his employment

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[43] CA *Rollo*, p. 69.

[44] <http://www.medialabinc.net/spg374393/reactive_mesothelial_cells.aspx> (visited June 20, 2013).

[45] Thoracentesis is a procedure to remove excess fluid in the space between the lungs and the chest wall. <http://www.nhlbi.nih.gov/health/health-topics/topics/thor/> (visited June 20, 2013).

[46] CA *Rollo*, p. 72.

[47] *Id.* at 76.

[48] Germ cell tumors are tumors that begin in cells that, in a developing fetus, become sperm or egg cells. Because of the way a baby develops in the womb, these kinds of tumors are found in the ovaries and testes, and in other sites along the midline of the body, such as the brain, the center of the chest, and the center back wall of the abdominal cavity. They can also be found in the center parts of the pelvis, cervix, and uterus, in the vagina or prostate, in the oral or nasal cavities, or on the lips. These tumors are usually discovered either during the first few years of life, or shortly after puberty (when an increase in hormone levels may initiate cancer formation). <http://www.healthline.com/galecontent/germ-cell-tumors> (visited June 20, 2013).

[49] <http://www.dhs.wisconsin.gov/wish/main/Mortality/define.htm> (visited June 20, 2013).

[50] *Rollo*, p. 57.

because his extended/renewed contract was void for lack of POEA approval and thus, barred recognition of any rights and obligations arising therefrom. Such interpretation runs counter to the avowed policy of the State to give maximum aid and protection to labor, especially in the instant case where the lack of POEA approval was not Joselito's fault who was made to continuously serve aboard M/T Demetra ***beyond the maximum allowable period of service of twelve months***[51] ***without the benefit of a formal contract or being subjected to another pre-employment medical examination (PEME)***. Petitioners made such a scenario occur and should not benefit from their wrongful acts. Thus, the CA is correct in holding that there was an implied renewal of Joselito's contract of employment for another nine (9) months starting from the expiration of the allowable three (3) month extension on January 28, 2003, or for the period of January 29, 2003 up to October 28, 2003, with petitioners being deemed to have relied on Joselito's fitness based on his previous PEME and assumed the risk of liability for illness contracted during such extended term. In this regard, the Court has repeatedly held that a worker brings with him possible infirmities in the course of his employment and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability.[52]

Neither may the execution of release documents in petitioners' favor detract from the compensability of Joselito's death. While the documents appear to have been executed voluntarily, they were the result of a pre-designated scheme to evade payment of disability benefits due to Joselito, whose medical condition gradually regressed despite the company designated physician's declaration that he was fit to work.

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[51] Section 2(B) of the 1996 POEA-SEC provides:

[t]he period of employment shall be for a period mutually agreed upon by the seafarer and the employer but not to exceed twelve (12) months. Any extension of the contract shall be subject to the mutual consent of both parties.

[52] *Coastal Safeway Marine Services, Inc. v. Delgado*, *supra* note 37, at 599, citing *Seagull Shipmanagement and Transport, Inc. v. NLRC*, G.R. No. 123619, June 8, 2000, 333 SCRA 236, 243.

Anent the release documents that Joselito executed in favor of petitioners, records show that Joselito's two (2) previous complaints were actually "walk-in settlements,"[53] thus explaining his actions of filing such complaints and eventual motions to dismiss, as well as the execution of release documents, all on the same day. Moreover, petitioners never traversed Cristina's assertion[54] that the motion to dismiss and release document in connection with Joselito's second complaint were already signed and executed even before such complaint was filed and that respondent Inter-Orient's representatives actually accompanied Joselito in filing the same.

The foregoing facts, coupled with Joselito's failing health, negate his voluntariness in executing his complaints, motions to dismiss, and release documents and give life to the truism that "necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them."[55] Besides, as a rule, quitclaims, waivers, or releases are looked upon with disfavor and are largely ineffective to bar recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel.[56] This is especially true in this case where instead of promoting the orderly settlement of disputes; petitioners' acts encouraged the circumvention of the proper legal procedures and the evasion of the payment of legitimate claims to a seafarer succumbing to a life-threatening disease. Therefore the settlements that Joselito entered into must be struck down for being contrary to public policy.

Lastly, despite the declaration of fitness that would have entitled him to reinstatement to his former position,[57] Joselito

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[53] CA *Rollo*, pp. 111-112 & 121-122.

[54] *Id.* at 50-53.

[55] *University of Santo Tomas v. Samahang Manggagawa ng UST*, G.R. No. 169940, September 18, 2009, 600 SCRA 499, 522.

[56] *Interorient Maritime Enterprises, Inc. v. Remo*, G.R. No. 181112, June 29, 2010, 622 SCRA 237, 247-248.

[57] *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 317.

was not provided work, apparently due to his worsening health. He was thus constrained to seek medical attention at his own expense and was continuously unable to work until his death. This only shows that his medical condition effectively barred his chances of being hired by other maritime employers and deployed abroad on an ocean-going vessel. In a number of cases, the Court disregarded the medical report issued by the company designated physician that the seafarer was fit to work in view of the evidence on record that the latter had in fact been unable to engage in his regular work within the allowable period,[58] as in this case.

In view of the foregoing, Joselito's death is compensable for having been caused by an illness duly established to have been contracted in the course of his employment.

WHEREFORE, the petition is **DENIED**. The October 21, 2011 Decision dated and March 27, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 113342 are hereby **AFFIRMED**. Therefore, petitioners Inter-Orient Maritime, Incorporated and/or Tankoil Carriers, Limited are ordered to pay respondent Cristina Candava the following amounts: (1) US$50,000.00 as death benefits; (2) US$7,000.00 as benefits to Joselito's minor child, Jerome Lester; (3) US$1,000.00 as burial assistance; and (4) ten percent (10%) of the total monetary award as attorney's fees.

SO ORDERED.

Carpio (Chaiperson), Brion, del Castillo, and *Perez, JJ.,* concur.

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[58] See *Wallem Maritime Services, Inc. v. NLRC*, G.R. No. 163838, September 25, 2008, 566 SCRA 338, 350-351, citing *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 596; and *Philimare, Inc./ Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 445-449.

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A.M. No. 04-10-11-SC (The Rules on Violence Against Women and Children) — Does not prohibit the respondent to question the constitutionality of R.A. No. 9262 in his opposition to the petition for protection order. (Garcia *vs*. Honorable Ray Alan T. Garcia, G.R. No. 179267, June 25, 2013; *Leonardo-De Castro, J., concurring opinion*) p. 44

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— May be raised in an opposition to the petition for protection order. *(Id.)*

— The distinction between men and women is germane to the purpose of the law which is to address violence committed against women and children, spelled out in its Declaration of Policy. *(Id.)*

— The earliest opportunity to challenge the constitutionality of R.A. No. 9262 is to raise it as an affirmative defense in an opposition to a petition for protection order and not by filing a separate action before the trial court. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Leonardo-De Castro, J., concurring opinion*) p. 44

— The gender-based classification in R.A. No. 9262 is substantially related to the achievement of governmental objectives, therefore, not violative of the equal protection clause. *(Id.)*

— The law does not violate the guaranty of equal protection clause because it rests on substantial distinction specifically pointing to the unequal power relationship between men and women. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013) p. 44

— The statutory classification under the law is valid, and that the lowest level of scrutiny of review should be applied in determining if it has established a valid classification germane to the Constitution's objective to protect the family by protecting its women and children members. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Brion, J., concurring opinion*) p. 44

Expanded equal protection clause — Concept. (Garcia *vs*. Hon. Ray Alan T. Garcia, G.R. No. 179267, June 25, 2013; *Abad, J., separate concurring opinion*) p. 44

Middle-tier scrutiny or the intermediate standard of judicial review — The appropriate test to determine whether the classification under R.A. No. 9262 violates the equal protection clause. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Leonardo-De Castro, J., concurring opinion*) p. 44

— To survive intermediate review, the classification in the challenged law must (1) serve important governmental objectives, and (2) be substantially related to the achievement of those objectives; the essential governmental objectives of safeguarding human rights, ensuring gender equality and empowering women are being served by R.A. No. 9262. *(Id.)*

Nature of — An ameliorative action that would address the evil effects of such social model on Filipino women and children and elevate their status as human beings on the same level as the father or the husband. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Abad, J., separate concurring opinion*) p. 44

Section 23 (c) of A.M. No. 04-10-11-SC — Referral of the case to a mediator is not allowed because violence is not a subject for compromise. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013) p. 44

Suspect classification, not a — The classification is not a "suspect classification" that requires strict scrutiny standard review, it not having been brought on by consideration of gender or sex but by the reality in Philippine society. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Brion, J., concurring opinion*) p. 44

Temporary protection order — The grant of a temporary protection ex parte is not violative of due process. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013) p. 44

— The issuance of temporary protection order ex parte does not violate due process of law. (Garcia *vs*. Hon. Garcia, G.R. No. 179267, June 25, 2013; *Leonardo-De Castro, J., concurring opinion*) p. 44

APPEALS

Appeal from quasi-judicial agencies to the Court of Appeals — Decisions or awards of the Construction Industry Arbitration Commission (CIAC) may be appealed to the Court of Appeals in a petition for review; the Regional Trial Court has no jurisdiction to review awards or decision of the CIAC in construction disputes. (J. Plus Asia Dev't. Corp. *vs*. Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

Appeal from the Construction Industry Arbitration Commission (CIAC) decisions or awards — CIAC awards need not be confirmed to be executory. (J. Plus Asia Dev't. Corp. *vs*. Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

Appeal to the Court of Appeals — Must be filed within a period of fifteen days, which may be extended upon request of the party specifically citing reason therefor, and only at the discretion of the Court of Appeals, and on the basis of reasons it may find meritorious, but in no case to exceed fifteen days, save in exceptionally meritorious cases. (Go *vs*. BPI Finance Corp., G.R. No. 199354, June 26, 2013) p. 579

Extensions of time to file a petition for review — A party cannot simply demand for a longer period, without citing the reason therefor, for the court's consideration and application of discretion. (Go *vs*. BPI Finance Corp., G.R. No. 199354, June 26, 2013) p. 579

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. (Go *vs*. BPI Finance Corp., G.R. No. 199354, June 26, 2013) p. 579

— Court cannot touch on factual questions except in the course of determining whether or not the National Labor Relations Commission (NLRC) committed grave abuse of discretion in considering and appreciating the factual issues before it. (Poseidon International Maritime Services, Inc. *vs*. Tamala, G.R. No. 186475, June 26, 2013) p. 459

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. (People of the Phils. *vs*. Datu Not Abdul, G.R. No. 186137, June 26, 2013) p. 441

(Akang *vs.* Mun. of Isulan, Sultan Kudarat Province, G.R. No. 186014, June 26, 2013) p. 420

Question of law — Controversy arising from the application of law and jurisprudence on the conflicting disability assessments of the two sets of physicians involves a question of law. (Phil. Hammonia Ship Agency, Inc. *vs.* Dumadag, G.R. No. 194362, June 26, 2013) p. 507

ARREST

Legality of — Accused-appellant is estopped from assailing the legality of her arrest as she is deemed to have waived any irregularity, that may have tainted her arrest when she failed to raise any objection to the manner of her arrest before arraignment. (People of the Phils. *vs.* Trinidad, G.R. No. 191267, June 26, 2013) p. 497

Warrantless arrest — Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on lawful warrantless arrests, either by a peace officer or a private person; two elements must concur: 1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and 2) such overt act is done in the presence or within the view of the arresting officer; explained. (People of the Phils. *vs.* Trinidad, G.R. No. 191267, June 26, 2013) p. 497

BILL OF RIGHTS

Exclusionary rule — Exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation. (Tanengge *vs.* People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

Prying into the privacy of another's residence — The individual's right to privacy under Article 26 (1) of the Civil Code should not be confined to his house or residence as it may extend to a business office where he has the right to

exclude the public or deny them access and only individuals who are allowed to enter may come. (Sps. Hing *vs*. Choachuy, Sr., G.R. No. 179736, June 26, 2013) p. 337

Reasonable expectation of privacy test — The reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether, by his conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable; the installation of video surveillance cameras should not cover places where there is reasonable expectation of privacy, unless the consent of the individual, whose right to privacy would be affected, was obtained or should these cameras be used to pry into the privacy of another's residence or business office. (Sps. Hing *vs*. Choachuy, Sr., G.R. No. 179736, June 26, 2013) p. 337

Right to counsel — The proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution is applicable only in custodial interrogation. (Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

Right to privacy — The right of an individual to be let alone that no one, not even the State, except in case of overriding social need and only under stringent procedural safeguards, can a person be disturbed in the privacy of his/her home. (Sps. Hing *vs*. Choachuy, Sr., G.R. No. 179736, June 26, 2013) p. 337

CERTIORARI

Petition for — An aggrieved party may assail an interlocutory order through a petition for certiorari but only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

— Issues of jurisdiction and due process cannot be considered unsubstantial to warrant outright dismissal of the petition for certiorari to review the resolutions of the Commission on Elections. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

— The Supreme Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence except when the COMELEC's appreciation and evaluation of evidence are so grossly unreasonable as to turn into an error of jurisdiction. *(Id.)*

CITIZENSHIP

Burden of evidence — Absent sufficient proof that the petitioner is an American citizen, the burden of evidence cannot be shifted to the respondent to prove that she had availed of the privileges of R.A. No. 9225 in order to re-acquire her status as a natural-born Filipino citizen. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003 (R.A. NO. 9225)

Application — The fact that a candidate is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

— The twin requirements of swearing to an oath of allegiance and executing a renunciation of foreign citizenship does not apply to a candidate who is a natural born Filipino citizen who did not subsequently become a naturalized citizen of another country. *(Id.)*

Oath of allegiance — Oath of office as provincial administrator cannot be considered as the oath of allegiance in compliance with the R.A. No. 9925. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

COMMISSION ON ELECTIONS (COMELEC)

COMELEC Rules of Procedure — The COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

Jurisdiction — COMELEC is not ousted of its jurisdiction to hear and decide questions relating to qualifications of candidates and the petition for the cancellation of certificate of candidacy after the winner is proclaimed. (Jalosjos *vs*. COMELEC, G.R. No. 193314, June 25, 2013) p. 177

COMMON CARRIERS

Contract of carriage — When an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date, if not, the former opens itself to a suit for breach of the said contract. (Cathay Pacific Airways *vs*. Reyes, G.R. No. 185891, June 26, 2013) p. 398

Standard of care required — The standard of care required is that of a good father of a family which connotes reasonable care consistent with that which an ordinary prudent person would have observed when confronted with a similar situation. (Cathay Pacific Airways *vs*. Reyes, G.R. No. 185891, June 26, 2013) p. 398

COMPLEX CRIME

Murder with multiple attempted murder — The single act of pitching or rolling a hand grenade on the floor of a gymnasium which resulted in the death of one victim and injuries to others constitutes a complex crime of murder with multiple attempted murder under Article 48 of the Revised Penal Code. (People of the Phils. *vs*. Mores, G.R. No. 189846, June 26, 2013) p. 480

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Substantial evidence gaps in the chain of custody of the plastic sachet confiscated from the appellant put into question the reliability and evidentiary value of the contents thereof; failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused is fatal for the prosecution. (People of the Phils. *vs*. Datu Not Abdul, G.R. No. 186137, June 26, 2013) p. 441

— Two crucial links must be complied with: first, the seized illegal drug must be marked in the presence of the accused and immediately upon confiscation which must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking, and second, the turnover of the seized drugs at every stage–from confiscation from the accused, transportation to the police station, conveyance to the chemistry lab, and presentation to the court-must be shown and substantiated. *(Id.)*

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*. Trinidad, G.R. No. 191267, June 26, 2013) p. 497

CONFESSIONS

Voluntariness of — One of the indicia of voluntariness in the execution of extrajudicial statement is that it contains many details and facts which the investigating officers could not have known and could not have supplied without the knowledge and information given by him. (Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

— Where the defendant did not present evidence of compulsion, where he did not institute any criminal or administrative action against his supposed intimidators,

and where no physical evidence of violence was presented, his extrajudicial statement shall be considered as having been voluntarily executed. *(Id.)*

CONTRACTS

Breach of — Where a party to a building construction contract fails to comply with the duty imposed by the terms of the contract, a breach results for which an action may be maintained to recover the damages sustained thereby, and a breach occurs where the contractor inexcusably fails to perform substantially in accordance with the terms of the contract. (J. Plus Asia Dev't. Corp. *vs.* Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

Contract with moros or other non-Christian inhabitants or cultural minorities — Rule that contracts entered into by a person with any moro or other non-Christian inhabitants or cultural monoritites shall not be valid unless with executive approval by Sections 145 and 146 of the Administrative Code of Mindanao and Sulu, and Section 120 of the Public Land Act, as amended will not be applied so stringently as to render ineffective a contract that is otherwise valid, except for want of approval by the Commission on National Integration. (Akang *vs.* Mun. of Isulan, Sultan Kudarat Province, G.R. No. 186014, June 26, 2013) p. 420

Interpretation of — Various stipulations of a contract shall be interpreted together attributing to the doubtful ones that sense which may result from all of them taken jointly. (J. Plus Asia Dev't. Corp. *vs.* Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

COURT PERSONNEL

Conduct of — Court employees are supposed to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers, and the transacting public for boorishness, foul language, and any misbehavior in the court premises diminish its sanctity and dignity. (Abulencia *vs.* Hermosisima, A.M. SB-13-20-P, June 26, 2013) p. 248

Dishonesty and grave misconduct — Classified as grave offenses under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, with the corresponding penalty of dismissal for the first offense; Section 58(a) of the same rule states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service. (Sabidong *vs.* Solas, A.M. No. P-01-1448, June 25, 2013) p. 1

Grave misconduct and simple misconduct — Distinguished; hurling invectives on co-workers during office hours and within the court premises, although not work-related, constitute clear deviations from the established norms of conduct which ought to be followed by public officers, amounting to simple misconduct. (Abulencia *vs.* Hermosisima, A.M. SB.-13-20-P, June 26, 2013) p. 248

Habitual absenteeism — Close-to-unbearable working conditions, substantial evidence of reformation and family considerations mitigate the penalty of dismissal to suspension. (Judge Ma. Monina S. Misajon *vs.* Hiponia, A.M. No. P-08-2439 [Formerly OCA IPI No. 08-2733-P), June 25, 2013) p. 22

— Under Administrative Circular No. 14-2002, an officer or employee shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least 3 months in a semester, the imposable penalty of which is dismissal from service for the second offense. *(Id.)*

Misconduct and dishonesty — Explained. (Sabidong *vs.* Solas, A.M. No. P-01-1448, June 25, 2013) p. 1

— The deception and fraudulent acts perpetrated against complainant's family who were forced into submission by the constant threat of eviction constitute grave misconduct. *(Id.)*

Prohibition against acquisition of property involved in litigation — A property forming part of the estate under judicial settlement continues to be subject of litigation until the probate court issues an order declaring the estate proceedings closed and terminated. (Sabidong *vs.* Solas, A.M. No. P-01-1448, June 25, 2013) p. 1

— Article 1491, paragraph 5 of the Civil Code prohibits court officers such as clerks of court from acquiring property involved in litigation within the jurisdiction or territory of their courts. *(Id.)*

— No violation of the rule when the property is pending litigation before another court (RTC) and not the MTCC where respondent was Clerk of Court. *(Id.)*

— The sale or assignment of the property must take place during the pendency of the litigation involving the property. *(Id.)*

DAMAGES

Actual damages — Award thereof requires that the amount of loss be capable of proof and must actually be proven with reasonable degree of certainty. (Cathay Pacific Airways vs. Reyes, G.R. No. 185891, June 26, 2013) p. 398

Liquidated damages — As a precondition to the award thereof, there must be proof of the fact of delay in the performance of the obligation. (J. Plus Asia Dev't. Corp. *vs.* Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

Moral and exemplary damages — To warrant an award of moral damages in breaches of contract, there must be proof that the defendant acted fraudulently or in bad faith and to warrant an award of exemplary damages, the defendant must have acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. (Cathay Pacific Airways *vs.* Reyes, G.R. No. 185891, June 26, 2013) p. 398

Negligence — Failure of a travel agency to input the correct ticket number of a passenger and making fictitious bookings for the latter constitute negligence in the performance of an obligation which renders it liable for damages. (Cathay Pacific Airways *vs*. Reyes, G.R. No. 185891, June 26, 2013) p. 398

Nominal damages — Recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown. (Cathay Pacific Airways *vs*. Reyes, G.R. No. 185891, June 26, 2013) p. 398

— The amount of nominal damages to be awarded shall be equal or at least commensurate to the injury sustained by the party considering the concept and purpose of such damages and the special reasons extant in the case. *(Id.)*

DANGEROUS DRUGS ACT (R.A. NO. 6425)

Drug pushing — Drug pushing has been committed with so much casualness even between total strangers. (People of the Phils. *vs*. Linda *y* Gerolaga, G.R. No. 200507, June 26, 2013) p. 614

Illegal sale of dangerous drugs — Essential requisites for illegal sale of shabu are: (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 and the following material requirements: (1) proof that the transaction or sale actually took place and (2) presentation in court of the *corpus delicti* as evidence. (People of the Phils. *vs*. Linda *y* Gerolaga, G.R. No. 200507, June 26, 2013) p. 614

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*. Linda *y* Gerolaga, G.R. No. 200507, June 26, 2013) p. 614

(People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

(Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

DUE PROCESS

Administrative due process — In administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

ELECTIONS

Certificate of candidacy, cancellation of — The cancellation of the certificate of candidacy based on an ineligibility that existed at the time of its filing renders the ineligible candidate, who was subsequently proclaimed and assumed office, a de facto officer, whose ouster from office, does not leave a vacancy to speak of as the de jure officer, the rightful winner in the elections, has the legal right to assume the position. (Jalosjos *vs*. COMELEC, G.R. No. 193314, June 25, 2013) p. 177

Certificate of candidacy, denial and cancellation of — Petition for denial and cancellation of the Certificate of Candidacy (COC) is summary in nature, thus the COMELEC is given much discretion on the evaluation and admission of evidence pursuant to its principal objective of determining whether or not the COC should be cancelled. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

Citizenship requirement — A candidate has the duty to prove that she is a natural-born Filipino Citizen and has not lost the same, or that she has required such status in accordance with the provisions of R.A. No. 9925 or the Citizenship Retention and Re-acquisition Act of 2003. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

— The COMELEC did not impose additional qualifications on candidates for the House of Representatives who have acquired foreign citizenship but merely applied the qualifications prescribed by the Constitution. *(Id.)*

Jurisdiction over election contests — Once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns and qualification ends, and the HRET's own jurisdiction begins. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

Pre-proclamation controversy — Decisions of the COMELEC in pre-proclamation cases shall become final and executory after the lapse of five days from their promulgation unless restrained by the Supreme Court via petition for certiorari under Rule 37 of the COMELEC Rules of Procedure or Rule 64 of the Rules of Court. (Ongsiako Reyes *vs*. COMELEC, G.R. No. 207264, June 25, 2013) p. 192

ELECTIVE GOVERNMENT OFFICIALS

Eligibility of candidates — When the candidate's claim of eligibility is proven false, as when the candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the Certificate of Candidacy (COC) constitutes a deliberate attempt to mislead, misinform, or hide the fact of ineligibility. (Jalosjos *vs*. COMELEC, G.R. No. 193314, June 25, 2013) p. 177

Residency requirement — A temporary and intermittent stay in a stranger's house does not amount to residence. (Jalosjos *vs*. COMELEC, G.R. No. 193314, June 25, 2013) p. 177

— Mere purchase of a parcel of land does not make it one's residence to be an actual and physical residence of a locality, one must have a dwelling place where one resides no matter how modest and regardless of ownership. *(Id.)*

— The approval of the registration as a voter does not prove that the registrant has resided in the locality for more than one year prior to the elections, but it only carries a presumption that the registrant will be able to meet the six-month residency requirement for the elections in which the registrant intends to vote. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts; mere absence of an employee is not sufficient to constitute abandonment; the employer has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning. (Fianza *vs.* NLRC, G.R. No. 163061, June 26, 2013) p. 275

— Management has the right to regulate the business and control its every aspect which includes the freedom to close or cease its operations for any reason, as long as it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence. (Poseidon International Maritime Services, Inc. *vs.* Tamala, G.R. No. 186475, June 26, 2013) p. 459

EMPLOYMENT, TERMINATION OF

Abandonment of work as a ground — Employee's continuous inquiry about the status of his employment, his willingness to return to work at anytime and his filing of an illegal dismissal, evinced the employee's intent to return to work. (Fianza *vs.* NLRC, G.R. No. 163061, June 26, 2013) p. 275

Backwages — An award of backwages, inclusive of allowances and other benefits or their monetary equivalent, is to be computed from the time the employee's actual compensation was withheld up to the finality of the decision of the case. (Manila Jockey Club, Inc. *vs*. Trajano, G.R. No. 160982, June 26, 2013) p. 254

Cessation of business operations — Cessation of business operations is a valid ground for the termination of an overseas employment subject to compliance with the following requisites: 1. the decision to close or cease operations must be bona fide in character; 2. service of written notice on the affected employees and on the Department of Labor and Employment (DOLE) at least one (1) month prior to the effectivity of the termination; and 3. payment to the affected employees of termination or separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. (Poseidon International Maritime Services, Inc. *vs*. Tamala, G.R. No. 186475, June 26, 2013) p. 459

Dismissal of employees — Employer must establish by substantial evidence that dismissal was for a valid cause. (Manila Jockey Club, Inc. *vs*. Trajano, G.R. No. 160982, June 26, 2013) p. 254

Due process requirement — Confrontation of witnesses is required only in adversarial criminal prosecutions, but not in company investigations for the administrative liabilty of an employee. (Manila Jockey Club, Inc. *vs*. Trajano, G.R. No. 160982, June 26, 2013) p. 254

— For termination of employment based on just causes as defined in Article 282 of the Labor Code: (i) a written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side; (ii) a hearing or conference during which the employee

concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and (iii) a written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. *(Id.)*

— Personal service of the notice of termination on the employee is not required but the notice must be served on the last known address of the employee. *(Id.)*

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement and to full backwages which, if no longer feasible in view of the considerable time that has lapsed between the dismissal and the resolution of the case, to an award of separation pay, computed at one month pay for every year of service. (Manila Jockey Club, Inc. *vs*. Trajano, G.R. No. 160982, June 26, 2013) p. 254

Just cause — A legally dismissed employee is entitled to an award of nominal damages as indemnity for the violation of the required statutory procedures. (Poseidon International Maritime Services, Inc. *vs*. Tamala, G.R. No. 186475, June 26, 2013) p. 459

Loss of trust and confidence as a ground — A belated invocation of loss of confidence broadly hints the ground as a mere afterthought to buttress an otherwise baseless dismissal of the employee. (Manila Jockey Club, Inc. *vs*. Trajano, G.R. No. 160982, June 26, 2013) p. 254

— Must be shown to be genuine, not a mere afterthought to justify an earlier action taken in bad faith, and should not be used as a subterfuge for causes which are illegal, improper and unjustified. *(Id.)*

— To be a valid ground for dismissal, the same must be based on a willful breach of trust and confidence founded on clearly established facts, and not on the employer's arbitrariness, whims, caprices or suspicion, and must be related to the employee's performance of duties. *(Id.)*

Separation pay — May be given when there is illegal dismissal to employees who are terminated for authorized causes; for considerations of social justice or if it has become an established practice of the company. (7K Corp. *vs.* Albarico, G.R. No. 182295, June 26, 2013) p. 372

Voluntary arbitrator, jurisdiction of — The voluntary arbitrator may award backwages upon a finding of illegal dismissal, even though the issue of entitlement thereto is not explicitly claimed in the submission agreement. (7K Corp. *vs.* Albarico, G.R. No. 182295, June 26, 2013) p. 372

— The voluntary arbitrator rightly assumed jurisdiction to decide the issue of legality of dismissal, although not explicitly included in the submission agreement, where the issue of the employee's entitlement to separation pay emanates solely from his allegation of illegal dismissal. *(Id.)*

Waivers and quitclaims — Quitclaims are looked with disfavor for being contrary to public policy except when done voluntarily, with a full understanding of its terms and with the payment of credible and reasonable consideration, in which case the transaction is recognized to be valid and binding. (Poseidon International Maritime Services, Inc. *vs.* Tamala, G.R. No. 186475, June 26, 2013) p. 459

EVIDENCE

Flight of the accused — Non-flight does not necessarily connote innocence and unexplained flight is indicative of guilt. (People of the Phils. *vs.* Mores, G.R. No. 189846, June 26, 2013) p. 480

Proof of genuineness — An article in the internet cannot simply be taken to be evidence of the truth of what it says, nor can photocopies of documents not shown to be genuine be taken as proof of the truth. (Ongsiako Reyes vs. COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

Substantial evidence — The quantum of evidence necessary to find an individual administratively liable is substantial evidence. (Ongsiako Reyes vs. COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

FALSIFICATION OF COMMERCIAL DOCUMENTS

Elements — The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and, (3) that the falsification was committed in a public, official or commercial document. (Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

FORGERY

Finding of — A finding of forgery does not depend entirely on the testimonies of government handwriting experts whose opinions do not mandatorily bind the courts; a trial court is not precluded but is even authorized by law to conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. (Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

FRAME-UP

Defense of — Defense of frame-up cannot stand against the testimony of the police, supported by evidence of *corpus delicti* in illegal sale of drugs. (People of the Phils. *vs*. Trinidad, G.R. No. 191267, June 26, 2013) p. 497

GRAVE ABUSE OF DISCRETION

Application — Rulings of the labor tribunals rendered in total disregard of the law between the parties constitute grave abuse of discretion. (Phil. Hammonia Ship Agency, Inc. *vs*. Dumadag, G.R. No. 194362, June 26, 2013) p. 507

HOUSE OF REPRESENTATIVES

Oath of office — Before there is a valid or official taking of the oath it must be made (1) before the Speaker of the House of Representatives, and (2) in open session. (Ongsiako Reyes *vs.* COMELEC, G.R. No. 207264, June 25, 2013) p. 192

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Jurisdiction — The jurisdiction of the HRET as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives. (Ongsiako Reyes *vs.* COMELEC, G.R. No. 207264, June 25, 2013) p. 192

— The proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation and the party questioning the qualifications of the winning candidate should now present his case in a proper proceeding before the HRET who, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualification of members of the House of Representatives. (Ongsiako Reyes *vs.* COMELEC, G.R. No. 207264, June 25, 2013; *Brion, J., dissenting opinion*) p. 192

— The proclamation of the winner in the congressional elections serves as the reckoning point as well as the trigger that brings any contests relating to his election, return and qulifications within the HRET's sole and exclusive jurisdiction. *(Id.)*

INJUNCTION

Preliminary injunction — There is a reasonable expectation of privacy in one's property, whether used as a business office or as a residence and the installation of video surveillance cameras directly facing said property or covering a significant portion thereof, without the owner's consent, is a clear violation of his right to privacy for

which the issuance of a preliminary injunction was justified. (Sps. Hing *vs*. Choachuy, Sr., G.R. No. 179736, June 26, 2013) p. 337

Section 22(j) of A.M. NO. 04-10-11-SC — A temporary protection order (TPO) may not be enjoined. (Garcia *vs*. Honorable Ray Alan T. Garcia, G.R. No. 179267, June 25, 2013) p. 44

JUDGES

Administrative complaint against — A judge may no longer be made liable if the complaint was filed after his retirement. (OCAD *vs*. Retired Judge Guillermo R. Andaya, A.M. No. RTJ-09-2181 [Formerly A.M. No. 09-4-174-RTJ], June 25, 2013) p. 33

Duty to promptly decide or resolve cases — Section 15(1), Article VIII of the Constitution mandates lower courts to decide or resolve cases or matters for decision or resolution within three (3) months from date of submission. (OCAD *vs*. Retired Judge Guillermo R. Andaya, A.M. No. RTJ-09-2181 (Formerly A.M. No. 09-4-174-RTJ), June 25, 2013) p. 33

JUDGMENTS

Foreign judgments — A party should be allowed to simply prove as a fact under the Rules of Court the foreign judgment nullifying the marriage between a Filipino and a foreign citizen on ground of bigamy, as the same is fully consistent with Philippine public policy. (Minoru Fujiki *vs*. Marinay, G.R. No. 196049, June 26, 2013) p. 524

— A petition to recognize a foreign judgment declaring a marriage void does not require relitigation of the case under a Philippine court as if it were a new petition for declaration of nullity of marriage. *(Id.)*

— A recognition of a foreign judgment is not an action to nullify a marriage but an action for Philippine courts to recognize the effectivity of a foreign judgment which presupposes a case which was already tried and decided under foreign law. *(Id.)*

— A recognition of a foreign judgment nullifying a bigamous marriage is without prejudice to a criminal prosecution for bigamy under the Revised Penal Code. *(Id.)*

— In a foreign judgment relating to the status of a marriage involving a citizen of a foreign country, Philippine courts only decide whether to extend its effect to the Filipino party, under the rule of *lex nationalii* expressed in Article 15 of the Civil Code. *(Id.)*

— In the absence of inconsistency with public policy or adequate proof of extrinsic ground to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations; the recognition of the foreign judgment nullifying a bigamous marriage is a subsequent event that establishes a new status, right and fact that needs to be reflected in the civil registry. *(Id.)*

— Once admitted and proven in a Philippine court, the foreign judgment can only be repelled on ground of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. *(Id.)*

— The purpose of recognizing foreign judgments is to limit repetitive litigation on claims and issues. *(Id.)*

— The recognition of a foreign judgment may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court since the recognition only requires proof of fact of the judgment. *(Id.)*

— The Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. *(Id.)*

— To extend the effect of a foreign judgment in the Philippines, Philippine courts must determine if the foreign judgment is consistent with domestic public policy and other mandatory laws. *(Id.)*

— To recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the foreign judgment must be proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court through (1) an official publication or (2) a certification or a copy attested by the officer who has custody of the judgment. *(Id.)*

LABOR ARBITER

Jurisdiction — Labor arbiters have exclusive jurisdiction over termination disputes except where the parties agree to have it submitted to voluntary arbitrators. (7K Corp. *vs.* Albarico, G.R. No. 182295, June 26, 2013) p. 372

LACHES

Application — In exceptional cases, laches is allowed as a bar to recover titled property. (Akang *vs.* Mun. of Isulan, Sultan Kudarat Province, G.R. No. 186014, June 26, 2013) p. 420

— While the sale of real property by a cultural minority is null and void for lack of executive approval, nevertheless, his right to recover possession and ownership is barred by laches, due to his lengthy inaction and negligence warranting a conclusion that he acquisced or conformed to the sale. *(Id.)*

LAND REFORM CODE (R.A. NO. 3844)

Agricultural leasehold relation — Where a certificate of land title (CLT) had already been issued to the tenant-farmers, nor to claim prescription, for the latter are guaranteed continued enjoyment and possession of their land holding except when their dispossession had been authorized by virtue of a final and executory judgment. (Coderias *vs.* Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

— Where the tenant-farmer's tenure on the farm is deemed uninterrupted, any benefit or advantage from the land shall accrue to him. *(Id.)*

Rights of the agricultural tenant — Where the farm has been expropriated and placed under the coverage of the land reform law, the landowner has no right to evict the tenant-farmer and enter the property, but is bound to respect the juridical tie that exists between him and the farmer. (Coderias *vs*. Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

Section 8 thereof — The agricultural leasehold relation shall be extinguished only under any of the following three circumstances, to wit: (1) abandonment of the landholding without the knowledge of the agricultural lessor; (2) voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or (3) absence of the persons under Section 9 to succeed the lessee. (Coderias *vs*. Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

Section 38 thereof — An action to enforce any cause of action shall be barred if not commenced within three years after such cause of action accrued; as long as the intimidation and threats to the farmer's life and limb existed, the farmer had a cause of action against the agricultural lessor to enforce the recognition of the juridical tie that exists between them. (Coderias *vs*. Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

LOCUS STANDI

Concept of — A non-victim has no legal standing to question the constitutionality of R.A. No. 9262. (Garcia *vs*. Honorable Ray Alan T. Garcia, G.R. No. 179267, June 25, 2013; *Leonen, J., concurring opinion*) p. 44

— Legal standing in cases that raise constitutional issues is essential. *(Id.)*

— The presence of an actual case prevents the Supreme Court from providing advisory opinions or using its immense power of judicial review absent the presence of a party with real and substantial interests to clarify the issues based upon his/her experience and standpoint. *(Id.)*

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Section 10 thereof — Applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause. (Poseidon International Maritime Services, Inc. *vs*. Tamala, G.R. No. 186475, June 26, 2013) p. 459

OBLIGATIONS

Contractor's performance bond — A stipulation allowing the confiscation of the contractor's performance bond in case of breach of the obligation partakes of the nature of a penalty clause and such stipulation is strictly binding upon the obligor so long as the same does not contravene law, morals, or public order. (J. Plus Asia Dev't. Corp. *vs*. Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

— If the language of the bond is ambiguous or uncertain, it will be construed most strongly against a compensated surety and in favor of the obligees or beneficiaries under the bond, for whose benefit it was ostensibly executed. *(Id.)*

Default of debtor — Requisites in order that the debtor may be in default: 1) that the obligation be demandable and already liquidated; 2) that the debtor delays performance; and 3) that the creditor requires the performance judicially and extrajudicially; default generally begins from the moment the creditor demands the performance of the obligation; it could be considered to have been made upon the filing of the complaint, and it is only from this date that the interest should be computed. (J. Plus Asia Dev't. Corp. *vs*. Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

Surety — If a surety upon demand fails to pay, it can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation; the liability for the payment of interest is not because of the suretyship agreement itself but because of the delay in payment of its obligation under the said agreement. (J. Plus Asia Dev't. Corp. *vs*. Utility Assurance Corp., G.R. No. 199650, June 26, 2013) p. 587

OMBUDSMAN

Powers — The filing of the criminal action against an accused in court does not prevent the Ombudsman from exercising his power to grant him immunity from criminal prosecution so he can be used as state witness. (People of the Phils. *vs*. Sandiganbayan, G.R. Nos. 185729-32, June 26, 2013) p. 386

PARTIES TO CIVIL ACTIONS

Real party in interest — A real party defendant is one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former. (Sps. Hing *vs*. Choachuy, Sr., G.R. No. 179736, June 26, 2013) p. 337

— Being a real party in interest, the prior spouse has the personality to file a petition to recognize a foreign judgment nullifying his spouse's bigamous marriage and judicially declare as a fact that such judgment is effective in the Philippines, and he has also the personality to file a petition to cancel the entry of the bigamous marriage in the civil registry on the basis of the foreign judgment. (Minoru Fujiki *vs*. Marinay, G.R. No. 196049, June 26, 2013) p. 524

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Death compensation benefits — The illness leading to the eventual death of seafarer need not be shown to be work-related in order to be compensable, but must be proven to have been contracted during the term of the contract;

neither is it required that there be proof that the working conditions increased the risk of contracting the disease or illness. (Inter-Orient Maritime and/or Tankoh Carriers Ltd. *vs*. Candava, G.R. No. 201251, June 26, 2013) p. 628

Renewal of contract of employment — There is an implied renewal of contract of employment where the seafarer was made to continuously serve aboard the vessel beyond the maximum allowable period of service without the benefit of a formal contract or being subjected to another pre-employment medical examination. (Inter-Orient Maritime and/or Tankoh Carriers Ltd. *vs.* Candava, G.R. No. 201251, June 25, 2013) p. 628

PRESUMPTIONS

Presumption of regularity in the performance of official duties — 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 their part or deviation from the regular performance of their duties. (People of the Phils. *vs*. Linda y Gerolaga, G.R. No. 200507, June 26, 2013) p. 614

Suppressed evidence is unfavourable — The presumption that suppressed evidence is unfavorable does not apply where the evidence was at the disposal of both the defense and the prosecution. (Tanengge *vs*. People of the Phils., G.R. No. 179448, June 26, 2013) p. 310

PROBABLE CAUSE

Determination of — A judge is not bound by the resolution of the public prosecutor who conducted the preliminary investigation and must himself ascertain from the latter's findings and supporting documents whether probable cause exists for the purpose of issuing a warrant of arrest. (De Los Santos-Dio *vs*. CA, G.R. No. 178947, June 26, 2013) p. 288

— The judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause but if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. *(Id.)*

Existence of — A judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly infrerred from the evidence presented and not when its existence is simply doubtful. (De Los Santos-Dio *vs*. Ca, G.R. No. 178947, June 26, 2013) p. 288

Guiding principles — Once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (a) issue a warrant of arrest, if he finds probable cause; (b) immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and (c) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause. (De Los Santos-Dio *vs*. Ca, G.R. No. 178947, June 26, 2013) p. 288

QUALIFIED RAPE

Civil indemnity — The award of civil indemnity and moral damages, each in the amount of ₱75,000.00 and exemplary damages in the amount of ₱30,000.00, are subject to interest at the rate of six percent per annum from the date of finality of judgment until fully paid. (People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

Penalty — The proper penalty to be imposed in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole. (People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

QUALIFYING CIRCUMSTANCES

Treachery — Two elements must concur in order to establish treachery: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed. (People of the Phils. *vs*. Mores, G.R. No. 189846, June 26, 2013) p. 480

QUASI-DELICT

Liability for —The responsibility of joint tortfeasors who are liable for a quasi-delict is solidary. (Cathay Pacific Airways *vs*. Reyes, G.R. No. 185891, June 26, 2013) p. 398

QUITCLAIMS

Validity of — Quitclaims, waiver, or releases are looked upon with disfavor and are largely ineffective to bar recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel, especially where instead of promoting the orderly settlement of disputes, the employer's acts encouraged the circumvention of the proper legal procedures and the evasion of the payment of legitimate claims to a seafarer succumbing to a life-threatening disease. (Inter-Orient Maritime and/or Tankoh Carriers Ltd. *vs*. Candava, G.R. No. 201251, June 26, 2013) p. 628

RAPE

Commission of — Absence of external signs or physical injuries does not negate the commission of the crime of rape. (People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

— Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the

usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case. *(Id.)*

— Failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. *(Id.)*

RULES OF PROCEDURE

Application — Technicalities may be set aside for reasons of equity. (Coderias *vs.* Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

Liberal application/construction — Courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. (Coderias *vs.* Estate of Juan Chioco, G.R. No. 180476, June 26, 2013) p. 354

SALES

Contract of — Non-payment of the purchase price merely gave rise to a right in favor of the petitioner to either demand specific performance or rescission of the contract of sale. (Akang *vs.* Mun. of Isulan, Sultan Kudarat Province, G.R. No. 186014, June 26, 2013) p. 420

— Perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price; to be valid, all of the following essential elements must concur: a) consent or meeting of the minds; b) determinate subject matter; and c) price certain in money or its equivalent. *(Id.)*

Contract to sell — Distinguished from contract of sale. (Akang *vs*. Mun. of Isulan, Sultan Kudarat Province, G.R. No. 186014, June 26, 2013) p. 420

SEAFARERS, CONTRACT OF EMPLOYMENT

Claim for disability benefits — Failure of the seafarer to comply with the conflict resolution procedure under the POEA-SEC and the CBA is fatal to his disability benefits claim. (Phil. Hammonia Ship Agency, Inc. *vs*. Dumadag, G.R. No. 194362, June 26, 2013) p. 507

Medical report — The medical report issued by the company designated physician that the seafarer was fit to work may be disregarded by the court where evidence on record shows that the latter had in fact been unable to engage in his regular work within the allowable period. (Inter-Orient Maritime and/or Tankoh Carriers Ltd. *vs*. Candava, G.R. No. 201251, June 26, 2013) p. 628

Seafarers-vessel owners relationship — The POEA Standard Employment Contract (POEA-SEC) and the Collective Bargaining Agreement (CBA), of which the seafarer and the vessel owner are both signatories, govern their employment relationship and are the law between them and as such, they are bound by their terms and conditions. (Phil. Hammonia Ship Agency, Inc. *vs*. Dumadag, G.R. No. 194362, June 26, 2013) p. 507

STATE WITNESS

Discharge of accused to be state witness — The following requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been

convicted of any offense involving moral turpitude. (People of the Phils. *vs*. Sandiganbayan, G.R. Nos. 185729-32, June 26, 2013) p. 386

— The immunity granted to an accused does not blot out his commission of the offense but the State saw a higher social value in eliciting information from him rather than in engaging in his prosecution. *(Id.)*

— Unless made in clear violation of the rules, the prosecutorial discretion in the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses should be given weight by our courts. *(Id.)*

— Where a crime is contrived in secret, the discharge of one of the conspirators is essential so he can testify against the others. *(Id.)*

STATUTES

Constitutionality of — Requisites that must concur before the court can rule on constitutional issues: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. (Garcia *vs*. Honorable Ray Alan T. Garcia, G.R. No. 179267, June 25, 2013; *Leonen, J., concurring opinion*) p. 44

WITNESSES

Credibility of — Factual findings of the trial court, especially when affirmed by the Court of Appeals are entitled to great weight and respect since the trial court was in the best position as the original trier of the facts in whose

direct presence and under whose keen observation the witnesses rendered their respective versions. (People of the Phils. *vs*. Linda *y* Gerolaga, G.R. No. 200507, June 26, 2013) p. 614

(People of the Phils. *vs*. Mores, G.R. No. 189846, June 26, 2013) p. 480

— Inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. (People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

— Rape victim's credibility cannot be diminished or tainted by imputation of ill motives for it is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motive or grudge. *(Id.)*

— Trivial and insignificant discrepancies which were immediately clarified upon further questioning, will warrant neither the rejection of her testimony nor the reversal of the judgment. *(Id.)*

Retractions of — Retractions are looked upon with considerable disfavor because they are generally unreliable. (People of the Phils. *vs*. Zafra *y* Serrano, G.R. No. 197363, June 26, 2013) p. 559

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