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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 170245. July 1, 2013]

THE HEIRS OF SPOUSES DOMINGO TRIA and CONSORCIA CAMANO TRIA, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES and DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; IT IS MORE EQUITABLE TO DETERMINE JUST COMPENSATION BASED ON THE GOVERNMENT SUPPORT PRICE (GSP) OF *PALAY* AT THE CURRENT PRICE OR THE VALUE OF SAID PROPERTY AT THE TIME OF PAYMENT.— In *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc.*, we ruled that since the *Gabatin* case, this Court had already decided several cases in which it found more equitable to determine just compensation based on the GSP of *palay* at the current price or the value of said property at the time of payment. In this case, the Court used the standard laid down in Section 17 of Republic Act No. 6657 (RA No. 6657) as a guidepost in the determination of just compensation in relation to the GSP of *palay*.

2. ID.; ID.; ID.; WHEN THE GOVERNMENT TAKES PROPERTY PURSUANT TO PD NO. 27, BUT DOES NOT PAY THE LANDOWNER HIS JUST COMPENSATION

UNTIL R.A. NO. 6657 HAS TAKEN EFFECT IN 1998, IT BECOMES MORE EQUITABLE TO DETERMINE JUST COMPENSATION USING R.A. 6657 AND NOT E.O. 228.— In the more recent case of *Land Bank of the Philippines v. Heirs of Maximo Puyat and Gloria Puyat*, the Court again adhered to the ruling laid down in the abovementioned case. Here, the Court ruled that when the government takes property pursuant to PD No. 27, but does not pay the landowner his just compensation until after RA No. 6657 has taken effect in 1998, it becomes more equitable to determine just compensation using RA No. 6657 and not EO No. 228. Hence, the valuation of the GSP of *palay* should be based on its value at the time it was ordered paid by the SAC. Considering that the present case involves a similar factual milieu as the aforementioned cases, the Court deems it more equitable to determine just compensation due the petitioners using values pursuant to the standard laid down in Section 17 of RA No. 6657. Here, the property of the deceased spouses was placed under the land reform program in October 1972, and since then the land was parceled out and distributed to some 30 tenant-beneficiaries by respondents without effecting immediate and prompt payment. Clearly, the tenant-beneficiaries have already benefited from the land, while petitioners wait in vain to be paid. Unfortunately, it was only 19 years after the land was distributed by respondents that there was an action on the part of respondents to pay petitioners.

LEONEN, *J., separate opinion:*

1. POLITICAL LAW; AGRARIAN REFORM; JUST COMPENSATION; THE VALUE FOR PURPOSES OF JUST COMPENSATION SHOULD BE THE FAIR MARKET VALUE AT THE TIME OF THE TAKING BUT THE AMOUNT TO BE PAID MUST BE THE PRESENT VALUE OF THE AMOUNT THAT SHOULD HAVE BEEN PAID.— I maintain my position that the value for purposes of just compensation should be the fair market value at the time of the taking but the amount to be paid must be the *present* value of the amount that should have been paid. The amount to be paid must therefore take into consideration inflation, among other pertinent factors. This is what is meant by the

various cases cited in the *ponencia* that the amount to be given is the value of the property "at the time the payment is made."

2. ID.; ID.; ID.; TO INDEX JUST COMPENSATION TO BE PAID TO THE OWNER ON THE FAIR MARKET VALUE OF THE PROPERTY AT THE TIME OF THE PAYMENT WILL BE TO NEEDLESSLY PENALIZE THE OWNER.— The concept of just compensation in agrarian reform is the same as just compensation in all types of taking. The landowner should be paid the present value of the fair market value of the land at the time of the actual taking of the property. Just compensation is computed at the time of the taking because it replaces the value of the rights to property removed from the owner. The fair market value of the property is the outcome of market perceptions. Such taking will also have an effect on the fair market value of adjoining properties. At that instance, the taking on the part of the government may have already caused other properties that are located near the property to depreciate in value. Hence, the value of the property itself naturally decreases after the property has been definitively taken by government. To index the just compensation to be paid to the owner on the fair market value of the property at the time of the payment will be to needlessly penalize the owner. This is not what our Constitution mandated in Article III, Section 9.

3. ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION, PARTICULARLY THE DETERMINATION OF FAIR MARKET VALUE, IS AN INHERENT JUDICIAL FUNCTION WHICH CANNOT BE CURTAILED BY LEGISLATION; THE FORMULAS CONTAINED IN VARIOUS AGRARIAN REFORM LAWS SHOULD BE MERELY RECOMMENDATORY TO THE TRIAL COURT DETERMINING JUST COMPENSATION.— I am also of the view that the Constitution provides that the determination of just compensation, particularly the determination of fair market value, is an inherent judicial function. That discretion cannot be curtailed by legislation. Hence, the formulas contained in various agrarian reform laws should be merely recommendatory to the trial court determining just compensation. Each case must be approached by the trial judge with sensitivity to the specific local market in which it

is found and in accordance with the general guidance given by our jurisprudence. This valuation of the fair market value must be done on a case-to-case basis. The totality of the circumstances must be fully appreciated in determining the value of the property. This is in the interest of making certain that the landowners are ensured of their rights under the Constitution. With that, I am of the opinion that there is a need to provide a method of determination of just compensation. This is particularly true for the Special Administrative Court (SAC) in agrarian reform, which is explicitly mandated in Republic Act No. 6657, as amended by Republic Act No. 9700. This definitive method of determination will ensure that courts will have a proper jurisprudential guideline that is provided by the judiciary itself, and not one imposed by the legislative or the executive branches of government.

4. ID.; ID.; ID.; METHOD THAT SHOULD BE UNDERTAKEN IN THE DETERMINATION OF JUST COMPENSATION IN EMINENT DOMAIN CASES WHEN A SIGNIFICANT AMOUNT OF TIME HAS LAPSED BETWEEN THE TIME OF TAKING AND THE TIME OF PAYMENT; TWO DIFFERENT STAGES IN THE DETERMINATION OF THE JUST COMPENSATION; EXPLAINED.— I propose that when the courts undertake the determination of just compensation in eminent domain cases, this determination should undergo two different stages. This applies when a significant amount of time has lapsed between the time of taking and the time of payment. The first stage requires ascertaining the fair market value of the subject property, as earlier mentioned. This requires determining the value of the property at the time of the taking. Among other factors, this includes the due consideration of the applicability of formulas found in the law and administrative guidelines, tax declarations and the like. In agrarian reform cases, such as the present case before this Court, I propose that the provisions on social justice in the 1987 Constitution on agrarian reform should serve as definitive qualitative standards to ascertain the determination of the fair market value which should be paid to the landowner. The second stage of determining just compensation is finding the *present* value of the fair market value at the time of the taking. When the law said payment should be based on "fair market value at the time of taking," ideally, *the property owner*

should also be paid at the time of taking. This would give true meaning to the Constitutional phrase of "just compensation." It is only just that at the instance the owner is deprived of the property, government compensates the owner.

5. ID.; ID.; ID.; IN CASES WHERE AN APPRECIABLE GAP OF TIME HAS LAPSED BETWEEN THE ACTUAL TAKING AND THE FINAL AWARD OF COMPENSATION, COURTS HAVE TO TAKE INTO CONSIDERATION THE INTEREST INCOME THE OWNER COULD HAVE EARNED IF HE RECEIVED THE MONEY WHEN THE PROPERTY WAS TAKEN.— We have to face the reality that expropriation proceedings, as in this case, take a significant amount of time. An appreciable gap of time has lapsed between the actual taking and the final award of just compensation granted by the court. This period of time can take years in certain cases. This results in the deprivation of beneficial use on the part of the landowner of the land or the proceeds from the payment of its fair market value. To augment this situation, courts have to take into consideration the interest income the owner could have earned if he had received the money when the property was taken. In economics, this is referred to as the future or present value. Another way of looking at the concept of present value in the context of expropriation is to pretend that the parties in the case have extraordinary foresight. In such a hypothetical situation, the parties already know the fair market value even before the expropriation proceedings have been terminated. With that amount in mind, government could already pay the property owner at the time of taking and in turn, the property owner could deposit the payment in a bank. By the time expropriation proceedings have ceased, the property owner could already withdraw this amount of money. By then, he would have withdrawn the principal (fair market value of the property at the time of taking) and the interest it has accumulated over time.

6. ID.; ID.; ID.; THE PROPOSED METHOD WILL ALLOW THE COURTS TO EXERCISE A JUDICIAL STANDARD THAT THE COURTS, PARTICULARLY THE SPECIAL ADMINISTRATIVE COURT (SAC) CAN UTILIZE TO ARRIVE AT A TRULY FAIR AMOUNT OF JUST COMPENSATION.— This proposal is admittedly unfamiliar

to most of the members of the bench and bar. But the Court has undertaken similar endeavors in the past, such as the calculation of loss of earning capacity for purposes of computing actual damages. The usage of the concept of present value, and the proposed formula, incorporates the discipline of economics into the judicial determination of the SAC. This will not only simplify the judicial determination, but also ensure that the landowner is compensated justly after the fair market value of the property has been determined, no matter how long the expropriation proceedings take in court. Valuation is an inexact science; each property subject to the court's determination of just compensation is subject to varying circumstances, and what is present for one property may not be present for another. That said, this new proposed method will allow the courts to exercise a judicial standard that the courts, particularly the SAC can utilize to arrive at a truly fair amount of just compensation.

APPEARANCES OF COUNSEL

Exequiel C. Tria for petitioners.
LBP Legal Services Group for Land Bank of the Phils.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Amended Decision[1] of the Court of Appeals (*CA*), dated October 25, 2005.

The facts follow.

During their lifetime, the deceased spouses Domingo Tria and Consorcia Camano owned a parcel of agricultural land located at Sangay, Camarines Sur, with an area of 32.3503 hectares.

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Eugenio S. Labitoria and Martin S. Villarama, Jr. (now a member of this Court), concurring; *rollo*, pp. 42-46.

By virtue of Presidential Decree (PD) No. 27, which mandated the emancipation of tenant-farmers from the bondage of the soil, the Government, sometime in 1972, took a sizeable portion of the deceased spouses' property with a total area of 25.3830 hectares. Thereafter, respondent Department of Agrarian Reform (*DAR*) undertook the distribution and eventual transfer of the property to thirty tenant-beneficiaries. In due time, individual Emancipation Patents were issued by respondent DAR in favor of the tenant-beneficiaries. Pursuant to Section 2 of Executive Order (*EO*) No. 228, respondent Land Bank of the Philippines (*LBP*) made an offer on November 23, 1990 to pay petitioners, by way of compensation for the land, the total amount of ₱182,549.98, broken down as follows: ₱18,549.98 of which would be in cash, and the remaining ₱164,000.00 to be satisfied in the form of LBP Bonds.[2]

Not satisfied with the LBP's valuation of their property, petitioners rejected their offer and filed a Complaint before the Regional Trial Court (*RTC*) of Naga City claiming that the just compensation for their property is ₱2,700,000.00.

During trial, petitioners filed a Motion for Partial Judgment praying that respondent LBP pay them the amount of ₱182,549.98 pursuant to its previous offer. Hence, the RTC issued a Partial Judgment[3] on December 22, 1992 ordering respondent LBP to pay the amount of ₱182,549.98.

Consequently, respondent LBP filed a Motion for Reconsideration against said Partial Judgment on the ground that the RTC's Order for it to immediately pay the amount of ₱182,549.98 is not in accord with the provisions of Section 3 of EO No. 228 which requires payment of just compensation partially in cash and gradually through LBP Bonds.

Hence, the RTC issued an Order[4] granting respondent LBP's motion for reconsideration, to wit:

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[2] *Id*. at 48-49.

[3] *Id*. at 62-63.

[4] CA *rollo*, pp. 74-76.

WHEREFORE, partial judgment is hereby rendered ordering Defendant Land Bank of the Philippines to pay the "Heirs of Domingo Tria and Consorcia Camano" the following amounts:

1. EIGHTEEN THOUSAND FIVE HUNDRED FORTY-NINE and 98/100 (₱18,549.98) PESOS, Philippine Currency, plus interest earned from investment securities at the shortest time and at the highest rate possible in accordance with Executive Order No. 12; and

2. ONE HUNDRED SIXTY-FOUR THOUSAND (₱164,000.00) PESOS, Philippine Currency, plus interest thereon at market rates of interest that are aligned with 90-day treasury bill rates, computed from date of approval of the claim of the said spouses.

This partial judgment shall be without prejudice to further proceedings to determine the just compensation and other claims due the Heirs of the deceased Spouses Domingo Tria and Consorcia Camano as provided by law.

In compliance with the RTC's Order, respondent LBP paid petitioners the total amount of ₱309,444.97 in the form of manager's checks, and the amount of ₱43,524.00 in the form of LBP Bonds, representing the cash portion with interest earned from investment securities, and bond payment of the just compensation for the expropriated property, respectively.[5]

In the course of the proceedings, the RTC appointed three Commissioners to compute and recommend to the court the just compensation to be paid for the expropriated property.

In their report, each of the three Commissioners adopted a different formula in their valuation for the expropriated property: (1) the Commissioner representing respondent LBP adopted the mode of computation provided under EO No. 228; (2) the Commissioner representing petitioners adopted the Sales Value Analysis Formula; and (3) the Commissioner representing the trial court used the Assessor's Schedule of Value Formula.

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[5] *Rollo*, p. 50.

In order to resolve the differences in their computation, the Commissioners obtained the average of their respective valuations and made a final recommendation of ₱1,151,166.51 for the entire expropriated property.

However, neither the parties nor the RTC found the computation of the Commissioners acceptable. Resultantly, in a Decision[6] dated August 23, 1995, the RTC made its own computation by using the formula used by the Commissioner representing the LBP with the slight modification that it used the government support price (*GSP*) for one cavan of palay in 1994 as multiplier.

Not in conformity with the RTC's ruling, respondents interposed an appeal before the CA.

On March 31, 2004, the CA rendered a Decision[7] affirming the RTC's ruling. It held that the formula and computation adopted by the RTC are well in accord with the working principles of fairness and equity, and likewise finds ample support from the recent pronouncement of the Supreme Court on the matter of determination of just compensation.

Nevertheless, upon a motion for reconsideration filed by respondents, the CA reversed itself and issued an Amended Decision[8] dated October 25, 2005, reversing its earlier ruling favoring the RTC's decision.

In its Amended Decision, the CA heavily relied in the *Gabatin v. Land Bank of the Philippines*[9] (*Gabatin*) ruling wherein this Court fixed the rate of the GSP for one cavan of *palay* at ₱35.00, the value of the corresponding produce at the time the property was taken in 1972.

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[6] *Id*. at 56-61.

[7] *Id*. at 47-55.

[8] *Id*. at 42-46.

[9] 486 Phil. 366 (2004).

Accordingly, petitioners filed before this Court a petition for review on *certiorari* assailing the Amended Decision rendered by the CA. Petitioners, therefore, cite the following arguments in their petition:

I. JUST COMPENSATION IS A JUDICIAL ISSUE NOT AN ADMINISTRATIVE ISSUE.

II. IF APPLYING THE PROVISIONS OF EO NO. 228 WOULD RESULT TO UNJUST COMPENSATION, THE DISTINCTION BETWEEN ACTUAL TAKING AND ACTUAL PAYMENT WOULD BE OF NO MOMENT AND IRRELEVANT.

III. RIGHT TO PROPERTY IS A FRAMEWORK OF A WELL-ORDERED SOCIETY AND THIS COURT MUST PROTECT IT FROM CONFISCATION WITHOUT JUST COMPENSATION.

IV. THE COURT'S ASSERTION OF ITS ROLE AS THE FINAL ARBITER OF INDIVIDUAL'S RIGHTS GUARANTEED BY THE CONSTITUTION AGAINST GOVERNMENT OPPRESSION FAR OUTWEIGHS ANY FINANCIAL RIPPLE THAT MAY BE CAUSED BY OVERTURNING THE DOCTRINE IN GABATIN V. COURT OF APPEALS.

V. THE AWARD BY THE TRIAL COURT IN 1995 MUST BE INCREMENTED WITH INTEREST OF 12% PER ANNUM.[10]

Ultimately, this Court is called upon to determine the issue of whether or not the CA erred in ruling that the valuation of the property for purposes of determining just compensation should be based on the GSP at the time the property was taken in 1972, in accordance with the *Gabatin* case.

Petitioners insist that the CA erred in relying on the case of *Gabatin*. They assert that the true guidepost in property taking, whether under the police power of the state or under its eminent domain, is "just compensation."

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[10] *Rollo*, pp. 23, 29, 33-35, 38.

Petitioners maintain that the jurisprudential definition of just compensation means just and complete equivalent of the loss which the owner of the property expropriated has to suffer by reason of it. Hence, they argue that the valuation offered by respondent LBP at ₱9,243.50 per hectare in 1972 could have represented the fair market value of its landholdings had the same been actually paid in that same year. However, since the same was never really paid, it would be totally unjust if the valuation offered by respondent LBP in 1972 be paid in 1995.

Conversely, respondent LBP contends that the CA correctly ruled in ordering the RTC to compute and fix the just compensation for the expropriated agricultural lands, strictly in accordance with the mode of computation prescribed in the *Gabatin* case. It stresses that when EO No. 228 fixed the basis in determining the value of the land using the GSP for one cavan of *palay* on October 21, 1972 at ₱35.00, it was merely in cognizance of the settled rule that just compensation is the value of the property at the time of the taking.

For its part, respondent DAR supports respondent LBP's contention that the CA did not commit reversible error when it reconsidered its decision and remanded the case to the court of origin for the determination of just compensation based on the formula set forth in the *Gabatin* case.

We find for petitioners.

In *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc.*,[11] we ruled that since the *Gabatin* case, this Court had already decided several cases in which it found more equitable to determine just compensation based on the GSP of *palay* at the current price or the value of said property at the time of payment. In this case, the Court used the standard laid down in Section 17 of Republic Act No. 6657[12] (RA

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[11] G.R. No. 177607, January 19, 2009, 576 SCRA 291, 306.

[12] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS

No. 6657) as a guidepost in the determination of just compensation in relation to the GSP of *palay*, *viz.*:

In *Gabatin v. Land Bank of the Philippines*, the formula under Presidential Decree No. 27, Executive Order No. 228 and A.O. No. 13 was applied. In *Gabatin*, the crux of the case was the valuation of the GSP for one cavan of *palay*. In said case, the SAC fixed the government support price (GSP) of *palay* at the current price of ₱400 as basis for the computation of the payment, and not the GSP at the time of taking in 1972. On appeal therein by respondent Land Bank of the Philippines, the Court of Appeals reversed the ruling of the SAC. The case was then elevated to this Court, wherein therein petitioners set forth, *inter alia*, the issue of whether just compensation in kind (*palay*) shall be appraised at the price of the commodity at the time of the taking or at the time it was ordered paid by the SAC. The Court declared that the reckoning period should be the time when the land was taken in 1972, based on the following ratiocination.

x x x x x x x x x

Since *Gabatin*, however, the Court has decided several cases in which it found it more equitable to determine just compensation based on the **value of said property at the time of payment**, foremost of which is *Land Bank of the Philippines v. Natividad*, cited by the Court of Appeals in its Decision assailed herein.

In *Natividad*, the parcels of agricultural land involved were acquired from their owners for purposes of agrarian reform on 21 October 1972, the time of the effectivity of Presidential Decree No. 27. Still, as late as the year 1993, the landowners were yet to be paid the value of their lands. Thus, the landowners filed a petition before

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IMPLEMENTATION, AND FOR OTHER PURPOSES, Effective June 10, 1988.

x x x x

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

the trial court for the determination of just compensation. The trial court therein ruled in favor of the landowners, declaring that Presidential Decree No. 27 and Executive Order No. 228 were mere guidelines in the determination of just compensation. Said court likewise fixed the just compensation on the basis of the evidence presented on the valuation of the parcels of land in 1993, not the value thereof as of the time of the acquisition in 1972. Therein petitioner Land Bank of the Philippines sought a review of the Decision of the trial court before this Court. This Court found that the petition for review of therein petitioner Land Bank of the Philippines was unmeritorious, to wit:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> **Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect,** conformably with our ruling in Paris v. Alfeche. [416 Phil. 473.]
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> x x x x x x x x x
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> **It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its**

owner by the expropriator, the equivalent being real, substantial, full and ample.[13]

In *Meneses v. Secretary of Agrarian Reform*, the Court applied its ruling in *Natividad*. x x x On the issue of the payment of just compensation, the Court adjudged:

x x x x x x x x x

> As previously noted, the property was expropriated under the Operation Land Transfer scheme of P.D. No. 27 way back in 1972. More than 30 years have passed and petitioners are yet to benefit from it, while the farmer-beneficiaries have already been harvesting its produce for the longest time. Events have rendered the applicability of P.D. No. 27 inequitable. Thus, the provisions of R.A. No. 6657 should apply in this case.

In the even more recent case, *Lubrica v. Land Bank of the Philippines*, the Court also adhered to *Natividad*, *viz.*:

> The *Natividad* case reiterated the Court's ruling in *Office of the President v. Court of Appeals* [413 Phil. 711] that the expropriation of the landholding did not take place on the effectivity of P.D. No. 27 on October 21, 1972 but seizure would take effect on the payment of just compensation judicially determined.
>
> Likewise, in the recent case of *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals* [489 SCRA 590], we held that expropriation of landholdings covered by R.A. No. 6657 takes place, not on the effectivity of the Act on June 15, 1988, but on the payment of just compensation.[14]

Additionally, in the more recent case of *Land Bank of the Philippines v. Heirs of Maximo Puyat and Gloria Puyat*,[15] the Court again adhered to the ruling laid down in the abovementioned case. Here, the Court ruled that when the government takes property pursuant to PD No. 27, but does not pay the landowner

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[13] Emphases supplied.

[14] *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc.*, *supra* note 11, at 306-309.

[15] G.R. No. 175055, June 27, 2012.

his just compensation until after RA No. 6657 has taken effect in 1998, it becomes more equitable to determine just compensation using RA No. 6657 and not EO No. 228. Hence, the valuation of the GSP of *palay* should be based on its value at the time it was ordered paid by the SAC.

Considering that the present case involves a similar factual milieu as the aforementioned cases, the Court deems it more equitable to determine just compensation due the petitioners using values pursuant to the standard laid down in Section 17 of RA No. 6657.

Here, the property of the deceased spouses was placed under the land reform program in October 1972, and since then the land was parceled out and distributed to some 30 tenant-beneficiaries by respondents without effecting immediate and prompt payment. Clearly, the tenant-beneficiaries have already benefited from the land, while petitioners wait in vain to be paid. Unfortunately, it was only 19 years after the land was distributed by respondents that there was an action on the part of respondents to pay petitioners.

Also worth emphasizing is the observation made by the RTC —

> What the Court considers as unfair, however, is that portion of Section 2 of Executive Order No. 228 which fixed at ₱35.00 the price per cavan of 50 kilos of *palay*, which amount was the government support price for *palay* in 1972 when P.D. No. 27 took effect. What made the said portion of Executive Order No. 228 unfair and unjust is the fact that the landowner was not paid in 1972 and he has been deprived of his 25% share in the net harvest since 1972, until now.
>
> Eduardo Ico, the [C]ommissioner representing the defendant Land Bank of the Philippines, modified the formula prescribed in Executive Order No. 228, by getting the average of the following values: (1) the total value of the land based upon the government support price of ₱35.00 with interest of six (6%) per cent per annum, compounded annually from 1972 until 1994; and (2) the total value of the land based upon the present government support price of ₱300.00 per cavan.

The Court finds that the said modification of the formula has no basis in fact and in law. To let the value of the land earn interest of 6% per annum would be fair enough had the price of *palay* remained the same. **The fact, however, was that the price of *palay* had increased 857 times from 1972 to 1994, whereas 6% interest would mean only an increase of 138 times from 1972 to 1995**. The Court does not see the justification for getting the average between the government support prices in 1972 and in 1995.[16]

Needless to say, petitioners have been deprived of the use and dominion over their landholdings for a substantial period of time, while respondents abjectly failed to pay the just compensation due the petitioners.

WHEREFORE, in light of the foregoing, the Petition for Review on *Certiorari* is **GRANTED.** The Amended Decision of the Court of Appeals dated October 25, 2005 is hereby **REVERSED** and **SET ASIDE**, and the Decision of the Regional Trial Court, dated August 23, 1995, is hereby **AFFIRMED** and **REINSTATED.**

SO ORDERED.

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

Leonen, J., see separate opinion.

SEPARATE OPINION

LEONEN, *J.*:

I maintain my position that the value for purposes of just compensation should be the fair market value at the time of the taking but the amount to be paid must be the *present* value of the amount that should have been paid. The amount to be paid must therefore take into consideration inflation, among other pertinent factors. This is what is meant by the various cases

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[16] *Rollo*, pp. 58-59. (Emphasis supplied.)

cited in the *ponencia* that the amount to be given is the value of the property "at the time the payment is made."[1]

The concept of just compensation in agrarian reform is the same as just compensation in all types of taking.[2] The landowner should be paid the present value of the fair market value of the land at the time of the actual taking of the property.[3] Just compensation is computed at the time of the taking because it replaces the value of the rights to property removed from the owner.

The fair market value of the property is the outcome of market perceptions. Such taking will also have an effect on the fair market value of adjoining properties. At that instance, the taking on the part of the government may have already caused other properties that are located near the property to depreciate in value. Hence, the value of the property itself naturally decreases after the property has been definitively taken by government.[4] To index the just compensation to be paid to the owner on the fair market value of the property at the time of the payment will be to needlessly penalize the owner. This is not what our Constitution mandated in Article III, Section 9.

I am also of the view that the Constitution provides that the determination of just compensation, particularly the determination

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[1] See *Ponencia,* 5-8, citing among others, *Gabatin v. Land Bank of the Philippines,* 486 Phil. 366 (2004).

[2] *Apo Fruits v. Land Bank,* G.R. No. 164195, April 5, 2011, 647 SCRA 207.

[3] *National Power Corporation v. Sps. Florimon V. Ileto, et al.,* G.R. No. 169957 and *Danilo Brillo, et al. vs. National Power Corporation,* G.R. No. 171588, July 11, 2012.

[4] See *Republic v. Vda. de Castellvi*, G.R. No. L-20620, August 15, 1974, 58 SCRA 336, defining taking as "(1) entry by the expropriator into a private property, (2) entrance into private property must be more than a momentary period, (3) such entry must be under warrant or color of legal authority, (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected, and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property."

of fair market value, is an inherent judicial function.[5] That discretion cannot be curtailed by legislation. Hence, the formulas contained in various agrarian reform laws should be merely recommendatory to the trial court determining just compensation.[6] Each case must be approached by the trial judge with sensitivity to the specific local market in which it is found and in accordance with the general guidance given by our jurisprudence.[7] This valuation of the fair market value must be done on a case-to-case basis. The totality of the circumstances must be fully appreciated in determining the value of the property. This is in the interest of making certain that the landowners are ensured of their rights under the Constitution.

With that, I am of the opinion that there is a need to provide a method of determination of just compensation. This is particularly true for the Special Administrative Court (SAC) in agrarian reform, which is explicitly mandated in Republic Act No. 6657, as amended by Republic Act No. 9700. This definitive method of determination will ensure that courts will have a proper jurisprudential guideline that is provided by the judiciary itself, and not one imposed by the legislative or the executive branches of government.

I propose that when the courts undertake the determination of just compensation in eminent domain cases, this determination should undergo two different stages. This applies when a significant amount of time has lapsed between the time of taking and the time of payment.

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[5] *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, April 29, 1987, 149 SCRA 305.

[6] *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc.*, G.R. No. 177607, January 19, 2009, 576 SCRA 291; *Meneses v. Secretary of Agrarian Reform*, 535 Phil. 819 (2006); *Lubrica v. Land Bank*, 537 Phil. 571 (2006); *Land Bank of the Philippines v. Heirs of Maximo Puyat and Gloria Puyat*, G.R. No. 175055, June 27, 2012; *Land Bank of the Philippines v. Natividad*, 497 Phil. 738 (2005); *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108.

[7] See for instance *Spouses Curata, et al. v. Philippine Ports Authority*, G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214.

The first stage requires ascertaining the fair market value of the subject property, as earlier mentioned. This requires determining the value of the property at the time of the taking. Among other factors, this includes the due consideration of the applicability of formulas found in the law and administrative guidelines, tax declarations and the like. In agrarian reform cases, such as the present case before this Court, I propose that the provisions on social justice in the 1987 Constitution[8]

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[8] CONSTITUTION, Art. XIII, Sec. 4. — The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further incentives for voluntary land-sharing.

CONSTITUTION, Art. XIII, Sec. 5. — The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

CONSTITUTION, Art. XIII, Sec. 6. — The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

CONSTITUTION, Art. XIII, Sec. 7. — The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

on agrarian reform should serve as definitive qualitative standards to ascertain the determination of the fair market value which should be paid to the landowner.

The second stage of determining just compensation is finding the *present* value of the fair market value at the time of the taking. When the law said payment should be based on "fair market value at the time of taking," ideally, *the property owner should also be paid at the time of taking*. This would give true meaning to the Constitutional phrase of "just compensation." It is only just that at the instance the owner is deprived of the property, government compensates the owner.

We have to face the reality that expropriation proceedings, as in this case, take a significant amount of time. An appreciable gap of time has lapsed between the actual taking and the final award of just compensation granted by the court. This period of time can take years in certain cases. This results in the deprivation of beneficial use on the part of the landowner of the land or the proceeds from the payment of its fair market value.

To augment this situation, courts have to take into consideration the interest income the owner could have earned if he had received the money when the property was taken. In economics, this is referred to as the future[9] or present value.[10]

Another way of looking at the concept of present value in the context of expropriation is to pretend that the parties in the case have extraordinary foresight. In such a hypothetical situation, the parties already know the fair market value even before the

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CONSTITUTION, Art. XIII, Sec. 8. — The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

[9] "Future value is the amount of money in the future that an amount of money today will yield given prevailing interest rates." N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 414 (2007 edition).

[10] Present value (of an asset) is defined as "the value for an asset that yields a stream of income over time." PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 748 (Eighteenth Edition).

expropriation proceedings have been terminated. With that amount in mind, government could already pay the property owner at the time of taking and in turn, the property owner could deposit the payment in a bank. By the time expropriation proceedings have ceased, the property owner could already withdraw this amount of money. By then, he would have withdrawn the principal (fair market value of the property at the time of taking) and the interest it has accumulated over time.

When the courts undertake their duty of determining just compensation, they must aim for compensation that is truly just, taking into consideration all relevant factors, such as the appreciation or depreciation of currency. Economists have devised a simple way to compute for the value of money in consideration of future interest earnings.

For purposes of our understanding and application, consider property owner AA, who owns a piece of land. The government took his property at Year 0. Let us assume that his property had a fair market value of ₱100 at the time of taking. In our ideal situation, the government should have paid him ₱100 at Year 0. By then, AA could have put the money in the bank so it could earn interest. Let us peg the interest rate at 5% per annum (or in decimal form, 0.05).[11]

If the expropriation proceedings took just one year (again, another ideal situation), AA could only be paid after that year. The value of the ₱100 has appreciated already. We have to take into consideration the fact that in Year 1, AA could have earned an additional ₱5 in interest if he had been paid in Year 0.

In order to compute the present value of ₱100, we have to consider this formula:

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[11] Interest rates are dependent on risk, inflation and tax treatment. *See* PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 269 (Eighteenth Edition). Actual interest rate to be applied should be computed reasonably according to historical epochs in our political economy. For example, during the war, we have experienced extraordinary inflation. This extraordinary inflation influences adversely interest rates of financial investments. The period of martial law is another example of a historical epoch that influences interest rates.

Present Value in Year 1 = Value at the time of Taking + (Interest Earned of the Value at the Time of Taking)

In formula[12] terms it will look like this:

$$PV_1 = V + (V*r)$$

$$\mathbf{PV_1 = V*(1+r)}$$

PV_1 = present value in Year 1

V = value at the time of taking

r = interest rate

So in the event that AA gets paid in Year 1, then:

$$\mathbf{PV_1 = V * (1+r)}$$

$$PV_1 = ₱100\ (1 + 0.05)$$

$$PV_1 = ₱105$$

So if AA were to be paid in Year 1 instead of in Year 0, it is only just that he be paid ₱105 to take into account the interest earnings he has foregone due to the expropriation proceedings. If he were to be paid in Year 2, we should take into consideration not only the interest earned of the principal, but the fact that the interest earned in Year 1 will also be subject to interest earnings in Year 2. This concept is referred to as *compounding* interest rates. So our formula becomes:

Present Value in Year 2 = [Present Value in Year 1] + [Interest Earned of Present Value in Year 1]

Recall that in formula terms, Present Value in Year 1 was expressed as:

$$PV_1 = [V*(1+r)]$$

Hence, in Year 2, the formula will be:

$$PV_2 = PV_1*(1+r) \text{ or}$$

$$\boldsymbol{PV_2 = [V*(1+r)]*(1+r)}$$

Seeing that the term (1+r) is repeated, it can be further simplified as:

[12] N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 414-415 (2007 edition).

$$\boldsymbol{PV_2 = V*(1+r)^2}$$

$$PV_2 = ₱100 *(1+0.05)^2$$

$$PV_2 = ₱100 *1.1025$$

$$PV_2 = ₱110.25$$

This is the same as if we multiply the present value in Year 1 of ₱105 by ₱1.05 (our multiplier with the interest rate).

If proceedings go on until Year 3, then the formula would be:

$$PV_3 = \boldsymbol{PV_2}*(1+r)$$

$$PV_3 = \boldsymbol{\{[V*(1+r)]*(1+r)\}}*(1+r)$$

Again, (1+r) is repeated three times, the same number as the number of years, hence, simplifying the formula would yield:

$$\boldsymbol{PV_3 = V*(1+r)^3}$$

Due to compounding interest, the formula for present value at any given year becomes:

$$\boldsymbol{PV_t = V *(1+r)^t}$$

PV stands for the present value of the property. In order to calculate the present value of the property, the corresponding formula is used: *V* stands for value of the property at the time of the taking, taking in all the considerations that the court may use in order to arrive at the fair market value in accordance with law.

This is multiplied to *(1 + r)* where *r* equals the implied rate of return (average year to year interest rate) and raised to the exponent *t*. The exponent *t* refers to the time period or the number of years for which the value of the money would have changed.

So if AA were to be paid ten years from the time of taking, the present value of the amount he should have been paid at the time of taking would be:

$$PV_t = V *(1+r)^t$$

$$PV_{10} = ₱100 *(1+0.05)^{10}$$

$$PV_{10} = ₱100 *(1.63)$$

$$PV_{10} = ₱163$$

This proposal is admittedly unfamiliar to most of the members of the bench and bar. But the Court has undertaken similar endeavors in the past, such as the calculation of loss of earning capacity for purposes of computing actual damages. The usage of the concept of present value, and the proposed formula, incorporates the discipline of economics into the judicial determination of the SAC. This will not only simplify the judicial determination, but also ensure that the landowner is compensated justly after the fair market value of the property has been determined, no matter how long the expropriation proceedings take in court.

Valuation is an inexact science; each property subject to the court's determination of just compensation is subject to varying circumstances, and what is present for one property may not be present for another. That said, this new proposed method will allow the courts to exercise a judicial standard that the courts, particularly the SAC can utilize to arrive at a truly fair amount of just compensation.

I vote therefore to remand the case back to the Regional Trial Court for promulgation of the partial judgment and for the Court, to determine the full amount of just compensation in accordance with this opinion.

SECOND DIVISION

[G.R. No. 177050. July 1, 2013]

CARLOS LIM, CONSOLACION LIM, EDMUNDO LIM,[*] CARLITO LIM, SHIRLEY LEODADIA DIZON,[**] and ARLEEN LIM FERNANDEZ, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

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[*] Also referrred to as Eduardo Lim in some parts of the records.

[**] Also referrred to as Shirley Leocadio Dizon in some parts of the records.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PURE AND CONDITIONAL OBLIGATIONS; ARTICLE 1186 OF THE CIVIL CODE WHICH STATES THAT "THE CONDITION SHALL BE DEEMED FULFILLED WHEN THE OBLIGOR VOLUNTARILY PREVENTS ITS FULFILLMENT" IS NOT APPLICABLE IN CASE AT BAR.— Petitioners, however, insist that DBP's cancellation of the Restructuring Agreement justifies the extinguishment of their loan obligation under the Principle of Constructive Fulfillment found in Article 1186 of the Civil Code. We do not agree. As aptly pointed out by the CA, Article 1186 of the Civil Code, which states that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment," does not apply in this case, *viz*: Article 1186 enunciates the doctrine of constructive fulfillment of suspensive conditions, which applies when the following three (3) requisites concur, *viz*: (1) The condition is suspensive; (2) The obligor actually prevents the fulfillment of the condition; and (3) He acts voluntarily. Suspensive condition is one the happening of which gives rise to the obligation. It will be irrational for any Bank to provide a suspensive condition in the Promissory Note or the Restructuring Agreement that will allow the debtor-promissor to be freed from the duty to pay the loan without paying it. Besides, petitioners have no one to blame but themselves for the cancellation of the Restructuring Agreement. It is significant to point out that when the Regional Credit Committee reconsidered petitioners' proposal to restructure the loan, it imposed additional conditions. In fact, when DBP's General Santos Branch forwarded the Restructuring Agreement to the Legal Services Department of DBP in Makati, petitioners were required to pay the amount of ₱1,300,672.75, plus a daily interest of ₱632.15 starting November 16, 1993 up to the date of actual payment of the said amount. This, petitioners failed to do. DBP therefore had reason to cancel the Restructuring Agreement. Moreover, since the Restructuring Agreement was cancelled, it could not have novated or extinguished petitioners' loan obligation. And in the absence of a perfected Restructuring Agreement, there was no impediment for DBP to exercise its right to foreclose the mortgaged properties.

2. ID.; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A.

NO. 3135); FAILURE OF RESPONDENT BANK TO SEND NOTICE OF EXTRAJUDICIAL FORECLOSURE AS STIPULATED IN PARAGRAPH 11 OF THE MORTGAGE CONTRACT, IS A BREACH SUFFICIENT TO INVALIDATE THE FORECLOSURE SALE.— But while DBP had a right to foreclose the mortgage, we are constrained to nullify the foreclosure sale due to the bank's failure to send a notice of foreclosure to petitioners. We have consistently held that **unless the parties stipulate**, "personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary" because Section 3 of Act 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. In this case, the parties stipulated in paragraph 11 of the Mortgage that: 11. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extra-judicial action shall be sent to the Mortgagor at xxx or at the address that may hereafter be given in writing by the Mortgagor or the Mortgagee; However, no notice of the extrajudicial foreclosure was sent by DBP to petitioners about the foreclosure sale scheduled on July 11, 1994. The letters dated January 28, 1994 and March 11, 1994 advising petitioners to immediately pay their obligation to avoid the impending foreclosure of their mortgaged properties are not the notices required in paragraph 11 of the Mortgage. The failure of DBP to comply with their contractual agreement with petitioners, *i.e.*, to send notice, is a breach sufficient to invalidate the foreclosure sale.

3. ID.; ID.; LOAN; PENALTIES AND INTEREST RATES SHOULD BE EXPRESSLY STIPULATED IN WRITING.— As to the imposition of additional interest and penalties not stipulated in the Promissory Notes, this should not be allowed. Article 1956 of the Civil Code specifically states that "no interest shall be due unless it has been expressly stipulated in writing." Thus, the payment of interest and penalties in loans is allowed only if the parties agreed to it and reduced their agreement in writing. In this case, petitioners never agreed to pay additional interest and penalties. Hence, we agree with the RTC that these are illegal, and thus, void. x x x. Consequently, this case should be remanded to the RTC for the proper determination of petitioners' total loan obligation based on the interest and penalties stipulated in the Promissory Notes.

4. ID.; DAMAGES; THERE MUST BE A SHOWING THAT THE CONTRACTUAL BREACHES WERE DONE IN BAD FAITH OR IN WANTON, RECKLESS, OR OPPRESSIVE MANNER IN ORDER TO BE RECOVERABLE.— As to petitioners' claim for damages, we find the same devoid of merit. DBP did not act in bad faith or in a wanton, reckless, or oppressive manner in cancelling the Restructuring Agreement. As we have said, DBP had reason to cancel the Restructuring Agreement because petitioners failed to pay the amount required by it when it reconsidered petitioners' request to restructure the loan. Likewise, DBP's failure to send a notice of the foreclosure sale to petitioners and its imposition of additional interest and penalties do not constitute bad faith. There is no showing that these contractual breaches were done in bad faith or in a wanton, reckless, or oppressive manner.

APPEARANCES OF COUNSEL

Law Firm of Anacleto M. Diaz & Associates for petitioners.
Jose R. Barroso for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the February 22, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 59275.

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[1] *Metropolitan Bank v. Wong*, 412 Phil. 207, 220 (2001).

[2] *Rollo,* pp. 58-156.

[3] CA *rollo*, pp. 238-284; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Jane Aurora C. Lantion.

Factual Antecedents

On November 24, 1969, petitioners Carlos, Consolacion, and Carlito, all surnamed Lim, obtained a loan of ₱40,000.00 (Lim Account) from respondent Development Bank of the Philippines (DBP) to finance their cattle raising business.[4] On the same day, they executed a Promissory Note[5] undertaking to pay the annual amortization with an interest rate of 9% *per annum* and penalty charge of 11% *per annum*.

On December 30, 1970, petitioners Carlos, Consolacion, Carlito, and Edmundo, all surnamed Lim; Shirley Leodadia Dizon, Arleen Lim Fernandez, Juan S. Chua,[6] and Trinidad D. Chua[7] obtained another loan from DBP[8] in the amount of ₱960,000.00 (Diamond L Ranch Account).[9] They also executed a Promissory Note,[10] promising to pay the loan annually from August 22, 1973 until August 22, 1982 with an interest rate of 12% *per annum* and a penalty charge of 1/3% per month on the overdue amortization.

To secure the loans, petitioners executed a Mortgage[11] in favor of DBP over real properties covered by the following titles registered in the Registry of Deeds for the Province of South Cotabato:

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[4] The loan was granted by DBP of Davao Branch. However, on January 14, 1972, the loan account was transferred to DBP General Santos Branch. (Exhibit "38", Folder of Exhibits for DBP)

[5] Records, p. 35.

[6] Deceased.

[7] As per this Court's Resolution dated January 16, 2008, the name of Trinidad D. Chua was dropped as petitioner in the absence of a Special Power of Attorney authorizing petitioner Edmundo T. Lim to sign the verification of the petition in behalf of Trinidad D. Chua (*Rollo*, p. 550).

[8] The loan was granted by DBP Davao Branch. However, on January 14, 1972, the loan account was transferred to DBP General Santos Branch. (Exhibit "38", Folder of Exhibits for DBP)

[9] *Rollo*, p. 213.

[10] Records, p. 26.

[11] *Id*. at 27-34.

(a) TCT No. T-6005 x x x in the name of Edmundo Lim;

(b) TCT No. T-6182 x x xin the name of Carlos Lim;

(c) TCT No. T-7013 x x x in the name of Carlos Lim;

(d) TCT No. T-7012 x x x in the name of Carlos Lim;

(e) TCT No. T-7014 x x x in the name of Edmundo Lim;

(f) TCT No. T-7016 x x x in the name of Carlito Lim;

(g) TCT No. T-28922 x x x in the name of Consolacion Lim;

(h) TCT No. T-29480 x x x in the name of Shirley Leodadia Dizon;

(i) TCT No. T-24654 x x x in the name of Trinidad D. Chua; and

(j) TCT No. T-25018 x x x in the name of Trinidad D. Chua's deceased husband Juan Chua.[12]

Due to violent confrontations between government troops and Muslim rebels in Mindanao from 1972 to 1977, petitioners were forced to abandon their cattle ranch.[13] As a result, their business collapsed and they failed to pay the loan amortizations.[14]

In 1978, petitioners made a partial payment in the amount of ₱902,800.00,[15] leaving an outstanding loan balance of ₱610,498.30, inclusive of charges and unpaid interest, as of September 30, 1978.[16]

In 1989, petitioners, represented by Edmundo Lim (Edmundo), requested from DBP Statements of Account for the "Lim Account" and the "Diamond L Ranch Account."[17] Quoted below are the computations in the Statements of Account, as of January 31,

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[12] *Id*. at 3.

[13] *Id*. at 279.

[14] *Id*.

[15] CA *rollo*, p. 241.

[16] Records, p. 279.

[17] *Id*.

1989 which were stamped with the words "Errors & Omissions Excepted/Subject to Audit:"

Diamond L Ranch Account:		
Matured [Obligation]:		
Principal	₱	939,973.33
Regular Interest		561,037.14
Advances		34,589.45
Additional Interest		2,590,786.26
Penalty Charges		1,068,147.19
Total claims as of January 31, 1989	₱	5,194,533.37[18]
Lim Account:		
Matured Obligation:		
Principal	₱	40,000.00
Regular Interest		5,046.97
Additional Interest		92,113.56
Penalty Charges		39,915.46
Total [claims as of January 31, 1989]	₱	177,075.99[19]

Claiming to have already paid ₱902,800.00, Edmundo requested for an amended statement of account.[20]

On May 4, 1990, Edmundo made a follow-up on the request for recomputation of the two accounts.[21] On May 17, 1990, DBP's General Santos Branch informed Edmundo that the Diamond L Ranch Account amounted to ₱2,542,285.60 as of May 31, 1990[22] and that the mortgaged properties located at San Isidro, Lagao, General Santos City, had been subjected to Operation Land Transfer under the Comprehensive Agrarian Reform Program (CARP) of the government.[23] Edmundo was also advised to discuss with the Department of Agrarian Reform

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[18] Exhibit "D", Folder of Exhibits for petitioners.

[19] Exhibit "L", *id*.

[20] Records, p. 280.

[21] Exhibit "F", Folder of Exhibits for petitioners.

[22] Exhibit "G", *id*.

[23] Records, p. 282.

(DAR) and the Main Office of DBP[24] the matter of the expropriated properties.

Edmundo asked DBP how the mortgaged properties were ceded by DAR to other persons without their knowledge.[25] No reply was made.[26]

On April 30, 1991, Edmundo again signified petitioners' intention to settle the Diamond L Ranch Account.[27] Again, no reply was made.[28]

On February 21, 1992, Edmundo received a Notice of Foreclosure scheduled the following day.[29] To stop the foreclosure, he was advised by the bank's Chief Legal Counsel to pay an interest covering a 60-days period or the amount of ₱60,000.00 to postpone the foreclosure for 60 days.[30] He was also advised to submit a written proposal for the settlement of the loan accounts.[31]

In a letter[32] dated March 20, 1992, Edmundo proposed the settlement of the accounts through *dacion en pago*, with the balance to be paid in equal quarterly payments over five years.

In a reply-letter[33] dated May 29, 1992, DBP rejected the proposal and informed Edmundo that unless the accounts are fully settled as soon as possible, the bank will pursue foreclosure proceedings.

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[24] *Id*.

[25] Exhibit "H", Folder of Exhibits for petitioners.

[26] Records, p. 282.

[27] Exhibit "I", Folder of Exhibits for petitioners.

[28] Records, p. 282.

[29] *Id*.

[30] *Id*. at 282-283.

[31] *Id*. at 283.

[32] Exhibit "J", Folder of Exhibits for petitioners.

[33] Exhibit "K", *id*.

DBP then sent Edmundo the Statements of Account[34] as of June 15, 1992 which were stamped with the words "Errors & Omissions Excepted/Subject to Audit" indicating the following amounts: (1) Diamond L Ranch: ₱7,210,990.27 and (2) Lim Account: ₱187,494.40.

On June 11, 1992, Edmundo proposed to pay the principal and the regular interest of the loans in 36 equal monthly installments.[35]

On July 3, 1992, DBP advised Edmundo to coordinate with Branch Head Bonifacio Tamayo, Jr. (Tamayo).[36] Tamayo promised to review the accounts.[37]

On September 21, 1992, Edmundo received another Notice from the Sheriff that the mortgaged properties would be auctioned on November 22, 1992.[38] Edmundo again paid ₱30,000.00 as additional interest to postpone the auction.[39] But despite payment of ₱30,000.00, the mortgaged properties were still auctioned with DBP emerging as the highest bidder in the amount of ₱1,086,867.26.[40] The auction sale, however, was later withdrawn by DBP for lack of jurisdiction.[41]

Thereafter, Tamayo informed Edmundo of the bank's new guidelines for the settlement of outstanding loan accounts under Board Resolution No. 0290-92.[42] Based on these guidelines, petitioners' outstanding loan obligation was computed at

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[34] Exhibits "N" and "O", *id*.

[35] Exhibit "M", *id*.

[36] Exhibit "P", *id*.

[37] Records, p. 285.

[38] CA *rollo*, p. 257.

[39] *Id*.

[40] Records, p. 285.

[41] CA *rollo*, pp. 251-252.

[42] Records, p. 286.

₱3,500,000.00 plus.[43] Tamayo then proposed that petitioners pay 10% downpayment and the remaining balance in 36 monthly installments.[44] He also informed Edmundo that the bank would immediately prepare the Restructuring Agreement upon receipt of the downpayment and that the conditions for the settlement have been "pre-cleared" with the bank's Regional Credit Committee.[45] Thus, Edmundo wrote a letter[46] on October 30, 1992 manifesting petitioners' assent to the proposal.

On November 20, 1992, Tamayo informed Edmundo that the proposal was accepted with some minor adjustments and that an initial payment should be made by November 27, 1992.[47]

On December 15, 1992, Edmundo paid the downpayment of ₱362,271.75[48] and was asked to wait for the draft Restructuring Agreement.[49]

However, on March 16, 1993, Edmundo received a letter[50] from Tamayo informing him that the Regional Credit Committee rejected the proposed Restructuring Agreement; that it required downpayment of 50% of the total obligation; that the remaining balance should be paid within one year; that the interest rate should be non prime or 18.5%, whichever is higher; and that the proposal is effective only for 90 days from March 5, 1993 to June 2, 1993.[51]

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[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] Exhibit "R", Folder of Exhibits for petitioners.

[47] Exhibit "S", *id*.

[48] Exhibit "V", *id*.

[49] Records, p. 288.

[50] Exhibit "W", Folder of Exhibits for petitioners.

[51] *Id*.

Edmundo, in a letter[52] dated May 28, 1993, asked for the restoration of their previous agreement.[53] On June 5, 1993, the bank replied,[54] *viz*:

> This has reference to your letter dated May 28, 1993, which has connection to your desire to restructure the Diamond L Ranch/Carlos Lim Accounts.
>
> We wish to clarify that what have been agreed between you and the Branch are not final until [the] same has been approved by higher authorities of the Bank. We did [tell] you during our discussion that we will be recommending the restructuring of your accounts with the terms and conditions as agreed. Unfortunately, our Regional Credit Committee did not agree to the terms and conditions as recommended, hence, the subject of our letter to you on March 15, 1993.
>
> Please be informed further, that the Branch cannot do otherwise but to comply with the conditions imposed by the Regional Credit Committee. More so, the time frame given had already lapsed on June 2, 1993.
>
> Unless we will receive a favorable action on your part soonest, the Branch will be constrained to do appropriate action to protect the interest of the Bank."[55]

On July 28, 1993, Edmundo wrote a letter[56] of appeal to the Regional Credit Committee.

In a letter[57] dated August 16, 1993, Tamayo informed Edmundo that the previous Restructuring Agreement was reconsidered and approved by the Regional Credit Committee subject to the following additional conditions, to wit:

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[52] Exhibit "X", *id*.

[53] *Id*.

[54] Exhibit "Y", *id*.

[55] *Id*. at 229-230.

[56] Exhibit "Z", Folder of Exhibits for petitioners.

[57] Exhibit "AA", *id*.

1) Submission of Board Resolution and Secretary's Certificate designating you as authorized representative in behalf of Diamond L Ranch;

2) Payment of March 15 and June 15, 1993 amortizations within 30 days from date hereof; and

3) Submission of SEC registration.

In this connection, please call immediately x x x our Legal Division to guide you for the early documentation of your approved restructuring.

Likewise, please be reminded that upon failure on your part to sign and perfect the documents and comply [with] other conditions within (30) days from date of receipt, your approved recommendation shall be deemed CANCELLED and your deposit of ₱362,271.75 shall be applied to your account.

No compliance was made by Edmundo.[58]

On September 21, 1993, Edmundo received Notice that the mortgaged properties were scheduled to be auctioned on that day.[59] To stop the auction sale, Edmundo asked for an extension until November 15, 1993[60] which was approved subject to additional conditions:

Your request for extension is hereby granted with the conditions that:

1) This will be the last and final extension to be granted your accounts; and

2) That all amortizations due from March 1993 to November 1993 shall be paid including the additional interest computed at straight 18.5% from date of your receipt of notice of approval, *viz*:

x x x x x x x x x

Failure on your part to comply with these conditions, the Bank will undertake appropriate legal measures to protect its interest.

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[58] CA *rollo*, p. 259.

[59] *Id*.

[60] *Id*.

Please give this matter your preferential attention.[61]

On November 8, 1993, Edmundo sent Tamayo a telegram, which reads:

Acknowledge receipt of your Sept. 27 letter. I would like to finalize documentation of restructuring Diamond L Ranch and Carlos Lim Accounts. However, we would need clarification on amortizations due on NTFI means [sic]. I will call x x x your Legal Department at DBP Head Office by Nov. 11. Pls. advise who[m] I should contact. Thank you.[62]

Receiving no response, Edmundo scheduled a meeting with Tamayo in Manila.[63] During their meeting, Tamayo told Edmundo that he would send the draft of the Restructuring Agreement by courier on November 15, 1993 to the Main Office of DBP in Makati, and that Diamond L Ranch need not submit the Board Resolution, the Secretary's Certificate, and the SEC Registration since it is a single proprietorship.[64]

On November 24, 1993 and December 3, 1993, Edmundo sent telegrams to Tamayo asking for the draft of the Restructuring Agreement.[65]

On November 29, 1993, the documents were forwarded to the Legal Services Department of DBP in Makati for the parties' signatures. At the same time, Edmundo was required to pay the amount of ₱1,300,672.75, plus a daily interest of ₱632.15 starting November 16, 1993 up to the date of actual payment of the said amount.[66]

On December 19, 1993, Edmundo received the draft of the Restructuring Agreement.[67]

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[61] Exhibit "BB", Folder of Exhibits for petitioners.

[62] Exhibit "CCC", *id*.

[63] Records, pp. 291-292.

[64] *Id*. at 292.

[65] *Id*.

[66] CA *rollo*, pp. 242-243.

[67] Records, p. 293.

In a letter[68] dated January 6, 1994, Tamayo informed Edmundo that the bank cancelled the Restructuring Agreement due to his failure to comply with the conditions within a reasonable time.

On January 10, 1994, DBP sent Edmundo a Final Demand Letter asking that he pay the outstanding amount of ₱6,404,412.92, as of November 16, 1993, exclusive of interest and penalty charges.[69]

Edmundo, in a letter[70] dated January 18, 1994, explained that his lawyer was not able to review the agreement due to the Christmas holidays. He also said that his lawyer was requesting clarification on the following points:

1. Can the existing obligations of the Mortgagors, if any, be specified in the Restructuring Agreement already?
2. Is there a statement showing all the accrued interest and advances that shall first be paid before the restructuring shall be implemented?
3. Should Mr. Jun Sarenas Chua and his wife Mrs. Trinidad Chua be required to sign as Mortgagors considering that Mr. Chua is deceased and the pasture lease which he used to hold has already expired?[71]

Edmundo also indicated that he was prepared to pay the first quarterly amortization on March 15, 1994 based on the total obligations of ₱3,260,445.71, as of December 15, 1992, plus interest.[72]

On January 28, 1994, Edmundo received from the bank a telegram[73] which reads:

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[68] Exhibit "HH", Folder of Exhibits for petitioners.

[69] CA *rollo*, p. 265.

[70] Exhibit "II", Folder of Exhibits for petitioners.

[71] *Id*.

[72] *Id*.

[73] Exhibit "II-1", *id*.

We refer to your cattle ranch loan carried at our DBP General Santos City Branch.

Please coordinate immediately with our Branch Head not later than 29 January 1994, to forestall the impending foreclosure action on your account.

Please give the matter your utmost attention.

The bank also answered Edmundo's queries, *viz*:

In view of the extended leave of absence of AVP Bonifacio A. Tamayo, Jr. due to the untimely demise of his father, we regret [that] he cannot personally respond to your letter of January 18, 1994. However, he gave us the instruction to answer your letter on direct to the point basis as follows:

- Yes to Items No. 1 and 2,
- No longer needed on Item No. 3

AVP Tamayo would like us also to convey to you to hurry up with your move to settle the obligation, while the foreclosure action is still pending with the legal division. He is afraid you might miss your last chance to settle the account of your parents.[74]

Edmundo then asked about the status of the Restructuring Agreement as well as the computation of the accrued interest and advances[75] but the bank could not provide any definite answer.[76]

On June 8, 1994, the Office of the Clerk of Court and *Ex-Officio* Provincial Sheriff of the RTC of General Santos City issued a Notice[77] resetting the public auction sale of the mortgaged properties on July 11, 1994. Said Notice was published for three consecutive weeks in a newspaper of general circulation in General Santos City.[78]

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[74] Exhibit "JJ", *id*.

[75] Records, p. 294.

[76] CA *rollo*, p. 264.

[77] Exhibit "49", Folder of Exhibits for DBP.

[78] Exhibit "50", *id*.

On July 11, 1994, the *Ex-Officio* Sheriff conducted a public auction sale of the mortgaged properties for the satisfaction of petitioners' total obligations in the amount of ₱5,902,476.34. DBP was the highest bidder in the amount of ₱3,310,176.55.[79]

On July 13, 1994, the *Ex-Officio* Sheriff issued the Sheriff's Certificate of Extra-Judicial Sale in favor of DBP covering 11 parcels of land.[80]

In a letter[81] dated September 16, 1994, DBP informed Edmundo that their right of redemption over the foreclosed properties would expire on July 28, 1995, to wit:

> This is to inform you that your right of redemption over your former property/ies acquired by the Bank on July 13, 1994, thru Extra-Judicial Foreclosure under Act 3135 will lapse on July 28, 1995.
>
> In view thereof, to entitle you of the maximum condonable amount (Penal Clause, AI on Interest, PC/Default Charges) allowed by the Bank, we are urging you to exercise your right within six (6) months from the date of auction sale on or before January 12, 1995.
>
> Further, failure on your part to exercise your redemption right by July 28, 1995 will constrain us to offer your former property/ies in a public bidding.
>
> Please give this matter your preferential attention. Thank you.[82]

On July 28, 1995, petitioners filed before the RTC of General Santos City, a Complaint[83] against DBP for Annulment of Foreclosure and Damages with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. Petitioners alleged that DBP's acts and omissions prevented them from fulfilling their obligation; thus, they prayed that they be discharged from their obligation and that the foreclosure of

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[79] Exhibit "52", *id*.

[80] CA *rollo*, p. 268.

[81] Exhibit "KK", Folder of Exhibits for petitioners.

[82] *Id*.

[83] Records, pp. 1-25.

the mortgaged properties be declared void. They likewise prayed for actual damages for loss of business opportunities, moral and exemplary damages, attorney's fees, and expenses of litigation.[84]

On same date, the RTC issued a Temporary Restraining Order[85] directing DBP to cease and desist from consolidating the titles over petitioners' foreclosed properties and from disposing the same.

In an Order[86] dated August 18, 1995, the RTC granted the Writ of Preliminary Injunction and directed petitioners to post a bond in the amount of ₱3,000,000.00.

DBP filed its Answer,[87] arguing that petitioners have no cause of action;[88] that petitioners failed to pay their loan obligation;[89] that as mandated by Presidential Decree No. 385, initial foreclosure proceedings were undertaken in 1977 but were aborted because petitioners were able to obtain a restraining order;[90] that on December 18, 1990, DBP revived its application for foreclosure but it was again held in abeyance upon petitioners' request;[91] that DBP gave petitioners written and verbal demands as well as sufficient time to settle their obligations;[92] and that under Act 3135,[93] DBP has the right to foreclose the properties.[94]

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[84] *Id*. at 23-24.

[85] *Id*. at 62-63.

[86] *Id*. at 129-131.

[87] *Id*. at 146-160.

[88] *Id*. at 150.

[89] *Id*. at 151.

[90] *Id*.

[91] *Id*.

[92] Id. at 153.

[93] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, as amended. Approved March 6, 1924.

[94] Records, p. 152.

Ruling of the Regional Trial Court

On December 10, 1996, the RTC rendered a Decision,[95] the dispositive portion of which reads:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered:
>
> (1) Declaring that the [petitioners] have fully extinguished and discharged their obligation to the [respondent] Bank;
>
> (2) Declaring the foreclosure of [petitioners'] mortgaged properties, the sale of the properties under the foreclosure proceedings and the resultant certificate of sale issued by the foreclosing Sheriff by reason of the foreclosure NULL and VOID;
>
> (3) Ordering the return of the [properties] to [petitioners] free from mortgage liens;
>
> (4) Ordering [respondent] bank to pay [petitioners], actual and compensatory damages of ₱170,325.80;
>
> (5) Temperate damages of ₱50,000.00;
>
> (c) Moral damages of ₱500,000.00;
>
> (d) Exemplary damages of ₱500,000.00;
>
> (e) Attorney's fees in the amount of ₱100,000.00; and
>
> (f) Expenses of litigation in the amount of ₱20,000.00.
>
> [Respondent] Bank's counterclaims are hereby DISMISSED.
>
> [Respondent] Bank is likewise ordered to pay the costs of suit.
>
> SO ORDERED.[96]

Ruling of the Court of Appeals

On appeal, the CA reversed and set aside the RTC Decision. Thus:

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[95] *Id.* at 368-420; penned by Judge Teodoro A. Dizon, Jr.

[96] *Id.* at 419-420.

WHEREFORE, in view of the foregoing, the instant appeal is hereby **GRANTED**. The assailed Decision dated 10 December 1996 is hereby **REVERSED** and **SET ASIDE**. A new judgment is hereby rendered. It shall now read as follows:

> **WHEREFORE**, premises considered, judgment is hereby rendered:
>
> 1. Ordering the dismissal of the Complaint in Civil Case No. 5608;
>
> 2. Declaring the extrajudicial foreclosure of [petitioners'] mortgaged properties as valid;
>
> 3. Ordering [petitioners] to pay the [respondent] the amount of **Two Million Five Hundred Ninety Two Thousand Two Hundred Ninety Nine [Pesos] and Seventy-Nine Centavos (₱2,592,299.79)** plus interest and penalties as stipulated in the Promissory Note computed from **11 July 1994** until full payment; and
>
> 4. Ordering [petitioners] to pay the costs.
>
> **SO ORDERED.**
>
> **SO ORDERED.**[97]

Issues

Hence, the instant recourse by petitioners raising the following issues:

1. Whether x x x respondent's own wanton, reckless and oppressive acts and omissions in discharging its reciprocal obligations to petitioners effectively prevented the petitioners from paying their loan obligations in a proper and suitable manner;

2. Whether x x x as a result of respondent's said acts and omissions, petitioners' obligations should be deemed fully complied with and extinguished in accordance with the principle of constructive fulfillment;

3. Whether x x x the return by the trial Court of the mortgaged properties to petitioners free from mortgage liens constitutes unjust enrichment;

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[97] CA *rollo*, p. 283. Emphases in the original.

4. Whether x x x the low bid price made by the respondent for petitioners' mortgaged properties during the foreclosure sale is so gross, shocking to the conscience and inherently iniquitous as to constitute sufficient ground for setting aside the foreclosure sale;

5. Whether x x x the restructuring agreement reached and perfected between the petitioners and the respondent novated and extinguished petitioners' loan obligations to respondent under the Promissory Notes sued upon; and

6. Whether x x x the respondent should be held liable to pay petitioners actual and compensatory damages, temperate damages, moral damages, exemplary damages, attorney's fees and expenses of litigation.[98]

Petitioners' Arguments

Petitioners seek the reinstatement of the RTC Decision which declared their obligation fully extinguished and the foreclosure proceedings of their mortgaged properties void.

Relying on the Principle of Constructive Fulfillment, petitioners insist that their obligation should be deemed fulfilled since DBP prevented them from performing their obligation by charging excessive interest and penalties not stipulated in the Promissory Notes, by failing to promptly provide them with the correct Statements of Account, and by cancelling the Restructuring Agreement even if they already paid ₱362,271.75 as downpayment.[99] They likewise deny any fault or delay on their part in finalizing the Restructuring Agreement.[100]

In addition, petitioners insist that the foreclosure sale is void for lack of personal notice[101] and the inadequacy of the bid price.[102] They contend that at the time of the foreclosure, petitioners'

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[98] *Rollo*, pp. 578-579.

[99] *Id*. at 584-602.

[100] *Id*. at 603-627.

[101] *Id*. at 639-643.

[102] *Id*. at 636-638.

obligation was not yet due and demandable,[103] and that the restructuring agreement novated and extinguished petitioners' loan obligation.[104]

Finally, petitioners claim that DBP acted in bad faith or in a wanton, reckless, or oppressive manner; hence, they are entitled to actual, temperate, moral and exemplary damages, attorney's fees, and expenses of litigation.[105]

Respondent's Arguments

DBP, on the other hand, denies acting in bad faith or in a wanton, reckless, or oppressive manner[106] and in charging excessive interest and penalties.[107] According to it, the amounts in the Statements of Account vary because the computations were based on different cut-off dates and different incentive schemes.[108]

DBP further argues that the foreclosure sale is valid because gross inadequacy of the bid price as a ground for the annulment of the sale applies only to judicial foreclosure.[109] It likewise maintains that the Promissory Notes and the Mortgage were not novated by the proposed Restructuring Agreement.[110]

As to petitioners' claim for damages, DBP contends it is without basis because it did not act in bad faith or in a wanton, reckless, or oppressive manner.[111]

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[103] *Id*. at 643-658.

[104] *Id*. at 658-665.

[105] *Id*. at 665-677.

[106] *Id*. at 712-719.

[107] *Id*. at 714-715.

[108] *Id*. at 715.

[109] *Id*. at 719-722.

[110] *Id*. at 722-728.

[111] *Id*. at 728-731.

Our Ruling

The Petition is partly meritorious.

The obligation was not extinguished or discharged.

The Promissory Notes subject of the instant case became due and demandable as early as 1972 and 1976. The only reason the mortgaged properties were not foreclosed in 1977 was because of the restraining order from the court. In 1978, petitioners made a partial payment of ₱902,800.00. No subsequent payments were made. It was only in 1989 that petitioners tried to negotiate the settlement of their loan obligations. And although DBP could have foreclosed the mortgaged properties, it instead agreed to restructure the loan. In fact, from 1989 to 1994, DBP gave several extensions for petitioners to settle their loans, but they never did, thus, prompting DBP to cancel the Restructuring Agreement.

Petitioners, however, insist that DBP's cancellation of the Restructuring Agreement justifies the extinguishment of their loan obligation under the Principle of Constructive Fulfillment found in Article 1186 of the Civil Code.

We do not agree.

As aptly pointed out by the CA, Article 1186 of the Civil Code, which states that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment," does not apply in this case,[112] *viz*:

> Article 1186 enunciates the doctrine of constructive fulfillment of suspensive conditions, which applies when the following three (3) requisites concur, *viz*: (1) The condition is suspensive; (2) The obligor actually prevents the fulfillment of the condition; and (3) He acts voluntarily. Suspensive condition is one the happening of which gives rise to the obligation. It will be irrational for any Bank to provide a suspensive condition in the Promissory Note or the

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[112] CA *rollo*, p. 275.

Restructuring Agreement that will allow the debtor-promissor to be freed from the duty to pay the loan without paying it.[113]

Besides, petitioners have no one to blame but themselves for the cancellation of the Restructuring Agreement. It is significant to point out that when the Regional Credit Committee reconsidered petitioners' proposal to restructure the loan, it imposed additional conditions. In fact, when DBP's General Santos Branch forwarded the Restructuring Agreement to the Legal Services Department of DBP in Makati, petitioners were required to pay the amount of ₱1,300,672.75, plus a daily interest of ₱632.15 starting November 16, 1993 up to the date of actual payment of the said amount.[114] This, petitioners failed to do. DBP therefore had reason to cancel the Restructuring Agreement.

Moreover, since the Restructuring Agreement was cancelled, it could not have novated or extinguished petitioners' loan obligation. And in the absence of a perfected Restructuring Agreement, there was no impediment for DBP to exercise its right to foreclose the mortgaged properties.[115]

The foreclosure sale is not valid.

But while DBP had a right to foreclose the mortgage, we are constrained to nullify the foreclosure sale due to the bank's failure to send a notice of foreclosure to petitioners.

We have consistently held that **unless the parties stipulate**, "personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary"[116] because Section 3[117] of Act

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[113] *Id*.

[114] *Id*. at 242-243.

[115] *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 796 (1998).

[116] *Global Holiday Ownership Corporation v. Metropolitan Bank & Trust Company*, G.R. No. 184081, June 19, 2009, 590 SCRA 188, 201.

[117] SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more

3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.

In this case, the parties stipulated in paragraph 11 of the Mortgage that:

> 11. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extra-judicial action shall be sent to the Mortgagor at xxx or at the address that may hereafter be given in writing by the Mortgagor or the Mortgagee;[118]

However, no notice of the extrajudicial foreclosure was sent by DBP to petitioners about the foreclosure sale scheduled on July 11, 1994. The letters dated January 28, 1994 and March 11, 1994 advising petitioners to immediately pay their obligation to avoid the impending foreclosure of their mortgaged properties are not the notices required in paragraph 11 of the Mortgage. The failure of DBP to comply with their contractual agreement with petitioners, *i.e.*, to send notice, is a breach sufficient to invalidate the foreclosure sale.

In *Metropolitan Bank and Trust Company v. Wong*,[119] we explained that:

> x x x a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:
>
> > Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three

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than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

[118] Exhibit "B", Folder of Exhibits for petitioners.

[119] *Supra* note 1.

> consecutive weeks in a newspaper of general circulation in the municipality and city.

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:

> all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE.

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. **When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.**[120] (Emphasis supplied)

In view of foregoing, the CA erred in finding the foreclosure sale valid.

Penalties and interest rates should be expressly stipulated in writing.

As to the imposition of additional interest and penalties not stipulated in the Promissory Notes, this should not be allowed. Article 1956 of the Civil Code specifically states that "no interest shall be due unless it has been expressly stipulated in writing." Thus, the payment of interest and penalties in loans is allowed only if the parties agreed to it and reduced their agreement in writing.[121]

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[120] *Id.* at 216-217.

[121] *Prisma Construction & Development Corporation v. Menchavez*, G.R. No. 160545, March 9, 2010, 614 SCRA 590, 598.

In this case, petitioners never agreed to pay additional interest and penalties. Hence, we agree with the RTC that these are illegal, and thus, void. Quoted below are the findings of the RTC on the matter, to wit:

Moreover, in its various statements of account, [respondent] Bank charged [petitioners] for additional interests and penalties which were not stipulated in the promissory notes.

In the Promissory Note, Exhibit "A", for the principal amount of ₱960,000.00, only the following interest and penalty charges were stipulated:

(1) interest at the rate of twelve percent (12%) per annum;
(2) penalty charge of one-third percent (1/3%) per month on overdue amortization;
(3) attorney's fees equivalent to ten percent (10%) of the total indebtedness then unpaid; and
(4) advances and interest thereon at one percent (1%) per month.

[Respondent] bank, however, charged [petitioners] the following items as shown in its Statement of Account for the period as of 31 January 1989, Exhibit "D":

(1) regular interest in the amount of ₱561,037.14;
(2) advances in the amount of ₱34,589.45;
(3) additional interest in the amount of ₱2,590,786.26; and
(4) penalty charges in the amount of ₱1,068,147.19.

The Court finds no basis under the Promissory Note, Exhibit "A", for charging the additional interest in the amount of ₱2,590,786.26. Moreover, it is incomprehensible how the penalty charge of 1/3% per month on the overdue amortization could amount to ₱1,086,147.19 while the regular interest, which was stipulated at the higher rate of 12% per annum, amounted to only ₱561,037.14 or about half of the amount allegedly due as penalties.

In Exhibit "N", which is the statement of account x x x as of 15 June 1992, [respondent] bank charged plaintiffs the following items:

(1) regular interest in the amount of ₱561,037.14;
(2) advances in the amount of ₱106,893.93;
(3) additional interest on principal in the amount of ₱1,233,893.79;

(4) additional interest on regular interest in the amount of ₱859,966.83;
(5) additional interest on advances in the amount of ₱27,206.45;
(6) penalty charges on principal in the amount of ₱1,639,331.15;
(7) penalty charges on regular interest in the amount of ₱1,146,622.55;
(8) penalty charges on advances in the amount of ₱40,520.53.

Again, the Court finds no basis in the Promissory Note, Exhibit "A", for the imposition of additional interest on principal in the amount of ₱1,233,893.79, additional interest on regular interest in the amount of ₱859,966.83, penalty charges on regular interest in the amount of ₱1,146,622.55 and penalty charges on advances in the amount of ₱40,520.53.

In the Promissory Note, Exhibit "C", for the principal amount of ₱40,000.00, only the following charges were stipulated:

(1) interest at the rate of nine percent (9%) per annum;
(2) all unpaid amortization[s] shall bear interest at the rate of eleven percent (11%) per annum; and,
(3) attorney's fees equivalent to ten percent (10%) of the total indebtedness then unpaid.

In its statement of account x x x as of 31 January 1989, Exhibit "E", [respondent] bank charged [petitioners] with the following items:

(1) regular interest in the amount of ₱5,046.97
(2) additional interest in the amount of ₱92,113.56; and
(3) penalty charges in the amount of ₱39,915.46.

There was nothing in the Promissory Note, Exhibit "C", which authorized the imposition of additional interest. Again, this Court notes that the additional interest in the amount of ₱92,113.56 is even larger than the regular interest in the amount of ₱5,046.97. Moreover, based on the Promissory Note, Exhibit "C", if the 11% interest on unpaid amortization is considered an "additional interest," then there is no basis for [respondent] bank to add penalty charges as there is no other provision providing for this charge. If, on the other hand, the 11% interest on unpaid amortization is considered the penalty charge, then there is no basis to separately charge plaintiffs additional interest. The same provision cannot be used to charge plaintiffs both interest and penalties.

In Exhibit "O", which is the statement of account x x x as of 15 June 1992, [respondent] charged [petitioners] with the following:

(1) regular interest in the amount of ₱4,621.25;
(2) additional interest on principal in the amount of ₱65,303.33;
(3) additional interest on regular interest in the amount of ₱7,544.58;
(4) penalty charges on principal in the amount of ₱47,493.33;
(5) penalty charges on regular interest in the amount of ₱5,486.97;
(6) penalty charges on advances in the amount of ₱40,520.53.

[Respondent] bank failed to show the basis for charging additional interest on principal, additional interest on regular interest and penalty charges on principal and penalty charges on regular interest under items (2), (3), (4) and (5) above.

Moreover, [respondent] bank charged [petitioners] twice under the same provisions in the promissory notes. It categorically admitted that the additional interests and penalty charges separately being charged [petitioners] referred to the same provision of the Promissory Notes, Exhibits "A" and "C". Thus, for the Lim Account in the amount of ₱40,000.00, [respondent's] Mr. Ancheta stated:

Q: In Exhibit 14, it is stated that for a principal amount of ₱40,000.00 you imposed an additional interest in the amount of ₱65,303.33 in addition to the regular interest of ₱7,544.58, can you tell us looking [at] the mortgage contract and promissory note what is your basis for charging that additional interest?
A: The same as that when I answered Exhibit No. 3, which shall cover amortization on the principal and interest at the above-mentioned rate. All unpaid amortization[s] shall bear interest at the rate of eleven per centum (11%) per annum.

Q: You also imposed penalty which is on the principal in the amount of ₱40,000.00 in the amount of ₱47,493.33 in addition to regular interest of ₱5,486.96. Can you point what portion of Exhibit 3 gives DBP the right to impose such penalty?
A: The same paragraph as stated.

Q: Can you please read the portion referring to penalty?
A: All unpaid amortization shall bear interest at the rate of 11% per annum.

Q: The additional interest is based on 11% per annum and the penalty is likewise based on the same rate?
A: Yes, it is combined (TSN, 28 May 1996, pp. 39-40.)

With respect to the Diamond L. Ranch account in the amount of ₱960,000.00, Mr. Ancheta testified as follows:

Q: Going back to Exhibit 14 Statement of Accounts. Out of the principal of ₱939,973.33 you imposed an additional interest of ₱1,233,893.79 plus ₱859,966.83 plus ₱27,206.45. Can you tell us what is the basis of the imposition?
A: As earlier stated, it is only the Promissory Note as well as the Mortgage Contract.

Q: Please point to us where in the Promissory Note is the specific portion?
A: In Exhibit 1: "in case of failure to pay in full any amortization when due, a penalty charge of 1/3% per month on the overdue amortization shall be paid."

Q: What is the rate?
A: 1/3% per month.

Q: So, the imposition of the additional interest and the penalty charge is based on the same provision?
A: Yes (TSN, 28 May 1996, pp. 41-42.)

A perusal of the promissory notes, however, failed to justify [respondent] bank's computation of both interest and penalty under the same provision in each of the promissory notes.

[Respondent] bank also admitted that the additional interests and penalties being charged [petitioners] were not based on the stipulations in the Promissory Notes but were imposed unilaterally as a matter of its internal banking policies. (TSN, 19 March 1996, pp. 23-24.) This banking policy, however, has been declared null and void in Philippine National Bank vs. CA, 196 SCRA 536 (1991). The act of [respondent] bank in unilaterally changing the stipulated interest rate is violative of the principle of mutuality of contracts under 1308 of the Civil Code and contravenes 1956 of the Civil Code.

[Respondent] bank completely ignored [petitioners'] "right to assent to an important modification in their agreement and (negated) the element of mutuality in contracts." (Philippine National Bank vs. CA, G.R. No. 109563, 9 July 1996; Philippine National Bank vs. CA, 238 SCRA 20 1994). As in the PNB cases, [petitioners] herein never agreed in writing to pay the additional interest, or the penalties, as fixed by [respondent] bank; **hence [respondent] bank's imposition of additional interest and penalties is null and void**.[122] (Emphasis supplied)

Consequently, this case should be remanded to the RTC for the proper determination of petitioners' total loan obligation based on the interest and penalties stipulated in the Promissory Notes.

DBP did not act in bad faith or in a wanton, reckless, or oppressive manner.

Finally, as to petitioners' claim for damages, we find the same devoid of merit.

DBP did not act in bad faith or in a wanton, reckless, or oppressive manner in cancelling the Restructuring Agreement. As we have said, DBP had reason to cancel the Restructuring Agreement because petitioners failed to pay the amount required by it when it reconsidered petitioners' request to restructure the loan.

Likewise, DBP's failure to send a notice of the foreclosure sale to petitioners and its imposition of additional interest and penalties do not constitute bad faith. There is no showing that these contractual breaches were done in bad faith or in a wanton, reckless, or oppressive manner.

In *Philippine National Bank v. Spouses Rocamora*,[123] we said that:

Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the defendant acted

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[122] Records, pp. 385-390.

[123] G.R. No. 164549, September 18, 2009, 600 SCRA 395.

fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

We are not sufficiently convinced that PNB acted fraudulently, in bad faith, or in wanton disregard of its contractual obligations, simply because it increased the interest rates and delayed the foreclosure of the mortgages. Bad faith cannot be imputed simply because the defendant acted with bad judgment or with attendant negligence. Bad faith is more than these; it pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. Proof of actions of this character is undisputably lacking in this case. Consequently, we do not find the spouses Rocamora entitled to an award of moral and exemplary damages. Under these circumstances, neither should they recover attorney's fees and litigation expense. These awards are accordingly deleted.[124] (Emphasis supplied)

WHEREFORE, the Petition is **PARTLY GRANTED.** The assailed February 22, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 59275 is hereby **MODIFIED** in accordance with this Decision. The case is hereby **REMANDED** to the Regional Trial Court of General Santos City, Branch 22, for the proper determination of petitioners' total loan obligations based on the interest and penalties stipulated in the Promissory Notes dated November 24, 1969 and December 30, 1970. The foreclosure sale of the mortgaged properties held on July 11, 1994 is **DECLARED** *void ab initio* for failure to comply with paragraph 11 of the Mortgage, without prejudice to the conduct of another foreclosure sale based on the recomputed amount of the loan obligations, if necessary.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[124] *Id.* at 411-412.

THIRD DIVISION

[G.R. No. 179334. July 1, 2013]

SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS and DISTRICT ENGINEER CELESTINO R. CONTRERAS, *petitioners, vs.* **SPOUSES HERACLEO and RAMONA TECSON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL ORDER.—** As aptly noted by the CA, the issues of prescription and laches are not proper issues for resolution as they were not included in the pre-trial order. x x x To be sure, the pre-trial order explicitly defines and limits the issues to be tried and controls the subsequent course of the action unless modified before trial to prevent manifest injustice.

2. **CIVIL LAW; CIVIL CODE; LACHES AND PRESCRIPTION; NOT APPLICABLE IN CASE AT BAR.—** Even if we squarely deal with the issues of laches and prescription, the same must still fail. Laches is principally a doctrine of equity which is applied to avoid recognizing a right when to do so would result in a clearly inequitable situation or in an injustice. This doctrine finds no application in this case, since there is nothing inequitable in giving due course to respondents' claim. Both equity and the law direct that a property owner should be compensated if his property is taken for public use. Neither shall prescription bar respondents' claim following the long-standing rule "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof *does not prescribe*."

3. **POLITICAL LAW; EMINENT DOMAIN; JUST COMPENSATION; THE FAIR VALUE OF THE PROPERTY SHOULD BE FIXED AT THE TIME OF THE ACTUAL TAKING BY THE GOVERNMENT; REASON FOR THE RULE.—** When a property is taken by the government for public use, jurisprudence clearly provides for

the remedies available to a landowner. The owner may recover his property if its return is feasible or, if it is not, the aggrieved owner may demand payment of just compensation for the land taken. For failure of respondents to question the lack of expropriation proceedings for a long period of time, they are deemed to have waived and are estopped from assailing the power of the government to expropriate or the public use for which the power was exercised. What is left to respondents is the right of compensation. The trial and appellate courts found that respondents are entitled to compensation. The only issue left for determination is the propriety of the amount awarded to respondents. Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x ***fixed at the time of the actual taking by the government***." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.

4. ID.; ID.; ID.; WHILE DISPARITY IN THE AMOUNTS IS OBVIOUS AND MAY APPEAR INEQUITABLE TO RESPONDENTS AS THEY WOULD BE RECEIVING OUTDATED VALUATION AFTER A VERY LONG PERIOD, IT IS EQUALLY TRUE THAT THEY TOO ARE EQUALLY REMISS IN GUARDING AGAINST THE CRUEL EFFECTS OF A BELATED CLAIM.— Both the RTC and the CA recognized that the fair market value of the subject property in 1940 was ₱0.70/sq. m. Hence, it should, therefore, be used in determining the amount due respondents instead of the higher value which is ₱1,500.00. While disparity in the above amounts is obvious and may appear inequitable to respondents as they would be receiving such outdated valuation after a very long period, it is equally true that they too are remiss in guarding against the cruel effects of belated claim. The concept of just compensation does not imply fairness to the property owner alone. Compensation must be just not only to the property owner, but also to the public which ultimately bears the cost of expropriation.

5. ID.; ID.; ID.; FOR THE ILLEGAL TAKING OF RESPONDENTS' PROPERTY FOR MORE THAN FIFTY YEARS WITHOUT THE BENEFIT OF EXPROPRIATION PROCEEDINGS, THEY ARE ENTITLED TO ADEQUATE COMPENSATION IN THE FORM OF ACTUAL

COMPENSATORY DAMAGES WHICH IN THIS CASE SHOULD BE THE LEGAL INTEREST OF SIX PERCENT (6%) PER ANNUM ON THE VALUE OF THE LAND AT THE TIME OF TAKING IN 1940 UNTIL FULL PAYMENT.— Clearly, petitioners had been occupying the subject property for more than fifty years without the benefit of expropriation proceedings. In taking respondents' property without the benefit of expropriation proceedings and without payment of just compensation, petitioners clearly acted in utter disregard of respondents' proprietary rights which cannot be countenanced by the Court. For said illegal taking, respondents are entitled to adequate compensation in the form of actual or compensatory damages which in this case should be the legal interest of six percent (6%) per annum on the value of the land at the time of taking in 1940 until full payment. This is based on the principle that interest runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of taking.

LEONEN*, J., separate opinion:*

1. **POLITICAL LAW; EMINENT DOMAIN; JUST COMPENSATION; THE FAILURE OF THE STATE TO PAY THE PROPERTY OWNERS AT THE PROPER TIME DEPRIVES THEM OF THE TRUE VALUE OF THE PROPERTY THAT THEY HAD.—** I agree with the *ponencia* of Justice Peralta in so far as the fair market value of a property subjected to expropriation must be the value of the property at the time of the actual taking by the government, at the moment that the owner is unable to have beneficial use (see *Republic v. Vda. de Castellvi*). However, I also agree with Justice Velasco that gross injustice will result if the amount that will be awarded today will be based simply on the value of the property at the time of the actual taking. Should the value of the property been awarded to the owners at the time of the taking, they would have used it for other profitable uses. Hence, the failure of the State to have paid at the proper time deprives the owners of the true value of the property that they had.

2. **ID.; ID.; ID.; PROPER WAY TO RESOLVE THE INEQUITY WOULD BE TO USE THE ECONOMIC CONCEPT OF PRESENT VALUE.—** I am of the opinion that the proper way to resolve this would be to use the economic concept of

present value. This concept is usually summarized this way: Money received today is more valuable than the same amount of money received tomorrow. By applying this concept, we are able to capture just compensation in a more holistic manner. We take into consideration the potential of money to increase (or decrease) in value across time. If the parties in an expropriation case would have perfect foresight, they would have known the amount of "fair market value at the time of taking." If this amount of money was deposited in a bank pending expropriation proceedings, by the time proceedings are over, the property owner would be able to withdraw the principal (fair market value at the time of taking) and the interest earnings it has accumulated over the time of the proceedings. Economists have devised a simple method to compute for the value of money in consideration of this future interest earnings.

3. ID.; ID.; ID.; USING THE ESTABLISHED CONCEPT OF PRESENT VALUE INCORPORATES THE DISCIPLINE OF ECONOMICS INTO OUR JURISPRUDENCE ON TAKINGS.— Using the established concept of present value incorporates the discipline of economics into our jurisprudence on takings. Valuation is indeed an inexact science and economics also has its own assumptions. However, in my reckoning, this is infinitely better than leaving it up to the trial court judge. I submit that this proposal is a happy middle ground. It meets the need for doctrinal precision urged by Justice Peralta and the thirst for substantial justice in Justice Velasco's separate opinion. After all, I am sure that we all share in each other's goals.

VELASCO, JR., *J., dissenting & concurring opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE DOCTRINE APPLIES IN THE COURT OF APPEALS' RULING IN CA-G.R. CV NO. 51454 ON RESPONDENTS' RIGHT TO RECOVER JUST COMPENSATION FOR THE EXPROPRIATION OF THEIR PROPERTY.— Respondents' right to recover just compensation for the expropriation of the subject property has already been settled by the CA in its Decision dated February 11, 1999 in CA-G.R. CV No. 51454. When the CA remanded the case to the RTC of Malolos City, further proceedings were intended "for the purpose of determining the just compensation

to which [respondents] are entitled to recover from the government." Said CA Decision in CA-G.R. CV No. 51454 has already become final. The ruling in CA-G.R. CV No. 51454 on respondents' right to recover just compensation was the law of the case. In *Strategic Alliance Development Corporation v. Radstock Securities Limited*, the Court explained the law of the case doctrine, as follows: Law of the case is defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be facts of the case before the court, notwithstanding that the rule laid down may have been reversed in other cases. **Indeed, after the appellate court has issued a pronouncement on a point presented to it with a full opportunity to be heard having been accorded to the parties, that pronouncement should be regarded as the law of the case and should not be reopened on a remand of the case.**

2. ID.; ID.; PRE-TRIAL; THE ISSUES OF PRESCRIPTION AND LACHES ARE NOT PROPER ISSUES FOR RESOLUTION SINCE THEY WERE NOT INCLUDED IN THE PRE-TRIAL ORDER.— On the issues of prescription and laches, I agree with the *ponencia* that these are also not proper issues for resolution since they were not included in the pre-trial order, where the issues for resolution were limited to the following: (1) whether respondents are entitled to just compensation; (2) whether the valuation would be based on the corresponding value at the time of the taking or at the time of the filing of the action; and (3) whether respondents were entitled to damages.

3. CIVIL LAW; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); A TORRENS TITLE CANNOT BE ATTACKED COLLATERALLY, AND THE ISSUE OF ITS VALIDITY CAN BE RAISED ONLY IN AN ACTION EXPRESSLY INSTITUTED FOR THAT PURPOSE.— As the liability to respondents had been determined with finality in a prior proceeding, this Court could no longer entertain questions on ownership of the subject property so as to release the DPWH from its liability to respondents. Otherwise, this would require

us to reopen and review the final decision in CA-G.R. CV No. 51454. Also, respondents' ownership may not be questioned in this proceeding. It is settled that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose. Sec. 48 of Presidential Decree No. 1529, also known as the Property Registration Decree, expressly provides: Section 48. *Certificate not subject to collateral attack.* A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. Accordingly, the Torrens title of respondents (TCT T-43006) speaks for itself and is conclusive proof of ownership of the subject property.

4. ID.; CIVIL CODE; LACHES AND PRESCRIPTION FINDS NO APPLICATION IN CASE AT BAR; IT WOULD BE THE HEIGHT OF INJUSTICE IF RESPONDENTS WOULD BE DEPRIVED OF JUST COMPENSATION FOR THEIR PROPERTY, WHICH WAS TAKEN FOR PUBLIC USE AND WITHOUT THEIR CONSENT BASED ON THESE DOCTRINES.— And even if the issues of laches and prescription are to be dealt with substantively, still, these grounds have no leg to stand on. As aptly pointed out in the *ponencia*, laches "finds no application in this case, since there is nothing inequitable in giving due course to respondents' claim." Contrarily, it would be the height of injustice if respondents would be deprived of just compensation for their property, which was taken for public use and without their consent, based on this equitable doctrine. Also, prescription will not bar respondents' claim since, as stated in the *ponencia*, the owner's action to recover the land or the value thereof does not prescribe where private property is taken for public use by the government without first acquiring title thereto. Accordingly, the only issue left for determination is the amount of just compensation which respondents are entitled to receive from the government for the taking of their subject property.

5. POLITICAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; SINCE EXPROPRIATION IS ESSENTIALLY A FORCED TAKING OF PRIVATE PROPERTY BY THE STATE OR ITS AGENCIES, THE PRIVATE OWNER BEING COMPELLED TO GIVE UP HIS PROPERTY FOR THE COMMON WEAL, THEN THE MANDATORY

REQUIREMENT OF DUE PROCESS SHOULD BE STRICTLY FOLLOWED.— Indeed, in a number of cases, the Court has ruled that the reckoning point for the determination of just compensation is the time of taking. Nonetheless, I respectfully submit that there is a necessity to deviate from such general rule in view of the attendant inequity and prejudice such application entails. For one, DPWH violated respondents' constitutional right to procedural due process when it deprived respondents of the subject property without their consent and the requisite expropriation proceedings. It has been my position that since expropriation is essentially a forced taking of private property by the state or its agencies, the private owner being compelled to give up his property for the common weal, then the mandatory requirement of due process should be strictly followed. Expropriation is an exercise of the government's power of eminent domain. As an inherent attribute of the government, this power is fundamentally limitless if not restrained by the Bill of Rights. Without the limitations thus imposed, the exercise of the power of eminent domain can become repressive. Thus, the Bill of Rights should always be a measure and guarantee of protecting certain areas of a person's life, liberty, and property against the government's abuse of power. In the instant case, it is not disputed that DPWH illegally took the subject lot without the consent of respondents and the necessary expropriation proceedings. To make matters worse, almost 55 years have already passed from the time of taking, yet DPWH still failed to institute condemnation proceedings. This is clearly indicative of DPWH's lack of intention to formally expropriate the subject property and consequently deny respondents of the elementary due process of law. Thus, when respondents were constrained to file a complaint before the trial court, they were the ones who, in effect, commenced the inverse condemnation proceedings, which, to my mind, is ironic. The prevalence of the taking of a subject property without the owner's consent and the necessary expropriation proceedings does not, and should not, cure its illegality. Verily, the government's action in the instant case, done as it were without observing procedural due process, is illegal and invalid. As such, the condemnation of the subject property ought to be reversed and respondents restored to its possession. However, considering that the subject property had already been put to public use—forming part of the MacArthur Highway—

respondents can no longer be restored to the possession of the subject property. As pointed out by the CA, the only remedy available to respondents is the recovery of just compensation.

6. ID.; EMINENT DOMAIN; JUST COMPENSATION; WHILE IT IS A SETTLED RULE THAT THE VALUE OF THE PROPERTY AT THE TIME OF TAKING WHICH IS CONTROLLING IN THE DETERMINATION OF THE VALUE OF JUST COMPENSATION, AN EXCEPTION MUST BE MADE IN CASES WHERE NO CONDEMNATION PROCEEDINGS WERE INSTITUTED AFTER A SUBSTANTIAL PERIOD OF TIME FROM THE TIME OF ILLEGAL TAKING.— But if the Court is to peg the reckoning value of the just compensation to PhP 0.70, it would, in effect, be condoning the wrongful act of DPWH in taking the subject property in utter disregard of respondents' property rights and violation of the due process of laws. Thus, while this Court has previously ruled, in a number of cases, that the value of the property at the time of the taking which is controlling in the determination of the value of just compensation, it is my submission that an exception to the foregoing ruling must be made in cases where **no condemnation proceedings were instituted after a substantial period of time from the time of illegal taking**. Pertinently, there is "illegal taking" when there is taking of a property without the benefit of expropriation proceedings and without payment of just compensation, as in the instant case. When the illegal taking is compounded with the failure of the condemnor to institute condemnation proceedings after a substantial period of time, *i.e.*, 55 years from the time of taking, then it is not really hard to grasp why pegging the basis for valuation of just compensation at the time of illegal taking is erroneous, if not utterly reprehensible. The Court cannot reluctantly close its eyes to the likelihood that the invariable application of the determination of just compensation at the time of the actual taking, as in the cases cited in the *ponencia*, will grant government agencies and instrumentalities the license to disregard the property rights of landowners, violate the Constitution's proviso on due process of laws, and render nugatory statutory and procedural laws on expropriation proceedings of private properties for public use. Both the RTC of Malolos City and the CA were, therefore, correct in granting

just compensation to respondents in the amount of PhP 1,500 per square meter, as recommended by the PAC. This way, government agencies and instrumentalities would think twice before taking any unwarranted short cuts in condemning private properties that violate the owners' right to due process of laws as enshrined in the Bill of Rights.

7. ID.; ID.; ID.; ID.; THE COURT SHOULD NOT AWARD THE RESPONDENTS A MEASLY AMOUNT OF JUST COMPENSATION, 72 YEARS AFTER THE ILLEGAL TAKING OF THEIR PROPERTY; CASE AT BAR.— [T]he basis for determining the amount of just compensation as awarded by the RTC of Malolos City and the CA at PhP 1,500, as recommended by the PAC, is but just and proper given the attendant circumstances. It should be noted that at the time the case was referred to PAC for its recommendation on the value of the just compensation, the prevailing value of the subject property is already at PhP 10,000 per square meter. x x x Undeniably, the valuation of PhP 10,000 is already enhanced by the public purpose for which the subject property is taken, as well as the natural increase in value of the property due its general conditions and consequent developments. However, by pegging the basis in determining just compensation at PhP 1,500, the RTC of Malolos City and the CA, as recommended by the PAC, reasonably fixed the basis for the award of just compensation. As between PhP 0.70 and PhP 10,000, the valuation of PhP 1,500 is but just and proper given the present circumstances. And for a third, it is highly unjust and inequitable, as aptly observed by the CA, to pay respondents just compensation at the rate of PhP 0.70 per square meter, which was then the value of the subject property in 1940 when the illegal taking was committed. This injustice and inequity is emphasized by the measly award respondents will receive now, as the *ponencia* so rules, after having been deprived of their right to procedural due process for 55 years with the DPWH disregarding and violating practically all constitutional, statutory and procedural rules relative to the condemnation of the subject lot for public use. In effect, despite what respondents have been through, they are still penalized by the government considering that after 72 years from the time of the illegal taking of their property, they will only receive a measly amount of just compensation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Ma. Elenita R. Quintana for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated July 31, 2007 in CA-G.R. CV No. 77997. The assailed decision affirmed with modification the Regional Trial Court (RTC)[2] Decision[3] dated March 22, 2002 in Civil Case No. 208-M-95.

The case stemmed from the following factual and procedural antecedents:

Respondent spouses Heracleo and Ramona Tecson (respondents) are co-owners of a parcel of land with an area of 7,268 square meters located in San Pablo, Malolos, Bulacan and covered by Transfer Certificate of Title (TCT) No. T-43006[4] of the Register of Deeds of Bulacan. Said parcel of land was among the properties taken by the government sometime in 1940 without the owners' consent and without the necessary expropriation proceedings and used for the construction of the MacArthur Highway.[5]

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Estela M. Perlas-Bernabe (now a member of this Court), concurring; *rollo*, pp. 124-137.

[2] Branch 80, Malolos, Bulacan.

[3] Penned by Judge Caesar A. Casanova; *rollo,* pp. 165-167.

[4] Records, p. 5.

[5] *Rollo,* p. 125.

In a letter[6] dated December 15, 1994, respondents demanded the payment of the fair market value of the subject parcel of land. Petitioner Celestino R. Contreras (petitioner Contreras), then District Engineer of the First Bulacan Engineering District of petitioner Department of Public Works and Highways (DPWH), offered to pay the subject land at the rate of ₱0.70 per square meter per Resolution of the Provincial Appraisal Committee (PAC) of Bulacan.[7] Unsatisfied with the offer, respondents demanded for the return of their property or the payment of compensation at the current fair market value.[8]

As their demand remained unheeded, respondents filed a Complaint[9] for recovery of possession with damages against petitioners, praying that they be restored to the possession of the subject parcel of land and that they be paid attorney's fees.[10] Respondents claimed that the subject parcel of land was assessed at ₱2,543,800.00.[11]

Instead of filing their Answer, petitioners moved for the dismissal of the complaint on the following grounds: (1) that the suit is against the State which may not be sued without its consent; (2) that the case has already prescribed; (3) that respondents have no cause of action for failure to exhaust administrative remedies; and (4) if respondents are entitled to compensation, they should be paid only the value of the property in 1940 or 1941.[12]

On June 28, 1995, the RTC issued an Order[13] granting respondents' motion to dismiss based on the doctrine of state

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[6] Records, p. 6.

[7] *Id*. at 7.

[8] *Rollo*, p. 125.

[9] Records, pp. 1-4.

[10] *Id*. at 3.

[11] *Id*. at 2.

[12] *Id*. at 17-19.

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

immunity from suit. As respondents' claim includes the recovery of damages, there is no doubt that the suit is against the State for which prior waiver of immunity is required. When elevated to the CA,[14] the appellate court did not agree with the RTC and found instead that the doctrine of state immunity from suit is not applicable, because the recovery of compensation is the only relief available to the landowner. To deny such relief would undeniably cause injustice to the landowner. Besides, petitioner Contreras, in fact, had earlier offered the payment of compensation although at a lower rate. Thus, the CA reversed and set aside the dismissal of the complaint and, consequently, remanded the case to the trial court for the purpose of determining the just compensation to which respondents are entitled to recover from the government.[15] With the finality of the aforesaid decision, trial proceeded in the RTC.

The Branch Clerk of Court was initially appointed as the Commissioner and designated as the Chairman of the Committee that would determine just compensation,[16] but the case was later referred to the PAC for the submission of a recommendation report on the value of the subject property.[17] In PAC Resolution No. 99-007,[18] the PAC recommended the amount of ₱1,500.00 per square meter as the just compensation for the subject property.

On March 22, 2002, the RTC rendered a Decision,[19] the dispositive portion of which reads:

WHEREFORE, premises considered, the Department of Public Works and Highways or its duly assigned agencies are hereby directed to pay said Complainants/Appellants the amount of One Thousand

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[14] The case was docketed as CA-G.R. CV No. 51454.

[15] Embodied in a Decision dated February 11, 1999, penned by Associate Justice Artemon D. Luna, with Associate Justices Delilah Vidallon-Magtolis and Rodrigo V. Cosico, concurring; records, pp. 56-62.

[16] Records, p. 104.

[17] *Id*. at 116.

[18] *Id*. at 122.

[19] *Id*. at 150-152.

Five Hundred Pesos (₱1,500.00) per square meter for the lot subject matter of this case in accordance with the Resolution of the Provincial Appraisal Committee dated December 19, 2001.

SO ORDERED.[20]

On appeal, the CA affirmed the above decision with the modification that the just compensation stated above should earn interest of six percent (6%) per annum computed from the filing of the action on March 17, 1995 until full payment.[21]

In its appeal before the CA, petitioners raised the issues of prescription and laches, which the CA brushed aside on two grounds: *first*, that the issue had already been raised by petitioners when the case was elevated before the CA in CA-G.R. CV No. 51454. Although it was not squarely ruled upon by the appellate court as it did not find any reason to delve further on such issues, petitioners did not assail said decision barring them now from raising exactly the same issues; and *second*, the issues proper for resolution had been laid down in the pre-trial order which did not include the issues of prescription and laches. Thus, the same can no longer be further considered. As to the propriety of the property's valuation as determined by the PAC and adopted by the RTC, while recognizing the rule that the just compensation should be the reasonable value at the time of taking which is 1940, the CA found it necessary to deviate from the general rule. It opined that it would be obviously unjust and inequitable if respondents would be compensated based on the value of the property in 1940 which is ₱0.70 per sq m, but the compensation would be paid only today. Thus, the appellate court found it just to award compensation based on the value of the property at the time of payment. It, therefore, adopted the RTC's determination of just compensation of ₱1,500.00 per sq. m. as recommended by the PAC. The CA further ordered the payment of interest at the rate of six percent (6%) per annum reckoned from the time of taking, which is the filing of the complaint on March 17, 1995.

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[20] *Id*. at 152.

[21] *Supra* note 1.

Aggrieved, petitioners come before the Court assailing the CA decision based on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED IN GRANTING JUST COMPENSATION TO RESPONDENTS CONSIDERING THE HIGHLY DUBIOUS AND QUESTIONABLE CIRCUMSTANCES OF THEIR ALLEGED OWNERSHIP OF THE SUBJECT PROPERTY.

II.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING JUST COMPENSATION TO RESPONDENTS BECAUSE THEIR COMPLAINT FOR RECOVERY OF POSSESSION AND DAMAGES IS ALREADY BARRED BY PRESCRIPTION AND LACHES.

III.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION ORDERING THE PAYMENT OF JUST COMPENSATION BASED ON THE CURRENT MARKET VALUE OF THE ALLEGED PROPERTY OF RESPONDENTS.[22]

Petitioners insist that the action is barred by prescription having been filed fifty-four (54) years after the accrual of the action in 1940. They explain that the court can *motu proprio* dismiss the complaint if it shows on its face that the action had already prescribed. Petitioners likewise aver that respondents slept on their rights for more than fifty years; hence, they are guilty of laches. Lastly, petitioners claim that the just compensation should be based on the value of the property at the time of taking in 1940 and not at the time of payment.[23]

The petition is partly meritorious.

The instant case stemmed from an action for recovery of possession with damages filed by respondents against petitioners. It, however, revolves around the taking of the subject lot by petitioners for the construction of the MacArthur Highway. There

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[22] *Rollo*, p. 108.

[23] *Id*. at 24-32.

is taking when the expropriator enters private property not only for a momentary period but for a permanent duration, or for the purpose of devoting the property to public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof.[24]

It is undisputed that the subject property was taken by petitioners without the benefit of expropriation proceedings for the construction of the MacArthur Highway. After the lapse of more than fifty years, the property owners sought recovery of the possession of their property. Is the action barred by prescription or laches? If not, are the property owners entitled to recover possession or just compensation?

As aptly noted by the CA, the issues of prescription and laches are not proper issues for resolution as they were not included in the pre-trial order. We quote with approval the CA's ratiocination in this wise:

> Procedurally, too, prescription and laches are no longer proper issues in this appeal. In the pre-trial order issued on May 17, 2001, the RTC summarized the issues raised by the defendants, to wit: (a) whether or not the plaintiffs were entitled to just compensation; (b) whether or not the valuation would be based on the corresponding value at the time of the taking or at the time of the filing of the action; and (c) whether or not the plaintiffs were entitled to damages. Nowhere did the pre-trial order indicate that prescription and laches were to be considered in the adjudication of the RTC.[25]

To be sure, the pre-trial order explicitly defines and limits the issues to be tried and controls the subsequent course of the action unless modified before trial to prevent manifest injustice.[26]

Even if we squarely deal with the issues of laches and prescription, the same must still fail. Laches is principally a doctrine of equity which is applied to avoid recognizing a right

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[24] *Manila International Airport Authority v. Rodriguez*, 518 Phil. 750, 757 (2006).

[25] *Rollo*, p. 133.

[26] Rules of Court, Rule 18, Sec. 7.

when to do so would result in a clearly inequitable situation or in an injustice.[27] This doctrine finds no application in this case, since there is nothing inequitable in giving due course to respondents' claim. Both equity and the law direct that a property owner should be compensated if his property is taken for public use.[28] Neither shall prescription bar respondents' claim following the long-standing rule "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof *does not prescribe*."[29]

When a property is taken by the government for public use, jurisprudence clearly provides for the remedies available to a landowner. The owner may recover his property if its return is feasible or, if it is not, the aggrieved owner may demand payment of just compensation for the land taken.[30] For failure of respondents to question the lack of expropriation proceedings for a long period of time, they are deemed to have waived and are estopped from assailing the power of the government to expropriate or the public use for which the power was exercised. What is left to respondents is the right of compensation.[31] The trial and appellate courts found that respondents are entitled to compensation. The only issue left for determination is the propriety of the amount awarded to respondents.

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x ***fixed at the time of the actual taking by the government***." This rule holds true when the property is taken before the filing of an

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[27] *Republic v. Court of Appeals*, G.R. No. 147245, March 31, 2005, 454 SCRA 516, 527.

[28] *Id*.

[29] *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009, 603 SCRA 576, 583; *Republic v. Court of Appeals*, *supra* note 27, at 528.

[30] *Republic v. Court of Appeals*, *supra* note 27, at 532.

[31] *Eusebio v. Luis*, *supra* note 29, at 584; *Forfom Development Corporation v. Philippine National Railways*, G.R. No. 124795, December 10, 2008, 573 SCRA 350, 366-367.

expropriation suit, and even if it is the property owner who brings the action for compensation.[32]

The issue in this case is not novel.

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*,[33] PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings.[34] In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*,[35] respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*,[36] in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In *Republic v. Sarabia*,[37] sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot

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[32] *Republic v. Court of Appeals*, *supra* note 27, at 534. (Emphasis supplied.)

[33] *Supra* note 31.

[34] *Forfom Development Corporation v. Philippine National Railways*, *supra* note 31, at 366.

[35] *Supra* note 29.

[36] *Supra* note 24.

[37] G.R. No. 157847, August 25, 2005, 468 SCRA 142.

situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. ***The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation.*** In *Forfom*, the payment of just compensation was reckoned from the time of taking in 1973; in *Eusebio*, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980; in *MIAA*, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in *Republic*, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation. As in said cases, just compensation due respondents in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940.

The reason for the rule has been clearly explained in *Republic v. Lara, et al.*,[38] and repeatedly held by the Court in recent cases, thus:

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[38] 96 Phil. 170 (1954).

x x x "[T]he value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x x x.[39]

Both the RTC and the CA recognized that the fair market value of the subject property in 1940 was ₱0.70/sq. m.[40] Hence, it should, therefore, be used in determining the amount due respondents instead of the higher value which is ₱1,500.00. While disparity in the above amounts is obvious and may appear inequitable to respondents as they would be receiving such outdated valuation after a very long period, it is equally true that they too are remiss in guarding against the cruel effects of belated claim. The concept of just compensation does not imply fairness to the property owner alone. Compensation must be just not only to the property owner, but also to the public which ultimately bears the cost of expropriation.[41]

Clearly, petitioners had been occupying the subject property for more than fifty years without the benefit of expropriation proceedings. In taking respondents' property without the benefit of expropriation proceedings and without payment of just compensation, petitioners clearly acted in utter disregard of respondents' proprietary rights which cannot be countenanced by the Court.[42] For said illegal taking, respondents are entitled to adequate compensation in the form of actual or compensatory

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[39] *Republic v. Lara, et al., supra,* at 177-178.

[40] *Rollo,* p. 44.

[41] *Republic v. Court of Appeals, supra* note 27, at 536.

[42] *Eusebio v. Luis, supra* note 29, at 587.

damages which in this case should be the legal interest of six percent (6%) per annum on the value of the land at the time of taking in 1940 until full payment.[43] This is based on the principle that interest runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of taking.[44]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED.** The Court of Appeals Decision dated July 31, 2007 in CA-G.R. CV No. 77997 is **MODIFIED,** in that the valuation of the subject property owned by respondents shall be ₱0.70 instead of ₱1,500.00 per square meter, with interest at six percent (6%) per annum from the date of taking in 1940 instead of March 17, 1995, until full payment.

SO ORDERED.

Abad and *Mendoza, JJ.,* concur.

Leonen, J., see separate opinion.

Velasco, Jr., J. (Chairperson), see dissenting and concurring opinion.

SEPARATE OPINION

LEONEN, *J.*:

I agree with the *ponencia* of Justice Peralta in so far as the fair market value of a property subjected to expropriation must be the value of the property at the time of the actual taking by the government, at the moment that the owner is unable to have beneficial use (see *Republic v. Vda. de Castellvi*).[1]

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[43] *Id.* at 587-588; *Forfom Development Corporation v. Philippine National Railways*, *supra* note 31, at 373; *Manila International Airport Authority v. Rodriguez*, *supra* note 24, at 761. (Citations omitted).

[44] *Manila International Airport Authority v. Rodriguez*, *supra* note 24, at 761. (Citation omitted).

[1] G.R. No. L-20620, August 15, 1974, 58 SCRA 336, 352.

However, I also agree with Justice Velasco that gross injustice will result if the amount that will be awarded today will be based simply on the value of the property at the time of the actual taking. Should the value of the property been awarded to the owners at the time of the taking, they would have used it for other profitable uses. Hence, the failure of the State to have paid at the proper time deprives the owners of the true value of the property that they had.

I am of the opinion that the proper way to resolve this would be to use the economic concept of present value.[2] This concept is usually summarized this way: Money received today is more valuable than the same amount of money received tomorrow.[3] By applying this concept, we are able to capture just compensation in a more holistic manner. We take into consideration the potential of money to increase (or decrease) in value across time.

If the parties in an expropriation case would have perfect foresight, they would have known the amount of "fair market value at the time of taking." If this amount of money was deposited in a bank pending expropriation proceedings, by the time proceedings are over, the property owner would be able to withdraw the principal (fair market value at the time of taking) and the interest earnings it has accumulated over the time of the proceedings. Economists have devised a simple method to compute for the value of money in consideration of this future interest earnings.

For purposes of explaining this method, consider property owner AA who owns a piece of land. The government took his property at Year 0. Let us assume that his property had a fair market value of ₱100 at the time of taking. In our ideal situation, the government should have paid him ₱100 at Year 0. By then, AA could have put the money in the bank so it could earn interest.

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[2] Present value (of an asset) is defined as "the value for an asset that yields a stream of income over time." PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 748 (Eighteenth Edition).

[3] N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 414 (2007 Edition).

Let us peg the interest rate at 5% per annum (or in decimal form, 0.05).[4]

If the expropriation proceedings took just one year (again, another ideal situation), AA could only be paid after that year. The value of the ₱100 would have appreciated already. We have to take into consideration the fact that in Year 1, AA could have earned an additional ₱5 in interest if he had been paid in Year 0.

In order to compute the present value of ₱100, we have to consider this formula:

Present Value in Year 1 = Value at the Time of Taking + (Interest Earned of the Value at the Time of Taking)

In formula[5] terms, it will look like this:

$$PV_1 = V + (V*r)$$

$$\boldsymbol{PV_1 = V*(1+r)}$$

$\mathbf{PV_1}$ = present value in Year 1
V = value at the time of taking
r = interest rate

So in the event that AA gets paid in Year 1, then:

$$\boldsymbol{PV_1 = V*(1+r)}$$

$$PV_1 = ₱100\ (1 + 0.05)$$

$$PV_1 = ₱105$$

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[4] Interest rates are dependent on risk, inflation and tax treatment. *See* PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 269 (Eighteenth Edition). Actual interest rate to be applied should be computed reasonably according to historical epochs in our political economy. For example, during the war, we have experienced extraordinary inflation. This extraordinary inflation influenced adversely interest rates of financial investments. The period of martial law is another example of a historical epoch that influenced interest rates.

[5] N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 414-415 (2007 Edition).

So if AA were to be paid in Year 1 instead of in Year 0, it is only just that he be paid 105 to take into account the interest earnings he has foregone due to the expropriation proceedings. If he were to be paid in Year 2, we should take into consideration not only the interest earned of the principal, but the fact that the interest earned in Year 1 will also be subject to interest earnings in Year 2. This concept is referred to as *compounding* interest rates. So our formula becomes:

Present Value in Year 2 = [Present Value in Year 1] + [Interest Earned of Present Value in Year 1]

Recall that in formula terms, Present Value in Year 1 was expressed as:

$$PV_1 = [V*(1+r)]$$

Hence, in Year 2, the formula will be:

$$PV_2 = PV_1*(1+r) \text{ or}$$

$$PV_2 = [V*(1+r)]*(1+r)$$

Seeing that the term (1+r) is repeated, it can be further simplified as:

$$\boldsymbol{PV_2 = V*(1+r)^2}$$

$$PV_2 = ₱100 * (1+0.05)^2$$

$$PV_2 = ₱100 * 1.1025$$

$$PV_2 = ₱110.25$$

This is the same as if we multiply the present value in Year 1 of 105 by ₱1.05 (our multiplier with the interest rate).

If proceedings go on until Year 3, then the formula would be:

$$PV_3 = \boldsymbol{PV_2}*(1+r)$$

$$PV_3 = \boldsymbol{\{[V*(1+r)]*(1+r)\}}*(1+r)$$

Again, (1+r) is repeated three times, the same number as the number of years; hence, simplifying the formula would yield:

$$\boldsymbol{PV_3 = V*(1+r)^3}$$

Due to compounding interests, the formula for present value at any given year becomes:

$$PV_t = V*(1+r)^t$$

PV stands for the present value of the property. In order to calculate the present value of the property, the corresponding formula is used. *V* stands for the value of the property at the time of the taking, taking in all the considerations that the court may use in order to arrive at the fair market value in accordance with law.

This is multiplied to *(1 + r)* where *r* equals the implied rate of return (average year-to-year interest rate) and raised to the exponent *t*. The exponent *t* refers to the time period or the number of years for which the value of the money would have changed. It is treated as an exponent because it is the number of times you have to multiply (1+r) to capture the effect of compounding interest rates.

So if AA were to be paid seventy-three (73) years from the time of taking, the present value of the amount he should have been paid at the time of taking would be:

$$PV_t = V*(1+r)^t$$

$$PV_{73} = ₱100 * (1+0.05)^{73}$$

$$PV_{73} = ₱100 * (35.2224)$$

$$PV_{73} = ₱3,522.24$$

As applied in this case, the property which is the subject of the current controversy is worth ₱0.70/sq.m. in 1940, but it is actually worth more than ₱0.70/sq. m. by 2013. There is a period of 73 years between the actual taking and the time payment is to be made. The value of the cash to be paid to the owner at this time is definitely more because of changes in the interest rate.

Computing for present value would only reflect the cost of the property today. It should be separate from the six percent (6%) per annum computed on a compounded basis awarded as actual or compensatory damages.

Thus, applying the formula, assuming the average interest rate is at:

4%, the property will be worth ₱12.26 per sq. m.;
5%, the property will be worth ₱24.66 per sq. m.;
6%, the property will be worth ₱49.25 per sq. m.

Using the established concept of present value incorporates the discipline of economics into our jurisprudence on takings. Valuation is indeed an inexact science and economics also has its own assumptions. However, in my reckoning, this is infinitely better than leaving it up to the trial court judge.

I submit that this proposal is a happy middle ground. It meets the need for doctrinal precision urged by Justice Peralta and the thirst for substantial justice in Justice Velasco's separate opinion. After all, I am sure that we all share in each other's goals.

I vote to **GRANT** the petition and to **REMAND** the case to the court of origin for proper valuation according to the formula discussed.

DISSENTING & CONCURRING OPINION

VELASCO, JR., *J.*:

When the circumstances obtaining distinctly call for a deviation from the general rule laid down by jurisprudence, the Court should give due consideration to the same, lest oppression and injustice ensue.

The Case

Before the Court is a Petition for Review on *Certiorari* under Rule 45 assailing the July 31, 2007 Decision[1] of the Court of

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[1] *Rollo*, pp. 37-50. Penned by Associate Justice (now a member of this Court) Lucas P. Bersamin and concurred in by Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe (also now a member of this Court).

Appeals (CA) in CA-G.R. CV No. 77997, affirming with modification the March 22, 2002 Decision[2] of the Regional Trial Court (RTC) of Malolos City, Bulacan.

The Facts

Respondent spouses Heracleo and Ramona Tecson (respondents) are the co-owners of a 7,268-square meter lot located in San Pablo, Malolos, Bulacan, and covered by Transfer Certificate of Title (TCT) No. T-43006.[3] This parcel of land is among the private properties traversed by the MacArthur Highway, a government project undertaken sometime in 1940. The taking appears to have been made absent the requisite expropriation proceedings and without respondents' consent.[4]

After the lapse of more than forty (40) years, respondents, in a letter[5] dated December 15, 1994, demanded payment equivalent to the fair market value of the subject property from the Department of Public Works and Highways (DPWH). Petitioner Celestino R. Contreras (petitioner Contreras), then District Engineer of the First Bulacan Engineering District of DPWH, responded with an offer to pay just compensation at the rate of PhP 0.70 per square meter based on Resolution No. XII dated January 15, 1950 of the Provincial Appraisal Committee (PAC) of Bulacan.[6] Respondents made a counter-offer that the government either return the subject property or pay just compensation based on the current fair market value.[7]

As the parties failed to reach any agreement on the price, respondents filed a suit for recovery of possession with damages against DPWH and petitioner Contreras (collectively referred

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[2] *Id*. at 78-80.

[3] *Id*. at 37-38.

[4] *Id*. at 38.

[5] Records, p. 6.

[6] *Rollo*, p. 38.

[7] *Id*. at 38.

to as "petitioners") on March 17, 1995.[8] In their Complaint,[9] docketed as Civil Case No. 208-M-95 and raffled to Branch 80 of the RTC of Malolos City, respondents claimed that the subject property was assessed at PhP 2,543,800.[10]

Subsequently, petitioners filed a Motion to Dismiss[11] dated May 16, 1995, invoking (1) immunity from suit; (2) prescription; (3) lack of cause of action; and (4) different valuation for payment of just compensation.

In its Order[12] dated June 28, 1995, the RTC of Malolos City granted petitioners' motion to dismiss for lack of jurisdiction over the subject matter based on the doctrine of state immunity from suit. Therefrom, respondents filed an appeal, docketed as CA-G.R. CV No. 51454, before the CA, which reversed the RTC of Malolos and held that the doctrine of state immunity from suit should not apply to cause injustice.[13] Consequently, the RTC of Malolos City was directed to hear the Complaint "for the purpose of determining the just compensation to which [respondents] are entitled to recover from the government."[14] The Decision[15] in CA-G.R. CV No 51454 attained finality on March 6, 1999.[16]

The RTC of Malolos City conducted further proceedings. Upon respondents' motion, the Branch Clerk of Court was authorized to serve as commissioner for the purpose of determining just compensation.[17] However, upon the Branch Clerk of Court's

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[8] *Id*. at 37-38.

[9] *Id*. at 51-54.

[10] Records, p. 5.

[11] *Rollo*, pp. 56-58.

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

[13] *Id*. at 38-39.

[14] *Id*. at 68.

[15] *Id*. at 62-68.

[16] *Id*. at 39.

[17] *Id*. at 39.

recommendation, the RTC of Malolos City referred the case to the PAC of Bulacan for proper action.[18]

In its Resolution No. 99-007, the PAC recommended the amount of PhP 1,500 per square meter as the basis for the valuation of just compensation for the subject property.[19] As stated in said Resolution:

> PRESENTED were the Decision of the Court of Appeals re Civil Case No. 208-M-95, the Commissioner's Report and the report of the sub-committee on appraisal;
>
> WHEREAS, Civil Case No. 208-M-95 is about a parcel of land situated at San Pablo, Malolos, Bulacan, which was allegedly taken by the government in 1940 during the construction of MacArthur Highway without the consent of the owner nor expropriation proceedings;
>
> WHEREAS, a Resolution No. XII dated January 15, 1950 promulgated the price of Seventy Centavos (₱0.70) per square meter as the price of the lots affected by the aforesaid project;
>
> WHEREAS, a suit was filed by the owner to the Court of Appeals, condemning the aforesaid market value as unfair;
>
> WHEREAS, upon the instruction of the Chairman of the Provincial Appraisal Committee, the sub-committee conducted a thorough inspection and field investigation;
>
> WHEREAS, taking into consideration the price during the time of the taking which is ₱0.70 per square meter and the price prevailing nowadays which is ₱10,000.00 per square meter, the members motioned and seconded by the Chairman that the reasonable and just compensation is One Thousand Five Hundred Pesos (₱1,500.00) per square meter.
>
> NOW THEREFORE, be it resolved as it is now resolved that the just compensation of One Thousand Five Hundred Pesos (₱1,500.00) per square meter is hereby submitted for consideration of the authorities concerned.

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[18] *Id*. at 39.

[19] *Id*. at 40.

UNANIMOUSLY RESOLVED.[20]

On the basis of PAC's recommendation, the RTC of Malolos City rendered on March 22, 2002 a Decision.[21] The dispositive portion of said decision reads:

> WHEREFORE, premises considered, the Department of Public Works and Highways or its duly assigned agencies are hereby directed to pay said Complainants/Appellants the amount of One Thousand Five Hundred Pesos (₱1,500.00) per square meter for the lot subject matter of this case in accordance with the Resolution of the Provincial Appraisal Committee dated December 19, 2001.
>
> SO ORDERED.[22]

On appeal by petitioners, the CA affirmed with modification the above-mentioned RTC Decision. Particularly, the dispositive portion of the CA Decision reads:

> **WHEREFORE**, the **DECISION DATED MARCH 22, 2002** is **AFFIRMED**, subject to the **MODIFICATION** that the just compensation shall earn interest of 6% per annum computed from the time of the filing of this action on March 17, 1995 until full payment.
>
> **SO ORDERED.**[23]

Aggrieved, petitioners filed the instant petition.

Issues

I

THE CA GRAVELY ERRED IN GRANTING JUST COMPENSATION TO RESPONDENTS CONSIDERING THE HIGHLY DUBIOUS AND QUESTIONABLE CIRCUMSTANCES OF THEIR ALLEGED OWNERSHIP OF THE SUBJECT PROPERTY.

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[20] *Id*. at 40.

[21] *Id*. at 78-80.

[22] *Id*. at 80.

[23] *Id*. at 49.

II

THE CA GRAVELY ERRED IN AWARDING JUST COMPENSATION TO RESPONDENTS BECAUSE THEIR COMPLAINT FOR RECOVERY OF POSSESSION AND DAMAGES IS ALREADY BARRED BY PRESCRIPTION AND LACHES.

III

THE CA GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION ORDERING THE PAYMENT OF JUST COMPENSATION BASED ON THE CURRENT MARKET VALUE OF THE ALLEGED PROPERTY OF RESPONDENTS.

Essentially, the issues raised in the instant petition revolve around the following: (1) ownership of the subject property; (2) prescription and laches; and (3) amount of just compensation.

I submit that the petition should be denied.

Ownership of the subject property

Petitioners claim that respondents' ownership of the subject property is highly dubious and questionable, thus, the CA allegedly erred in awarding just compensation to respondents.[24] Petitioners' contention is misplaced.

Respondents' right to recover just compensation for the expropriation of the subject property has already been settled by the CA in its Decision[25] dated February 11, 1999 in CA-G.R. CV No. 51454. When the CA remanded the case to the RTC of Malolos City, further proceedings were intended "for the purpose of determining the just compensation to which [respondents] are entitled to recover from the government."[26] Said CA Decision in CA-G.R. CV No. 51454 has already become final.

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[24] *Id*. at 22.

[25] *Id*. at 62-68.

[26] *Id*. at 68.

The ruling in CA-G.R. CV No. 51454 on respondents' right to recover just compensation was the law of the case. In *Strategic Alliance Development Corporation v. Radstock Securities Limited*,[27] the Court explained the law of the case doctrine, as follows:

> Law of the case is defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be facts of the case before the court, notwithstanding that the rule laid down may have been reversed in other cases. **Indeed, after the appellate court has issued a pronouncement on a point presented to it with a full opportunity to be heard having been accorded to the parties, that pronouncement should be regarded as the law of the case and should not be reopened on a remand of the case.** (Emphasis supplied.)

As the liability to respondents had been determined with finality in a prior proceeding, this Court could no longer entertain questions on ownership of the subject property so as to release the DPWH from its liability to respondents. Otherwise, this would require us to reopen and review the final decision in CA-G.R. CV No. 51454.

Also, respondents' ownership may not be questioned in this proceeding. It is settled that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose.[28] Sec. 48 of Presidential Decree No. 1529, also known as the Property Registration Decree, expressly provides:

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

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[27] G.R. Nos. 178158 & 180428, December 4, 2009.

[28] *Cimafranca v. Intermediate Appellate Court*, G.R. No. 68687, January 31, 1987.

Accordingly, the Torrens title of respondents (TCT T-43006) speaks for itself and is conclusive proof of ownership of the subject property.

Prescription and laches

On the issues of prescription and laches, I agree with the *ponencia* that these are also not proper issues for resolution since they were not included in the pre-trial order, where the issues for resolution were limited to the following: (1) whether respondents are entitled to just compensation; (2) whether the valuation would be based on the corresponding value at the time of the taking or at the time of the filing of the action; and (3) whether respondents were entitled to damages.[29]

And even if the issues of laches and prescription are to be dealt with substantively, still, these grounds have no leg to stand on. As aptly pointed out in the *ponencia*, laches "finds no application in this case, since there is nothing inequitable in giving due course to respondents' claim." Contrarily, it would be the height of injustice if respondents would be deprived of just compensation for their property, which was taken for public use and without their consent, based on this equitable doctrine. Also, prescription will not bar respondents' claim since, as stated in the *ponencia*, the owner's action to recover the land or the value thereof does not prescribe where private property is taken for public use by the government without first acquiring title thereto.[30]

Accordingly, the only issue left for determination is the amount of just compensation which respondents are entitled to receive from the government for the taking of their subject property.

Basis in determining the amount of just compensation

Both the RTC of Malolos and the CA found and granted just compensation to respondents in the amount of PhP 1,500 per

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[29] *Rollo*, p. 46.

[30] *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009, 603 SCRA 576, 583; *Republic v. Court of Appeals*, G.R. No. 147245, March 31, 2005, 454 SCRA 516, 528.

square meter, as recommended by the PAC. Additionally, the CA granted 6% interest on the total just compensation, reckoned from the time of the filing of the Complaint until fully paid.

Petitioners, however, insist that respondents' entitlement to just compensation, if indeed they are entitled, should be based only on the fair market value at the time of taking, that is, at PhP 0.70 per square meter.

On this point, the majority agrees with petitioners, I am of a different mind and accordingly register this dissent.

In justifying its ruling that just compensation of the subject property should be based on 1940 values, that is, PhP 0.70 per square meter, the *ponencia* noted that "[t]he Court has uniformly ruled that just compensation is the value of the property at the time of the taking that is controlling for the purposes of compensation."[31] It cited in this regard the 1954 case of *Republic v. Lara*,[32] where the Court held:

> x x x [T]he value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x x x.[33]

Indeed, in a number of cases,[34] the Court has ruled that the reckoning point for the determination of just compensation is

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[31] *Ponencia*, p. 9.

[32] 96 Phil. 170 (1954).

[33] *Id.* at 177-178; *ponencia*, p. 10.

[34] *Forfom Development Corporation v. Philippine National Railways*, G.R. No. 124795, December 10, 2008, 573 SCRA 350; *Eusebio v. Luis*,

the time of taking. Nonetheless, I respectfully submit that there is a necessity to deviate from such general rule in view of the attendant inequity and prejudice such application entails.

For one, DPWH violated respondents' constitutional right to procedural due process when it deprived respondents of the subject property without their consent and the requisite expropriation proceedings.[35] It has been my position that since expropriation is essentially a forced taking of private property by the state or its agencies, the private owner being compelled to give up his property for the common weal, then the mandatory requirement of due process should be strictly followed.[36]

Expropriation is an exercise of the government's power of eminent domain. As an inherent attribute of the government, this power is fundamentally limitless if not restrained by the Bill of Rights. Without the limitations thus imposed, the exercise of the power of eminent domain can become repressive. Thus, the Bill of Rights should always be a measure and guarantee of protecting certain areas of a person's life, liberty, and property against the government's abuse of power.[37]

In the instant case, it is not disputed that DPWH illegally took the subject lot without the consent of respondents and the necessary expropriation proceedings. To make matters worse, almost 55 years have already passed from the time of taking, yet DPWH still failed to institute condemnation proceedings. This is clearly indicative of DPWH's lack of intention to formally expropriate the subject property and consequently deny

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G.R. No. 162474, October 13, 2009, 603 SCRA 576; *Manila International Airport Authority v. Rodriguez*, G.R. No. 161836, February 28, 2006, 483 SCRA 619; *Republic v. Sarabia*, G.R. No. 157847, August 25, 2005, 468 SCRA 142.

[35] See *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011.

[36] *Concurring Opinion* of Justice Presbitero J. Velasco, Jr. in *Mactan-Cebu International Airport v. Tudtud*, G.R. No. 174012, November 14, 2008.

[37] *Id*.

respondents of the elementary due process of law. Thus, when respondents were constrained to file a complaint before the trial court, they were the ones who, in effect, commenced the inverse condemnation proceedings, which, to my mind, is ironic. The prevalence of the taking of a subject property without the owner's consent and the necessary expropriation proceedings does not, and should not, cure its illegality.

Verily, the government's action in the instant case, done as it were without observing procedural due process, is illegal and invalid. As such, the condemnation of the subject property ought to be reversed and respondents restored to its possession. However, considering that the subject property had already been put to public use—forming part of the MacArthur Highway—respondents can no longer be restored to the possession of the subject property. As pointed out by the CA, the only remedy available to respondents is the recovery of just compensation.

But if the Court is to peg the reckoning value of the just compensation to PhP 0.70, it would, in effect, be condoning the wrongful act of DPWH in taking the subject property in utter disregard of respondents' property rights and violation of the due process of laws.

Thus, while this Court has previously ruled, in a number of cases, that the value of the property at the time of the taking which is controlling in the determination of the value of just compensation, it is my submission that an exception to the foregoing ruling must be made in cases where **no condemnation proceedings were instituted after a substantial period of time from the time of illegal taking**.

Pertinently, there is "illegal taking" when there is taking of a property without the benefit of expropriation proceedings and without payment of just compensation,[38] as in the instant case. When the illegal taking is compounded with the failure of the condemnor to institute condemnation proceedings after a substantial period of time, *i.e.*, 55 years from the time of taking,

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[38] *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009.

then it is not really hard to grasp why pegging the basis for valuation of just compensation at the time of illegal taking is erroneous, if not utterly reprehensible.

The Court cannot reluctantly close its eyes to the likelihood that the invariable application of the determination of just compensation at the time of the actual taking, as in the cases cited in the *ponencia*, will grant government agencies and instrumentalities the license to disregard the property rights of landowners, violate the Constitution's proviso on due process of laws, and render nugatory statutory and procedural laws on expropriation proceedings of private properties for public use. Both the RTC of Malolos City and the CA were, therefore, correct in granting just compensation to respondents in the amount of PhP 1,500 per square meter, as recommended by the PAC. This way, government agencies and instrumentalities would think twice before taking any unwarranted short cuts in condemning private properties that violate the owners' right to due process of laws as enshrined in the Bill of Rights.

For another, the basis for determining the amount of just compensation as awarded by the RTC of Malolos City and the CA at PhP 1,500, as recommended by the PAC, is but just and proper given the attendant circumstances.

It should be noted that at the time the case was referred to PAC for its recommendation on the value of the just compensation, the prevailing value of the subject property is already at PhP 10,000 per square meter. As indicated in PAC's Resolution No. 99-007:

> WHEREAS, taking into consideration the price during the time of the taking which is ₱0.70 per square meter and **the price prevailing nowadays which is ₱10,000.00 per square meter**, the members motioned and seconded by the Chairman that the reasonable and just compensation is **One Thousand Five Hundred Pesos (₱1,500.00) per square meter**.
>
> NOW THEREFORE, be it resolved as it is now resolved that the just compensation of One Thousand Five Hundred Pesos (₱1,500.00) per square meter is hereby submitted for consideration of the authorities concerned.

UNANIMOUSLY RESOLVED.[39] (Emphasis supplied.)

Undeniably, the valuation of PhP 10,000 is already enhanced by the public purpose for which the subject property is taken, as well as the natural increase in value of the property due its general conditions and consequent developments. However, by pegging the basis in determining just compensation at PhP 1,500, the RTC of Malolos City and the CA, as recommended by the PAC, reasonably fixed the basis for the award of just compensation. As between PhP 0.70 and PhP 10,000, the valuation of PhP 1,500 is but just and proper given the present circumstances.

And for a third, it is highly unjust and inequitable, as aptly observed by the CA, to pay respondents just compensation at the rate of PhP 0.70 per square meter, which was then the value of the subject property in 1940 when the illegal taking was committed. This injustice and inequity is emphasized by the measly award respondents will receive now, as the *ponencia* so rules, after having been deprived of their right to procedural due process for 55 years with the DPWH disregarding and violating practically all constitutional, statutory and procedural rules relative to the condemnation of the subject lot for public use. In effect, despite what respondents have been through, they are still penalized by the government considering that after 72 years from the time of the illegal taking of their property, they will only receive a measly amount of just compensation.

Given the foregoing perspective, the proper reckoning value for the determination of just compensation in the instant case—as aptly held and granted by the RTC of Malolos City and the CA—is PhP 1,500 per square meter.

For a better appreciation of the differing bases for the award of just compensation, the comparative figures are as follows:

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[39] *Rollo*, p. 40; CA Decision, p. 4.

	Land Area of Subject Property	(**Awarded in *ponencia***) 1940 value per square meter at **PhP 0.70**	(**Awarded by the Court of Appeals**) 1995 value per square meter at **PhP 1,500**
Just Compensation	7,268 square meters	PhP 5,087.60	PhP 10,902,000.00
6% Interest (72 yrs: from 1940-2012)		PhP21,978.432	
6% Interest (17 yrs: from 1995-2012)			PhP 11,120,040.00
Total Award, as of 2012		**PhP 27,066.032**	**PhP 22,022,040.00**

The *ponencia*, thus, awards the measly total of **PhP 27,066.032** as just compensation to be paid by DPWH to respondents—the amount, except for the 6% interest from the time of taking, essentially offered by DPWH to respondents in early 1995 when respondents demanded payment for the illegal taking of the subject lot in December 1994.

Instead of being accorded justice and equity, respondents are, thus, penalized again by being awarded a mere pittance. The Court should not countenance DPWH's illegal act and penalize respondents by awarding them with a miserable amount of just compensation after going through the arduous process of vindicating their constitutional and property rights.

In view of the foregoing, I humbly submit that the assailed CA Decision is the appropriate ruling as this would give respondents the just and proper award for recovery of just compensation of the subject property illegally taken by DPWH some 72 years ago.

Accordingly, I vote to deny the petition and affirm the appealed July 31, 2007 Decision of the Court of Appeals.

SECOND DIVISION

[G.R. No. 180281, July 1, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEMARIE JALBONIAN *alias* "Budo",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF LONE WITNESS FOR THE PROSECUTION SUFFICES TO ESTABLISH APPELLANT'S CULPABILITY FOR THE CRIME CHARGED.— We are convinced that it was appellant who killed the victim. Valenciano clearly narrated the details of the stabbing incident and positively identified appellant as the assailant. In a simple, spontaneous, and straightforward manner. x x x It has been held that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth. Moreover, Valenciano's testimony on the stabbing of the victim was corroborated by the Certificate of Death attesting that the cause of death was a stab wound.

2. ID.; ID.; ID.; INCONSISTENCIES ON MINOR DETAILS DOES NOT AFFECT CREDIBILITY.— As to appellant's argument that it was impossible for Valenciano to personally identify him as the assailant since the victim and his attacker had their backs turned to Valenciano, we find the same unworthy of credence. Suffice it to say that the relative position of the witness from the victim and the assailant refers to a minor detail that does not detract from his credibility. What is important is that Valenciano witnessed the unfolding of the crime and was able to positively identify appellant as the culprit. In addition and as correctly pointed out by the OSG, Valenciano readily identified appellant because the latter used to reside in the same *barangay* of which he was *barangay* captain. x x x Also, the fact that Valenciano was just a few meters away from the victim and that the crime was committed in broad daylight bolster Valenciano's identification of appellant as the assailant.

3. ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE ON THE PART OF THE WITNESS TO FALSELY TESTIFY

AGAINST THE ACCUSED ENTITLES HIS TESTIMONY WORTHY OF BELIEF AND CREDENCE.— Likewise untenable is appellant's contention that Valenciano's testimony cannot be relied upon since it was not corroborated by other witnesses to the crime. Finding of guilt based on the testimony of a lone witness is not uncommon. "For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary 'only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.'" This is not obtaining in this case. Moreover, appellant also failed to attribute any improper motive to Valenciano to falsely testify against him. There was no evidence to establish that Valenciano harbored any ill-will against appellant or that he had reasons to fabricate his testimony. In the absence of proof to the contrary, the presumption is that the witness was not moved by any ill-will and was untainted by bias, and thus worthy of belief and credence.

4. ID.; ID.; ID.; FLIGHT OF THE ACCUSED; MILITATE AGAINST CLAIM OF INNOCENCE.— Furthermore, appellant's immediate departure from the scene of the crime and successful effort to elude arrest until his apprehension more than five years later are not consistent with his claim of innocence. Flight from the scene of the crime and failure to immediately surrender militate against appellant's contention of innocence "since an innocent person will not hesitate to take prompt and necessary action to exonerate himself of the crime imputed to him."

5. ID.; ID.; ID.; APPELLANT'S CULPABILITY FOR THE KILLING OF THE VICTIM WAS DULY ESTABLISHED BY THE LONE PROSECUTION WITNESS.— Under these circumstances, the rule that "where the prosecution eyewitness was familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, then [his] version of the story deserves much weight," thus applies. We are therefore convinced that appellant's culpability for the killing of the victim was duly established by the testimony of the lone prosecution witness, Valenciano.

6. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ATTENDED THE KILLING IN CASE AT BAR.— Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, committed with any of the attendant circumstances enumerated in Article 248 of the Revised Penal Code, one of which is treachery. The killing committed in this case is neither parricide nor infanticide and the same was attended with treachery. "There 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." "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape." In this case, treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life. He was unprepared for the sudden, unexpected and unprovoked attack on his person when appellant stabbed his back with a knife then swiftly ran away. Clearly, appellant's execution of the killing left the victim with no opportunity to defend himself or retaliate.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"Well-settled is the rule that the testimony of a lone prosecution witness, as long as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt."[1]

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[1] *People v. Gonzales*, G.R. No. 105689, February 23, 1994, 230 SCRA 291, 296. Citation omitted.

On appeal is the June 7, 2007 Decision[2] of the Court of Appeals (CA) in Criminal Case No. CA-G.R. CR. HC No. 00565 which affirmed with modification the March 5, 2003 Decision[3] of the Regional Trial Court (RTC), Branch 61, Kabankalan City, Negros Occidental in Criminal Case No. 917 declaring appellant Joemarie Jalbonian *alias* "Budo" (appellant) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

On July 30, 1991, an Information[4] for murder was filed against appellant, the accusatory portion of which reads as follows:

> That on or about the 26th day of January 1991, in the municipality of Ilog, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is still at-large, armed with a bladed weapon, with evident premeditation, treachery and with intent to kill, did, then and there, willfully, unlawfully, and feloniously attack, assault and stab one FORTUNATO QUINTANILLA, JR., thereby inflicting [a] mortal stab wound [on] the back of the body of the latter, which caused the death of said victim.
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> CONTRARY TO LAW.[5]

Appellant went into hiding for more than five years and was apprehended only on July 10, 1996.[6] During his arraignment, he entered a plea of "not guilty."[7] Thereafter, trial ensued.

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[2] CA *rollo*, pp. 87-97; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Antonio L. Villamor and Stephen C. Cruz.

[3] Records, pp. 104-107; penned by Judge Henry D. Arles.

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

[5] *Id*. at 1.

[6] *Id*. at 106.

[7] *Id*. at 26.

Evidence for the Prosecution

Barangay Chairman Oscar Valenciano (Valenciano) testified that at 9:00 a.m. of January 26, 1991, a *barangay* assembly meeting was held in Balicotoc Elementary School, a public educational institution located in Brgy. Balicotoc, Ilog, Negros Occidental.[8] After the meeting was adjourned at noon, the participants including Valenciano left the school premises.[9]

From a distance of about three-arms length, Valenciano saw appellant position himself behind Fortunato Quintanilla, Jr.[10] (Quintanilla), stab the latter on the back with a knife, and immediately run away.[11] Valenciano ordered Julio Gaston, a member of the Citizens Armed Forces Geographical Unit (CAFGU), to chase appellant but the latter eluded arrest.[12]

Quintanilla was brought by Valenciano to the nearest hospital but he died before reaching there.[13]

The prosecution also intended to present as witness Dr. Ricardo P. Garrido, Rural Health Officer of Ilog, Negros Occidental, but his testimony was dispensed with[14] as the prosecution and the defense stipulated on the existence of the death certificate[15] issued by him indicating that the victim died on January 26, 1991 due to shock and hemorrhage resulting from a stab wound.

Recourse of the Defense

After the prosecution rested its case, appellant filed a Motion for Leave to File [a] Motion to Dismiss (by way of Demurrer

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[8] TSN, May 27, 1997, pp. 4 and 7.

[9] *Id*.

[10] *Id*. at 5.

[11] *Id*.

[12] *Id*. at 6.

[13] *Id*.

[14] Records, p. 64.

[15] Folder of Exhibits, Exh. "A", p. 1.

to Evidence).[16] However, the trial court denied the motion in its Order dated May 14, 2002.[17] Despite the denial, the defense did not present any evidence anymore.

Ruling of the Regional Trial Court

On March 5, 2003, the trial court rendered a Decision[18] convicting appellant of murder qualified by treachery. It gave credence to the testimony of Valenciano who identified appellant as the perpetrator of the crime and gave a detailed account of the stabbing incident. The trial court found that Valenciano had no reason to falsely testify against the appellant and that his account as to how appellant stabbed the victim was corroborated by the death certificate. In addition, the trial court considered appellant's flight for more than five years as indication of his guilt. The dispositive portion of the trial court's Decision reads as follows:

> WHEREFORE, premises considered, the Court finds accused Joemarie Jalbonian guilty beyond reasonable doubt of [the] crime of murder as charged[,] qualified by treachery and hereby sentences him to a penalty of *RECLUSION PERPETUA* and to pay the heirs of the victim Fortunato Quintanilla, Jr. the amount of ₱50,000.00 by reason of his death.
>
> It is hereby ordered that the accused be immediately remitted to the National Penitentiary.
>
> SO ORDERED.[19]

Appellant filed a Notice of Appeal,[20] which the RTC approved in its Order[21] of April 10, 2003. Pursuant thereto, the records of the case were elevated to this Court. However, in view of

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[16] Records, p. 68.

[17] *Id*. at 78.

[18] *Id*. at 104-107.

[19] *Id*. at 106-107.

[20] *Id*.. at 108.

[21] *Id*. at 109.

our ruling in *People v. Mateo*[22] this case was remanded to the CA for intermediate review.

Ruling of the Court of Appeals

In its June 7, 2007 Decision,[23] the CA affirmed appellant's conviction but modified the RTC's judgment by ordering appellant to pay the heirs of the victim exemplary damages, *viz*:

> **WHEREFORE,** in x x x view of the foregoing premises, the instant appeal is hereby **DISMISSED** and the decision of the court *a quo* is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant Joemarie Jalbonian is further ordered to pay the heirs of the deceased Fortunato Quintanilla, Jr. exemplary damages in the amount of Twenty Five Thousand Pesos (₱25,000.00). The decision of the trial court is **AFFIRMED** as to all other respects.
>
> SO ORDERED.[24]

Hence, the appeal before us.

Assignment of Error

Appellant seeks his acquittal by assigning the lone error that:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE HIS [GUILT] BEYOND REASONABLE DOUBT.[25]

The Parties' Arguments

Appellant assails the credibility of Valenciano and contends that the RTC erred in relying on the latter's testimony which was incredible and insufficient to prove his guilt. He posits that if Valenciano was indeed following the victim, then the

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

[23] CA *rollo*, pp. 87-97.

[24] *Id*. at 96. Emphases in the original.

[25] *Id*. at 34.

latter could not have seen the face of the attacker who must necessarily position himself between him and the victim. And in order for the assailant to stab the victim from behind, his back must be turned against Valenciano. Moreover, Valenciano's testimony was not even corroborated.[26]

Appellant likewise asserts that the fatal stab wound on the back of the victim is not by itself proof of treachery. He maintains that there is nothing on record to prove that he stabbed the victim's back to ensure the execution of the crime or to deprive the victim of any chance to defend himself.[27]

In its Brief,[28] the People of the Philippines, through the Office of the Solicitor General (OSG), maintains that Valenciano witnessed the commission of the crime since he was just a few meters away from the victim when the latter was attacked in broad daylight. Also, it was easy for Valenciano to identify appellant since the former was then the *Barangay* Chairman and, therefore, was familiar with the residents of the *barangay*. The OSG likewise disputes appellant's claim that Valenciano's uncorroborated testimony adversely affects his credibility. It argues that the testimony of a single witness, if truthful and credible, is sufficient to convict an accused. Besides, the factual findings of the trial court, in the absence of showing that they were reached arbitrarily or without sufficient basis, must be upheld. The OSG further argues that the crime committed was murder qualified by treachery since the suddenness of the assault deprived the victim of an opportunity to either fight or flee.[29]

Our Ruling

The appeal is unmeritorious.

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[26] See Accused-Appellant's Brief, *id*. at 32-43.

[27] *Id*.

[28] *Id*. at 55-70.

[29] *Id*.

The testimony of Valenciano as the lone witness for the prosecution suffices to establish appellant's culpability for the crime charged.

We are convinced that it was appellant who killed the victim. Valenciano clearly narrated the details of the stabbing incident and positively identified appellant as the assailant. In a simple, spontaneous, and straightforward manner, he testified as follows:

PROS. GATIA :		At around 12:00 o'clock, x x x on January 26, 1991, can you remember where [y]ou were]?
WITNESS	:	There was an assembly meeting and there was an incident [that] happened. I was about to go home after the assembly meeting [was] adjourned at 12:00 o'clock noon, sir.
Q	:	After your assembly meeting at Brgy. Balicotoc on January 26, 1991 was adjourned, where did you proceed?
A	:	We were following each other from the place where the assembly meeting was held, sir.
Q	:	What happened while you were going out from the school where the assembly meeting was held?
x x x		x x x x x x
WITNESS	:	I saw [the accused who was] following the victim Fortunato Quintanilla [stab] him[. I then] ordered the CAFGU to [chase] the accused, sir.
x x x		x x x x x x
Q	:	You said you saw somebody [position] himself at the back of Fortunato Quintanilla, Jr. and [stab] him, who was this person who stabbed Fortunato Quintinilla, Jr.?
A	:	Joemarie Jalbonian, sir.

Q	:	Are you referring to this Joemarie Jalbonian *alias* "Budo" whom you pointed out just awhile ago?
A	:	Yes, sir.
Q	:	How far were you from Fortunato Quintanilla, Jr. when he was stabbed by Joemarie Jalbonian?
A	:	About three (3) extended arms length, sir.[30]
x x x		x x x x x x
Q	:	What did you do with Fortunato Quintanilla, Jr. after he was stabbed?
A	:	I rushed for the transportation to bring the victim, but he did not [survive] because about five hundred meters we walked, sir.[31]

It has been held that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[32] Moreover, Valenciano's testimony on the stabbing of the victim was corroborated by the Certificate of Death[33] attesting that the cause of death was a stab wound.

As to appellant's argument that it was impossible for Valenciano to personally identify him as the assailant since the victim and his attacker had their backs turned to Valenciano, we find the same unworthy of credence.

Suffice it to say that the relative position of the witness from the victim and the assailant refers to a minor detail that does not detract from his credibility. What is important is that Valenciano witnessed the unfolding of the crime and was able to positively identify appellant as the culprit.[34] In addition and

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[30] TSN, May 27, 1997, pp. 4-5.

[31] *Id*. at 6.

[32] *People v. Marcelo*, 421 Phil. 566, 578 (2001).

[33] *Supra* note 15.

[34] *People v. Dumayan*, 410 Phil. 228, 238 (2001).

as correctly pointed out by the OSG, Valenciano readily identified appellant because the latter used to reside in the same *barangay* of which he was *barangay* captain. In fact, he testified as follows:

PROS. GATIA :		Mr. Valenciano, do you know the accused in this case by the name of Joemarie Jalbonian?
WITNESS	:	Yes, sir.
Q	:	Do you know this accused by face and by x x x name before January 26, 1991?
A	:	Yes, sir.
Q	:	Why [do] you know him?
A	:	Because I was then a *Barangay* Captain [of Brgy. Balicotoc.] I [am familiar with almost all] the residents there, sir.
Q	:	So, in 1991 of January you were then *Barangay* Captain of Barangay Balicotoc?
A	:	Yes, sir.
Q	:	If this Joemarie Jalbonian *alias* "Budo" is here inside the courtroom, can you point to him?
A	:	Yes, sir.
Q	:	Please point to him?
INTERPRETER:		The witness pointed to the person who stood up[,] and when asked[,] identified himself as Joemarie Jalbonian *y* Mellendez.[35]

Also, the fact that Valenciano was just a few meters away from the victim and that the crime was committed in broad daylight bolster Valenciano's identification of appellant as the assailant.

Likewise untenable is appellant's contention that Valenciano's testimony cannot be relied upon since it was not corroborated by other witnesses to the crime. Finding of guilt based on the

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[35] TSN, May 27, 1997, p. 3.

testimony of a lone witness is not uncommon.[36] "For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary 'only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.'"[37] This is not obtaining in this case.

Moreover, appellant also failed to attribute any improper motive to Valenciano to falsely testify against him. There was no evidence to establish that Valenciano harbored any ill-will against appellant or that he had reasons to fabricate his testimony. In the absence of proof to the contrary, the presumption is that the witness was not moved by any ill-will and was untainted by bias, and thus worthy of belief and credence.[38] Furthermore, appellant's immediate departure from the scene of the crime and successful effort to elude arrest until his apprehension more than five years later are not consistent with his claim of innocence. Flight from the scene of the crime and failure to immediately surrender militate against appellant's contention of innocence "since an innocent person will not hesitate to take prompt and necessary action to exonerate himself of the crime imputed to him."[39]

Under these circumstances, the rule that "where the prosecution eyewitness was familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, then [his] version of the story deserves

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[36] *People v. Tulop*, 352 Phil. 130, 148 (1998).

[37] *Id.* at 148-149.

[38] *People v. Manulit*, G.R. No. 192581, November 17, 2010, 635 SCRA 426, 437.

[39] *People v. Agacer*, G.R. No. 177751, December 14, 2011, 662 SCRA 461, 476.

much weight,"[40] thus applies. We are therefore convinced that appellant's culpability for the killing of the victim was duly established by the testimony of the lone prosecution witness, Valenciano.

The crime committed by appellant is murder qualified by treachery.

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, committed with any of the attendant circumstances enumerated in Article 248[41] of the Revised Penal Code, one of which is treachery.

The killing committed in this case is neither parricide nor infanticide and the same was attended with treachery. "There 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

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[40] *People v. Villacorta*, G.R. No. 186412, September 7, 2011, 657 SCRA 270, 278.

[41] Article 248. *Murder*.— Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impurity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vechicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

party might make."[42] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."[43]

In this case, treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life. He was unprepared for the sudden, unexpected and unprovoked attack on his person when appellant stabbed his back with a knife then swiftly run away. Clearly, appellant's execution of the killing left the victim with no opportunity to defend himself or retaliate.[44]

The Proper Penalty

Article 248 of the Revised Penal Code provides that the penalty for the crime of murder is *reclusion perpetua* to death. As correctly imposed by the trial court and as affirmed by the CA, appellant must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.

The Civil Liability

Appellant must indemnify the heirs of the victim since death resulted from the crime. The heirs of the victim are entitled to an award of civil indemnity in the amount of ₱75,000.00, which is mandatory and is granted without need of evidence other than the commission of the crime.[45] Hence, we increase the award for civil indemnity made by the trial court and affirmed by the CA from ₱50,000.00 to ₱75,000.00. Also, while the CA correctly ordered appellant to pay the heirs of the victim exemplary

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

[43] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

[44] *People v. Villacorta*, *supra* note 40 at 286.

[45] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

damages, the amount awarded must be increased from ₱25,000.00 to ₱30,000.00 in line with current jurisprudence.[46]

Aside from these, moral damages in the sum of ₱50,000.00 must likewise be awarded "despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family."[47] Moreover, while actual damages cannot be awarded since there was no evidence of actual expenses incurred for the death of the victim, in lieu thereof, the sum of ₱25,000.00 may be granted, as it is hereby granted, by way of temperate damages "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved."[48] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."[49] An interest at the legal rate of 6% percent from the finality of this judgment until fully paid should also be awarded to the heirs of the victim.[50]

WHEREFORE, the appeal is **DISMISSED.** The assailed June 7, 2007 Decision of the Court of Appeals in CA-G.R. CR. HC No. 00565 is **AFFIRMED with modifications** in that (1) the awards of civil indemnity and exemplary damages are increased to ₱75,000.00 and ₱30,000.00, respectively; (2) appellant Joemarie Jalbonian *alias* "Budo" is ordered to pay the victim's heirs the amounts of ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and interest at the legal rate of six percent (6%) on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

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[46] *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 543.

[47] *People v. Asis*, *supra* note 45 at 530-531.

[48] *People v. Lucero*,*supra* note 46.

[49] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289.

[50] *People v. Asis*, *supra* note 45 at 532.

Costs against appellant.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 189316. July 1, 2013]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES BERNARD and CRESENCIA MARAÑON**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; THE ISSUE ON PETITIONER'S STATUS AS A MORTGAGEE IN GOOD FAITH HAVE BEEN ADJUDGED WITH FINALITY AND IT WAS ERROR FOR THE COURT OF APPEALS TO STILL DELVE INTO AND WORSE, OVERTURN, THE SAME.— It is readily apparent from the facts at hand that the status of PNB's lien on the subject lot has already been settled by the RTC in its Decision dated June 2, 2006 where it was adjudged as a mortgagee in good faith whose lien shall subsist and be respected. The decision lapsed into finality when neither of the parties moved for its reconsideration or appealed. Being a final judgment, the dispositions and conclusions therein have become immutable and unalterable not only as against the parties but even the courts. This is known as the doctrine of immutability of judgments which espouses that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest

court of the land. x x x Hence, as correctly argued by PNB, the issue on its status as a mortgagee in good faith have been adjudged with finality and it was error for the CA to still delve into and, worse, overturn, the same. The CA had no other recourse but to uphold the status of PNB as a mortgagee in good faith regardless of its defects for the sake of maintaining stability of judicial pronouncements. "The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality. Nothing better serves this role than the long established doctrine of immutability of judgments."

2. CIVIL LAW; CIVIL CODE; CONTRACTS; MORTGAGE; IN CASE OF NON-PAYMENT OF THE SECURED DEBT, FORECLOSURE PROCEEDINGS SHALL COVER NOT ONLY THE HYPOTHECATED PROPERTY BUT ALL ITS ACCESSIONS AND ACCESSORIES AS WELL.— Rent is a civil fruit that belongs to the owner of the property producing it by right of accession. The rightful recipient of the disputed rent in this case should thus be the owner of the subject lot at the time the rent accrued. It is beyond question that Spouses Marañon never lost ownership over the subject lot. This is the precise consequence of the final and executory judgment in Civil Case No. 7213 rendered by the RTC on June 3, 2006 whereby the title to the subject lot was reconveyed to them and the cloud thereon consisting of Emilie's fraudulently obtained title was removed. Ideally, the present dispute can be simply resolved on the basis of such pronouncement. However, the application of related legal principles ought to be clarified in order to settle the intervening right of PNB as a mortgagee in good faith. The protection afforded to PNB as a mortgagee in good faith refers to the right to have its mortgage lien carried over and annotated on the new certificate of title issued to Spouses Marañon as so adjudged by the RTC. Thereafter, to enforce such lien thru foreclosure proceedings in case of non-payment of the secured debt, as PNB did so pursue. The principle, however, is not the singular rule that governs real estate mortgages and foreclosures attended by fraudulent transfers to the mortgagor. Rent, as an accessory follow the principal. In fact, when the principal property is mortgaged, the mortgage shall include all natural or civil fruits and improvements found thereon when the secured obligation

becomes due as provided in Article 2127 of the Civil Code. x x x Consequently, in case of non-payment of the secured debt, foreclosure proceedings shall cover not only the hypothecated property but all its accessions and accessories as well. This was illustrated in the early case of *Cu Unjieng e Hijos v. Mabalacat Sugar Co.* where the Court held: That a mortgage constituted on a sugar central includes not only the land on which it is built but also the buildings, machinery, and accessories installed at the time the mortgage was constituted as well as the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof x x x [.] Applying such pronouncement in the subsequent case of *Spouses Paderes v. Court of Appeals,* the Court declared that the improvements constructed by the mortgagor on the subject lot are covered by the real estate mortgage contract with the mortgagee bank and thus included in the foreclosure proceedings instituted by the latter.

3. ID.; ID.; ID.; ARTICLE 2127 OF THE CIVIL CODE IS PREDICATED ON THE PRESUMPTION THAT THE OWNERSHIP OF ACCESSIONS AND ACCESSORIES ALSO BELONGS TO THE MORTGAGOR AS THE OWNER OF THE PRINCIPAL.— However, the rule is not without qualifications. In *Castro, Jr. v. CA* the Court explained that Article 2127 is predicated on the presumption that the ownership of accessions and accessories also belongs to the mortgagor as the owner of the principal. After all, it is an indispensable requisite of a valid real estate mortgage that the mortgagor be the absolute owner of the encumbered property, thus: [A]ll improvements subsequently introduced or owned by *the mortgagor* on the encumbered property are deemed to form part of the mortgage. That the improvements are to be considered so incorporated only if so owned by the mortgagor is a rule that can hardly be debated since a contract of security, whether, real or personal, needs as an indispensable element thereof the ownership by the pledgor or mortgagor of the property pledged or mortgaged. x x x. Otherwise stated, absent an adverse claimant or any evidence to the contrary, all accessories and accessions accruing or attached to the mortgaged property are included in the mortgage contract and may thus also be foreclosed together with the principal property in case of non-payment of the debt secured. Corollary, any evidence sufficiently overthrowing the presumption that the mortgagor owns the

mortgaged property precludes the application of Article 2127. Otherwise stated, the provision is irrelevant and inapplicable to mortgages and their resultant foreclosures if the mortgagor is later on found or declared to be not the true owner of the property, as in the instant case.

4. ID.; ID.; ID.; SINCE THE MORTGAGORS IN CASE AT BAR ARE NOT THE TRUE OWNERS OF THE SUBJECT LOT MUCH LESS OF THE BUILDING WHICH PRODUCED THE DISPUTED RENT, THE FORECLOSURE PROCEEDINGS COULD NOT HAVE INCLUDED THE BUILDING FOUND ON THE SUBJECT LOT AND THE RENT IT YIELDS.— It is beyond question that PNB's mortgagors, Spouses Montealegre, are not the true owners of the subject lot much less of the building which produced the disputed rent. The foreclosure proceedings on August 16, 1991 caused by PNB could not have, thus, included the building found on the subject lot and the rent it yields. PNB's lien as a mortgagee in good faith pertains to the subject lot alone because the rule that improvements shall follow the principal in a mortgage under Article 2127 of the Civil Code does not apply under the premises. Accordingly, since the building was not foreclosed, it remains a property of Spouses Marañon; it is not affected by non-redemption and is excluded from any consolidation of title made by PNB over the subject lot. Thus, PNB's claim for the rent paid by Tolete has no basis. It must be remembered that there is technically no juridical tie created by a valid mortgage contract that binds PNB to the subject lot because its mortgagor was not the true owner. But by virtue of the mortgagee in good faith principle, the law allows PNB to enforce its lien. We cannot, however, extend such principle so as to create a juridical tie between PNB and the improvements attached to the subject lot despite clear and undeniable evidence showing that no such juridical tie exists.

5. ID.; ID.; ID.; AS A PURCHASER IN THE PUBLIC SALE, PETITIONER BANK WAS ONLY SUBSTITUTED TO AND ACQUIRED THE RIGHT, TITLE, INTEREST AND CLAIM OF THE MORTGAGOR TO THE PROPERTY AT THE TIME OF THE LEVY.— Lastly, it is worthy to note that the effects of the foreclosure of the subject lot is in fact still contentious considering that as a purchaser in the public sale, PNB was only substituted to and acquired the right,

title, interest and claim of the mortgagor to the property as of the time of the levy. There being already a final judgment reconveying the subject lot to Spouses Marañon and declaring as null and void Emilie's purported claim of ownership, the legal consequences of the foreclosure sale, expiration of the redemption period and even the consolidation of the subject lot's title in PNB's name shall be subjected to such final judgment. This is the clear import of the ruling in *Unionbank of the Philippines v. Court of Appeals*: This is because as purchaser at a public auction, UNIONBANK is only substituted to and acquires the right, title, interest and claim of the judgment debtors or mortgagors to the property at the time of levy. Perforce, the judgment in the main action for reconveyance will not be rendered ineffectual by the consolidation of ownership and the issuance of title in the name of UNIONBANK. Nonetheless, since the present recourse stemmed from a mere motion claiming ownership of rent and not from a main action for annulment of the foreclosure sale or of its succeeding incidents, the Court cannot proceed to make a ruling on the bearing of the CA's Decision dated June 18, 2008 to PNB's standing as a purchaser in the public auction. Such matter will have to be threshed out in the proper forum.

APPEARANCES OF COUNSEL

Eulogia M. Cueva for petitioner.
Leong Amihan Esuerte & Associates for respondents.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated June 18, 2008 and Resolution[3] dated August 10, 2009 of the Court of Appeals

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[1] *Rollo,* pp. 28-55.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Antonio L. Villamor and Florito S. Macalino, concurring; *id*. at 9-20.

[3] *Id*. at 21-23.

(CA) in CA-G.R. SP No. 02513, which affirmed *in toto* the Orders dated September 8, 2006[4] and December 6, 2006[5] of the Regional Trial Court (RTC) of Bacolod City, Branch 54, directing petitioner Philippine National Bank (PNB) to release in favor of Spouses Bernard and Cresencia Marañon (Spouses Marañon) the rental fees it received amounting to Thirty Thousand Pesos (₱30,000.00).

The Facts

The controversy at bar involves a 152-square meter parcel of land located at Cuadra-Smith Streets, Downtown, Bacolod (subject lot) erected with a building leased by various tenants. The subject lot was among the properties mortgaged by Spouses Rodolfo and Emilie Montealegre (Spouses Montealegre) to PNB as a security for a loan. In their transactions with PNB, Spouses Montealegre used Transfer Certificate of Title (TCT) No. T-156512 over the subject lot purportedly registered in the name of Emilie Montealegre (Emilie).[6]

When Spouses Montealegre failed to pay the loan, PNB initiated foreclosure proceedings on the mortgaged properties, including the subject lot. In the auction sale held on August 16, 1991, PNB emerged as the highest bidder. It was issued the corresponding Certificate of Sale dated December 17, 1991[7] which was subsequently registered on February 4, 1992.[8]

Before the expiration of the redemption period or on July 29, 1992, Spouses Marañon filed before the RTC a complaint for A*nnulment of Title, Reconveyance and Damages*[9] against Spouses Montealegre, PNB, the Register of Deeds of Bacolod City and the *Ex-Officio* Provincial Sheriff of Negros Occidental.

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[4] *Id*. at 130.

[5] *Id*. at 137.

[6] *Id*. at 73-87.

[7] *Id*. at 98-99.

[8] *See* TCT No. T-156512 in the name of Emilie Montealegre; *id*. at 96-97.

[9] *Id*. at 88-92.

The complaint, docketed as Civil Case No. 7213, alleged that Spouses Marañon are the true registered owners of the subject lot by virtue of TCT No. T-129577 which was illegally cancelled by TCT No. T-156512 under the name of Emilie who used a falsified Deed of Sale bearing the forged signatures of Spouse Marañon[10] to effect the transfer of title to the property in her name.

In its Answer,[11] PNB averred that it is a mortgagee in good faith and for value and that its mortgage lien on the property was registered thus valid and binding against the whole world.

As reflected in the Pre-trial Order[12] dated March 12, 1996, the parties stipulated, among others, that the period for legal redemption of the subject lot has already expired.

While the trial proceedings were ongoing, Paterio Tolete (Tolete), one of the tenants of the building erected on the subject lot deposited his rental payments with the Clerk of Court of Bacolod City which, as of October 24, 2002, amounted to ₱144,000.00.

On June 2, 2006, the RTC rendered its Decision[13] in favor of the respondents after finding, based on the expert testimony of Colonel Rodolfo Castillo, Head of the Forensic Technology Section of Bacolod City Philippine National Police, that the signatures of Spouses Marañon in the Deed of Sale presented by Spouses Montealegre before the Register of Deeds to cause the cancellation of TCT No. T-129577 were forged. Hence, the RTC concluded the sale to be null and void and as such it did not transfer any right or title in law. PNB was adjudged to be a mortgagee in good faith whose lien on the subject lot must be respected. Accordingly, the Decision disposed as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs [herein respondents]:

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[10] *Id.* at 93-97.

[11] *Id.* at 100-107.

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

[13] *Id.* at 118-122.

1. The cancellation of TCT No. 129577 over Lot 177-A-1 Bacolod Cadastre in the name of Bernard Marañon and the issuance of new TCT No. 156512 in the name of defendant Emilie Montealegre are hereby declared null and void;

2. The defendant Emilie Montealegre is ordered to reconvey the title over Lot No. 177-A-1, Bacolod Cadastre back to the plaintiffs Marañon [herein respondents];

3. The Real Estate Mortgage lien of the Philippine National Bank registered on the title of Lot No. 177-A-1 Bacolod Cadastre shall stay and be respected; and

4. The defendants - Emilie Montealegre and spouse are ordered to pay attorney's fees in the sum of Php50,000.00, and to pay the costs of the suit.

SO ORDERED.[14]

Neither of the parties sought a reconsideration of the above decision or any portion thereof nor did they elevate the same for appellate review.

What precipitated the controversy at hand were the subsequent motions filed by Spouses Marañon for release of the rental payments deposited with the Clerk of Court and paid to PNB by Tolete.

On June 13, 2006, Spouses Marañon filed an Urgent Motion for the Withdrawal of Deposited Rentals[15] praying that the ₱144,000.00 rental fees deposited by Tolete with the Clerk of Court be released in their favor for having been adjudged as the real owner of the subject lot. The RTC granted the motion in its Order[16] dated June 28, 2006.

On September 5, 2006, Spouses Marañon again filed with the RTC an Urgent *Ex-Parte* Motion for Withdrawal of Deposited Rentals[17] praying that the ₱30,000.00 rental fees paid to PNB

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[14] *Id*. at 122.

[15] *Id*. at 123-124.

[16] *Id*. at 126.

[17] *Id*. at 127-128.

by Tolete on December 12, 1999 be released in their favor. The said lease payments were for the five (5)-month period from August 1999 to December 1999 at the monthly lease rate of ₱6,000.00.

The RTC granted the motion in its Order[18] dated September 8, 2006 reasoning that pursuant to its Decision dated June 2, 2006 declaring Spouses Marañon to be the true registered owners of the subject lot, they are entitled to its fruits.

The PNB differed with the RTC's ruling and moved for reconsideration averring that as declared by the RTC in its Decision dated June 2, 2006, its mortgage lien should be carried over to the new title reconveying the lot to Spouses Marañon. PNB further argued that with the expiration of the redemption period on February 4, 1993, or one (1) year from the registration of the certificate of sale, PNB is now the owner of the subject lot hence, entitled to its fruits. PNB prayed that (1) the Order dated September 8, 2006 be set aside, and (2) an order be issued directing Spouses Marañon to turn over to PNB the amount of ₱144,000.00 released in their favor by the Clerk of Court.[19]

On November 20, 2006, the RTC issued an Order again directing PNB to release to Spouses Marañon the ₱30,000.00 rental payments considering that they were adjudged to have retained ownership over the property.[20]

On December 6, 2006, the RTC issued another Order denying PNB's motion for reconsideration and reiterating the directives in its Order dated September 8, 2006.[21]

Aggrieved, PNB sought recourse with the CA *via* a petition for *certiorari* and *mandamus*[22] claiming that as the lawful owner of the subject lot per the RTC's judgment dated June 2, 2006,

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[18] *Id*. at 130.

[19] *Id*. at 131-135.

[20] *Id*. at 136.

[21] *Id*. at 137.

[22] *Id*. at 138-158.

it is entitled to the fruits of the same such as rentals paid by tenants hence, the ruling that "the real estate mortgage lien of the [PNB] registered on the title of Lot No. 177-A-1 Bacolod Cadastre shall stay and be respected." PNB also contended that it is an innocent mortgagee.

In its Decision[23] dated June 18, 2008, the CA denied the petition and affirmed the RTC's judgment ratiocinating that not being parties to the mortgage transaction between PNB and Spouses Montealegre, Spouses Marañon cannot be deprived of the fruits of the subject lot as the same will amount to deprivation of property without due process of law. The RTC further held that PNB is not a mortgagee in good faith because as a financial institution imbued with public interest, it should have looked beyond the certificate of title presented by Spouses Montealegre and conducted an inspection on the circumstances surrounding the transfer to Spouses Montealegre. The decretal portion of the Decision thus read:

> **WHEREFORE**, in view of the foregoing, the petition is hereby ***DISMISSED***. The Orders dated September 8, 2006 and December 6, 2006, rendered by the respondent Presiding Judge of the Regional Trial Court, Branch 54, Bacolod City, in Civil Case NO. 7213 directing the release of the deposited rental in the amount of THIRTY THOUSAND PESOS ([₱]30,000.00) to private respondents are hereby ***AFFIRMED.***
>
> **SO ORDERED.**[24]

PNB moved for reconsideration[25] but the motion was denied in the CA Resolution dated August 10, 2009.[26] Hence, the present recourse whereby PNB argues that the RTC Decision dated June 2, 2006 lapsed into finality when it was not appealed or submitted for reconsideration. As such, all conclusions therein are immutable and can no longer be modified by any court even

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[23] *Id*. at 9-20.

[24] *Id*. at 19.

[25] *Id*. at 160-166.

[26] *Id*. at 21-23.

by the RTC that rendered the same. The CA however erroneously altered the RTC Decision by reversing the pronouncement that PNB is a mortgagee-in-good-faith.

PNB further asseverates that its mortgage lien was carried over to the new title issued to Spouses Marañon and thus it retained the right to foreclose the subject lot upon non-payment of the secured debt. PNB asserts that it is entitled to the rent because it became the subject lot's new owner when the redemption period expired without the property being redeemed.

Ruling of the Court

We deny the petition.

It is readily apparent from the facts at hand that the status of PNB's lien on the subject lot has already been settled by the RTC in its Decision dated June 2, 2006 where it was adjudged as a mortgagee in good faith whose lien shall subsist and be respected. The decision lapsed into finality when neither of the parties moved for its reconsideration or appealed.

Being a final judgment, the dispositions and conclusions therein have become immutable and unalterable not only as against the parties but even the courts. This is known as the doctrine of immutability of judgments which espouses that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[27] The significance of this rule was emphasized in *Apo Fruits Corporation v. Court of Appeals*,[28] to wit:

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[27] *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*, G.R. Nos. 180880-81, September 18, 2012, 681 SCRA 44, 60, citing *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50.

[28] G.R. No. 164195, December 4, 2009, 607 SCRA 200.

The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely. The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements.

The doctrine of immutability and inalterability of a final judgment has a *two-fold* purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, *at the risk of occasional errors*, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.[29] (Citations omitted)

Hence, as correctly argued by PNB, the issue on its status as a mortgagee in good faith have been adjudged with finality and it was error for the CA to still delve into and, worse, overturn, the same. The CA had no other recourse but to uphold the status of PNB as a mortgagee in good faith regardless of its defects for the sake of maintaining stability of judicial pronouncements. "The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality. Nothing better serves this role than the long established doctrine of immutability of judgments."[30]

Further, it must be remembered that what reached the CA on *certiorari* were RTC resolutions issued long after the finality of the Decision dated June 2, 2006. The RTC Orders dated September 8, 2006 and December 6, 2006 were implements of the pronouncement that Spouses Marañon are still the rightful owners of the subject lot, a matter that has been settled with finality as well. This notwithstanding, the Court agrees with the ultimate outcome of the CA's assailed resolutions.

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[29] *Id.* at 213-214.

[30] *Id.* at 212-213.

Rent is a civil fruit[31] that belongs to the owner of the property[32] producing it by right of accession[33].[34] The rightful recipient of the disputed rent in this case should thus be the owner of the subject lot at the time the rent accrued. It is beyond question that Spouses Marañon never lost ownership over the subject lot. This is the precise consequence of the final and executory judgment in Civil Case No. 7213 rendered by the RTC on June 3, 2006 whereby the title to the subject lot was reconveyed to them and the cloud thereon consisting of Emilie's fraudulently obtained title was removed. Ideally, the present dispute can be simply resolved on the basis of such pronouncement. However, the application of related legal principles ought to be clarified in order to settle the intervening right of PNB as a mortgagee in good faith.

The protection afforded to PNB as a mortgagee in good faith refers to the right to have its mortgage lien carried over and annotated on the new certificate of title issued to Spouses Marañon[35] as so adjudged by the RTC. Thereafter, to enforce

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[31] CIVIL CODE, Article 442. Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation of labor.

Civil fruits are the rent of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

[32] CIVIL CODE, Article 441. To the owner belongs:

(1) The natural fruits;

(2) The industrial fruits;

(3) The civil fruits.

[33] CIVIL CODE, Article 440. The ownership of property gives the right of accession to everything which is produced thereby or which is incorporated or attached thereto, either naturally or artificially.

[34] *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 421 Phil. 709, 730 (2001).

[35] See *Philippine Banking Corporation v. Dy*, G.R. No. 183774, November 14, 2012, 685 SCRA 567, 577.

such lien thru foreclosure proceedings in case of non-payment of the secured debt,[36] as PNB did so pursue. The principle, however, is not the singular rule that governs real estate mortgages and foreclosures attended by fraudulent transfers to the mortgagor.

Rent, as an accessory follow the principal.[37] In fact, when the principal property is mortgaged, the mortgage shall include all natural or civil fruits and improvements found thereon when the secured obligation becomes due as provided in Article 2127 of the Civil Code, *viz*:

> Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person.

Consequently, in case of non-payment of the secured debt, foreclosure proceedings shall cover not only the hypothecated property but all its accessions and accessories as well. This was illustrated in the early case of *Cu Unjieng e Hijos v. Mabalacat Sugar Co.*[38] where the Court held:

> That a mortgage constituted on a sugar central includes not only the land on which it is built but also the buildings, machinery, and accessories installed at the time the mortgage was constituted as well as the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof x x x [.][39]

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[36] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91.

[37] *Torbela v. Rosario*, G.R. No. 140528, December 7, 2011, 661 SCRA 633, 675.

[38] 58 Phil. 439 (1933).

[39] *Id*. at 445, citing *Bischoff v. Pomar and Compania General de Tabacos*, 12 Phil. 690 (1909).

Applying such pronouncement in the subsequent case of *Spouses Paderes v. Court of Appeals,*[40] the Court declared that the improvements constructed by the mortgagor on the subject lot are covered by the real estate mortgage contract with the mortgagee bank and thus included in the foreclosure proceedings instituted by the latter.[41]

However, the rule is not without qualifications. In *Castro, Jr. v. CA*[42] the Court explained that Article 2127 is predicated on the presumption that the ownership of accessions and accessories also belongs to the mortgagor as the owner of the principal. After all, it is an indispensable requisite of a valid real estate mortgage that the mortgagor be the absolute owner of the encumbered property, thus:

> [A]ll improvements subsequently introduced or owned by *the mortgagor* on the encumbered property are deemed to form part of the mortgage. That the improvements are to be considered so incorporated only if so owned by the mortgagor is a rule that can hardly be debated since a contract of security, whether, real or personal, needs as an indispensable element thereof the ownership by the pledgor or mortgagor of the property pledged or mortgaged. x x x.[43] (Citation omitted)

Otherwise stated, absent an adverse claimant or any evidence to the contrary, all accessories and accessions accruing or attached to the mortgaged property are included in the mortgage contract and may thus also be foreclosed together with the principal property in case of non-payment of the debt secured.

Corollary, any evidence sufficiently overthrowing the presumption that the mortgagor owns the mortgaged property precludes the application of Article 2127. Otherwise stated, the provision is irrelevant and inapplicable to mortgages and their resultant foreclosures if the mortgagor is later on found

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[40] 502 Phil. 76 (2005).

[41] *Id*. at 95.

[42] 321 Phil. 262 (1995).

[43] *Id*. at 267.

or declared to be not the true owner of the property, as in the instant case.

It is beyond question that PNB's mortgagors, Spouses Montealegre, are not the true owners of the subject lot much less of the building which produced the disputed rent. The foreclosure proceedings on August 16, 1991 caused by PNB could not have, thus, included the building found on the subject lot and the rent it yields. PNB's lien as a mortgagee in good faith pertains to the subject lot alone because the rule that improvements shall follow the principal in a mortgage under Article 2127 of the Civil Code does not apply under the premises. Accordingly, since the building was not foreclosed, it remains a property of Spouses Marañon; it is not affected by non-redemption and is excluded from any consolidation of title made by PNB over the subject lot. Thus, PNB's claim for the rent paid by Tolete has no basis.

It must be remembered that there is technically no juridical tie created by a valid mortgage contract that binds PNB to the subject lot because its mortgagor was not the true owner. But by virtue of the mortgagee in good faith principle, the law allows PNB to enforce its lien. We cannot, however, extend such principle so as to create a juridical tie between PNB and the improvements attached to the subject lot despite clear and undeniable evidence showing that no such juridical tie exists.

Lastly, it is worthy to note that the effects of the foreclosure of the subject lot is in fact still contentious considering that as a purchaser in the public sale, PNB was only substituted to and acquired the right, title, interest and claim of the mortgagor to the property as of the time of the levy.[44] There being already a final judgment reconveying the subject lot to Spouses Marañon and declaring as null and void Emilie's purported claim of ownership, the legal consequences of the foreclosure sale, expiration of the redemption period and even the consolidation of the subject lot's title in PNB's name shall be subjected to

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[44] *PNB v. CA*, 341 Phil. 72, 82 (1997).

such final judgment. This is the clear import of the ruling in *Unionbank of the Philippines v. Court of Appeals*:[45]

> This is because as purchaser at a public auction, UNIONBANK is only substituted to and acquires the right, title, interest and claim of the judgment debtors or mortgagors to the property at the time of levy. Perforce, the judgment in the main action for reconveyance will not be rendered ineffectual by the consolidation of ownership and the issuance of title in the name of UNIONBANK.[46] (Citation omitted)

Nonetheless, since the present recourse stemmed from a mere motion claiming ownership of rent and not from a main action for annulment of the foreclosure sale or of its succeeding incidents, the Court cannot proceed to make a ruling on the bearing of the CA's Decision dated June 18, 2008 to PNB's standing as a purchaser in the public auction. Such matter will have to be threshed out in the proper forum.

All told, albeit the dispositive portions of the assailed CA decision and resolution are differently premised, they ought to be upheld as they convey the similar conclusion that Spouses Marañon are the rightful owners of the rent earned by the building on the subject lot.

WHEREFORE, foregoing considered, the petition is hereby **DENIED.** The Decision dated June 18, 2008 and Resolution dated August 10, 2009 of the Court of Appeals in CA-G.R. SP No. 02513 are **AFFIRMED.**

SO ORDERED.

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

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[45] 370 Phil. 837 (1999).

[46] *Id*. at 848.

THIRD DIVISION

[G.R. No. 196529. July 1, 2013]

WILLIAM T. GO, *petitioner*, *vs.* **ALBERTO T. LOOYUKO, substituted by his legal heirs TERESITA C. LOOYUKO, ALBERTO LOOYUKO, JR., ABRAHAM LOOYUKO and STEPHANIE LOOYUKO (minors, represented by their mother TERESITA LOOYUKO), ALVIN, AMOS, AARON, DAVID, SOLOMON and NOAH, all surnamed PADECIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; SHOULD COVER ONLY QUESTIONS OF LAW.— It is apparent from the arguments of William that he is calling for the Court to reevaluate the evidence presented by the parties. A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable by this Court. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact. William is, therefore, raising questions of facts beyond the ambit of the Court's review.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ISSUE OF OWNERSHIP MAY BE RULED UPON WHEN PROPERLY RAISED AND AS LONG AS IT IS INEXTRICABLY LINKED TO THE ISSUE OF POSSESSION.— This petition involves an action for unlawful detainer, which is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is

physical or material possession of the property involved, independent of any claim of ownership by any of the parties. When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. The Court agrees with William that the issue of ownership should be ruled upon considering that such has been raised and it appears that it is inextricably linked to the question of possession. Its resolution will then boil down to which of the parties' respective evidence deserves more weight. Even granting, however, that all the pieces of documentary evidence presented by William are valid, they will fail to bolster his case.

3. ID.; ID.; ID.; THE ADJUDICATION ON OWNERSHIP IN UNLAWFUL DETAINER CASES IS MERELY PROVISIONAL.— The Court has consistently upheld the registered owners' superior right to possess the property in unlawful detainer cases. It is an age-old rule that the person who has a Torrens Title over a land is entitled to its possession. It has repeatedly been emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer. It has even been held that it does not even matter if the party's title to the property is questionable. The TCT of respondent Looyuko is, therefore, evidence of indefeasible title over the property and, as its holder, he is entitled to its possession as a matter of right. Thus, the partnership agreements and other documentary evidence presented by petitioner William are not, by themselves, enough to offset Looyuko's right as registered owner. It must be underscored, however, that this adjudication on ownership is merely provisional and would not bar or prejudice the action between Jimmy and Looyuko involving their claimed shares in the title over the property.

4. ID.; ID.; ID.; PRIOR PHYSICAL POSSESSION BY THE PLAINTIFF IS NOT AN INDISPENSABLE REQUIREMENT IN AN UNLAWFUL DETAINER CASE.— William is mistaken in his argument that respondent Looyuko's prior physical possession is necessary for his action

for unlawful detainer to prosper. Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer. Nowhere does it appear in the above-cited rule that, in an action for unlawful detainer, the plaintiff be in prior physical possession of the property. Thus, it has been held that prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case brought by a vendee or other person against whom the possession of any land is unlawfully withheld after the expiration or termination of a right to hold possession.

APPEARANCES OF COUNSEL

John Anthony Lim for petitioner.
Villa Judan & Cruz Law Offices for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on c*ertiorari* under Rule 45 of the Rules of Court assailing the October 29, 2009 Decision[1] and the March 30, 2011 Resolution of the Court of Appeals *(CA)*, in CA-G.R. SP No. 84844, which set aside the March 29, 2004 Decision[2] of the Regional Trial Court, Branch 88, Quezon City *(QC RTC)*, and reinstated the May 20, 2000 Decision[3] of the Metropolitan Trial Court, Branch 35, Quezon City *(MeTC)* in an action for unlawful detainer.

The Facts:

Respondent Alberto T. Looyuko (*Looyuko)* and Jimmy Go, brother of petitioner William Go *(William)* were partners in a

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[1] *Rollo*, pp. 18-29, penned by Associate Justice Antonio L. Villamor and concurred in by then Associate Justice Bienvenido L. Reyes, (now a member of this Court), and Associate Justice Japar B. Dimaampao of the Seventeenth Division, Manila.

[2] *Id*. at 52-56, penned by Judge Abednego O. Adre.

[3] *Id* at. 48-51.

business called Noah's Ark Group of Companies (*Noah's Ark*). Their partnership was embodied in a written agreement, dated February 9, 1982.

Sometime in 1986, William was appointed Chief of Staff of Noah's Ark Sugar Refinery. He was allowed by Looyuko to occupy the townhouse in Gilmore Townhomes, Granada Street, Quezon City. On October 10, 1986, another agreement was entered into by Looyuko and Jimmy in furtherance of their business partnership.

In a letter, dated October 28, 1998, Looyuko demanded that William vacate the townhouse. Jimmy filed an adverse claim over the property, annotating his interest on the title as co-owner. He claimed that the townhouse was bought using funds from Noah's Ark and, hence, part of the property of the partnership. William refused to vacate the property relying on the strength of his brother's adverse claim.

On December 2, 1998, Looyuko filed a complaint for unlawful detainer against William before the MeTC. He adduced as evidence the Transfer Certificate of Title *(TCT)* No. 108763 issued in his name as well as the aforementioned demand letter. He alleged that William's occupation was merely by tolerance, on the understanding that he should vacate the property upon demand. On the other hand, William presented the partnership agreements, the contract to sell of the subject property to Noah's Ark, and the cash voucher evidencing payment for the acquisition of the property.

On May 20, 2000, the MeTC rendered a decision in favor of Looyuko stating that he had the right to the possession of the said townhouse as its registered owner. William then appealed to the QC RTC. Meanwhile, Looyuko filed a motion for execution pending appeal on the ground that the supersedeas bond was insufficient.

On his part, William filed a motion to suspend proceedings in the unlawful detainer case because a complaint for specific performance against Looyuko had been filed by Jimmy before Branch 167 of the RTC of Pasig City *(Pasig RTC)*, docketed

as Civil Case No. 67921, to establish his alleged right as a co-owner. In March 2001, the QC RTC ruled in favor of William and deferred the proceedings in the unlawful detainer case to await the outcome of the civil case before the Pasig RTC. The QC RTC also denied Looyuko's two motions for execution.

The CA, however, reversed the QC RTC orders and directed the immediate execution of the MTC Decision.

On March 29, 2004, the QC RTC issued a decision in the action for unlawful detainer, reversing the findings of the MTC and ruling in favor of William. It held that the property was purchased in the name of Noah's Ark and that Looyuko held the title for purpose of expediency only. The QC RTC also gave credence to the affidavit and authorization executed by Jimmy, finding them to be unrebutted. The said documents stated that William's authority to occupy the disputed property was part of his privilege as Chief of Staff of Noah's Ark.

Looyuko filed a Petition for Review under Rule 42 of the Rules of Court before the CA. In its assailed October 29, 2009 Decision, the CA ruled in favor of Looyuko and held that the issue of possession could be resolved without ruling on the claim of ownership. The CA stated that the TCT presented by Looyuko unequivocally showed that he owned the property and, as a consequence of ownership, he was entitled to its possession. It ruled that the validity of Looyuko's title could be assailed through a direct proceeding but not in an action for ejectment. William filed a motion for reconsideration, which was subsequently denied by the CA in its assailed March 30, 2011 Resolution.

Hence, this petition with the following

ASSIGNMENT OF ERRORS:

I.

THE HONORABLE COURT ERRED IN GRANTING THE INSTANT PETITION.

II.

THE HONORABLE COURT ERRED IN HOLDING THAT THE EJECTMENT CASE CAN PROCEED WITHOUT RESOLVING THE ISSUE OF OWNERSHIP RAISED BY PETITIONER.[4]

Petitioner William, in his pleadings, argues that the QC RTC correctly appreciated the evidence he presented to prove Jimmy's co-ownership, reiterating that his evidence shows that the actual owner is not respondent Looyuko but Noah's Ark, and that he was allowed to use the property as part of his benefits and privileges as its Chief of Staff. He further argues that the CA erred in holding that the ejectment case could proceed without resolving the issue of ownership, and posits that the issue of ownership was properly raised and the MeTC, in fact, addressed such issue. He contends that he is not attacking the validity of the certificate of title and that a certificate of title does not foreclose the fact that the same may be under co-ownership not mentioned in the certificate. He also argues that respondent Looyuko failed to prove that he had prior physical possession of the property before he was unlawfully deprived of it, which is fundamental in an ejectment case.

The Court's Ruling

The petition is bereft of merit.

It is apparent from the arguments of William that he is calling for the Court to reevaluate the evidence presented by the parties. A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable by this Court. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[5] William is, therefore, raising questions of facts beyond the ambit of the Court's review.

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

[5] *Heirs of Vda. Dela Cruz v. Heirs of Fajardo,* G.R. No. 184966, May 30, 2011, 649 SCRA 463.

Even if the Court were to reevaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

This petition involves an action for unlawful detainer, which is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess.[6] The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties.[7] When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.[8]

The Court agrees with William that the issue of ownership should be ruled upon considering that such has been raised and it appears that it is inextricably linked to the question of possession. Its resolution will then boil down to which of the parties' respective evidence deserves more weight.[9] Even granting, however, that all the pieces of documentary evidence presented by William are valid, they will fail to bolster his case.

The Court has consistently upheld the registered owners' superior right to possess the property in unlawful detainer cases.[10] It is an age-old rule that the person who has a Torrens Title

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[6] *Union Bank v. Maunlad Homes,* G.R. No. 190071, August 15, 2012, 678 SCRA 539.

[7] *Sps. Esmaquel v. Coprada,* G.R. No. 152423, December 15, 2010, 638 SCRA 428.

[8] Section 16, Rule 70, RULES OF COURT.

[9] *Sps. Esmaquel v. Coprada,supra* note 7.

[10] *Sps. Pascual v. Sps. Coronel,* 554 Phil. 351 (2007).

over a land is entitled to its possession.[11] It has repeatedly been emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer.[12] It has even been held that it does not even matter if the party's title to the property is questionable.[13]

The TCT of respondent Looyuko is, therefore, evidence of indefeasible title over the property and, as its holder, he is entitled to its possession as a matter of right. Thus, the partnership agreements and other documentary evidence presented by petitioner William are not, by themselves, enough to offset Looyuko's right as registered owner. It must be underscored, however, that this adjudication on ownership is merely provisional and would not bar or prejudice the action between Jimmy and Looyuko involving their claimed shares in the title over the property.

Lastly, William is mistaken in his argument that respondent Looyuko's prior physical possession is necessary for his action for unlawful detainer to prosper. Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer, to wit:

> Sec. 1. *Who may institute proceedings, and when.* — Subject to the provision of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action

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[11] *Corpuz v. Sps. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350.

[12] *Salandanan v. Sps. Mendez,* G.R. No. 160280, March 13, 2009, 581 SCRA 182.

[13] *Id*.

in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Nowhere does it appear in the above-cited rule that, in an action for unlawful detainer, the plaintiff be in prior physical possession of the property. Thus, it has been held that prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case brought by a vendee or other person against whom the possession of any land is unlawfully withheld after the expiration or termination of a right to hold possession.[14]

In fine, this Court finds no cogent reason to reverse and set aside the findings and conclusions of the CA.

WHEREFORE, the petition is **DENIED,** without prejudice to the outcome of Civil Case No. 67921 before Branch 167 of the RTC of Pasig City.

SO ORDERED.

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

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[14] *Sps. Maninang v. CA,* 373 Phil. 304 (1999).

SECOND DIVISION

[G.R. No. 198759. July 1, 2013]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; GOODS SUBJECT TO EXCISE TAXES; PERSONS LIABLE.— Under Section 129 of the National Internal Revenue Code (NIRC), as amended, excise taxes are imposed on two (2) kinds of goods, namely: (*a*) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (*b*) things imported. With respect to the first kind of goods, Section 130 of the NIRC states that, unless otherwise specifically allowed, the taxpayer obligated to file the return and pay the excise taxes due thereon is the manufacturer/producer. On the other hand, with respect to the second kind of goods, Section 131 of the NIRC states that the taxpayer obligated to file the return and pay the excise taxes due thereon is the owner or importer, unless the imported articles are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption. While the NIRC mandates the foregoing persons to pay the applicable excise taxes directly to the government, they may, however, shift the economic burden of such payments to someone else – usually the purchaser of the goods – since excise taxes are considered as a kind of indirect tax.

2. ID.; ID.; ID.; INDIRECT TAXES ARE THOSE WHICH ARE DEMANDED IN THE FIRST INSTANCE FROM ONE PERSON WITH THE EXPECTATION AND INTENTION THAT HE CAN SHIFT THE ECONOMIC BURDEN TO SOMEONE ELSE; EVEN IF THE PURCHASER EFFECTIVELY PAYS THE VALUE OF THE TAX, THE MANUFACTURER/PRODUCER OR THE OWNER OR IMPORTER ARE STILL REGARDED AS THE STATUTORY TAXPAYERS UNDER THE LAW.—

Jurisprudence states that indirect taxes are those which are demanded in the first instance from one person with the expectation and intention that he can shift the economic burden to someone else. In this regard, the statutory taxpayer can transfer to its customers the value of the excise taxes it paid or would be liable to pay to the government by treating it as part of the cost of the goods and tacking it on to the selling price. Notably, this shifting process, otherwise known as "passing on," is largely a contractual affair between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer/producer (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) are still regarded as the statutory taxpayers under the law. To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.

3. ID.; ID.; ID.; TAX REFUND; WHILE IT IS A SETTLED RULE THAT THE STATUTORY TAXPAYER IS THE PROPER PARTY TO SEEK OR CLAIM A REFUND, THE RULE SHOULD NOT APPLY TO INSTANCES WHERE THE LAW CLEARLY GRANTS THE PARTY TO WHICH THE ECONOMIC BURDEN OF THE TAX IS SHIFTED AS EXEMPTION FROM BOTH DIRECT AND INDIRECT TAXES.— In this relation, Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135 of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden. For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke

the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*: **The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another**. x x x However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted as exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

4. ID.; ID.; ID.; ID.; SINCE PETITIONER PHILIPPINE AIRLINES' (PAL) FRANCHISE GRANTS IT EXEMPTION FROM BOTH DIRECT AND INDIRECT TAXES ON ITS PETROLEUM PRODUCTS, IT IS ENDOWED WITH LEGAL STANDING TO FILE THE SUBJECT TAX REFUND CLAIM, NOTWITHSTANDING THE FACT THAT IT IS NOT THE STATUTORY TAXPAYER AS CONTEMPLATED BY LAW.— In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. x x x Based on Section 13 of its franchise, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement." In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (*a*) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (*b*) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under

its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.

5. ID.; ID.; ID.; ID.; THE PHRASE "PURCHASE OF DOMESTIC PETROLEUM PRODUCTS FOR USE IN ITS DOMESTIC OPERATIONS" WHICH CHARACTERIZES THE TAX PRIVILEGE LETTER OF INSTRUCTION (LOI) 1483 WITHDREW REFERS ONLY TO PAL'S TAX EXEMPTIONS ON PASSED ON EXCISE TAX COSTS DUE FROM THE SELLER, MANUFACTURER/PRODUCER OF LOCALLY MANUFACTURED/PRODUCED GOODS FOR DOMESTIC SALE AND DOES NOT, IN ANY WAY, PERTAIN TO ANY OF PAL'S TAX PRIVILEGES CONCERNING IMPORTED GOODS.— LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. x x x On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL. The Court disagrees. Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (*a*) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (*b*) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (*c*), all taxes due on all importations by PAL of aviation gas, fuel, and oil. Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, *i.e.*, the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (*a*) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic

sale (first tax exemption under the second kind of tax privilege); and (*b*) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same. In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" – **which characterizes the tax privilege LOI 1483 withdrew** – ***refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale*** and ***does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***, may it be (*a*) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (*b*) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege).

6. ID.; ID.; ID.; ID.; THE SUBJECT PETROLEUM PRODUCTS ARE IN THE NATURE OF "THINGS IMPORTED" AND THUS, BEYOND THE COVERAGE OF LOI 1483.— Both textual and contextual analyses lead to this conclusion: ***First***, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported. ***Second***, examining its context, certain "whereas clauses" in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are

manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist. In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon.

7. ID.; ID.; ID.; ID.; RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED; PETITIONER HAS SUFFICIENTLY PROVED ITS ENTITLEMENT TO A TAX REFUND OF THE EXCISE TAXES SUBJECT OF THE PRESENT CASE.— Section 229 of the NIRC provides that the claim for refund should be filed within two (2) years from the date of payment of the tax. x x x PAL filed its administrative claim for refund on October 29, 2004 and its judicial claim with the CTA on July 25, 2006. In this regard, PAL's claims for refund were filed on time in accordance with the 2-year prescriptive period. ***Second***, PAL paid the lower of the basic corporate income tax or the franchise tax as provided for in the afore-quoted Section 13 of its franchise. In its income tax return for FY 2004-2005, PAL reported no net taxable income for the period resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period. ***Third***, the subject excise taxes were duly declared and remitted to the BIR. Contrary to

the findings of the CTA that the excise taxes sought to be refunded were not the very same taxes that were declared in the Excise Tax Returns filed by Caltex (underscoring the discrepancy of ₱23,855.00 between the amount of ₱2,975,892.90 declared in the said returns and the amount of ₱2,952.037.90 sought to be refunded), an examination of the records shows a sufficient explanation for the difference. In the Certification of Caltex on the volume of aviation fuel sold to PAL and its Summary of Local Sales (see table below), Caltex sold 810,870 liters during the subject period out of which 804,370 liters were sold to PAL, while the difference of 6,500 liters were sold to its other client, LBOrendain. x x x Per Summary of Removals and Excise Tax Due on Mineral Products Chargeable Against Payments attached to the Excise Tax Returns, the excise tax rate is ₱3.67 per liter, which, if multiplied with 6,500 liters sold by Caltex to LBOrendain, would equal the discrepancy amount of ₱23,855.00. Further examination of the records also reveals that the amount reflected in Caltex's Certification is consistent with the amount indicated in Caltex's Aviation Receipts and Invoices and Aviation Billing Invoice. Thus, finding that PAL has sufficiently proved its entitlement to a tax refund of the excise taxes subject of this case, the Court hereby grants its petition and consequently, annuls the assailed CTA resolutions.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the May 9, 2011 Decision[2] and September 16, 2011

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[1] *Rollo,* pp. 13-50.

[2] *Id*. at 64-85. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Ernesto D. Acosta (on wellness leave), and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar

Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 588 which denied petitioner Philippine Airlines, Inc.'s (PAL) claim for refund of the excise taxes imposed on its purchase of petroleum products from Caltex Philippines, Inc. (Caltex).

The Facts

For the period July 24 to 28, 2004, Caltex sold 804,370 liters of imported Jet A-1 fuel to PAL for the latter's domestic operations.[4] Consequently, on July 26, 27, 28 and 29, 2004, Caltex electronically filed with the Bureau of Internal Revenue (BIR) its Excise Tax Returns for Petroleum Products, declaring the amounts of ₱1,232,798.80, ₱686,767.10, ₱623,422.90 and ₱433,904.10, respectively, or a total amount of ₱2,975,892.90, as excise taxes due thereon.[5]

On August 3, 2004, PAL received from Caltex an Aviation Billing Invoice for the purchased aviation fuel in the amount of US$313,949.54, reflecting the amount of US$52,669.33 as the related excise taxes on the transaction. This was confirmed by Caltex in a Certification dated August 20, 2004 where it indicated that: (*a*) the excise taxes it paid on the imported petroleum products amounted to ₱2,952,037.90, *i.e.*, the peso equivalent of the abovementioned dollar amount; (*b*) the foregoing excise tax payment was passed on by it to PAL; and (*c*) it did not file any claim for the refund of the said excise tax with the BIR.[6]

On October 29, 2004, PAL, through a letter-request dated October 15, 2004 addressed to respondent Commissioner of

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A. Casanova (on wellness leave), Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring.

[3] *Id*. at 55-63. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring.

[4] *Id*. at 68.

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

[6] *Id*.

Internal Revenue (CIR), sought a refund of the excise taxes passed on to it by Caltex. It hinged its tax refund claim on its operating franchise, *i.e.*, Presidential Decree No. 1590[7] issued on June 11, 1978 (PAL's franchise), which conferred upon it certain tax exemption privileges on its purchase and/or importation of aviation gas, fuel and oil, including those which are passed on to it by the seller and/or importer thereof. Further, PAL asserted that it had the legal personality to file the aforesaid tax refund claim.[8]

Due to the CIR's inaction, PAL filed a Petition for Review with the CTA on July 25, 2006.[9] In its Answer, the CIR averred that since the excise taxes were paid by Caltex, PAL had no cause of action.[10]

The CTA Division Ruling

Relying on *Silkair (Singapore) Pte. Ltd. v. CIR*[11] (*Silkair*), the CTA Second Division denied PAL's petition on the ground that only a statutory taxpayer (referring to Caltex in this case) may seek a refund of the excise taxes it paid.[12] It added that even if the tax burden was shifted to PAL, the latter cannot be deemed a statutory taxpayer.

It further ruled that PAL's claim for refund should be denied altogether on account of Letter of Instruction No. 1483 (LOI 1483) which already withdrew the tax exemption privileges previously granted to PAL on its purchase of domestic petroleum products, of which the transaction between PAL and Caltex was characterized. [13]

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[7] "AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES."

[8] *Rollo*, pp. 69-70.

[9] *Id.* at 70.

[10] *Id.*

[11] G.R. No. 173594, February 6, 2008, 544 SCRA 100.

[12] *Rollo*, pp. 112-113.

[13] *Id.* at 116-124.

PAL moved for reconsideration, but the same was denied in a Resolution[14] dated January 14, 2010, prompting it to elevate the matter to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision dated May 9, 2011,[15] the CTA *En Banc* affirmed the ruling of the CTA Second Division, reiterating that it was Caltex, the statutory taxpayer, which had the personality to file the subject refund claim. It explained that the payment of the subject excise taxes, being in the nature of indirect taxes, remained to be the direct liability of Caltex. While the tax burden may have been shifted to PAL, the liability passed on to it should not be treated as a tax but a part of the purchase price which PAL had to pay to obtain the goods.[16] Further, it held that PAL's exemption privileges on the said excise taxes, which it claimed through its franchise, had already been withdrawn by LOI 1483.[17]

Aggrieved, PAL filed a motion for reconsideration which was, however, denied in a Resolution dated September 16, 2011.[18]

Hence, the instant petition.

The Issues Before the Court

The following issues have been presented for the Court's resolution: (*a*) whether PAL has the legal personality to file a claim for refund of the passed on excise taxes; (*b*) whether the sale of imported aviation fuel by Caltex to PAL is covered by LOI 1483 which withdrew the tax exemption privileges of PAL on its purchases of domestic petroleum products for use in its domestic operations; and (*c*) whether PAL has sufficiently proved its entitlement to refund.

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[14] *Id*. at 87-102. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

[15] *Id*. at 64-85.

[16] *Id*. at 80.

[17] *Id*. at 81-82.

[18] *Id*. at 55-63.

The Ruling of the Court

The petition is meritorious.

A. PAL's legal personality to file a claim for refund of excise taxes.

The CIR argues that PAL has no personality to file the subject tax refund claim because it is not the statutory taxpayer. As basis, it relies on the *Silkair* ruling which enunciates that the proper party to question, or to seek a refund of an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if the burden to pay such was shifted to another.[19]

PAL counters that the doctrine laid down in *Silkair* is inapplicable, asserting that it has the legal personality to file the subject tax refund claim on account of its tax exemption privileges under its legislative franchise which covers both direct and indirect taxes. In support thereof, it cites the case of *Maceda v. Macaraig, Jr.*[20] (*Maceda*).

The Court agrees with PAL.

Under Section 129 of the National Internal Revenue Code (NIRC),[21] as amended, excise taxes are imposed on two (2) kinds of goods, namely: (*a*) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (*b*) things imported.[22]

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[19] *Id.* at 153-161.

[20] G.R. No. 88291, June 8, 1993, 223 SCRA 217. This is the resolution denying the petitioner's motion for reconsideration of the Court's May 31, 1991 Decision in the same case and in effect, upholding the tax refund claim of the National Power Corporation.

[21] Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997."

[22] SEC. 129. *Goods Subject to Excise Taxes*. – Excise taxes apply to **goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and** to **things imported**.

With respect to the first kind of goods, Section 130 of the NIRC states that, unless otherwise specifically allowed, the taxpayer obligated to file the return and pay the excise taxes due thereon is the manufacturer/producer.[23]

On the other hand, with respect to the second kind of goods, Section 131 of the NIRC states that the taxpayer obligated to file the return and pay the excise taxes due thereon is the owner or importer, unless the imported articles are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption.[24]

While the NIRC mandates the foregoing persons to pay the applicable excise taxes directly to the government, they may, however, shift the economic burden of such payments to someone else – usually the purchaser of the goods – since excise taxes are considered as a kind of indirect tax.

The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV. (Emphasis and underscoring supplied)

x x x x x x x x x

[23] SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –

x x x x x x x x x

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, **the return shall be filed and the excise tax paid by the manufacturer or producer** before removal of domestic products form place of production x x x. (Emphasis and underscoring supplied)

x x x x x x x x x

[24] SEC. 131. *Payment of Excise Taxes on Imported Articles.*–

(A) Persons Liable.– **Excise taxes on imported articles shall be paid by the owner or importer** to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. (Emphasis and underscoring supplied)

Jurisprudence states that indirect taxes are those which are demanded in the first instance from one person with the expectation and intention that he can shift the economic burden to someone else.[25] In this regard, the statutory taxpayer can transfer to its customers the value of the excise taxes it paid or would be liable to pay to the government by treating it as part of the cost of the goods and tacking it on to the selling price.[26] Notably, this shifting process, otherwise known as "passing on," is largely a contractual affair between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer/producer (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) are still regarded as the statutory taxpayers under the law. To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.[27]

In this relation, Section 204(c)[28] of the NIRC states that it is the statutory taxpayer which has the legal personality to file

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[25] *CIR v. John Gotamco & Sons, Inc.*, G.R. No. L- 31092, February 27, 1987, 148 SCRA 36, 40.

[26] See *Silkair Singapore Pte. Ltd. v. CIR*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141, 156.

[27] *Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. CIR*, G.R. No. 180909, January 19, 2011, 640 SCRA 203, 222, citing Justice Oliver Wendell Holmes' opinion in *Lash's Products v. United States*,278 U.S. 175 (1928).

[28] SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes*. The Commissioner may –

x x x x x x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund** within

a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135[29] of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden.[30]

For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2)[31] of the Air

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two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis and underscoring supplied)

[29] SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies*. – Petroleum products sold to the following are exempt from excise tax:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) Entities which are by law exempt from direct and indirect taxes.

[30] See the three (3) subsequent *Silkair* cases namely: (*a*) *Silkair Singapore Pte. Ltd. v. CIR*, *supra* note 26; (*b*) *Silkair Singapore Pte. Ltd. v. CIR*, G.R. No. 184398, February 25, 2010, 613 SCRA 638; and *(c) Silkair Singapore Pte. Ltd. v. CIR*, G.R. No. 166482, January 25, 2012, 664 SCRA 33. See also *Exxonmobil Petroleum and Chemical Holdings, Inc. v. CIR*, *supra* note 27.

[31] Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territories of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over

Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*:

> **The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another**. Section 130(A)(2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.
>
> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.[32] (Emphasis supplied)

However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted as exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

To elucidate, in *Maceda*, the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter

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the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.

[32] *Supra* note 11, at 112.

specifically granted it an exemption from both direct and indirect taxes, *viz*:

> x x x [T]he Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation**. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR**.[33] (Emphasis and underscoring supplied)

Notably, the Court even discussed the *Maceda* ruling in *Silkair*, highlighting the relevance of the exemptions in NPC's charter to its claim for tax refund:

> Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." **It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes**.
>
> Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone*

[33] *Supra* note 20, at 256.

Company, this Court clarified the ruling in *Maceda v. Macaraig, Jr., viz*:

> It may be so that in *Maceda vs. Macaraig, Jr.*, the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "*all taxes*" excludes indirect taxes, **unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption**. Wrote the Court:
>
> > x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, ***both direct and indirect taxes*** on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees…"
> >
> > The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before. . .
> >
> > x x x x x x x x x
> >
> > It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals.

The exemption granted under Section 135(b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.[34] (Emphasis and underscoring supplied)

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[34] *Supra* note 11, at 112-114.

Based on these rulings, it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.

In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:

SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited** to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are **directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement**; provided, that all such purchases by, sales or deliveries

of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Emphasis and underscoring supplied)

x x x x x x x x x

Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.[35] The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement."[36] In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (*a*) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (*b*) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.

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[35] SEC. 13 of PAL's franchise. See also *CIR v. PAL*, G.R. No. 180066, July 7, 2009, 592 SCRA 237, 250.

[36] SEC. 13(b)(1) of PAL's franchise.

B. Coverage of LOI 1483.

LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. It pertinently provides:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the **tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn**. (Emphasis and underscoring supplied)

On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL.

The Court disagrees.

Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (*a*) all taxes due on PAL's local purchase of aviation gas, fuel and oil;[37] (*b*) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL;[38] and (*c*),

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[37] The pertinent portion of PAL's franchise reads:

> 1. All taxes, duties, charges, royalties, or fees due on **local purchases by the grantee** of aviation gas, fuel, and oil, whether refined or in crude form x x x. (Emphasis and underscoring supplied)

[38] The pertinent portion of PAL's franchise reads:

> x x x and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products **but are billed or passed on the grantee** either as part of the price or cost thereof or by mutual agreement or other arrangement; (Emphasis and underscoring supplied)
>
> x x x x x x x x x

all taxes due on all importations by PAL of aviation gas, fuel, and oil.[39]

Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/ produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, *i.e.*, the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (*a*) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (*b*) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.[40]

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[39] The pertinent portion of PAL's franchise reads:

> 2. All taxes, including compensating taxes, duties, charges, royalties, or fees due **on all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Emphasis and underscoring supplied)
>
> x x x x x x x x x

[40] See SEC. 129 in relation to SEC. 131 of the NIRC.

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" – **which characterizes the tax privilege LOI 1483 withdrew** – ***refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale***[41] and ***does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***,[42] may it be (*a*) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (*b*) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:

First, examining its phraseology, the word "domestic," which means "of or relating to one's own country"[43] or "an article of domestic manufacture,"[44] clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition[45] as opposed to things imported.[46] In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.

Second, examining its context, certain "whereas clauses"[47] in LOI 1483 disclose that the said law was intended to lift the

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[41] The first tax exemption under the second kind of tax privilege, relating to the first type of excisable articles under SEC. 129 of the NIRC.

[42] The second type of excisable articles under SEC. 129 of the NIRC.

[43] *BLACK'S LAW DICTIONARY*, 9th Ed. (2009), p. 557.

[44] <http://www.merriam-webster.com/dictionary/domestic?show=0&t=1372905302> (visited January 25, 2013).

[45] The first type of excisable articles under SEC. 129 of the NIRC.

[46] The second type of excisable articles under SEC. 129 of the NIRC.

[47] WHEREAS, **by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969**, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;

tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported).[48] In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term

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WHEREAS, **this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment** of similarly situated enterprises; (Emphasis and underscoring supplied)

x x x x x x x x x

[48] By way of background, the Subject DOF Ruling was issued in response to a letter seeking for the DOF's opinion regarding the scope of the "imposition of the specific tax on aviation gasoline and other fuels **purchased locally** by airline companies **direct from local sources** of production for use in domestic flight operations." The conflict stemmed from the import of BIR Ruling No. 65-116, issued on October 5, 1965, which "exempted from the specific tax aviation fuel and other fuel oils imported by [PAL], and similar franchise grantees ***but not those locally purchased by them for use in domestic flight operations***." Through the Subject DOF Ruling, the DOF eventually overturned BIR Ruling No. 65-116, clarifying that PAL's franchise also conferred upon it tax exemption privileges concerning aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales and not only to those imported. The DOF stated:

> In view thereof, and considering that Ruling No. 65-116 of the [BIR] is not in harmony with the established doctrine laid down by the Supreme Court on the matter, this Department hereby modifies the same and rules that aviation gasoline and other fuel oils directly purchased for domestic consumption by airline companies which are exempt from the payment of specific tax pursuant to their franchise are **also exempt from the payment of specific tax on their domestic purchases of the same articles** provided such airline companies are already owners and possessors of such products prior to or at the time of their removal from the place of production or bonded warehouses of the local refineries. x x x (See Subject DOF Ruling, pp. 3-4; emphasis and underscoring supplied)

"purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.

In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon.

C. PAL's entitlement to refund.

It is hornbook principle that the Court is not a trier of facts and often, remands cases to the lower courts for the determination of questions of such character. However, when the trial court had already received all the evidence of the parties, the Court may resolve the case on the merits instead of remanding them in the interest of expediency and to better serve the ends of justice.[49]

Applying these principles, the Court finds that the evidence on record shows that PAL was able to sufficiently prove its entitlement to the subject tax refund. The following incidents attest to the same:

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[49] "x x x On many occasions, the Court, in the public interest and expeditious administration of justice, has resolved action on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be subserved by the remand of the case or where the trial court had already received all the evidence of the parties." (*Apo Fruits Corporation v. CA*, G.R. No. 164195, February 6, 2007, 514 SCRA 537).

First, PAL timely filed its claim for refund.

Section 229[50] of the NIRC provides that the claim for refund should be filed within two (2) years from the date of payment of the tax.

Shortly after imported aviation fuel was delivered to PAL, Caltex electronically filed the requisite excise tax returns and paid the corresponding amount of excise taxes, as follows:

DATE OF FILING AND PAYMENT	FILING REFERENCE NO.
July 26, 2004	074400000178825
July 27, 2004	070400000179115
July 28, 2004	070400000179294
July 29, 2004	070400000179586

PAL filed its administrative claim for refund on October 29, 2004[51] and its judicial claim with the CTA on July 25, 2006.[52] In this regard, PAL's claims for refund were filed on time in accordance with the 2-year prescriptive period.

Second, PAL paid the lower of the basic corporate income tax or the franchise tax as provided for in the afore-quoted Section 13 of its franchise.

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[50] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*–

x x x x x x x x x

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[51] *Rollo,* p. 69.

[52] *Id*. at 70.

In its income tax return for FY 2004-2005,[53] PAL reported no net taxable income for the period resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period.

Third, the subject excise taxes were duly declared and remitted to the BIR.

Contrary to the findings of the CTA that the excise taxes sought to be refunded were not the very same taxes that were declared in the Excise Tax Returns filed by Caltex[54] (underscoring the discrepancy of ₱23,855.00 between the amount of ₱2,975,892.90 declared in the said returns and the amount of ₱2,952.037.90[55] sought to be refunded), an examination of the records shows a sufficient explanation for the difference.

In the Certification[56] of Caltex on the volume of aviation fuel sold to PAL and its Summary of Local Sales[57] (see table below), Caltex sold 810,870 liters during the subject period out of which 804,370 liters were sold to PAL, while the difference of 6,500 liters[58] were sold to its other client, LBOrendain.

	DATE OF SALE					
DOCUMENT	July 24, 2004	July 25, 2004	July 26, 2004	July 27, 2004	July 28, 2004	TOTAL
Certification	174,070	158,570	187,130	166,370	118,230	804,370
Summary of Local Sales	177,070	158,570	187,130	166,370	121,730	810,870
DIFFERENCE	3,000	0	0	0	3,500	6,500

[53] Exhibits "VVV"- "BBBB", CTA *rollo*, pp. 573-596.

[54] Exhibits "PPP"- "SSS", CTA *rollo*, pp. 339-357.

[55] *Rollo*, p. 126.

[56] Exhibit "GGG", CTA *rollo*, p. 321.

[57] Exhibit "DDD", CTA *rollo*, pp. 314-315.

[58] 810,870 liters minus 804,370 liters.

Per Summary of Removals and Excise Tax Due on Mineral Products Chargeable Against Payments attached to the Excise Tax Returns,[59] the excise tax rate is ₱3.67 per liter, which, if multiplied with 6,500 liters sold by Caltex to LBOrendain, would equal the discrepancy amount of ₱23,855.00.

Further examination of the records also reveals that the amount reflected in Caltex's Certification is consistent with the amount indicated in Caltex's Aviation Receipts and Invoices[60] and Aviation Billing Invoice.[61]

Thus, finding that PAL has sufficiently proved its entitlement to a tax refund of the excise taxes subject of this case, the Court hereby grants its petition and consequently, annuls the assailed CTA resolutions.

WHEREFORE, the petition is hereby **GRANTED.** The May 9, 2011 Decision and September 16, 2011 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case No. 588 are **ANNULLED** and **SET ASIDE.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of the petitioner Philippine Airlines, Inc. in the amount of ₱2,952,037.90.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

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[59] CTA *rollo,* pp. 48-49, 53-54, 58-59, and 63-64.

[60] Exhibits "G" to "BBB", CTA *rollo,* pp. 264-311.

[61] Exhibit "CCC", CTA *rollo,* pp. 312-313.

EN BANC

[A.M. No. CA-13-51-J. July 2, 2013]

Re: **LETTER COMPLAINT OF MERLITA B. FABIANA AGAINST PRESIDING JUSTICE ANDRES B. REYES, JR., ASSOCIATE JUSTICES ISAIAS P. DICDICAN AND STEPHEN C. CRUZ; CARAG JAMORA SOMERA AND VILLAREAL LAW OFFICES AND ITS LAWYERS ATTYS. ELPIDIO C. JAMORA, JR. AND BEATRIZ O. GERONILLA-VILLEGAS, LAWYERS FOR MAGSAYSAY MARITIME CORPORATION AND VISAYAN SURETY AND INSURANCE CORPORATION.**

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE BURDEN OF SUBSTANTIATING THE CHARGES FALLS ON THE COMPLAINANT WHO MUST PROVE HER ALLEGATIONS IN THE COMPLAINT BY SUBSTANTIAL EVIDENCE.— In administrative proceedings, the burden of substantiating the charges falls on the complainant who must prove her allegations in the complaint by substantial evidence. Here, the allegation of willful disobedience against respondent CA Justices was unsubstantiated and baseless. The issues raised in the first petition (C.A.-G.R. No. 109382) were limited to the NLRC's jurisdiction over the appeal by Magsaysay Maritime Corporation and its principal, and to the reduction of the amounts awarded as moral and exemplary damages. In contrast, the second petition (C.A.-G.R. SP. No. 109699) concerned only the propriety of awarding monetary benefits. Under the circumstances, the promulgation by the Court of the resolution of January 13, 2010 in G.R. No. 189726 did not divest the respondents as members of the First Division of the CA of the jurisdiction to entertain and pass upon the second petition (C.A.-G.R. SP. No. 109699), something that they sought to explain through their resolution promulgated on June 4, 2010. The explanation, whether correct or not, was issued in the exercise of judicial discretion. It is

not for us to say now in a resolution of this administrative complaint whether the explanation was appropriate or not, nor for the complainant to herself hold them in error. The recourse open to the heirs of Fabiana, including the complainant, was to move for the correction of the resolution, if they disagreed with it, and, should their motion be denied, to assail the denial in this Court through the remedy warranted under the law.

2. **ID.; ID.; PUBLIC OFFICERS; JUDGES; DISCIPLINARY PROCEEDINGS AND CRIMINAL ACTIONS BROUGHT AGAINST ANY JUDGE OR JUSTICE IN RELATION TO THE PERFORMANCE OF OFFICIAL FUNCTIONS ARE NEITHER COMPLEMENTARY TO NOR SUPPLETORY OF APPROPRIATE JUDICIAL REMEDIES, NOR A SUBSTITUTE FOR SUCH REMEDIES.—** The complainant's initiation of her complaint would take respondent Justices to task for their regular performance of their office. Yet, as the surviving spouse of the late-lamented Marlon, she was understandably desirous of the most favorable and quickest outcome for the claim for death benefits because his intervening demise had rendered her and her family bereft of his support. Regardless of how commendable were her motives for initiating this administrative complaint, however, she could not substitute a proper judicial remedy not taken with an improper administrative denunciation of the Justices she has hereby charged. That is impermissible. If she felt aggrieved at all, she should have resorted to the available proper judicial remedy, and exhausted it, instead of resorting to the unworthy disciplinary charge. Truly, disciplinary proceedings and criminal actions brought against any Judge or Justice in relation to the performance of official functions are neither complementary to nor suppletory of appropriate judicial remedies, nor a substitute for such remedies.

3. **ID.; ID.; ID.; ID.; THE MATTER BEING ADDRESSED WAS REALLY SIMPLE AND AVOIDABLE IF ONLY THE COURT OF APPEALS HAD PROMPTLY IMPLEMENTED ITS CURRENT PROCEDURE FOR CONSOLIDATION OF PETITIONS OR PROCEEDINGS RELATING TO OR ARISING FROM THE SAME CONTROVERSIES.—** To be clear, although we do not shirk from the responsibility of imposing discipline on the erring Judges or Justices and employees of the Judiciary, we shall not hesitate to shield them

from baseless charges that only serve to disrupt rather than promote the orderly administration of justice. Even as we dismiss the administrative charge, we deem it necessary to observe further, in the exercise of our administrative supervision over the CA, that the matter addressed here was really simple and avoidable if only the CA had promptly implemented its current procedure for the consolidation of petitions or proceedings relating to or arising from the same controversies. Section 3(*a*), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices.

4. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION; APPLICABLE IN CASE AT BAR.— A perusal of the two petitions showed that they involved the same parties and the same facts. Even their issues of law, albeit not entirely identical, were closely related to one another. It could not also be denied that they assailed the same decision of the NLRC. For these reasons alone, the request for consolidation by the heirs of Fabiana should have been granted, and the two petitions consolidated in the same Division of the CA. The consolidation of two or more actions is authorized where the cases arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction and that consolidation will not give one party an undue advantage or that consolidation will not prejudice the substantial rights of any of the parties. As to parties, their substantial identity will suffice. Substantial identity of parties exists when there is a community of interest or privity of interest between a party in the first case and a party in the second, even if the latter has not been impleaded in the first case. As to issues, what is required is mere identity of issues where the parties, although not identical, present conflicting claims. The justification for consolidation is to prevent a judge from deciding identical issues presented in the case assigned to him in a manner that will prejudice another judge from deciding a similar case before him.

5. ID.; ID.; ID.; WHILE IT IS TRUE THAT THE CONSOLIDATION OF CASES FOR TRIAL IS PERMISSIVE AND A MATTER OF JUDICIAL DISCRETION, THE PERMISSIVENESS DOES NOT

CARRY OVER TO THE APPELLATE STAGE WHERE THE PRIMARY OBJECTIVE IS LESS THE AVOIDANCE OF UNNECESSARY EXPENSES AND UNDUE VEXATION THAN IT IS THE IDEAL REALIZATION OF THE DUAL FUNCTION OF ALL APPELLATE ADJUDICATIONS.— We are perplexed why the CA did not act on and grant the request for consolidation filed on August 20, 2009 by the heirs of Fabiana. In fact, the consolidation should have been required as a matter of course even without any of the parties seeking the consolidation of the petitions, considering that the two cases rested on the same set of facts, and involved claims arising from the death of the late Marlon Fabiana. It is true that under the *Rules of Court*, the consolidation of cases for trial is permissive and a matter of judicial discretion. This is because trials held in the first instance require the attendance of the parties, their respective counsel and their witnesses, a task that surely entails an expense that can multiply if there are several proceedings upon the same issues involving the same parties. At the trial stage, the avoidance of unnecessary expenses and undue vexation to the parties is the primary objective of consolidation of cases. But the permissiveness of consolidation does not carry over to the appellate stage where the primary objective is less the avoidance of unnecessary expenses and undue vexation than it is the ideal realization of the dual function of all appellate adjudications. x x x In the appellate stage, therefore, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Such consolidation should be made regardless of whether or not the parties or any of them requests it. A mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice.

6. LEGAL ETHICS; ATTORNEYS; THE COURT REMINDS ALL ATTORNEYS APPEARING AS COUNSEL FOR THE INITIATING PARTIES OF THEIR DIRECT RESPONSIBILITY TO GIVE PROMPT NOTICE OF ANY RELATED CASES PENDING IN COURTS, AND TO MOVE FOR THE CONSOLIDATION OF SUCH RELATED CASES IN THE PROPER COURTS.— In this connection, the Court reminds all attorneys appearing as counsel for the

initiating parties of their direct responsibility to give prompt notice of any related cases pending in the courts, and to move for the consolidation of such related cases in the proper courts. This responsibility proceeds from their express undertakings in the certifications against forum-shopping that accompany their initiatory pleadings pursuant to Section 5 of Rule 7 and related rules in the *Rules of Court*, to the effect that they have not theretofore commenced any actions or filed any claims involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of their knowledge, no such other actions or claims are pending therein; that if there were such other pending actions or claims, to render complete statements of the present status thereof; and if they should thereafter learn that the same or similar actions or claims have been filed or are pending, they shall report that fact within five days therefrom to the courts wherein the said complaints or initiatory pleadings have been filed.

APPEARANCES OF COUNSEL

Mario G. Aglipay for complainant.

D E C I S I O N

BERSAMIN, *J.*:

This administrative matter stems from the claim for death benefits by the heirs of the late Marlon Fabiana (heirs of Fabiana) against manning agent Magsaysay Maritime Corporation and its principal Air Sea Holiday GMBH-Stable Organizations Italia.

Complainant Merlita B. Fabiana, Marlon's surviving spouse, hereby accuses Court of Appeals (CA) Presiding Justice Andres B. Reyes, Jr., Associate Justice Isaias P. Dicdican and Associate Justice Stephen C. Cruz, as the former Members of the CA's First Division, of having openly defied the resolution promulgated by the Court on January 13, 2010 in G.R. No. 189726 entitled *Heirs of the Late Marlon A. Fabiana, [herein represented by Merlita B. Fabiana] v. Magsaysay Maritime Corp., et al.*, whereby the Court had allegedly "fixed with finality complainant's

claims for death benefits and other monetary claims, including damages and attorney's fees, against the Maritime Company arising from the death of her husband."[1]

The relevant antecedents follow.

On December 19, 2007, the Labor Arbiter granted the following claims to the heirs of Fabiana, to wit:

> WHEREFORE, considering all the foregoing premises, respondents are liable to pay the following to the complainants:
>
> 1. US $82,500.00 death benefits to complainant Merlita B. Fabiana;
> 2. US $16,500.00 to complainant Jomari Paul B. Fabiana;
> 3. Salary differentials from July 17, 2006 to April 23, 2007 computed at US $1,038 deducting the US $424.00 monthly salaries already paid by the respondents;
> 4. The difference of 1,500.00 Euro contributed by fellow Filipino seafarer and US $1,000 remitted by respondents computed at the rate of exchange at the time of payment;
> 5. Sick benefits from April 23, 2007 to May 11, 2007 computed at US $1,038.00 monthly salary rate;
> 6. US $331.00 guaranteed overtime pay;
> 7. ₱7,574.00 actual damages;
> 8. ₱100,000.00 for moral damages;
> 9. ₱1,000,000.00 exemplary damages;
> 10. Ten percent (10%) attorney's fees computed on the total awards.[2]

On December 10, 2008, the National Labor Relations Commission (NLRC) rendered its decision,[3] disposing:

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[1] *Rollo*, p. 2.

[2] *Id.* at 3-4.

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

WHEREFORE, foregoing premises considered, the appeal is MODIFIED in the sense that the award of moral and exemplary damages are reduced to ₱50,000.00 each while the other awards are AFFIRMED.

SO ORDERED.

The parties then separately brought their respective petitions for *certiorari* to the CA, specifically:

(*a*) C.A.-G.R. SP No. 109382 entitled *Heirs of the late Marlon A. Fabiana, herein represented by Merlita B. Fabiana v. National Labor Relations Commission, Magsaysay Maritime Corporation and Air Sea Holiday GMBH-Stab[i]le Organizations Italia (Hotel)*, assailing the jurisdiction of the NLRC in entertaining the appeal of Magsaysay Maritime Corporation and its principal, and seeking the reinstatement of the moral and exemplary damages as awarded by the Labor Arbiter (first petition);[4] and

(*b*) C.A.-G.R. SP No. 109699 entitled *Magsaysay Maritime Corporation, Eduardo Manese, Prudential Guarantee (Surety), and Air Sea Holiday GMBH-Stable Organizations, Italia v. Heirs of the late Marlon Fabiana, and National Labor Relations Commission* challenging the propriety of the monetary awards granted to the heirs of Fabiana (second petition).[5]

In the second petition, the petitioners averred that the late Marlon Fabiana had died from a non-work related disease after his employment contract had terminated.

On August 20, 2009, when the heirs of Fabiana filed their comment *vis-à-vis* the second petition, they sought the consolidation of the two petitions. Their request for consolidation was not acted upon, however, but was soon mooted a month later by the First Division of the CA promulgating its decision

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[4] *Id*. at 42-59 (entitled *Heirs of the Late Marlon A. Fabiana, herein represented by Merlita B. Fabiana v. National Labor Relations Commission, et al., respondents*).

[5] *Id*. at 60-79.

on the first petition (C.A.-G.R. No. 109382) on September 29, 2009,[6] to wit:

> WHEREFORE, premises considered, the petition is partly GRANTED. Accordingly, the challenged *Decision* is AFFIRMED but MODIFIED insofar as interest at the rate of six percent per annum (6% p.a.) is imposed on all the monetary awards, reckoned from the Labor Arbiter's judgment on 19 December 2007, except moral and exemplary damages to which the same rate of interest is imposed, but reckoned from the time the aforementioned decision was promulgated on 10 December 2008 by the NLRC Sixth Division. An additional interest of twelve percent per annum (12% p.a.) is applied on the total amount ultimately awarded upon finality of the decision until fully paid.
>
> The petitioners' motion for preliminary mandatory injunction is deemed resolved by this decision.
>
> IT IS SO ORDERED.

Magsaysay Maritime Corporation filed on October 25, 2009 a motion for clarification in C.A.-G.R. No. 109382 instead of a motion for reconsideration.[7] In response, the CA issued its clarification on November 26, 2009 by stating that the "affirmance with modification" was but the "consequence of the *certiorari* petition being merely 'partially granted.'"[8]

On their part, the heirs of Fabiana filed a motion for reconsideration in C.A.-G.R. No. 109382, which the CA denied. Hence, on November 23, 2009, they appealed to the Court by petition for review on *certiorari* (G.R. No. 189726). However, the Court, through the Third Division,[9] denied the petition for

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[6] *Id*. at 16-25; penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Presiding Justice Conrado M. Vasquez, Jr. (retired) and Associate Justice Jose C. Reyes, Jr.

[7] *Id*. at 82-85.

[8] *Id*. at 86.

[9] Associate Justice Renato C. Corona, Chairperson; Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura, Associate Justice Diosdado M. Peralta, and Associate Justice Jose C. Mendoza, as Members.

review on *certiorari* through the resolution of January 13, 2010,[10] quoted as follows:

> Acting on the petition for review on *certiorari* assailing the Decision dated 29 September 2009 of the Court of Appeals in CA-G.R. SP No. 109382, the Court resolves to DENY the petition for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction.
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> A careful consideration of the petition indicates a failure of the petitioners to show any cogent reason why the actions of the Labor Arbiter, the National Labor Relations Commission and the Court of Appeals which have passed upon the same issue should be reversed. Petitioners failed to show that their factual findings are not based on substantial evidence or that their decisions are contrary to applicable law and jurisprudence.
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> SO ORDERED.

In the meanwhile, on October 16, 2009, the heirs of Fabiana moved to dismiss the second petition (C.A.-G.R. SP. No. 109699) on the ground that the intervening promulgation on September 29, 2009 by the First Division of the decision on the first petition (C.A.-G.R. No. 109382) had rendered the second petition moot and academic.[11]

On June 4, 2010, however, the First Division of the CA, then comprised by Presiding Justice Reyes, Jr., Associate Justice Dicdican (*ponente*) and Associate Justice Cruz, denied the motion to dismiss filed in C.A.-G.R. SP. No. 109699,[12] holding thusly:

> This has reference to the motion filed by the private respondents, through their counsel, to dismiss the petition in the case at bench on the ground that it has been rendered moot and academic by the decision promulgated on September 29, 2009 by this Court in CA-G.R. SP No. 109382.

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[10] *Rollo*, pp. 14-15.

[11] *Id*. at 87-88.

[12] *Id*. at 94-95.

After a judicious scrutiny of the whole matter, we find the said motion to dismiss to be wanting in merit. It is not true that the petition in this case has been rendered moot and academic by the decision promulgated by this Court on September 29, 2009 in CA-G.R. SP No. 109382. The said decision rendered by this Court passed upon two limited issues only, namely, the NLRC's jurisdiction to allow the petitioners' appeal thereto despite flaws in their verification and non-forum shopping papers and the propriety of the reduction by the NLRC of the amount of damages awarded to the private respondents. A reading of the said decision will unmistakably bear this out. However, in the case at bench, the petitioners have assailed omnibously the NLRC's awards in favor of the private respondents for death benefits, sickness allowance, salary differentials and other monetary claims. We have to pass upon the propriety of all these monetary awards.

WHEREFORE, in view of the foregoing premises, we hereby DENY the aforementioned motion to dismiss filed in this case.

We hereby give the parties a fresh period of fifteen (15) days from notice hereof within which to file memoranda in support of their respective sides of the case.

SO ORDERED.

The second petition (C.A.-G.R. SP. No. 109699) was ultimately resolved on September 16, 2011 by the Sixth Division of the CA, composed of Associate Justice Amelita G. Tolentino, Associate Justice Normandie B. Pizarro (*ponente*) and Associate Justice Rodil V. Zalameda, dismissing the petition upon not finding the NLRC to have gravely abused its discretion.

As earlier adverted to, the complainant accuses Presiding Justice Reyes, Jr., Associate Justice Dicdican and Associate Justice Cruz with thereby willfully disobeying the resolution of January 13, 2010 promulgated by the Court.

The complaint lacks merit.

In administrative proceedings, the burden of substantiating the charges falls on the complainant who must prove her

allegations in the complaint by substantial evidence.[13] Here, the allegation of willful disobedience against respondent CA Justices was unsubstantiated and baseless. The issues raised in the first petition (C.A.-G.R. No. 109382) were limited to the NLRC's jurisdiction over the appeal by Magsaysay Maritime Corporation and its principal, and to the reduction of the amounts awarded as moral and exemplary damages. In contrast, the second petition (C.A.-G.R. SP. No. 109699) concerned only the propriety of awarding monetary benefits. Under the circumstances, the promulgation by the Court of the resolution of January 13, 2010 in G.R. No. 189726 did not divest the respondents as members of the First Division of the CA of the jurisdiction to entertain and pass upon the second petition (C.A.-G.R. SP. No. 109699), something that they sought to explain through their resolution promulgated on June 4, 2010. The explanation, whether correct or not, was issued in the exercise of judicial discretion. It is not for us to say now in a resolution of this administrative complaint whether the explanation was appropriate or not, nor for the complainant to herself hold them in error. The recourse open to the heirs of Fabiana, including the complainant, was to move for the correction of the resolution, if they disagreed with it, and, should their motion be denied, to assail the denial in this Court through the remedy warranted under the law.

The complainant's initiation of her complaint would take respondent Justices to task for their regular performance of their office. Yet, as the surviving spouse of the late-lamented Marlon, she was understandably desirous of the most favorable and quickest outcome for the claim for death benefits because his intervening demise had rendered her and her family bereft of his support. Regardless of how commendable were her motives for initiating this administrative complaint, however, she could not substitute a proper judicial remedy not taken with an improper administrative denunciation of the Justices she has hereby charged. That is impermissible. If she felt aggrieved at all, she should have resorted to the available proper judicial remedy, and

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[13] *Dayag v. Gonzales*, A.M. No. RTJ-05-1903, June 27, 2006, 493 SCRA 51, 60-61.

exhausted it, instead of resorting to the unworthy disciplinary charge.

Truly, disciplinary proceedings and criminal actions brought against any Judge or Justice in relation to the performance of official functions are neither complementary to nor suppletory of appropriate judicial remedies,nor a substitute for such remedies.[14] The Court has fittingly explained why in *In Re: Joaquin T. Borromeo*,[15] to wit:

> Given the nature of the judicial function, the power vested by the Constitution in the Supreme Court and the lower courts established by law, the question submits to only one answer: the administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof.
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> Simple reflection will make this proposition amply clear, and demonstrate that any contrary postulation can have only intolerable legal implications. Allowing a party who feels aggrieved by a judicial order or decision not yet final and executory to mount an administrative, civil or criminal prosecution for unjust judgment against the issuing judge would, at a minimum and as an indispensable first step, confer the prosecutor (Ombudsman) with an incongruous function pertaining, not to him, but to the courts: the determination of whether the questioned disposition is erroneous in its findings of fact or conclusions of law, or both. If he does proceed despite that impediment, whatever determination he makes could well set off a proliferation of administrative or criminal litigation, a possibility hereafter more fully explored.

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[14] *In Re: Wenceslao Laureta*, March 12, 1987, 148 SCRA 382, 420, where the Court stated:

> To allow litigants to *go beyond the Court's resolution* and claim that the members acted "with deliberate bad faith" and rendered an "unjust resolution" in disregard or violation of the duty of their high office to act upon their own independent consideration and judgment of the matter at hand would be to *destroy the authenticity, integrity and conclusiveness* of such collegiate acts and resolutions and to disregard utterly the presumption of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and *undermine the role of the Supreme Court as the final arbiter of all judicial disputes*.

[15] A.M. No.93-7-696-0, February 21, 1995, 241 SCRA 405, 459-460.

Such actions are impermissible and cannot prosper. It is not, as already pointed out, within the power of public prosecutors, or the Ombudsman or his deputies, directly or vicariously, to review judgments or final orders or resolutions of the Courts of the land. The power of review—by appeal or special civil action—is not only lodged exclusively in the Courts themselves but must be exercised in accordance with a well-defined and long established hierarchy, and long standing processes and procedures. No other review is allowed; otherwise litigation would be interminable, and vexatiously repetitive.

Moreover, in *Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of FH-Gymn Multi-Purpose and Transport Service Cooperative, against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals*,[16] the Court ruminates:

> In this regard, we reiterate that a judge's failure to correctly interpret the law or to properly appreciate the evidence presented does not necessarily incur administrative liability, for to hold him administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, will be nothing short of harassment and will make his position doubly unbearable. His judicial office will then be rendered untenable, because no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment. Administrative sanction and criminal liability should be visited on him only when the error is so gross, deliberate and malicious, or is committed with evident bad faith, or only in clear cases of violations by him of the standards and norms of propriety and good behavior prescribed by law and the rules of procedure, or fixed and defined by pertinent jurisprudence.

To be clear, although we do not shirk from the responsibility of imposing discipline on the erring Judges or Justices and employees of the Judiciary, we shall not hesitate to shield them

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[16] A.M. OCA I.P.I. No. 11-184-CA-J, January 31, 2012, 664 SCRA 465, 475-476.

from baseless charges that only serve to disrupt rather than promote the orderly administration of justice.[17]

Even as we dismiss the administrative charge, we deem it necessary to observe further, in the exercise of our administrative supervision over the CA, that the matter addressed here was really simple and avoidable if only the CA had promptly implemented its current procedure for the consolidation of petitions or proceedings relating to or arising from the same controversies. Section 3(*a*), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, *viz*:

> Section 3. *Consolidation of Cases*. – **When related cases are assigned to different justices, they shall be consolidated and assigned to one Justice.**
>
> (a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any or the related cases is assigned, upon notice to the parties, **consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law**. (Emphases supplied)
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> x x x x x x x x x

A perusal of the two petitions showed that they involved the same parties and the same facts. Even their issues of law, albeit not entirely identical, were closely related to one another. It could not also be denied that they assailed the same decision of the NLRC. For these reasons alone, the request for consolidation by the heirs of Fabiana should have been granted, and the two petitions consolidated in the same Division of the CA.

The consolidation of two or more actions is authorized where the cases arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction and that consolidation will not give one party an undue advantage or that consolidation will not prejudice the substantial rights of

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[17] *Mataga v. Rosete*, A.M. No. MTJ-03-1488, October 13, 2004, 440 SCRA 217, 221-222.

any of the parties.[18] As to parties, their substantial identity will suffice. Substantial identity of parties exists when there is a community of interest or privity of interest between a party in the first case and a party in the second, even if the latter has not been impleaded in the first case.[19] As to issues, what is required is mere identity of issues where the parties, although not identical, present conflicting claims.[20] The justification for consolidation is to prevent a judge from deciding identical issues presented in the case assigned to him in a manner that will prejudice another judge from deciding a similar case before him.

We are perplexed why the CA did not act on and grant the request for consolidation filed on August 20, 2009 by the heirs of Fabiana. In fact, the consolidation should have been required as a matter of course even without any of the parties seeking the consolidation of the petitions, considering that the two cases rested on the same set of facts, and involved claims arising from the death of the late Marlon Fabiana.

It is true that under the *Rules of Court*,[21] the consolidation of cases for trial is permissive and a matter of judicial

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[18] *Caños v. Peralta*, No. L-38352, August 19, 1982, 115 SCRA 843, 846.

[19] *Heirs of Trinidad De Leon Vda. de Roxas v. Court of Appeals*, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 116.

[20] *Hacienda Bigaa, Inc. v. Chavez*, G.R. No. 174160, April 20, 2010, 618 SCRA 559, 576.

[21] For civil trials, the rule on consolidation is Section 1, Rule 31, *Rules of Court*, which provides:

Section 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1)

For criminal trials, Section 22, Rule 119, *Rules of Court* states:

Section 22. *Consolidation of trials of related offenses*. – Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court. (14a)

discretion.[22] This is because trials held in the first instance require the attendance of the parties, their respective counsel and their witnesses, a task that surely entails an expense that can multiply if there are several proceedings upon the same issues involving the same parties. At the trial stage, the avoidance of unnecessary expenses and undue vexation to the parties is the primary objective of consolidation of cases.[23] But the permissiveness of consolidation does not carry over to the appellate stage where the primary objective is less the avoidance of unnecessary expenses and undue vexation than it is the ideal realization of the dual function of all appellate adjudications. The dual function is expounded thuswise:

> An appellate court serves a *dual* function. The *first* is the *review for correctness* function, whereby the case is reviewed on appeal to assure that substantial justice has been done. The *second* is the *institutional* function, which refers to the progressive development of the law for general application in the judicial system.
>
> Differently stated, the *review for correctness* function is concerned with the justice of the particular case while the *institutional* function is concerned with the *articulation* and *application* of *constitutional principles*, the *authoritative interpretation of statutes*, and the *formulation of policy within the proper sphere of the judicial function.*
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> The duality also relates to the dual function of *all* adjudication in the common law system. The *first* pertains to the doctrine of *res judicata*, which decides the case and settles the controversy; the *second* is the doctrine of *stare decisis*, which pertains to the precedential value of the case which assists in deciding future similar cases by the application of the rule or principle derived from the earlier case.
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> With each level of the appellate structure, the *review for correctness* function diminishes and the *institutional* function, which concerns

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[22] *Mega-Land Resources and Development Corporation v. C-E Construction Corporation*, G.R. No. 156211, July 31, 2007, 528 SCRA 622, 636; *People v. Sandiganbayan*, G.R. No. 149495, August 21, 2003, 409 SCRA 419, 423.

[23] *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*, G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618, 631.

itself with uniformity of judicial administration and the progressive development of the law, increases.[24]

In the appellate stage, therefore, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Such consolidation should be made regardless of whether or not the parties or any of them requests it. A mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice.

In this connection, the Court reminds all attorneys appearing as counsel for the initiating parties of their direct responsibility to give prompt notice of any related cases pending in the courts, and to move for the consolidation of such related cases in the proper courts. This responsibility proceeds from their express undertakings in the certifications against forum-shopping that accompany their initiatory pleadings pursuant to Section 5 of Rule 7 and related rules in the *Rules of Court*, to the effect that they have not theretofore commenced any actions or filed any claims involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of their knowledge, no such other actions or claims are pending therein; that if there were such other pending actions or claims, to render complete statements of the present status thereof; and if they should thereafter learn that the same or similar actions or claims have been filed or are pending, they shall report that fact within five days therefrom to the courts wherein the said complaints or initiatory pleadings have been filed.

WHEREFORE, the Court **DISMISSES** the administrative complaint against Presiding Justice Andres B. Reyes, Jr., Associate Justice Isaias P. Dicdican and Associate Justice Stephen C. Cruz of the Court of Appeals for its lack of merit.

The Court of Appeals is **DIRECTED** to forthwith adopt measures that will ensure the strict observance of Section 3,

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[24] Bersamin, L.P., *Appeal and Review in the Philippines*, 2000 (2nd Edition), Central Professional Books, Inc., Quezon City, p. 355.

Rule III of the 2009 *Internal Rules of the Court of Appeals*, including the revision of the rule itself to make the consolidation of cases and proceedings concerning similar or like issues or involving the same parties or interests mandatory and not dependent on the initiative of the parties or of any of them.

All attorneys of the parties in cases brought to the third level courts either on appeal or interlocutory review (like *certiorari*) are **REQUIRED** to promptly notify the reviewing courts of the pendency of any other cases and proceedings involving the same parties and issues pending in the same or other courts.

Let this decision be **FURNISHED** to the Court of Appeals, Sandiganbayan, Court of Tax Appeals and the Office of the Court Administrator for their guidance; and to the Integrated Bar of the Philippines for dissemination to all its chapters.

SO ORDERED.

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

EN BANC

[G.R. No. 195649. July 2, 2013]

CASAN MACODE MAQUILING, *petitioner, vs.* **COMMISSION ON ELECTIONS, ROMMEL ARNADO *Y* CAGOCO, and LINOG G. BALUA.** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COURT CANNOT TAKE JUDICIAL NOTICE OF

FOREIGN LAWS, WHICH MUST BE PRESENTED AS PUBLIC DOCUMENTS OF A FOREIGN COUNTRY AND MUST BE EVIDENCED BY AN OFFICIAL PUBLICATION THEREOF; MERE REFERENCE TO A FOREIGN LAW IN A PLEADING DOES NOT SUFFICE FOR IT TO BE CONSIDERED IN DECIDING A CASE.— Respondent cites Section 349 of the Immigration and Naturalization Act of the United States as having the effect of expatriation when he executed his Affidavit of Renunciation of American Citizenship on April 3, 2009 and thus claims that he was divested of his American citizenship. If indeed, respondent was divested of all the rights of an American citizen, the fact that he was still able to use his US passport after executing his Affidavit of Renunciation repudiates this claim. The Court cannot take judicial notice of foreign laws, which must be presented as public documents of a foreign country and must be "evidenced by an official publication thereof." Mere reference to a foreign law in a pleading does not suffice for it to be considered in deciding a case.

2. ID.; ID.; SETTLED RULE ON FINDINGS OF FACTS OF ADMINISTRATIVE BODIES NOT APPLICABLE IN CASE AT BAR; THE RULING OF THE COMMISSION ON ELECTIONS *EN BANC* IS BASED ON A MISAPPREHENSION OF FACTS THAT THE USE OF U.S. PASSPORT WAS DISCONTINUED WHEN RESPONDENT OBTAINED HIS PHILIPPINE PASSPORT.— Well-settled is the rule that findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence. They are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that the administrative body had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated. Nevertheless, it must be emphasized that COMELEC First Division found that Arnado used his U.S. Passport at least six times after he renounced his American citizenship. This was debunked by the COMELEC *En Banc*, which found that Arnado only used his U.S. passport four times, and which agreed with Arnado's claim that he only used his

U.S. passport on those occasions because his Philippine passport was not yet issued. x x x This conclusion, however, is not supported by the facts. Arnado claims that his Philippine passport was issued on 18 June 2009. The records show that he continued to use his U.S. passport even after he already received his Philippine passport. Arnado's travel records show that he presented his U.S. passport on 24 November 2009, on 21 January 2010, and on 23 March 2010. These facts were never refuted by Arnado. Thus, the ruling of the COMELEC *En Banc* is based on a misapprehension of the facts that the use of the U.S. passport was discontinued when Arnado obtained his Philippine passport. Arnado's continued use of his U.S. passport cannot be considered as isolated acts contrary to what the dissent wants us to believe. It must be stressed that what is at stake here is the principle that only those who are exclusively Filipinos are qualified to run for public office. If we allow dual citizens who wish to run for public office to renounce their foreign citizenship and afterwards continue using their foreign passports, we are creating a special privilege for these dual citizens, thereby effectively junking the prohibition in Section 40(d) of the Local Government Code.

3. POLITICAL LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; DISQUALIFICATIONS; DUAL CITIZENSHIP; ESTABLISHED BY THE FACT THAT AT THE TIME RESPONDENT FILED HIS CERTIFICATE OF CANDIDACY, HE WAS NOT ONLY A FILIPINO CITIZEN BUT, BY HIS OWN DECLARATION, ALSO AN AMERICAN CITIZEN.— Respondent likewise contends that this Court failed to cite any law of the United States "providing that a person who is divested of American citizenship thru an Affidavit of Renunciation will re-acquire such American citizenship by using a US Passport issued prior to expatriation." American law does not govern in this jurisdiction. Instead, Section 40(d) of the Local Government Code calls for application in the case before us, given the fact that at the time Arnado filed his certificate of candidacy, he was not only a Filipino citizen but, by his own declaration, also an American citizen. It is the application of this law and not of any foreign law that serves as the basis for Arnado's disqualification to run for any local elective position.

4. ID.; ID.; ID.; ID.; ID.; OUR LAWS INDICATE A POLICY THAT ANYONE WHO SEEKS TO RUN FOR PUBLIC OFFICE MUST BE SOLELY AND EXCLUSIVELY A FILIPINO CITIZEN; TO ALLOW A FORMER FILIPINO WHO REACQUIRES PHILIPPINE CITIZENSHIP TO CONTINUE USING A FOREIGN PASSPORT EVEN AFTER HE HAS RENOUNCED HIS FOREIGN CITIZENSHIP IS TO ALLOW A COMPLETE DISREGARD OF THE POLICY.— With all due respect to the dissent, the declared policy of Republic Act No. (RA) 9225 is that "all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act." This policy pertains to the reacquisition of Philippine citizenship. Section 5(2) requires those who have re-acquired Philippine citizenship and who seek elective public office, to renounce any and all foreign citizenship. This requirement of renunciation of any and all foreign citizenship, when read together with Section 40(d) of the Local Government Code which disqualifies those with dual citizenship from running for any elective local position, indicates a policy that anyone who seeks to run for public office must be solely and exclusively a Filipino citizen. To allow a former Filipino who reacquires Philippine citizenship to continue using a foreign passport – which indicates the recognition of a foreign state of the individual as its national – even after the Filipino has renounced his foreign citizenship, is to allow a complete disregard of this policy.

5. ID.; ID.; ID.; ID.; ID.; THE MAJORITY DECISION WAS NOT RULING ON A SITUATION OF DOUBT; THERE IS NO DOUBT THAT SECTION 40(D) OF THE LOCAL GOVERNMENT CODE DISQUALIFIES THOSE WITH DUAL CITIZENSHIP FOR LOCAL ELECTIVE POSITIONS.— We respectfully disagree that the majority decision rules on a situation of doubt. Indeed, there is no doubt that Section 40(d) of the Local Government Code disqualifies those with dual citizenship from running for local elective positions. There is likewise no doubt that the use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named therein as its national. It is unquestioned that Arnado is a natural

born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. It is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times. If there is any remaining doubt, it is regarding the efficacy of Arnado's renunciation of his American citizenship when he subsequently used his U.S. passport. The renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality. The dissent states that the Court has effectively left Arnado "a man without a country." On the contrary, this Court has, in fact, found Arnado to have more than one. Nowhere in the decision does it say that Arnado is *not* a Filipino citizen. What the decision merely points out is that he also possessed *another* citizenship at the time he filed his certificate of candidacy.

BRION, *J., dissenting opinion:*

1. POLITICAL LAW; CITIZENSHIP; CITIZENSHIP RETENTION AND RE-ACQUISITION ACT (R.A. 9225); THE ASSAILED DECISION RULES ON A SITUATION OF DOUBT AND IN THE RELATIVELY UNCHARTED AREA OF APPLICATION WHERE R.A. 9225 OVERLAPS WITH OUR ELECTION LAWS; IN A SITUATION OF DOUBT, DOUBTS SHOULD BE RESOLVED IN FAVOR OF FULL FILIPINO CITIZENSHIP.— The assailed Decision rules on a **situation of doubt** and in the relatively **uncharted area of application** where RA 9225 overlaps with our election laws. It reverses the Commission on Elections (*COMELEC*) ruling that respondent Rommel C. Arnado's use of his United States (*U.S.*) passport was isolated and did not affect his renunciation of his previous U.S. citizenship and his re-acquisition of Filipino citizenship. These, to my mind, should have been the starting points in the Court's consideration of the present case and the motion for reconsideration. x x x In

a situation of doubt, doubts should be resolved in favor of full Filipino citizenship since the thrust of RA 9225 is to encourage the return to Filipino citizenship of natural-born Filipinos who lost their Philippine citizenship through their acquisition of another citizenship. Note in this regard that Arnado consciously and voluntarily gave up a very much sought after citizenship status in favor of returning to full Filipino citizenship and participating in Philippine governance. From the perspective of our election laws, doubts should also be resolved in favor of Arnado since his election to the office of Mayor of Kauswagan, Lanao del Norte was never in doubt. The present voters of Kauswagan, Lanao del Norte have eloquently spoken and approved Arnado's offer of service not only once but twice – in 2010 and now in 2013. Note that the present case was very much alive in the minds of the Kauswagan voters in the immediately past May 13, 2013 elections, yet they again voted Arnado into office.

2. ID.; ID.; ID.; AFTER COMPLYING WITH THE TWIN REQUIREMENTS OF R.A. 9225, RESPONDENT NOT ONLY BECAME A "PURE" FILIPINO CITIZEN BUT ALSO BECAME ELIGIBLE TO RUN FOR PUBLIC OFFICE; THE MAJORITY'S EFFECTIVE REVERSAL OF *AZNAR V. COMMISSION ON ELECTIONS* UNDER MURKY FACTS AND THE FLIMSIEST OF REASONS, CREATED A NEW GROUND FOR THE LOSS OF THE POLITICAL RIGHTS OF A FILIPINO CITIZEN.— After complying with the twin requirements of RA 9225, Arnado not only became a "pure" Filipino citizen but also became eligible to run for public office. To be sure, the majority in fact concedes that Arnado's use of his U.S. passport is not a ground for loss of Filipino citizenship under Commonwealth Act No. 63 as the law requires ***express renunciation*** and not by implication or inference from conduct. Why the norm will be any different with respect to the loss of citizenship rights is, to my mind, a question that the majority ruling left hanging and unanswered as it disregards a directly related jurisprudential landmark – *Aznar v. Commission on Elections* - where the Court ruled that the mere fact that therein respondent Emilio Mario Renner Osmeña was a holder of a certificate that he is an American did not mean that he was no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship.

Through the Court's ruling in the present case (that by Arnado's isolated use of his U.S. passport, he is reverted to the status of a dual citizen), the Court effectively reversed *Aznar* and, under murky facts and the flimsiest of reasons, **created a new ground for the loss of the political rights** of a Filipino citizen.

3. ID.; ID.; ID.; NATURAL-BORN CITIZENS WHO WERE DEEMED TO HAVE LOST THEIR PHILIPPINE CITIZENSHIP BECAUSE OF THEIR NATURALIZATION AS CITIZENS OF A FOREIGN COUNTRY AND WHO SUBSEQUENTLY COMPLIED WITH THE REQUIREMENTS OF R.A. 9225 ARE DEEMED NOT TO HAVE LOST THEIR PHILIPPINE CITIZENSHIP; R.A. 9225 ALSO CURED AND NEGATED THE PRESUMPTION MADE UNDER COMMONWEALTH ACT 63.— To reiterate what I have stated before, under RA 9225, natural-born citizens who were deemed to have lost their Philippine citizenship because of their naturalization as citizens of a foreign country and who subsequently complied with the requirements of RA 9225 are ***deemed not to have lost*** their Philippine citizenship. ***RA 9225 cured and negated the presumption made under CA 63***. Hence, as in *Japzon v. Commission on Elections*, Arnado assumed "pure" Philippine citizenship again after taking the Oath of Allegiance and executing an Oath of Renunciation of his American citizenship under RA 9225. In this light, the proper framing of the main issue in this case should be whether Arnado's use of his U.S. passport affected his status as a "pure" Philippine citizen. In question form – ***did Arnado's use of a U.S. passport amount to a ground under the law for the loss of his Filipino citizenship under CA 63 or his rights thereunder*** or, alternatively, the retention of his dual citizenship status? That Arnado's use of his U.S. passport amounts to an express renunciation of his Filipino citizenship or some of his rights as a citizen – when its use was an isolated act that he sufficiently explained and fully justified – is not a conclusion that is easy to accept under the available facts of the case and the prevailing law. I emphasize that the law requires ***express renunciation*** in order to lose Philippine citizenship. The term means a renunciation that is made ***distinctly and explicitly and is not left to inference or implication***; ***it is a renunciation manifested by direct and appropriate language, as distinguished from that which is inferred from conduct***. The appreciation of

Arnado's use of his U.S. passport should not depart from this norm, particularly in a situation of doubt. *Aznar*, already cited above, presents a clear and vivid example, taken from jurisprudence, of ***what "express renunction" is not.*** The Court ruled that the mere fact that Osmeña was a holder of a certificate 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.

4. ID.; ID.; ID.; OTHER THAN RESPONDENT'S USE OF HIS U.S. PASSPORT IN TWO TRIPS TO AND FROM THE U.S., THE RECORD DOES NOT BEAR OUT ANY INDICATION, SUPPORTED BY EVIDENCE, OF RESPONDENT'S INTENTION TO RE-ACQUIRE U.S. CITIZENSHIP; THE ISOLATED ACT OF USING HIS U.S. PASSPORT DID NOT UNDO RESPONDENT'S RENUNCIATION OF HIS U.S. CITIZENSHIP.— In the present case, other than the use of his U.S. passport in two trips to and from the U.S., the record does not bear out any indication, supported by evidence, of Arnado's intention to re-acquire U.S. citizenship. In the absence of clear and affirmative acts of re-acquisition of U.S. citizenship either by naturalization or by express acts (such as the re-establishment of permanent residency in the U.S.), Arnado's use of his U.S. passport cannot but be considered an isolated act that did not undo his renunciation of his U.S. citizenship. What he might in fact have done was to violate American law on the use of passports, but this is a matter irrelevant to the present case. Thus, Arnado remains to be a "pure" Filipino citizen and the loss of his Philippine citizenship or of citizenship rights cannot be presumed or inferred from his isolated act of using his U.S. passport for travel purposes. I do not dispute that an Oath of Renunciation is not an empty or formal ceremony that can be perfunctorily professed at any given day, only to be disregarded on the next. As a mandatory requirement under Section 5(2) of RA 9225, it allows former natural-born Filipino citizens who were deemed to have lost their Philippine citizenship by reason of naturalization as citizens of a foreign country to enjoy full civil and political rights, foremost among them, the privilege to run for public office.

5. ID.; ID.; ID.; RESPONDENT'S USE OF HIS U.S. PASSPORT DESPITE HIS RENUNCIATION OF U.S. CITIZENSHIP IS JUSTIFIED.— It is another matter, however, to say that Arnado effectively negated his Oath of Renunciation when he used his U.S. passport for travel to the U.S. To reiterate, if only for emphasis, Arnado sufficiently justified the use of his U.S. passport despite his renunciation of his U.S. citizenship: when he travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the U.S. to attend to the business and other affairs that he was leaving. If at all, he could be faulted for using his U.S. passport by the time he returned to the Philippines on November 24, 2009 because at that time, he had presumably received his Philippine passport. However, given the circumstances of Arnado's use and that he consistently used his Philippine passport for travel after November 24, 2009, the true character of his use of his U.S. passport stands out and cannot but be an isolated and convenient act that did not negate his Oath of Renunciation. In these lights, I maintain the conclusion that ***no basis exists to overturn the ruling of the COMELEC for grave abuse of discretion***; its ruling was neither capricious nor arbitrary as it had basis in law and in fact.

6. ID.; ID.; ID.; THE COURT'S PRONOUNCEMENT HAS EFFECTIVELY LEFT RESPONDENT "A MAN WITHOUT A COUNTRY."— With the Court's assailed pronouncement and its underlying negative policy implication, the Court has effectively left Arnado "[A] MAN WITHOUT A COUNTRY" - neither a U.S. citizen by U.S. law, nor a Filipino citizen with full political rights despite his compliance with all the requirements of RA 9225. The only justification given for the treatment was the ***isolated use*** of Arnado's old U.S. passport in traveling between the U.S. and the Philippines ***before the duly applied for Philippine passport could be issued***. Under this situation, read in the context of the election environment under which *Japzon v. Commission on Elections* was made, the following ruling was apparently lost on the majority: Finally, when the evidence of x x x lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the

will of the electorate should be respected. ***For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters***. x x x In this case, Japzon failed to substantiate his claim that Ty is ineligible to be Mayor of the Municipality of General Macarthur, Eastern Samar, Philippines.

APPEARANCES OF COUNSEL

Rexie Efren A. Bugaring and Associates Law Offices and *Musico Law Office* for petitioner.

Federico R. Miranda for Linog G. Balua.

The Solicitor General for public respondent.

Tomas O. Cabili and *Rejoice S. Subejano* for Mayor Rommel Arnado.

R E S O L U T I O N

SERENO, *C.J.*:

This Resolution resolves the Motion for Reconsideration filed by respondent on May 10, 2013 and the Supplemental Motion for Reconsideration filed on May 20, 2013.

We are not unaware that the term of office of the local officials elected in the May 2010 elections has already ended on June 30, 2010. Arnado, therefore, has successfully finished his term of office. While the relief sought can no longer be granted, ruling on the motion for reconsideration is important as it will either affirm the validity of Arnado's election or affirm that Arnado never qualified to run for public office.

Respondent failed to advance any argument to support his plea for the reversal of this Court's Decision dated April 16, 2013. Instead, he presented his accomplishments as the Mayor of Kauswagan, Lanao del Norte and reiterated that he has taken the Oath of Allegiance not only twice but *six* times. It must be stressed, however, that the relevant question is the efficacy of his renunciation of his foreign citizenship and not the taking of the Oath of Allegiance to the Republic of the Philippines. Neither do his accomplishments as mayor affect the question before this Court.

Respondent cites Section 349 of the Immigration and Naturalization Act of the United States as having the effect of expatriation when he executed his Affidavit of Renunciation of American Citizenship on April 3, 2009 and thus claims that he was divested of his American citizenship. If indeed, respondent was divested of all the rights of an American citizen, the fact that he was still able to use his US passport after executing his Affidavit of Renunciation repudiates this claim.

The Court cannot take judicial notice of foreign laws,[1] which must be presented as public documents[2] of a foreign country and must be "evidenced by an official publication thereof."[3] Mere reference to a foreign law in a pleading does not suffice for it to be considered in deciding a case.

Respondent likewise contends that this Court failed to cite any law of the United States "providing that a person who is divested of American citizenship thru an Affidavit of Renunciation

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[1] *Benedicto v. CA*, G.R. No. 125359, 4 September 2001, citing *Vda. de Perez v. Tolete*, 232 SCRA 722, 735 (1994), which in turn cited *Philippine Commercial and Industrial Bank v. Escolin*, 58 SCRA 266 (1974).

[2] *See* Sec. 19, Rule 132 of the Rules of Court:

SEC. 19. *Classes of Documents*. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country.

[3] Sec. 24, Rule 132 of the Rules of Court

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.

will re-acquire such American citizenship by using a US Passport issued prior to expatriation."[4]

American law does not govern in this jurisdiction. Instead, Section 40(d) of the Local Government Code calls for application in the case before us, given the fact that at the time Arnado filed his certificate of candidacy, he was not only a Filipino citizen but, by his own declaration, also an American citizen. It is the application of this law and not of any foreign law that serves as the basis for Arnado's disqualification to run for any local elective position.

With all due respect to the dissent, the declared policy of Republic Act No. (RA) 9225 is that "all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act."[5] This policy pertains to the reacquisition of Philippine citizenship. Section 5(2)[6] requires those who have re-acquired Philippine citizenship and who seek elective public office, to renounce any and all foreign citizenship.

This requirement of renunciation of any and all foreign citizenship, when read together with Section 40(d) of the Local Government Code[7] which disqualifies those with dual citizenship

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[4] Motion for Reconsideration, p. 2

[5] Sec. 2, RA 9225.

[6] Sec. 5. Civil and Political Rights and Liabilities. — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(2) Those seeking 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 the filing of 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;

[7] SECTION 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

[…]

(d) Those with dual citizenship;

from running for any elective local position, indicates a policy that anyone who seeks to run for public office must be solely and exclusively a Filipino citizen. To allow a former Filipino who reacquires Philippine citizenship to continue using a foreign passport – which indicates the recognition of a foreign state of the individual as its national – even after the Filipino has renounced his foreign citizenship, is to allow a complete disregard of this policy.

Further, we respectfully disagree that the majority decision rules on a situation of doubt.

Indeed, there is no doubt that Section 40(d) of the Local Government Code disqualifies those with dual citizenship from running for local elective positions.

There is likewise no doubt that the use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named therein as its national.

It is unquestioned that Arnado is a natural born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. It is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times.

If there is any remaining doubt, it is regarding the efficacy of Arnado's renunciation of his American citizenship when he subsequently used his U.S. passport. The renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality.

The dissent states that the Court has effectively left Arnado "a man without a country." On the contrary, this Court has, in

fact, found Arnado to have more than one. Nowhere in the decision does it say that Arnado is *not* a Filipino citizen. What the decision merely points out is that he also possessed *another* citizenship at the time he filed his certificate of candidacy.

Well-settled is the rule that findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence.[8] They are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that the administrative body had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated.[9]

Nevertheless, it must be emphasized that COMELEC First Division found that Arnado used his U.S. Passport at least six times after he renounced his American citizenship. This was debunked by the COMELEC *En Banc*, which found that Arnado only used his U.S. passport four times, and which agreed with Arnado's claim that he only used his U.S. passport on those occasions because his Philippine passport was not yet issued. The COMELEC *En Banc* argued that Arnado was able to prove that he used his Philippine passport for his travels on the following dates: 12 January 2010, 31 January 2010, 31 March 2010, 16 April 2010, 20 May 2010, and 4 June 2010.

None of these dates coincide with the two other dates indicated in the certification issued by the Bureau of Immigration showing that on 21 January 2010 and on 23 March 2010, Arnado arrived in the Philippines using his U.S. Passport No. 057782700 which also indicated therein that his nationality is USA-American. Adding these two travel dates to the travel record provided by the Bureau of Immigration showing that Arnado also presented

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[8] *Raniel v. Jochico*, G.R. No. 153413, 2 March 2007, 517 SCRA 221, 227, citing *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846, 859 (2003).

[9] *Id.*, citing *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, 439 Phil. 36, 48 (2002).

his U.S. passport four times (upon departure on 14 April 2009, upon arrival on 25 June 2009, upon departure on 29 July 2009 and upon arrival on 24 November 2009), these incidents sum up to six.

The COMELEC *En Banc* concluded that "the use of the US passport was because to his knowledge, his Philippine passport was not yet issued to him for his use."[10] This conclusion, however, is not supported by the facts. Arnado claims that his Philippine passport was issued on 18 June 2009. The records show that he continued to use his U.S. passport even after he already received his Philippine passport. Arnado's travel records show that he presented his U.S. passport on 24 November 2009, on 21 January 2010, and on 23 March 2010. These facts were never refuted by Arnado.

Thus, the ruling of the COMELEC *En Banc* is based on a misapprehension of the facts that the use of the U.S. passport was discontinued when Arnado obtained his Philippine passport. Arnado's continued use of his U.S. passport cannot be considered as isolated acts contrary to what the dissent wants us to believe.

It must be stressed that what is at stake here is the principle that only those who are exclusively Filipinos are qualified to run for public office. If we allow dual citizens who wish to run for public office to renounce their foreign citizenship and afterwards continue using their foreign passports, we are creating a special privilege for these dual citizens, thereby effectively junking the prohibition in Section 40(d) of the Local Government Code.

WHEREFORE, the Motion for Reconsideration and the Supplemental Motion for Reconsideration are hereby **DENIED** with finality.

SO ORDERED.

Carpio, Velasco, Jr., Peralta, Bersamin, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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[10] *Rollo,* p. 66.

Leonardo-de Castro, del Castillo, Mendoza, and *Leonen, JJ.,* join the dissent of Justice Brion.

Brion, J., see dissenting opinion.

DISSENTING OPINION

BRION, *J.*:

I maintain my dissent and vote to reconsider the Court's April 16, 2013 Decision. I so vote for the reasons stated in my main Dissent, some of which I restate below for emphasis. Most importantly, I believe that the majority's ruling runs counter to the policy behind Republic Act No. (*RA*) 9225,[1] is legally illogical and unsound, and should thus be reversed.

a) The assailed Decision rules on a **situation of doubt** and in the relatively **uncharted area of application** where RA 9225 overlaps with our election laws. It reverses the Commission on Elections (*COMELEC*) ruling that respondent Rommel C. Arnado's use of his United States (*U.S.*) passport was isolated and did not affect his renunciation of his previous U.S. citizenship and his re-acquisition of Filipino citizenship. These, to my mind, should have been the starting points in the Court's consideration of the present case and the motion for reconsideration.

b) After complying with the twin requirements of RA 9225, Arnado not only became a "pure" Filipino citizen but also became eligible to run for public office. To be sure, the majority in fact concedes that Arnado's use of his U.S. passport is not a ground for loss of Filipino citizenship under Commonwealth Act No. 63 as the law requires ***express renunciation*** and not by implication or inference from conduct. Why the norm will be any different with respect to the loss of citizenship rights is, to my mind, a question that the majority ruling left hanging and unanswered as it disregards a directly related jurisprudential landmark —

[1] An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent. Amending for the Purpose Commonwealth Act No. 63, as Amended and for Other Purposes.

Aznar v. Commission on Elections[2] — where the Court ruled that the mere fact that therein respondent Emilio Mario Renner Osmeña was a holder of a certificate that he is an American did not mean that he was no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. Through the Court's ruling in the present case (that by Arnado's isolated use of his U.S. passport, he is reverted to the status of a dual citizen), the Court effectively reversed *Aznar* and, under murky facts and the flimsiest of reasons, **created a new ground for the loss of the political rights** of a Filipino citizen.

c) In a situation of doubt, doubts should be resolved in favor of full Filipino citizenship since the thrust of RA 9225 is to encourage the return to Filipino citizenship of natural-born Filipinos who lost their Philippine citizenship through their acquisition of another citizenship.[3] Note in this regard that Arnado consciously and voluntarily gave up a very much sought after citizenship status in favor of returning to full Filipino citizenship and participating in Philippine governance.

From the perspective of our election laws, doubts should also be resolved in favor of Arnado since his election to the office of Mayor of Kauswagan, Lanao del Norte was never in doubt. The present voters of Kauswagan, Lanao del Norte have eloquently spoken and approved Arnado's offer of service not only once but twice — in 2010 and now in 2013. Note that the present case was very much alive in the minds of the Kauswagan voters in the immediately past May 13, 2013 elections, yet they again voted Arnado into office.

d) To reiterate what I have stated before, under RA 9225, natural-born citizens who were deemed to have lost their Philippine citizenship because of their naturalization as citizens of a foreign country and who subsequently complied with the requirements

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[2] 264 Phil. 307 (1990).

[3] See *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331; and *Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member v. Datumanong*, G.R. No. 160869, May 11, 2007, 523 SCRA 108.

of RA 9225 are ***deemed not to have lost*** their Philippine citizenship. ***RA 9225 cured and negated the presumption made under CA 63.*** Hence, as in *Japzon v. Commission on Elections*,[4] Arnado assumed "pure" Philippine citizenship again after taking the Oath of Allegiance and executing an Oath of Renunciation of his American citizenship under RA 9225.

In this light, the proper framing of the main issue in this case should be whether Arnado's use of his U.S. passport affected his status as a "pure" Philippine citizen. In question form — ***did Arnado's use of a U.S. passport amount to a ground under the law for the loss of his Filipino citizenship under CA 63 or his rights thereunder*** or, alternatively, the retention of his dual citizenship status?

That Arnado's use of his U.S. passport amounts to an express renunciation of his Filipino citizenship or some of his rights as a citizen — when its use was an isolated act that he sufficiently explained and fully justified — is not a conclusion that is easy to accept under the available facts of the case and the prevailing law. I emphasize that the law requires ***express renunciation*** in order to lose Philippine citizenship. The term means a renunciation that is made ***distinctly and explicitly and is not left to inference or implication; it is a renunciation manifested by direct and appropriate language, as distinguished from that which is inferred from conduct.***[5] The appreciation of Arnado's use of his U.S. passport should not depart from this norm, particularly in a situation of doubt.

Aznar, already cited above, presents a clear and vivid example, taken from jurisprudence, of ***what "express renunction" is not.*** The Court ruled that the mere fact that Osmeña was a holder of a certificate 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.

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[4] *Supra*.

[5] *Board of Immigration Commissioners, et al. v. Callano, et al.*, 134 Phil. 901, 910 (1968).

In the present case, other than the use of his U.S. passport in two trips to and from the U.S., the record does not bear out any indication, supported by evidence, of Arnado's intention to re-acquire U.S. citizenship. In the absence of clear and affirmative acts of re-acquisition of U.S. citizenship either by naturalization or by express acts (such as the re-establishment of permanent residency in the U.S.), Arnado's use of his U.S. passport cannot but be considered an isolated act that did not undo his renunciation of his U.S. citizenship. What he might in fact have done was to violate American law on the use of passports, but this is a matter irrelevant to the present case. Thus, Arnado remains to be a "pure" Filipino citizen and the loss of his Philippine citizenship or of citizenship rights cannot be presumed or inferred from his isolated act of using his U.S. passport for travel purposes.

I do not dispute that an Oath of Renunciation is not an empty or formal ceremony that can be perfunctorily professed at any given day, only to be disregarded on the next. As a mandatory requirement under Section 5 (2) of RA 9225, it allows former natural-born Filipino citizens who were deemed to have lost their Philippine citizenship by reason of naturalization as citizens of a foreign country to enjoy full civil and political rights, foremost among them, the privilege to run for public office.

It is another matter, however, to say that Arnado effectively negated his Oath of Renunciation when he used his U.S. passport for travel to the U.S. To reiterate, if only for emphasis, Arnado sufficiently justified the use of his U.S. passport despite his renunciation of his U.S. citizenship: when he travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the U.S. to attend to the business and other affairs that he was leaving. If at all, he could be faulted for using his U.S. passport by the time he returned to the Philippines on November 24, 2009 because at that time, he had presumably received his Philippine passport. However, given the circumstances of Arnado's use and that he consistently used his Philippine passport for travel after November 24, 2009, the true character of his use of his U.S. passport stands out and cannot but be an

isolated and convenient act that did not negate his Oath of Renunciation.

In these lights, I maintain the conclusion that ***no basis exists to overturn the ruling of the COMELEC for grave abuse of discretion;*** its ruling was neither capricious nor arbitrary as it had basis in law and in fact.

e) With the Court's assailed pronouncement and its underlying negative policy implication, the Court has effectively left Arnado "[A] MAN WITHOUT A COUNTRY"[6] — neither a U.S. citizen by U.S. law, nor a Filipino citizen with full political rights despite his compliance with all the requirements of RA 9225. The only justification given for the treatment was the ***isolated use*** of Arnado's old U.S. passport in traveling between the U.S. and the Philippines ***before the duly applied for Philippine passport could be issued.*** Under this situation, read in the context of the election environment under which *Japzon v. Commission on Elections*[7] was made, the following ruling was apparently lost on the majority:

> Finally, when the evidence of x x x lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. ***For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.*** x x x In this case, Japzon failed to substantiate his claim that Ty is ineligible to be Mayor of the Municipality of General Macarthur, Eastern Samar, Philippines.[8]

For all these reasons, I urge the Court to reconsider its position in the assailed April 16, 2013 Decision and grant Rommel C. Arnado's motion for reconsideration.

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[6] The title of an 1863 short story by American writer Edward Everett Hale. *The Atlantic Monthly*, Vol. XII — December 1863 — No. LXXIV, pp. 665-679, available online at *http://www.bartleby.com/310/6/1.html* (last visited June 23, 2013).

[7] *Supra* note 3.

[8] *Id*. at 353; italics and emphasis ours.

FIRST DIVISION

[G.R. No. 159213. July 3, 2013]

VECTOR SHIPPING CORPORATION and FRANCISCO SORIANO, *petitioners, vs.* **AMERICAN HOME ASSURANCE COMPANY and SULPICIO LINES, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PRESCRIPTION; RESPONDENT'S CAUSE OF ACTION WAS NOT BASED ON A QUASI-DELICT THAT PRESCRIBED IN FOUR YEARS BUT ON AN OBLIGATION CREATED BY LAW FOR WHICH THE LAW FIXED A LONGER PRESCRIPTIVE PERIOD OF TEN YEARS FROM THE ACCRUAL OF THE ACTION.— The contract of affreightment that Caltex and Vector entered into did not give rise to the legal obligation of Vector and Soriano to pay the demand for reimbursement by respondent because it concerned only the agreement for the transport of Caltex's petroleum cargo. As the Court has aptly put it in *Pan Malayan Insurance Corporation v. Court of Appeals*, *supra*, respondent's right of subrogation pursuant to Article 2207, *supra*, was "not dependent upon, nor d[id] it grow out of, any privity of contract or upon written assignment of claim [but] accrue[d] simply upon payment of the insurance claim by the insurer." Considering that the cause of action accrued as of the time respondent actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988, the action was not yet barred by the time of the filing of its complaint on March 5, 1992, which was well within the 10-year period prescribed by Article 1144 of the *Civil Code*. The insistence by Vector and Soriano that the running of the prescriptive period was not interrupted because of the failure of respondent to serve any extrajudicial demand was rendered inconsequential by our foregoing finding that respondent's cause of action was not based on a quasi-delict that prescribed in four years from the date of the collision on December 20, 1987, as the RTC misappreciated, but on an obligation created by law, for which

the law fixed a longer prescriptive period of ten years from the accrual of the action.

2. ID.; ID.; ID.; OBLIGATIONS; RESPONDENT PREPONDERANTLY ESTABLISHED ITS RIGHT OF SUBROGATION.— We disagree with petitioners' assertions. It is undeniable that respondent preponderantly established its right of subrogation. Its Exhibit C was Marine Open Policy No. 34-5093-6 that it had issued to Caltex to insure the petroleum cargo against marine peril. Its Exhibit D was the formal written claim of Caltex for the payment of the insurance coverage of ₱7,455,421.08 coursed through respondent's adjuster. Its Exhibits E to H were marine documents relating to the perished cargo on board the M/V Vector that were processed for the purpose of verifying the insurance claim of Caltex. Its Exhibit I was the subrogation receipt dated July 12, 1988 showing that respondent paid Caltex ₱7,455,421.00 as the full settlement of Caltex's claim under Marine Open Policy No. 34-5093-6. All these exhibits were unquestionably duly presented, marked, and admitted during the trial. Specifically, Exhibit C was admitted as an authentic copy of Marine Open Policy No. 34-5093-6, while Exhibits D, E, F, G, H and I, inclusive, were admitted as parts of the testimony of respondent's witness Efren Villanueva, the manager for the adjustment service of the Manila Adjusters and Surveyors Company. Consistent with the pertinent law and jurisprudence, therefore, Exhibit I was already enough by itself to prove the payment of ₱7,455,421.00 as the full settlement of Caltex's claim. The payment made to Caltex as the insured being thereby duly documented, respondent became subrogated as a matter of course pursuant to Article 2207 of the *Civil Code*. In legal contemplation, subrogation is the "substitution of another person in the place of the creditor, to whose rights he succeeds in relation to the debt;" and is "independent of any mere contractual relations between the parties to be affected by it, and is broad enough to cover every instance in which one party is required to pay a debt for which another is primarily answerable, and which in equity and conscience ought to be discharged by the latter."

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; WITH THE CLEAR VARIANCE BETWEEN THE TWO ACTIONS, THE FAILURE TO SET UP THE CROSS-CLAIM AGAINST PETITIONERS IN CIVIL CASE

NO. 18735 IS NO REASON TO BAR THE PRESENT ACTION.— Vector and Soriano argue that Caltex waived and abandoned its claim by not setting up a cross-claim against them in Civil Case No. 18735, the suit that Sulpicio Lines, Inc. had brought to claim damages for the loss of the M/V Doña Paz from them, Oriental Assurance Company (as insurer of the M/T Vector), and Caltex; that such failure to set up its cross-claim on the part of Caltex, the real party in interest who had suffered the loss, left respondent without any better right than Caltex, its insured, to recover anything from them, and forever barred Caltex from asserting any claim against them for the loss of the cargo; and that respondent was similarly barred from asserting its present claim due to its being merely the successor-in-interest of Caltex. The argument of Vector and Soriano would have substance and merit had Civil Case No. 18735 and this case involved the same parties and litigated the same rights and obligations. But the two actions were separate from and independent of each other. Civil Case No. 18735 was instituted by Sulpicio Lines, Inc. to recover damages for the loss of its M/V Doña Paz. In contrast, this action was brought by respondent to recover from Vector and Soriano whatever it had paid to Caltex under its marine insurance policy on the basis of its right of subrogation. With the clear variance between the two actions, the failure to set up the cross-claim against them in Civil Case No. 18735 is no reason to bar this action.

APPEARANCES OF COUNSEL

Cruz & Pascual Law Offices for petitioners.
Siguion Reyna Montecillo & Ongsiako for American Home Assurance Co.
Arthur D. Lim Office for Sulpicio Lines, Inc.

D E C I S I O N

BERSAMIN, *J.*:

Subrogation under Article 2207 of the *Civil Code* gives rise to a cause of action created by law. For purposes of the law on the prescription of actions, the period of limitation is ten years.

The Case

Vector Shipping Corporation (Vector) and Francisco Soriano appeal the decision promulgated on July 22, 2003,[1] whereby the Court of Appeals (CA) held them jointly and severally liable to pay ₱7,455,421.08 to American Home Assurance Company (respondent) as and by way of actual damages on the basis of respondent being the subrogee of its insured Caltex Philippines, Inc. (Caltex).

Antecedents

Vector was the operator of the motor tanker M/T Vector, while Soriano was the registered owner of the M/T Vector. Respondent is a domestic insurance corporation.[2]

On September 30, 1987, Caltex entered into a contract of affreightment[3] with Vector for the transport of Caltex's petroleum cargo through the M/T Vector. Caltex insured the petroleum cargo with respondent for ₱7,455,421.08 under Marine Open Policy No. 34-5093-6.[4] In the evening of December 20, 1987, the M/T Vector and the M/V Doña Paz, the latter a vessel owned and operated by Sulpicio Lines, Inc., collided in the open sea near Dumali Point in Tablas Strait, located between the Provinces of Marinduque and Oriental Mindoro. The collision led to the sinking of both vessels. The entire petroleum cargo of Caltex on board the M/T Vector perished.[5] On July 12, 1988, respondent indemnified Caltex for the loss of the petroleum cargo in the full amount of ₱7,455,421.08.[6]

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[1] *Rollo*, pp. 51-64; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court), with Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Arsenio J. Magpale (retired/deceased) concurring.

[2] Records (Volume I), pp. 1-2.

[3] *Id*. at 6-9.

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

[5] *Rollo*, p. 53.

[6] Records (Volume II), pp. 390-391.

On March 5, 1992, respondent filed a complaint against Vector, Soriano, and Sulpicio Lines, Inc. to recover the full amount of ₱7,455,421.08 it paid to Caltex (Civil Case No. 92-620).[7] The case was raffled to Branch 145 of the Regional Trial Court (RTC) in Makati City.

On December 10, 1997, the RTC issued a resolution dismissing Civil Case No. 92-620 on the following grounds:

> This action is upon a quasi-delict and as such must be commenced within four [4] years from the day they may be brought. [Art. 1145 in relation to Art. 1150, Civil Code] "From the day [the action] may be brought" means from the day the quasi-delict occurred. [*Capuno v. Pepsi Cola*, 13 SCRA 663]
>
> The tort complained of in this case occurred on 20 December 1987. The action arising therefrom would under the law prescribe, unless interrupted, on 20 December 1991.
>
> When the case was filed against defendants Vector Shipping and Francisco Soriano on 5 March 1992, the action not having been interrupted, had already prescribed.
>
> Under the same situation, the cross-claim of Sulpicio Lines against Vector Shipping and Francisco Soriano filed on 25 June 1992 had likewise prescribed.
>
> The letter of demand upon defendant Sulpicio Lines allegedly on 6 November 1991 did not interrupt the [tolling] of the prescriptive period since there is no evidence that it was actually received by the addressee. Under such circumstances, the action against Sulpicio Lines had likewise prescribed.
>
> Even assuming that such written extra-judicial demand was received and the prescriptive period interrupted in accordance with Art. 1155, Civil Code, it was only for the 10-day period within which Sulpicio Lines was required to settle its obligation. After that period lapsed, the prescriptive period started again. A new 4-year period to file action was not created by the extra-judicial demand; it merely suspended and extended the period for 10 days, which in this case meant that the action should be commenced by 30 December 1991, rather than 20 December 1991.

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[7] Records (Volume I), pp. 1-5.

Thus, when the complaint against Sulpicio Lines was filed on 5 March 1992, the action had prescribed.

PREMISES CONSIDERED, the complaint of American Home Assurance Company and the cross-claim of Sulpicio Lines against Vector Shipping Corporation and Francisco Soriano are **DISMISSED.**

Without costs.

SO ORDERED.[8]

Respondent appealed to the CA, which promulgated its assailed decision on July 22, 2003 reversing the RTC.[9] Although thereby absolving Sulpicio Lines, Inc. of any liability to respondent, the CA held Vector and Soriano jointly and severally liable to respondent for the reimbursement of the amount of ₱7,455,421.08 paid to Caltex, explaining:

x x x x x x x x x

The resolution of this case is primarily anchored on the determination of what kind of relationship existed between Caltex and M/V Dona Paz and between Caltex and M/T Vector for purposes of applying the laws on prescription. The Civil Code expressly provides for the number of years before the extinctive prescription s[e]ts in depending on the relationship that governs the parties.

x x x x x x x x x

After a careful perusal of the factual milieu and the evidence adduced by the parties, We are constrained to rule that the relationship that existed between Caltex and M/V Dona Paz is that of a **quasi-delict** while that between Caltex and M/T Vector is **culpa contractual** based on a Contract of Affreightment or a charter party.

x x x x x x x x x

On the other hand, the claim of appellant against M/T Vector is anchored on a breach of contract of affreightment. The appellant averred that M/T Vector committed such act for having misrepresented to the appellant that said vessel is seaworthy when in fact it is not. The contract was executed between Caltex and M/T Vector on

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[8] *Rollo*, pp. 67-68.

[9] *Supra* note 1.

September 30, 1987 for the latter to transport thousands of barrels of different petroleum products. Under **Article 1144** of the New Civil Code, actions based on written contract must be brought within 10 years from the time the right of action accrued. A passenger of a ship, or his heirs, can bring an action based on culpa contractual within a period of 10 years because the ticket issued for the transportation is by itself a complete written contract (***Peralta de Guerrero vs. Madrigal Shipping Co., L 12951, November 17, 1959***). Viewed with reference to the statute of limitations, an action against a carrier, whether of goods or of passengers, for injury resulting from a breach of contract for safe carriage is one on contract, and not in tort, and is therefore, in the absence of a specific statute relating to such actions governed by the statute fixing the period within which actions for breach of contract must be brought ***(53 C.J.S. 1002 citing Southern Pac. R. Co. of Mexico vs. Gonzales 61 P. 2d 377, 48 Ariz. 260, 106 A.L.R. 1012)***.

Considering that We have already concluded that the prescriptive periods for filing action against M/V Doña Paz based on ***quasi delict*** and M/T Vector based on ***breach of contract*** have not yet expired, are We in a position to decide the appeal on its merit.

We say yes.

x x x x x x x x x

Article 2207 of the Civil Code on subrogation is explicit that if the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company should be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. Undoubtedly, the herein appellant has the rights of a subrogee to recover from M/T Vector what it has paid by way of indemnity to Caltex.

WHEREFORE, foregoing premises considered, the decision dated December 10, 1997 of the RTC of Makati City, Branch 145 is hereby REVERSED. Accordingly, the defendant-appellees Vector Shipping Corporation and Francisco Soriano are held jointly and severally liable to the plaintiff-appellant American Home Assurance Company for the payment of ₱7,455,421.08 as and by way of ***actual damages***.

SO ORDERED.[10]

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[10] *Rollo,* pp. 55-64.

Respondent sought the partial reconsideration of the decision of the CA, contending that Sulpicio Lines, Inc. should also be held jointly liable with Vector and Soriano for the actual damages awarded.[11] On their part, however, Vector and Soriano immediately appealed to the Court on September 12, 2003.[12] Thus, on October 1, 2003, the CA held in abeyance its action on respondent's partial motion for reconsideration pursuant to its internal rules until the Court has resolved this appeal.[13]

Issues

The main issue is whether this action of respondent was already barred by prescription for bringing it only on March 5, 1992. A related issue concerns the proper determination of the nature of the cause of action as arising either from a quasi-delict or a breach of contract.

The Court will not pass upon whether or not Sulpicio Lines, Inc. should also be held jointly liable with Vector and Soriano for the actual damages claimed.

Ruling

The petition lacks merit.

Vector and Soriano posit that the RTC correctly dismissed respondent's complaint on the ground of prescription. They insist that this action was premised on a quasi-delict or upon an injury to the rights of the plaintiff, which, pursuant to Article 1146 of the *Civil Code*, must be instituted within four years from the time the cause of action accrued; that because respondent's cause of action accrued on December 20, 1987, the date of the collision, respondent had only four years, or until December 20, 1991, within which to bring its action, but its complaint was filed only on March 5, 1992, thereby rendering its action already barred for being commenced beyond the four-year prescriptive

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[11] CA *rollo*, pp. 106-120.

[12] *Rollo*, pp. 10-35.

[13] CA *rollo*, p. 189.

period;[14] and that there was no showing that respondent had made extrajudicial written demands upon them for the reimbursement of the insurance proceeds as to interrupt the running of the prescriptive period.[15]

We concur with the CA's ruling that respondent's action did not yet prescribe. The legal provision governing this case was not Article 1146 of the *Civil Code*,[16] but Article 1144 of the *Civil Code*, which states:

Article 1144. The following actions must be brought within ten years from the time the cause of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

We need to clarify, however, that we cannot adopt the CA's characterization of the cause of action as based on the contract of affreightment between Caltex and Vector, with the breach of contract being the failure of Vector to make the M/T Vector seaworthy, as to make this action come under Article 1144 (1), *supra*. Instead, we find and hold that that the present action was not upon a written contract, but upon an obligation created by law. Hence, it came under Article 1144 (2) of the *Civil Code*. This is because the subrogation of respondent to the rights of Caltex as the insured was by virtue of the express provision of law embodied in Article 2207 of the *Civil Code*, to wit:

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[14] *Rollo*, pp. 20-24.

[15] *Id*. at 24-27.

[16] Article 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;

(2) Upon a quasi-delict. (n)

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law, including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year. (As amended by PD No. 1755, Dec. 24, 1980.)

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, **the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract**. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis supplied)

The juridical situation arising under Article 2207 of the *Civil Code* is well explained in *Pan Malayan Insurance Corporation v. Court of Appeals*,[17] as follows:

Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay. **Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer** [Compania Maritima v. Insurance Company of North America, G.R. No. L-18965, October 30, 1964, 12 SCRA 213; Fireman's Fund Insurance Company v. Jamilla & Company, Inc., G.R. No. L-27427, April 7, 1976, 70 SCRA 323].[18]

Verily, the contract of affreightment that Caltex and Vector entered into did not give rise to the legal obligation of Vector and Soriano to pay the demand for reimbursement by respondent because it concerned only the agreement for the transport of Caltex's petroleum cargo. As the Court has aptly put it in *Pan Malayan Insurance Corporation v. Court of Appeals*, *supra*, respondent's right of subrogation pursuant to Article 2207, *supra*,

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[17] G.R. No. 81026, April 3, 1990, 184 SCRA 54, 58.

[18] Bold emphasis supplied.

was "not dependent upon, nor d[id] it grow out of, any privity of contract or upon written assignment of claim [but] accrue[d] simply upon payment of the insurance claim by the insurer."

Considering that the cause of action accrued as of the time respondent actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988,[19] the action was not yet barred by the time of the filing of its complaint on March 5, 1992,[20] which was well within the 10-year period prescribed by Article 1144 of the *Civil Code*.

The insistence by Vector and Soriano that the running of the prescriptive period was not interrupted because of the failure of respondent to serve any extrajudicial demand was rendered inconsequential by our foregoing finding that respondent's cause of action was not based on a quasi-delict that prescribed in four years from the date of the collision on December 20, 1987, as the RTC misappreciated, but on an obligation created by law, for which the law fixed a longer prescriptive period of ten years from the accrual of the action.

Still, Vector and Soriano assert that respondent had no right of subrogation to begin with, because the complaint did not allege that respondent had actually paid Caltex for the loss of the cargo. They further assert that the subrogation receipt submitted by respondent was inadmissible for not being properly identified by Ricardo C. Ongpauco, respondent's witness, who, although supposed to identify the subrogation receipt based on his affidavit, was not called to testify in court; and that respondent presented only one witness in the person of Teresita Espiritu, who identified Marine Open Policy No. 34-5093-6 issued by respondent to Caltex.[21]

We disagree with petitioners' assertions. It is undeniable that respondent preponderantly established its right of subrogation. Its Exhibit C was Marine Open Policy No. 34-5093-6 that it

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[19] Records (Volume II), p. 390.

[20] Records (Volume I), p. 1.

[21] *Rollo*, pp. 27-28.

had issued to Caltex to insure the petroleum cargo against marine peril.[22] Its Exhibit D was the formal written claim of Caltex for the payment of the insurance coverage of ₱7,455,421.08 coursed through respondent's adjuster.[23] Its Exhibits E to H were marine documents relating to the perished cargo on board the M/V Vector that were processed for the purpose of verifying the insurance claim of Caltex.[24] Its Exhibit I was the subrogation receipt dated July 12, 1988 showing that respondent paid Caltex ₱7,455,421.00 as the full settlement of Caltex's claim under Marine Open Policy No. 34-5093-6.[25] All these exhibits were unquestionably duly presented, marked, and admitted during the trial.[26] Specifically, Exhibit C was admitted as an authentic copy of Marine Open Policy No. 34-5093-6, while Exhibits D, E, F, G, H and I, inclusive, were admitted as parts of the testimony of respondent's witness Efren Villanueva, the manager for the adjustment service of the Manila Adjusters and Surveyors Company.[27]

Consistent with the pertinent law and jurisprudence, therefore, Exhibit I was already enough by itself to prove the payment of ₱7,455,421.00 as the full settlement of Caltex's claim.[28] The payment made to Caltex as the insured being thereby duly documented, respondent became subrogated as a matter of course pursuant to Article 2207 of the *Civil Code*. In legal contemplation, subrogation is the "substitution of another person in the place of the creditor, to whose rights he succeeds in relation to the debt;" and is "independent of any mere contractual relations between the parties to be affected by it, and is broad enough to cover every instance in which one party is required to pay a

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[22] Records (Volume II), pp. 371-384.

[23] *Id*. at 384.

[24] *Id*. at 385-389.

[25] *Id*. at 390.

[26] *Id*. at 510.

[27] *Id*.

[28] *Gaisano Cagayan, Inc., v. Insurance Company of North America*, G.R. No. 147839, June 8, 2006, 490 SCRA 286, 300.

debt for which another is primarily answerable, and which in equity and conscience ought to be discharged by the latter."[29]

Lastly, Vector and Soriano argue that Caltex waived and abandoned its claim by not setting up a cross-claim against them in Civil Case No. 18735, the suit that Sulpicio Lines, Inc. had brought to claim damages for the loss of the M/V Doña Paz from them, Oriental Assurance Company (as insurer of the M/T Vector), and Caltex; that such failure to set up its cross-claim on the part of Caltex, the real party in interest who had suffered the loss, left respondent without any better right than Caltex, its insured, to recover anything from them, and forever barred Caltex from asserting any claim against them for the loss of the cargo; and that respondent was similarly barred from asserting its present claim due to its being merely the successor-in-interest of Caltex.

The argument of Vector and Soriano would have substance and merit had Civil Case No. 18735 and this case involved the same parties and litigated the same rights and obligations. But the two actions were separate from and independent of each other. Civil Case No. 18735 was instituted by Sulpicio Lines, Inc. to recover damages for the loss of its M/V Doña Paz. In contrast, this action was brought by respondent to recover from Vector and Soriano whatever it had paid to Caltex under its marine insurance policy on the basis of its right of subrogation. With the clear variance between the two actions, the failure to set up the cross-claim against them in Civil Case No. 18735 is no reason to bar this action.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on July 22, 2003; and **ORDERS** petitioners to pay the costs of suit.

SO ORDERED.

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

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[29] *II Bouvier's Law Dictionary*, Eighth Edition, p. 3166, citing *Johnson v. Barrett*, 117 Ind. 551, 19 N.E. 199, 10 Am. St. Rep. 83.

THIRD DIVISION

[G.R. No. 172206. July 3, 2013]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ERNESTO M. DE CHAVEZ, ROLANDO L. LONTOC, SR., DR. PORFIRIO C. LIGAYA, ROLANDO L. LONTOC, JR. and GLORIA M. MENDOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM REGIONAL TRIAL COURTS; NO APPEAL MAY BE TAKEN FROM AN INTERLOCUTORY ORDER; INSTANT PETITION TREATED AS ONE FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.— At the outset, the Court must clarify that a petition for review on *certiorari* is not the proper remedy to question the CA Resolution dated April 7, 2006 granting the Writ of Preliminary Injunction and denying petitioner's motion for intervention. Said Resolution did not completely dispose of the case on the merits, hence, it is merely an interlocutory order. As such, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken therefrom. However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court allows *certiorari* as a mode of redress. In this case, the discussion below will show that the assailed Resolution is patently erroneous, and that granting the Office of the Ombudsman the opportunity to be heard in the case pending before the lower court is of primordial importance. Thus, the Court resolves to relax the application of procedural rules by treating the petition as one for *certiorari* under Rule 65 of the Rules of Court.

2. ID.; ID.; INTERVENTION; THE OFFICE OF THE OMBUDSMAN HAD A CLEAR LEGAL INTEREST IN DEFENDING ITS RIGHT TO HAVE ITS JUDGMENT CARRIED OUT.— The CA should have allowed the Office of the Ombudsman to intervene in the appeal pending with the lower court. The wisdom of this course of action has been exhaustively explained in *Office of the Ombudsman v.*

Samaniego. In said case, the CA also issued a Resolution denying the Office of the Ombudsman's motion to intervene. In resolving the issue of whether the Office of the Ombudsman has legal interest to intervene in the appeal of its Decision, the Court expounded, thus: x x x the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. **Its function is critical because public interest (in the accountability of public officers and employees) is at stake.** x x x Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. **It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.** x x x Here, since its power to ensure enforcement of its Joint Decision and Supplemental Resolution is in danger of being impaired, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NOT APPLICABLE WHERE THE RIGHT OF A PARTY IS NOT CLEAR AND UNMISTAKABLE; THE PENALTY OF DISMISSAL FROM THE SERVICE METED ON GOVERNMENT EMPLOYEES OR OFFICIALS IS IMMEDIATELY EXECUTORY IN ACCORDANCE WITH THE VALID RULE OF EXECUTION PENDING APPEAL UNIFORMLY OBSERVED IN ADMINISTRATIVE DISCIPLINARY CASES.— Note that for a writ of preliminary injunction to issue, the following essential requisites must concur, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. In the present case, the right of respondents cannot be said to be clear and unmistakable,

because the prevailing jurisprudence is that the penalty of dismissal from the service meted on government employees or officials is immediately executory in accordance with the valid rule of execution pending appeal uniformly observed in administrative disciplinary cases.

4. ID.; ID.; ID.; THE COURT OF APPEALS' RESOLUTION GRANTING RESPONDENTS' PRAYER FOR A WRIT OF PRELIMINARY INJUNCTION ENJOINING THE IMPLEMENTATION OF THE BOARD RESOLUTION IS PATENTLY ERRONEOUS.— The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*. It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. There can be no cavil that respondents do not have any right to a stay of the Ombudsman's decision dismissing them from service. Perforce, the BSU-BOR acted properly in issuing Resolution No. 18, series of 2005, dated August 22, 2005, pursuant to the order of the Ombudsman, as its legally-mandated duty. The CA's Resolution granting respondents' prayer for a writ of preliminary injunction is patently erroneous.

APPEARANCES OF COUNSEL

Eduardo Padilla for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution[1] of the Court of Appeals (CA), dated April 7, 2006, be reversed and set aside.

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao, concurring; *rollo*, pp. 55-63.

The crux of the controversy is whether the Batangas State University Board of Regents (BSU-BOR) could validly enforce the Office of the Ombudsman's Joint Decision dated February 14, 2005 and Supplemental Resolution dated July 12, 2005, **finding herein respondents guilty of dishonesty and grave misconduct and imposing the penalty of dismissal from service with its accessory penalties**, despite the fact that said Joint Decision and Supplemental Resolution are pending appeal before the CA.

On August 18, 2005, the BSU-BOR received an Order from Deputy Ombudsman Victor Fernandez directing the former to enforce the aforementioned Office of the Ombudsman's Joint Decision and Supplemental Resolution. Pursuant to said Order, the BSU-BOR issued Resolution No. 18, series of 2005, dated August 22, 2005, resolving to implement the Order of the Office of the Ombudsman. Thus, herein respondents filed a petition for injunction with prayer for issuance of a temporary restraining order or preliminary injunction before the Regional Trial Court of Batangas City, Branch 4 (RTC), against the BSU-BOR. The gist of the petition before the RTC is that the BSU-BOR should be enjoined from enforcing the Ombudsman's Joint Decision and Supplemental Resolution because the same are still on appeal and, therefore, are not yet final and executory.

On September 26, 2005, the RTC ordered the dismissal of herein respondents' petition for injunction on the ground of lack of cause of action. Respondents filed their notice of appeal and promptly filed a Motion for Issuance of a Temporary Restraining Order and/or Injunction dated December 8, 2005 with the CA. On February 17, 2006, the CA issued a Resolution granting respondents' prayer for a temporary restraining order enjoining the BSU-BOR from enforcing its Resolution No. 18, series of 2005.

Thereafter, on March 7, 2006, the Office of the Ombudsman filed a Motion to Intervene and to Admit Attached Motion to Recall Temporary Restraining Order, with the Motion to Recall Temporary Restraining Order attached thereto. Respondents opposed said motion and then filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction. On April 7, 2006, the CA

issued the Resolution subject of the present petition, pertinent portions of which are reproduced below:

> At the outset, let it be emphasized that We are accepting and taking cognizance of the pleadings lodged by the Office of the Ombudsman only in so far as to afford it with ample opportunity to comment on and oppose appellants' application for injunctive relief, but not for the purpose of allowing the Ombudsman to formally and actively intervene in the instant appeal. Basically, this is a regular appeal impugning the disposition of the trial court, the pivotal issue of which is only for the appellants and the Board of Regents of BSU to settle and contest, and which may be completely adjudicated upon without the active participation of the Office of the Ombudsman.
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> x x x x x x x x x
>
> In the final reckoning, We stand firm by Our conclusion that the administrative penalty of dismissal from the service imposed upon herein appellants is not yet final and immediately executory in nature in view of the appeal interposed therefrom by the appellants before this Court, and this fact, in the end, impelled Us to act with favor upon appellants' prayer for injunctive relief to stay the execution of the impugned Resolution of the Board of Regents of BSU.
>
> Wherefore, premises considered, the Ombudsman's Motion to Recall the TRO is denied. On the other hand, appellants' Urgent Motion for Issuance of a Writ of Preliminary Injunction is granted. Accordingly, let a Writ of Preliminary Injunction be issued, as it is hereby issued, conditioned upon the posting by the appellants of an Injunction Bond in the sum of Php10,000.00, enjoining the Board of Regents of BSU, and all other persons and agents acting under its command authority, pending the complete resolution of this appeal, from effecting the enforcement and implementation of its Resolution No. 18, Series of 2005 issued pursuant to the July 12, 2005 Supplemental Resolution of the Ombudsman, Central Office.
>
> SO ORDERED.[2]

Petitioners then filed a petition for review on *certiorari* before this Court, assailing the aforequoted CA Resolution dated April 7, 2006, alleging that:

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[2] *Rollo*, pp. 57-63.

I.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS DISREGARDED THE WELL-ENTRENCHED RULE AGAINST FORUM SHOPPING WHEN, INSTEAD OF OUTRIGHTLY DISMISSING RESPONDENTS' PETITION, THE SAID COURT TOOK COGNIZANCE OF THE PETITION AND SUBSEQUENTLY ISSUED ITS RESOLUTIONS DATED 17 FEBRUARY 2006 AND 7 APRIL 2006, RESPECTIVELY;

II.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY OVERLOOKED THE PROVISIONS OF RULE 58 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE WHEN IT TOOK COGNIZANCE OF RESPONDENTS' UNVERIFIED PETITION AND SUBSEQUENTLY ISSUED ITS 17 FEBRUARY 2006 AND 7 APRIL 2006 RESOLUTIONS;

III.

THE ISSUANCE BY THE HONORABLE COURT OF APPEALS OF THE 17 FEBRUARY 2006 AND 7 APRIL 2006 RESOLUTIONS ENJOINING THE IMPLEMENTATION OF BOARD RESOLUTION NO. 18, SERIES OF 2005 ISSUED BY THE BOARD OF REGENTS OF BATANGAS STATE UNIVERSITY UNDULY DISREGARDS THE ESTABLISHED RULES RELATIVE TO IMPLEMENTATION OF OMBUDSMAN DECISION PENDING APPEAL, CONSIDERING THAT:

A. BOARD RESOLUTION NO. 18, SERIES OF 2005 WAS ISSUED BY THE BOARD OF REGENTS OF THE BATANGAS STATE UNIVERSITY PURSUANT TO THE JOINT DECISION AND SUPPLEMENTAL RESOLUTION ISSUED BY THE OFFICE OF THE OMBUDSMAN.

B. UNDER THE OMBUDSMAN RULES OF PROCEDURE, AN APPEAL DOES NOT STAY THE EXECUTION OF DECISIONS, RESOLUTIONS OR ORDERS ISSUED BY THE OFFICE OF THE OMBUDSMAN.

IV.

RESPONDENTS ARE NOT ENTITLED TO THE INJUNCTIVE RELIEF PRAYED FOR IN THEIR UNVERIFIED MOTION FILED BEFORE THE HONORABLE COURT OF APPEALS.[3]

Controverting petitioner's claims, respondents in turn allege that:

1. PETITIONER (OMBUDSMAN) HAS NO LEGAL PERSONALITY TO INSTITUTE THE INSTANT PETITION INASMUCH AS IT IS NOT A PARTY TO THE APPEALED CASE PENDING BEFORE THE COURT OF APPEALS;

2. ASSUMING THAT THE PETITIONER HAS THE LEGAL PERSONALITY TO INTERVENE IN THE APPEALED CASE BEFORE THE COURT OF APPEALS, THE INSTANT PETITION IS NOT THE PROPER RECOURSE AVAILABLE TO THE PETITIONER; AND

3. THE COURT OF APPEALS DID NOT COMMIT ANY GRAVE ABUSE OF DISCRETION IN ISSUING THE ASSAILED RESOLUTIONS.[4]

At the outset, the Court must clarify that a petition for review on *certiorari* is not the proper remedy to question the CA Resolution dated April 7, 2006 granting the Writ of Preliminary Injunction and denying petitioner's motion for intervention. Said Resolution did not completely dispose of the case on the merits, hence, it is merely an interlocutory order. As such, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken therefrom. However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court allows *certiorari* as a mode of redress.[5]

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[3] *Id*. at. 22-24.

[4] *Id*. at 101.

[5] *Equitable PCI Bank, Inc. vs. Fernandez*, G.R. No. 163117, December 18, 2009, 608 SCRA 433, 439-440.

In this case, the discussion below will show that the assailed Resolution is patently erroneous, and that granting the Office of the Ombudsman the opportunity to be heard in the case pending before the lower court is of primordial importance. Thus, the Court resolves to relax the application of procedural rules by treating the petition as one for *certiorari* under Rule 65 of the Rules of Court.

The CA should have allowed the Office of the Ombudsman to intervene in the appeal pending with the lower court. The wisdom of this course of action has been exhaustively explained in *Office of the Ombudsman v. Samaniego.*[6] In said case, the CA also issued a Resolution denying the Office of the Ombudsman's motion to intervene. In resolving the issue of whether the Office of the Ombudsman has legal interest to intervene in the appeal of its Decision, the Court expounded, thus:

> x x x the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. **Its function is critical because public interest (in the accountability of public officers and employees) is at stake.**
>
> x x x x x x x x x

The Office of the Obudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:

> "2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision x x x."

In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the

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[6] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. **It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.**

It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court after a consideration of the appropriate circumstances. However, such discretion is not without limitations. One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution. The CA should have considered the nature of the Ombudsman's powers as provided in the Constitution and RA 6770.

x x x x x x x x x

Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. **The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest.** What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?[7]

Here, since its power to ensure enforcement of its Joint Decision and Supplemental Resolution is in danger of being impaired, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention.

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[7] *Id*. at 576-581. (Emphasis supplied; citations omitted)

A discussion of the next issue of the propriety of the issuance of a writ of preliminary injunction in this case would necessarily touch on the very merits of the case, *i.e.*, whether the concerned government agencies and instrumentalities may execute the Office of the Ombudsman's order to dismiss a government employee from service even if the Ombudsman's decision is pending appeal. It would also be a great waste of time to remand the case back to the CA, considering that the entire records of the proceedings have already been elevated to this Court. Thus, at this point, the Court shall fully adjudicate the main issue in the case.

Note that for a writ of preliminary injunction to issue, the following essential requisites must concur, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage.[8] In the present case, the right of respondents cannot be said to be clear and unmistakable, because the prevailing jurisprudence is that the penalty of dismissal from the service meted on government employees or officials is immediately executory in accordance with the valid rule of execution pending appeal uniformly observed in administrative disciplinary cases. In *Facura v. Court of Appeals*,[9] the Court fully threshed out this matter, thus:

> The issue of whether or not an appeal of the Ombudsman decision in an administrative case carries with it the immediate suspension of the imposed penalty has been laid to rest in the recent resolution of the case of *Ombudsman v. Samaniego*, where this Court held that the decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ, to wit:
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> "Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

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[8] *Strategic Alliance Development Corporation vs. Star Infrastructure Development Corporation*, G.R. No. 187872, April 11, 2011, 647 SCRA 545, 555-556.

[9] G.R. No. 184263, February 16, 2011, 643 SCRA 428.

> SEC. 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.
>
> **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.**
>
> **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.** The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer. [Emphases supplied]

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*. It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH,* we held:

> The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an

absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

x x x x x x x x x

x x x Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. **For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.**

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other. [Emphases supplied]

Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order *(A.O.)* No. 17, is categorical in providing that an appeal shall not stop an Ombudsman decision from being executory. This rule applies to the appealable decisions of the Ombudsman, namely, those where the penalty imposed is other than public censure or reprimand, or

a penalty of suspension of more than one month, or a fine equivalent to more than one month's salary. Hence, the dismissal of De Jesus and Parungao from the government service is immediately executory pending appeal.

The aforementioned Section 7 is also clear in providing that in case the penalty is removal and the respondent wins his appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the removal. As explained above, there is no such thing as a vested interest in an office, or an absolute right to hold office, except constitutional offices with special provisions on salary and tenure. The Rules of Procedure of the Ombudsman being procedural, no vested right of De Jesus and Parungao would be violated as they would be considered under preventive suspension, and entitled to the salary and emoluments they did not receive in the event that they would win their appeal.

The ratiocination above also clarifies the application of Rule 43 of the Rules of Court in relation to Section 7 of the Rules of Procedure of the Office of the Ombudsman. The CA, even on terms it may deem just, has no discretion to stay a decision of the Ombudsman, as such procedural matter is governed specifically by the Rules of Procedure of the Office of the Ombudsman.

The CA's issuance of a preliminary mandatory injunction, staying the penalty of dismissal imposed by the Ombudsman in this administrative case, is thus an encroachment on the rule-making powers of the Ombudsman under Section 13 (8), Article XI of the Constitution, and Sections 18 and 27 of R.A. No. 6770, which grants the Office of the Ombudsman the authority to promulgate its own rules of procedure. The issuance of an injunctive writ renders nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.[10]

From the foregoing elaboration, there can be no cavil that respondents do not have any right to a stay of the Ombudsman's decision dismissing them from service. Perforce, the BSU-BOR acted properly in issuing Resolution No. 18, series of 2005, dated August 22, 2005, pursuant to the order of the Ombudsman,

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[10] *Id.* at 450-454.

as its legally-mandated duty. The CA's Resolution granting respondents' prayer for a writ of preliminary injunction is patently erroneous.

WHEREFORE, the petition is **GRANTED.** The Resolution of the Court of Appeals, dated April 7, 2006, is **SET ASIDE.** The Order of the Regional Trial Court of Batangas City, Branch 4, dated September 26, 2005 in Civil Case No. 7775, is **REINSTATED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177763. July 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARY VERGARA *Y* ORIEL and JOSEPH INOCENCIO[1] *Y* PAULINO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST ADJUDGED BY TRIAL COURTS.— Jurisprudence is consistent in reiterating that the trial court is in a better position to adjudge the credibility of witnesses especially if it is affirmed by the Court of Appeals. *People v. Clores* reminds us that: When it comes to the matter of credibility of a witness, settled are the guiding rules some of which are that (1) the Appellate court will not disturb the

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[1] *Rollo*, p. 112; per Resolution dated June 25, 2008 this case has been declared closed and terminated insofar as Joseph Inocencio is concerned.

factual findings of the lower Court, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, which showing is absent herein; (2) the findings of the Trial Court pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not[;] and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness.

2. ID.; ID.; ID.; ID.; RATIONALE THEREFOR; CASE AT BAR.— The rationale for these guidelines is that, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination, the trial courts are in a better position to decide the question of credibility. On the other hand, this Court is far detached from the details and drama during trial and relies only on the records of the case in its review. On the matter of credence and credibility of witnesses, therefore, this Court admits to its limitations and acknowledges the advantage of the trial court whose findings we give due deference. We see no need to depart from the aforestated rules. A careful review of the records reveals that accused-appellant Vergara failed to negate the findings of the trial court with concrete evidence that it had overlooked, misconstrued or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. We agree with the Court of Appeals when it stated that: The death of the victim, Miguelito Alfante, is directly caused by the stab wounds inflicted by [appellant Vergara] when he placed his left arm on the shoulder of the victim and stabbed him repeatedly in his chest and left forearm with a knife handed [to him] by [appellant Inocencio]. This is an overwhelming evidence, and in stark contrast, all [appellant Vergara] could offer are denial and self-defense. Denial is an intrinsically weak defense, which the accused must buttress with strong evidence of non-culpability to merit credibility. Having failed to satisfy, the denial must necessarily fail.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ESSENTIAL ELEMENTS.— Anent accused-appellant Vergara's claim of self-defense, the following essential elements had to be proved: (1) unlawful aggression on the

part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.

4. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ESTABLISHED BY THE NUMBER AND SEVERITY OF THE WOUNDS RECEIVED BY THE VICTIM WHO WAS RENDERED IMMOBILE AND WITHOUT ANY REAL OPPORTUNITY TO DEFEND HIMSELF OTHER THAN FEEBLY RAISING HIS ARM TO WARD OFF THE ATTACK.— We also agree with the RTC and the Court of Appeals that the acts of accused-appellant Vergara constituted treachery qualifying the crime committed to murder. As we have previously ruled upon, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. Here, accused-appellant Vergara after exchanging words with the victim, threw his arm around the victim's shoulder and proceeded to stab him. The victim was totally unaware of the evil that would befall him. The number and severity of the wounds received by the victim indicated that he was rendered immobile and without any real opportunity to defend himself other than feebly raising his arm to ward off the attack. We, thus, sustain the trial court and the Court of Appeals in finding that the qualifying circumstance of treachery is present in the commission of the crime.

5. ID.; CIVIL LIABILITY; CLAIM FOR LOSS OF EARNING CAPACITY DENIED FOR LACK OF PROOF.— We also agree with the Court of Appeals when it removed the RTC's award respecting the indemnity for the loss of earning capacity. As we have already previously ruled that: Damages for loss of earning capacity is in the nature of actual damages, which as a rule must be duly proven by documentary evidence, not merely by the self-serving testimony of the widow. By way of exception,

damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. In this case, we are constrained to uphold the ruling of the Court of Appeals since no documentary evidence was presented to buttress the claim for the loss of earning capacity of the victim as claimed by his common-law wife. Neither was it shown that the victim was covered by the exceptions mentioned in the above-quoted case. The Court of Appeals stated: Settled is the rule that actual damages, inclusive of expected earnings lost caused by the crime, [must] be proved with a reasonable degree of certainty and on the best evidence to prove obtainable by the injured party. The prosecution failed to meet this criteria, no witness was presented to support the contention of the common-law-wife of the victim that the latter is a self-employed mason earning ₱500.00 a day. Hence, this Court cannot rely on the uncorroborated testimony of the common-law-wife of the victim which lacks specific details or particulars on the claimed loss earnings.

6. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF PROPER IN CASE AT BAR.— Moreover, we deem it proper that an award for exemplary damages be made. We have ruled as follows: Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*. We, thus, award exemplary damages in the amount of ₱30,000.00 to conform to existing jurisprudence.

7. ID.; ID.; AWARD FOR MANDATORY CIVIL INDEMNITY INCREASED TO ₱75,000.00 TO CONFORM TO RECENT JURISPRUDENCE; INTEREST AT THE LEGAL RATE OF 6% PER ANNUM FROM DATE OF FINALITY UNTIL FULLY PAID ALSO IMPOSED ON ALL THE MONETARY AWARDS.— We increase the award for mandatory civil indemnity to ₱75,000.00 to conform to recent jurisprudence. Lastly, we sustain the RTC's award for moral damages in the amount of ₱50,000.00 even in the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. While no amount of damages may totally compensate the sudden and tragic loss of a loved one it is nonetheless awarded to the heirs of the deceased to at least assuage them. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Michael P. Moralde for accused-appellants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the March 30, 2007 **Decision**[2] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02387,[3] affirming with modification the December 29, 2001 **Decision**[4] of the Regional Trial Court (RTC), Branch 116, Pasay City in Crim. Case No. 01-0275, entitled *People of the Philippines v.*

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[2] *Id*. at 3-22; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[3] Entitled *People of the Philippines v. Gary Vergara y Oriel and Joseph Inocencio y Paulino.*

[4] CA *rollo*, pp. 17-27; penned by Judge Eleuterio F. Guerrero.

Gary Vergara y Oriel alias "Gary" and Joseph Inocencio y Paulino alias "Joseph," finding accused-appellants Gary Vergara (Vergara) and Joseph Inocencio (Inocencio) guilty beyond reasonable doubt of murder as principal and accomplice, respectively.

On February 13, 2001, an Information for the crime of murder qualified by treachery was filed against accused-appellants.

On March 12, 2001, upon arraignment, accused-appellants pleaded not guilty to the crime charged.[5] Trial on the merits ensued.

The prosecution established that at around midnight of February 10, 2001, accused-appellants were causing a ruckus on Libertad-Colayco Streets, Pasay City by throwing water bottles at passers-by. At around 2:00 a.m., the victim, Miguelito Alfante, who was seemingly drunk, walked down the street. Vergara approached Alfante and told him: *"Pare, mukhang high na high ka."* Alfante retorted: *"Anong pakialam mo?"* At this juncture, Vergara threw his arm around Alfante's shoulder, received a knife from Inocencio, and suddenly stabbed Alfante. Vergara then said *"Taga rito ako."* Thereafter, Vergara and Inocencio ran from the scene but were pursued by several witnesses. Alfante, meanwhile, was brought to the Pasay City General Hospital where he died.[6]

The autopsy report conducted on the cadaver of the victim revealed that Alfante sustained eight stab wounds: five located on the chest area and three on the left forearm. The victim sustained two fatal wounds: one which severed the left ventricle of the heart and another wound puncturing the lower lobe of the left lung. The Autopsy Report N-01-151[7] signed by Dr. Dominic Agbuda, medico-legal officer of the National Bureau of Investigation who conducted the autopsy, stated that:

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[5] *Id*. at 31.

[6] *Id*. at 18.

[7] Records, p. 91.

CAUSE OF DEATH: MULTIPLE STAB WOUNDS, CHEST, LEFT ARM.

The common-law wife of the victim, Gina Alfante,[8] testified that she incurred the following expenses in connection with the death and burial of Alfante:

a) ₱17,000.00 for the coffin
b) ₱3,000.00 for the *nicho*
c) ₱250.00 for the mass
d) ₱15,000.00 for food and drinks for the wake; and
e) ₱16,000.00 for the burial lot.

Gina further testified that Alfante had been working as a mason prior to his death earning ₱500.00 a day.[9]

In his defense, Vergara denied the version of the prosecution. He testified that on February 10, 2001, at around midnight, he and Inocencio went to a convenience store to buy salted eggs for "*baon*" the following day. When they passed by Libertad corner Colayco Streets in Pasay City to go to the 7-11 convenience store, they saw Alfante together with nine other persons. Contrary to the testimony of prosecution witnesses, it was Alfante who approached Vergara, knife in hand and proceeded to stab him. He was able to evade the attack and grappled with Alfante for possession of the knife and, in the course of their struggle, Alfante sustained his injuries. Inocencio stood by his side for the duration of the incident.[10] Thereafter, he fled the scene. He went to the nearest police station and was subsequently brought to the Ospital ng Maynila for treatment for the injury on his right palm sustained during the tussle.[11]

Dr. Oliver Leyson, Medical Officer III of the Ospital ng Maynila, testified to his medical examination and treatment of

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[8] TSN, June 15, 2001, pp. 6-8.

[9] *Id.* at 8.

[10] TSN, August 15, 2001, pp. 4-12.

[11] TSN, August 29, 2001, pp. 4-6.

Vergara's injury caused by a bladed weapon which he sustained on February 11, 2001.[12]

After evaluating the respective evidence of the contending parties, on December 29, 2001, the RTC found accused-appellants guilty beyond reasonable doubt of the crime of murder as defined under Article 248 of the Revised Penal Code. The decretal portion of the Decision stated:

> **WHEREFORE,** in the light of the foregoing premises and considerations, this Court hereby renders judgment finding the accused GARY VERGARA *Y* ORIEL *alias* GARY and JOSEPH INOCENCIO *Y* PAULINO *alias* JOSEPH both **GUILTY** as principal and accomplice, respectively, for the crime of Murder, as this felony is defined and penalized by Article 248 of the Revised Penal Code, as amended by R.A. 7659, and appreciating in favor of the accused Gary Vergara *y* Oriel *alias* Gary the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, the Court hereby sentences said accused Gary Vergara *y* Oriel alias Gary to suffer the penalty of *reclusion perpetua* and the other accused Joseph Inocencio *y* Paulino *alias* Joseph to suffer an indeterminate penalty of imprisonment ranging from Eight (8) Years and One (1) Day of *Prision Mayor,* as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *Reclusion Temporal*, as maximum, and for them to pay, jointly and severally the Heirs of the deceased Miguelito Alfante the sums of Php51,250.00, as actual damages, Php1,020,000.00, as indemnity for loss of earnings of the same deceased, Php250,00.00 as moral damages, plus costs (sic).[13]

Accused-appellants filed their notice of appeal on February 5, 2002 to the Supreme Court.[14] The appeal was accepted by this Court in its Resolution[15] dated September 4, 2002 but was subsequently transferred to the Court of Appeals pursuant to *People v. Mateo*.[16]

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[12] TSN, August 31, 2001, pp. 2-7.

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

[14] Records, pp. 145-146.

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

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

As in the Court of Appeals, accused-appellants challenged the court *a quo*'s finding of guilt beyond reasonable doubt. They averred that the elements of the crime of murder were not proven.[17] On March 30, 2007, the Court of Appeals affirmed with modification as to the award of damages the Decision of the RTC. The Court of Appeals thus disposed of the appeal in the following manner:

> **WHEREFORE,** premises considered the Decision dated December 29, 2001, of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 116, Pasay City is **AFFIRMED** with **MODIFICATION** in that the accused-appellants are jointly and severally held liable to pay the heirs of the victim, to the exclusion of his common-law-wife, the following amount, to wit:
>
> a. ₱50,000.00 as civil indemnification;
> b. ₱50,000.00 as moral damages; and
> c. ₱51,250.00 as actual damages.[18]

Hence, this appeal.[19] Accused-appellants' confinement was confirmed by the Bureau of Corrections on April 11, 2007.[20]

The appellee[21] manifested that it would not file a supplemental brief.

On May 13, 2008, accused-appellant Joseph P. Inocencio filed a motion to withdraw his appeal stating that he is no longer interested to pursue an appeal.[22] This Court, in a Resolution dated June 25, 2008, granted the motion of appellant Inocencio and declared the case terminated as far as he is concerned.[23]

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[17] CA *rollo*, pp. 93-100.

[18] *Rollo*, p. 22.

[19] CA *rollo*, pp. 127-130.

[20] *Id*. at 131.

[21] *Rollo*, pp. 28-30.

[22] *Id*. at 32.

[23] *Id*. at 34.

Due to the failure of accused-appellant Vergara's counsel to file a supplemental brief, the Court, in a Resolution dated November 19, 2008, resolved to dispense with its filing.[24]

We affirm the March 30, 2007 decision of the Court of Appeals with modification respecting the award of damages.

The pertinent provision in this case is Article 248 of the Revised Penal Code, to wit:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1) With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity[.] (Emphasis added.)

Jurisprudence is consistent in reiterating that the trial court is in a better position to adjudge the credibility of witnesses especially if it is affirmed by the Court of Appeals.[25] *People v. Clores*[26] reminds us that:

> When it comes to the matter of credibility of a witness, settled are the guiding rules some of which are that (1) the Appellate court will not disturb the factual findings of the lower Court, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, which showing is absent herein; (2) the findings of the Trial Court pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not[;] and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness. (Citations omitted.)

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[24] *Id*. at 41.

[25] *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 663.

[26] 263 Phil. 585, 591 (1990).

The rationale for these guidelines is that, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination, the trial courts are in a better position to decide the question of credibility.[27] On the other hand, this Court is far detached from the details and drama during trial and relies only on the records of the case in its review. On the matter of credence and credibility of witnesses, therefore, this Court admits to its limitations and acknowledges the advantage of the trial court whose findings we give due deference.

We see no need to depart from the aforestated rules. A careful review of the records reveals that accused-appellant Vergara failed to negate the findings of the trial court with concrete evidence that it had overlooked, misconstrued or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. We agree with the Court of Appeals when it stated that:

> The death of the victim, Miguelito Alfante, is directly caused by the stab wounds inflicted by [appellant Vergara] when he placed his left arm on the shoulder of the victim and stabbed him repeatedly in his chest and left forearm with a knife handed [to him] by [appellant Inocencio]. This is an overwhelming evidence, and in stark contrast, all [appellant Vergara] could offer are denial and self-defense. Denial is an intrinsically weak defense, which the accused must buttress with strong evidence of non-culpability to merit credibility. Having failed to satisfy, the denial must necessarily fail.[28] (Citation omitted.)

Anent accused-appellant Vergara's claim of self-defense, the following essential elements had to be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[29] A person who invokes self-defense

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[27] *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 155.

[28] *Rollo*, p. 17.

[29] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 502-503.

has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[30]

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life."[31]

In the present case, the element of unlawful aggression is absent. By the testimonies of all the witnesses, the victim's actuations did not constitute unlawful aggression to warrant the use of force employed by accused-appellant Vergara. The records reveal that the victim had been walking home albeit drunk when he passed by accused-appellants. However, there is no indication of any untoward action from him to warrant the treatment that he had by accused-appellant Vergara's hands. As succinctly stated by the RTC:

> [T]he victim was just walking, he [was] neither uttering invectives words nor provoking the [appellants] into a fight. [Appellant Vergara was] the unlawful aggressor. He was the one who put the life of the victim in actual peril. This can be inferred from the wounds sustained by the victim."[32]

It is thus clear that there being no unlawful aggression on the part of the victim, the act of accused-appellant Vergara of taking a knife and stabbing the victim was not made in lawful self-defense.

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[30] *Id*. at 503.

[31] *Id*. at 504.

[32] *Rollo*, p. 18.

We also agree with the RTC and the Court of Appeals that the acts of accused-appellant Vergara constituted treachery qualifying the crime committed to murder. As we have previously ruled upon, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[33]

Here, accused-appellant Vergara after exchanging words with the victim, threw his arm around the victim's shoulder and proceeded to stab him. The victim was totally unaware of the evil that would befall him. The number and severity of the wounds received by the victim indicated that he was rendered immobile and without any real opportunity to defend himself other than feebly raising his arm to ward off the attack. We, thus, sustain the trial court and the Court of Appeals in finding that the qualifying circumstance of treachery is present in the commission of the crime.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. Though there was an appreciation of voluntary surrender as a mitigating circumstance, following the Indeterminate Sentence Law, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.[34]

However, to conform to existing jurisprudence the Court must modify the amount of indemnity for death and exemplary damages awarded by the courts *a quo*.

Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex*

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[33] *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 571-572.

[34] *People v. Escleto*, *supra* note 27 at 159-160.

delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[35]

We agree with the Court of Appeals that the heirs of the victim was able to prove before the trial court, actual damages in the amount of ₱51,250.00 based on the receipts[36] they submitted to the trial court.

We also agree with the Court of Appeals when it removed the RTC's award respecting the indemnity for the loss of earning capacity. As we have already previously ruled that:

> Damages for loss of earning capacity is in the nature of actual damages, which as a rule must be duly proven by documentary evidence, not merely by the self-serving testimony of the widow.
>
> By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[37] (Citations and emphasis omitted.)

In this case, we are constrained to uphold the ruling of the Court of Appeals since no documentary evidence was presented to buttress the claim for the loss of earning capacity of the victim as claimed by his common-law wife. Neither was it shown that the victim was covered by the exceptions mentioned in the above-quoted case. The Court of Appeals stated:

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[35] *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 758.

[36] Records, pp. 79-82.

[37] *Serra v. Mumar*, G.R. No. 193861, March 14, 2012, 668 SCRA 335, 347-348; also *People v. Lopez*, G.R. No. 188902, February 16, 2011, 643 SCRA 524, 528-529.

Settled is the rule that actual damages, inclusive of expected earnings lost caused by the crime, [must] be proved with a reasonable degree of certainty and on the best evidence to prove obtainable by the injured party. The prosecution failed to meet this criteria, no witness was presented to support the contention of the common-law-wife of the victim that the latter is a self-employed mason earning ₱500.00 a day. Hence, this Court cannot rely on the uncorroborated testimony of the common-law-wife of the victim which lacks specific details or particulars on the claimed loss earnings.[38] (Citation omitted.)

Moreover, we deem it proper that an award for exemplary damages be made. We have ruled as follows:

Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.[39] (Emphasis omitted.)

We, thus, award exemplary damages in the amount of ₱30,000.00 to conform to existing jurisprudence.[40]

We increase the award for mandatory civil indemnity to ₱75,000.00 to conform to recent jurisprudence.[41]

Lastly, we sustain the RTC's award for moral damages in the amount of ₱50,000.00 even in the absence of proof of mental

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[38] *Rollo*, p. 21.

[39] *People v. Salafranca*, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 517.

[40] *People v. Escleto, supra* note 27 at 160.

[41] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 520.

and emotional suffering of the victim's heirs.[42] As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[43] While no amount of damages may totally compensate the sudden and tragic loss of a loved one it is nonetheless awarded to the heirs of the deceased to at least assuage them.

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[44]

WHEREFORE, the March 30, 2007 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02387 is **AFFIRMED with MODIFICATION.** Appellant **Gary Vergara *y* Oriel *alias* "Gary"** is found **GUILTY** beyond reasonable doubt of murder, and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is further ordered to pay the heirs of Miguelito Alfante the amounts of ₱51,250.00 as actual damages, ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

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[42] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384; *People v. Fontanilla*, G.R. No. 177743, January 25, 2012, 664 SCRA 150, 162.

[43] *People v. Escleto*, *supra* note 27 at 160.

[44] *Id*.

FIRST DIVISION

[G.R. No. 181277. July 3, 2013]

SWEDISH MATCH PHILIPPINES, INC., *petitioner, vs.* **THE TREASURER OF THE CITY OF MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; A VERIFICATION SIGNED WITHOUT AUTHORITY FROM THE BOARD OF DIRECTORS IS DEFECTIVE; THE REQUIREMENT OF VERIFICATION IS, HOWEVER, SIMPLY A CONDITION AFFECTING THE FORM OF THE PLEADING AND NON-COMPLIANCE DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE.— The power of a corporation to sue and be sued is lodged in the board of directors, which exercises its corporate powers. It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors." Thus, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. Consequently, a verification signed without an authority from the board of directors is defective. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading *fatally* defective. The court may in fact order the correction of the pleading if verification is lacking or, it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed with so that the ends of justice may be served.

2. ID.; ID.; ID.; ID.; ID.; BY SUBMITTING THE PROOF OF AUTHORITY FROM THE BOARD OF DIRECTORS, PETITIONER-CORPORATION RATIFIED THE AUTHORITY OF IT'S FINANCE MANAGER TO

REPRESENT IT IN THE PETITION FILED BEFORE THE TRIAL COURT AND CONSEQUENTLY TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING ON BEHALF OF THE CORPORATION.— In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure. A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. x x x. Additionally, it may be remembered that the Petition filed with the RTC was a claim for a refund of business taxes. x x x. Thus, for this particular case, Ms. Beleno, as finance director, may be said to have been in a position to verify the truthfulness and correctness of the allegations in the claim for a refund of the corporation's business taxes. In *Mediserv v. Court of Appeals,* we said that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.

3. TAXATION; LOCAL TAXATION; MANILA REVENUE CODE; DOUBLE TAXATION, DEFINED; THERE IS DOUBLE TAXATION IF RESPONDENT IS SUBJECTED TO TAXES UNDER SECTIONS 14 AND 21 OF TAX ORDINANCE NO. 7794.— At the outset, it must be pointed out that the issue of double taxation is not novel, as it has already been settled by this Court in *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, in this wise: Petitioners obstinately ignore the exempting proviso in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting proviso was precisely included in said section so as to avoid

double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character. Using the aforementioned test, the Court finds that **there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.**

4. ID.; ID.; ID.; ID.; ID.; SECTION 143 OF THE LOCAL GOVERNMENT CODE, WHICH IS THE SOURCE OF THE POWER OF CITIES AND MUNICIPALITIES TO IMPOSE A LOCAL BUSINESS TAX, REVISITED.— The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that **when a municipality or city has already imposed a business tax on manufacturers, *etc*. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc*. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance**

No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]. x x x Further, we agree with petitioner that Ordinance Nos. 7988 and 8011 cannot be the basis for the collection of business taxes. In *Coca-Cola*, this Court had the occasion to rule that Ordinance Nos. 7988 and 8011 were null and void for failure to comply with the required publication for three (3) consecutive days.

5. ID.; ID.; ID.; ID.; ID.; ID.; REFUND OF PAYMENT MADE FOR BUSINESS TAX OF A PERSON SUBJECTED TO DOUBLE TAXATION, PROPER; CASE AT BAR.— Accordingly, respondent's assessment under both Sections 14 and 21 had no basis. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. Hence, payments made under Section 21 must be refunded in favor of petitioner. It is undisputed that petitioner paid business taxes based on Sections 14 and 21 for the fourth quarter of 2001 in the total amount of ₱470,932.21. Therefore, it is entitled to a refund of ₱164,552.04 corresponding to the payment under Section 21 of the Manila Revenue Code.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Renato G. Dela Cruz and Editha C. Fernandez for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] filed by Swedish Match Philippines, Inc. (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax

[1] *Rollo*, pp. 26-75.

Appeals *En Banc* (CTA *En Banc*) Decision[2] dated 1 October 2007 and Resolution[3] dated 14 January 2008 in C.T.A. EB No. 241.

THE FACTS

On 20 October 2001, petitioner paid business taxes in the total amount of ₱470,932.21.[4] The assessed amount was based on Sections 14[5] and 21[6] of Ordinance No. 7794, otherwise known

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[2] *Id*. at 76-87; penned by Associate Justice Juanito C. Castañeda Jr. and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. The CTA *En Banc* affirmed the Decision dated 8 August 2006 and Resolution dated 27 November 2006 rendered by the CTA Second Division in C.T.A. AC No. 6, which affirmed the dismissal of petitioner's claim for a refund. The claim was dismissed by the Regional Trial Court (RTC) of Manila, Branch 21 on the ground of lack of legal capacity to sue and failure to establish a cause of action.

[3] *Id*. at 88-90.

[4] *Id*. at 269.

[5] SEC. 14. *Tax on Manufacturers, Assemblers and other Processors*. — There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines on manufacturers of any articles of commerce of whatever kind or nature in accordance with the following schedule.

With gross receipts or sales for the preceding calendar year in the amount of:

xxx.

[6] SEC. 21. *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes under the NIRC* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code, hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

A) On person who sells goods and services in the course of trade or businesses; xxx

PROVIDED, that all registered businesses in the City of Manila already paying the aforementioned tax shall be exempted from payment thereof.

as the Manila Revenue Code, as amended by Ordinance Nos. 7988 and 8011. Out of that amount, ₱164,552.04 corresponded to the payment under Section 21.[7]

Assenting that it was not liable to pay taxes under Section 21, petitioner wrote a letter[8] dated 17 September 2003 to herein respondent claiming a refund of business taxes the former had paid pursuant to the said provision. Petitioner argued that payment under Section 21 constituted double taxation in view of its payment under Section 14.

On 17 October 2003, for the alleged failure of respondent to act on its claim for a refund, petitioner filed a Petition for Refund of Taxes[9] with the RTC of Manila in accordance with Section 196 of the Local Government Code of 1991. The Petition was docketed as Civil Case No. 03-108163.

On 14 June 2004, the Regional Trial Court (RTC), Branch 21 of Manila rendered a Decision[10] in Civil Case No. 03-108163 dismissing the Petition for the failure of petitioner to plead the latter's capacity to sue and to state the authority of Tiarra T. Batilaran-Beleno (Ms. Beleno), who had executed the Verification and Certification of Non-Forum Shopping.

In denying petitioner's Motion for Reconsideration, the RTC went on to say that Sections 14 and 21 pertained to taxes of a different nature and, thus, the elements of double taxation were wanting in this case.

On appeal, the CTA Second Division affirmed the RTC's dismissal of the Petition for Refund of Taxes on the ground that petitioner had failed to state the authority of Ms. Beleno to institute the suit.

The CTA *En Banc* likewise denied the Petition for Review, ruling as follows:

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[7] *Supra* note 1, at 190-191.

[8] *Id*. at 263-268.

[9] *Id*. at 284-296.

[10] *Id*. at 254-257.

In this case, the plaintiff is the Swedish Match Philippines, Inc. However, as found by the RTC as well as the Court in Division, the signatory of the verification and/or certification of non-forum shopping is Ms. Beleno, the company's Finance Manager, and that there was no board resolution or secretary's certificate showing proof of Ms. Beleno's authority in acting in behalf of the corporation at the time the initiatory pleading was filed in the RTC. It is therefore, correct that the case be dismissed.

WHEREFORE, premises considered, the petition for review is hereby **DENIED.** Accordingly, the assailed Decision and the Resolution dated August 8, 2006 and November 27, 2006, respectively, are hereby **AFFIRMED *in toto.***

SO ORDERED.[11]

ISSUES

In order to determine the entitlement of petitioner to a refund of taxes, the instant Petition requires the resolution of two main issues, to wit:

1) Whether Ms. Beleno was authorized to file the Petition for Refund of Taxes with the RTC; and

2) Whether the imposition of tax under Section 21 of the Manila Revenue Code constitutes double taxation in view of the tax collected and paid under Section 14 of the same code.[12]

THE COURT'S RULING

Authority from the board to sign the Verification and Certification of Non-Forum Shopping

Anent the procedural issue, petitioner argues that there can be no dispute that Ms. Beleno was acting within her authority when she instituted the Petition for Refund before the RTC, notwithstanding that the Petition was not accompanied by a

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[11] *Id*. at 86.

[12] *Id*. at 34-35.

Secretary's Certificate. Her authority was ratified by the Board in its Resolution adopted on 19 May 2004. Thus, even if she was not authorized to execute the Verification and Certification at the time of the filing of the Petition, the ratification by the board of directors retroactively applied to the date of her signing.

On the other hand, respondent contends that petitioner failed to establish the authority of Ms. Beleno to institute the present action on behalf of the corporation. Citing *Philippine Airlines v. Flight Attendants and Stewards Association of the Philippines (PAL v. FASAP)*,[13] respondent avers that the required certification of non-forum shopping should have been valid at the time of the filing of the Petition. The Petition, therefore, was defective due to the flawed Verification and Certification of Non-Forum Shopping, which were insufficient in form and therefore a clear violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure.

We rule for petitioner.

Time and again, this Court has been faced with the issue of the validity of the verification and certification of non-forum shopping, absent any authority from the board of directors.

The power of a corporation to sue and be sued is lodged in the board of directors, which exercises its corporate powers.[14] It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors."[15] Thus, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[16]

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[13] 515 Phil. 579, 584 (2006).

[14] *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories, Philippines, Inc.*, G.R. No. 164757, 18 October 2010, 633 SCRA 320, 328.

[15] *Id*. at 329.

[16] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 994 (2001).

Consequently, a verification signed without an authority from the board of directors is defective. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading *fatally* defective.[17] The court may in fact order the correction of the pleading if verification is lacking or, it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed with so that the ends of justice may be served.[18]

Respondent cites this Court's ruling in *PAL v. FASAP*,[19] where we held that only individuals vested with authority by a valid board resolution may sign a certificate of non-forum shopping on behalf of a corporation. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.[20] In a number of cases, however, we have recognized exceptions to this rule. *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*[21] provides:

> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, we ruled that the

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[17] *Id.* at 994-995.

[18] *Id.* at 995.

[19] *Supra* note 13, at 582.

[20] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, 23 April 2012.

[21] G.R. No. 151413, 13 February 2008, 545 SCRA 10, 18-19.

Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. **The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."** (Emphases supplied)

Given the present factual circumstances, we find that the liberal jurisprudential exception may be applied to this case.

A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made.[22] In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure.

A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of

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[22] *Mediserv, Inc. v. Court of Appeals (Special Former 13th Division)*, G.R. No. 161368, 5 April 2010, 617 SCRA 284, 296.

Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. The Minutes of the Special Meeting of the Board of Directors of petitioner-corporation on 19 May 2004 reads:

> RESOLVED, that Tiarra T. Batilaran-Beleno, Finance Director of the Corporation, be authorized, as she is hereby authorized and empowered to represent, act, negotiate, sign, conclude and deliver, for and in the name of the Corporation, any and all documents for the application, prosecution, defense, arbitration, conciliation, execution, collection, compromise or settlement of all local tax refund cases pertaining to payments made to the City of Manila pursuant to Section 21 of the Manila Revenue Code, as amended;
>
> RESOLVED, FURTHER, that Tiarra T. Batilaran-Beleno be authorized to execute Verifications and/or Certifications as to Non-Forum Shopping of Complaints/Petitions that may be filed by the Corporation in the above-mentioned tax-refund cases;
>
> **RESOLVED, FURTHER, that the previous institution by Tiarra T. Batilaran-Beleno of tax refund cases on behalf of the Corporation, specifically Civil Cases Nos. 01-102074, 03-108163, and, 04-109044, all titled "Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila" and pending in the Regional Trial Court of Manila, as well as her execution of the Verifications and/or Certifications as to Non-Forum Shopping in these tax refund cases, are hereby, approved and ratified in all respects**. (Emphasis supplied)

Clearly, this is not an ordinary case of belated submission of proof of authority from the board of directors. Petitioner-corporation ratified the authority of Ms. Beleno to represent it in the Petition filed before the RTC, particularly in Civil Case No. 03-108163, and consequently to sign the verification and certification of non-forum shopping on behalf of the corporation. This fact confirms and affirms her authority and gives this Court all the more reason to uphold that authority.[23]

Additionally, it may be remembered that the Petition filed with the RTC was a claim for a refund of business taxes. It

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[23] *Supra* note 14, at 330-331.

should be noted that the nature of the position of Ms. Beleno as the corporation's finance director/manager is relevant to the determination of her capability and sufficiency to verify the truthfulness and correctness of the allegations in the Petition. A finance director/manager looks after the overall management of the financial operations of the organization and is normally in charge of financial reports, which necessarily include taxes assessed and paid by the corporation. Thus, for this particular case, Ms. Beleno, as finance director, may be said to have been in a position to verify the truthfulness and correctness of the allegations in the claim for a refund of the corporation's business taxes.

In *Mediserv v. Court of Appeals*,[24] we said that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.[25]

More importantly, taking into consideration the substantial issue of this case, we find a special circumstance or compelling reason to justify the relaxation of the rule. Therefore, we deem it more in accord with substantive justice that the case be decided on the merits.

Double taxation

As to the substantive issues, petitioner maintains that the enforcement of Section 21 of the Manila Revenue Code constitutes double taxation in view of the taxes collected under Section 14 of the same code. Petitioner points out that Section 21 is not in itself invalid, but the enforcement of this provision would constitute double taxation if business taxes have already been paid under Section 14 of the same revenue code. Petitioner further

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[24] *Supra* note 22.

[25] *Id*. at 296-297.

argues that since Ordinance Nos. 7988 and 8011 have already been declared null and void in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*,[26] all taxes collected and paid on the basis of these ordinances should be refunded.

In turn, respondent argues that Sections 14 and 21 pertain to two different objects of tax; thus, they are not of the same kind and character so as to constitute double taxation. Section 14 is a tax on manufacturers, assemblers, and other processors, while Section 21 applies to businesses subject to excise, value-added, or percentage tax. Respondent posits that under Section 21, petitioner is merely a withholding tax agent of the City of Manila.

At the outset, it must be pointed out that the issue of double taxation is not novel, as it has already been settled by this Court in *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*,[27] in this wise:

> Petitioners obstinately ignore the exempting proviso in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting proviso was precisely included in said section so as to avoid double taxation.
>
> Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.
>
> Using the aforementioned test, the Court finds that **there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila**

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[26] 526 Phil. 249 (2006).

[27] G.R. No. 181845, 4 August 2009, 595 SCRA 299.

contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that **when a municipality or city has already imposed a business tax on manufacturers, *etc*. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc*. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].**[28] (Emphases supplied)

Based on the foregoing reasons, petitioner should not have been subjected to taxes under Section 21 of the Manila Revenue Code for the fourth quarter of 2001, considering that it had already been paying local business tax under Section 14 of the same ordinance.

Further, we agree with petitioner that Ordinance Nos. 7988 and 8011 cannot be the basis for the collection of business taxes. In *Coca-Cola*,[29] this Court had the occasion to rule that Ordinance Nos. 7988 and 8011 were null and void for failure to comply

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[28] *Id*. at 320-322.

[29] *Supra* note 26.

with the required publication for three (3) consecutive days. Pertinent portions of the ruling read:

It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "*[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, anyway, does not legally exist.***" Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on *Certiorari* in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.[30] (Emphasis in the original)

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[30] *Id*. at 260-261.

Accordingly, respondent's assessment under both Sections 14 and 21 had no basis. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. Hence, payments made under Section 21 must be refunded in favor of petitioner.

It is undisputed that petitioner paid business taxes based on Sections 14 and 21 for the fourth quarter of 2001 in the total amount of ₱470,932.21.[31] Therefore, it is entitled to a refund of ₱164,552.04[32] corresponding to the payment under Section 21 of the Manila Revenue Code.

WHEREFORE, premises considered, the instant Petition is **GRANTED.** Accordingly, the Court of Tax Appeals *En Banc* Decision dated 1 October 2007 and Resolution dated 14 January 2008 are **REVERSED** and **SET ASIDE.**

SO ORDERED.

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

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[31] Respondent's Answer filed with the RTC of Manila in Civil Case No. 03108163, *supra* note 1, at 148.

[32] Annex "C" of the Petition, *id.* at 91.

THIRD DIVISION

[G.R. No. 183805. July 3, 2013]

JAMES WALTER P. CAPILI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SHIRLEY TISMO-CAPILI,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; BIGAMY; ELEMENTS OF THE CRIME.— The elements of the crime of bigamy, therefore, are: (1) the offender has been legally married; (2) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity. In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004.

2. ID.; ID.; ID.; THE SUBSEQUENT JUDICIAL DECLARATION OF THE SECOND MARRIAGE FOR BEING BIGAMOUS IN NATURE DOES NOT BAR THE PROSECUTION OF PETITIONER FOR THE CRIME OF BIGAMY.— It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999 during the subsistence of a valid first marriage between petitioner and Karla Y. Medina-Capili contracted on September 3, 1999. Notably, the RTC of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of petitioner for the crime of bigamy. Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage, so long as the first marriage was still subsisting when the second marriage was celebrated. In *Jarillo v. People*, the Court affirmed the accused's conviction for bigamy ruling that the

crime of bigamy is consummated on the celebration of the subsequent marriage without the previous one having been judicially declared null and void x x x. In like manner, the Court recently upheld the ruling in the aforementioned case and ruled that what makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid first marriage. It further held that the parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of the first marriage assumes the risk of being prosecuted for bigamy. Finally, it is a settled rule that the criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law. It is clear then that the crime of bigamy was committed by petitioner from the time he contracted the second marriage with private respondent. Thus, the finality of the judicial declaration of nullity of petitioner's second marriage does not impede the filing of a criminal charge for bigamy against him.

APPEARANCES OF COUNSEL

Virgilio M. Capili for petitioner.
The Solicitor General for public respondent.
Marcelo Rempillo, Jr. for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1]

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *rollo*, pp. 44-54.

dated February 1, 2008 and Resolution[2] dated July 24, 2008 of the Court of Appeals (*CA*) in CA-G.R. CR No. 30444.

The factual antecedents are as follows:

On June 28, 2004, petitioner was charged with the crime of bigamy before the Regional Trial Court (*RTC*) of Pasig City in an Information which reads:

> On or about December 8, 1999, in Pasig City, and within the jurisdiction of this Honorable Court, the accused being previously united in lawful marriage with Karla Y. Medina-Capili and without said marriage having been legally dissolved or annulled, did then and there willfully, unlawfully and feloniously contract a second marriage with Shirley G. Tismo, to the damage and prejudice of the latter.
>
> Contrary to law.[3]

Petitioner thereafter filed a Motion to Suspend Proceedings alleging that: (1) there is a pending civil case for declaration of nullity of the second marriage before the RTC of Antipolo City filed by Karla Y. Medina-Capili; (2) in the event that the marriage is declared null and void, it would exculpate him from the charge of bigamy; and (3) the pendency of the civil case for the declaration of nullity of the second marriage serves as a prejudicial question in the instant criminal case.

Consequently, the arraignment and pre-trial were reset by the RTC of Pasig City, in view of the filing of the Motion to Suspend Proceedings filed by petitioner.

In the interim, the RTC of Antipolo City rendered a decision declaring the voidness or incipient invalidity of the second marriage between petitioner and private respondent on the ground that a subsequent marriage contracted by the husband during the lifetime of the legal wife is void from the beginning.

Thereafter, the petitioner accused filed his Manifestation and Motion (to Dismiss) praying for the dismissal of the criminal

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[2] *Id*. at 56-57.

[3] Records, p. 1.

case for bigamy filed against him on the ground that the second marriage between him and private respondent had already been declared void by the RTC.

In an Order[4] dated July 7, 2006, the RTC of Pasig City granted petitioner's Manifestation and Motion to Dismiss, to wit:

> The motion is anchored on the allegation that this case should be dismissed as a decision dated December 1, 2004 had already been rendered by the Regional Trial Court of Antipolo City, Branch 72 in Civil Case No. 01-6043 (entitled: "Karla Medina-Capili versus James Walter P. Capili and Shirley G. Tismo," a case for declaration of nullity of marriage) nullifying the second marriage between James Walter P. Capili and Shirley G. Tismo and said decision is already final.
>
> In the opposition filed by the private prosecutor to the motion, it was stated, among others, that the issues raised in the civil case are not similar or intimately related to the issue in this above-captioned case and that the resolution of the issues in said civil case would not determine whether or not the criminal action may proceed.
>
> WHEREFORE, after a judicious evaluation of the issue and arguments of the parties, this Court is of the humble opinion that there is merit on the Motion to dismiss filed by the accused as it appears that the second marriage between James Walter P. Capili and Shirley G. Tismo had already been nullified by the Regional Trial Court, Branch 72 of Antipolo City which has declared "the voidness, non-existent or incipient invalidity" of the said second marriage. As such, this Court submits that there is no more bigamy to speak of.
>
> SO ORDERED.

Aggrieved, private respondent filed an appeal before the CA.

Thus, in a Decision[5] dated February 1, 2008, the CA reversed and set aside the RTC's decision. The *fallo* reads:

> **WHEREFORE,** premises considered, the Order dated 07 July 2006 of the Regional Trial Court of Pasig City, Branch 152 in Crim.

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[4] *Rollo,* p. 58.

[5] *Id*. at 44-54.

Case No. 128370 is **REVERSED** and **SET ASIDE.** The case is remanded to the trial court for further proceedings. No costs.

SO ORDERED.[6]

Petitioner then filed a Motion for Reconsideration against said decision, but the same was denied in a Resolution[7] dated July 24, 2008.

Accordingly, petitioner filed the present petition for review on *certiorari* alleging that:

1. THERE IS NO LEGAL BASIS FOR THE COURT OF APPEALS TO DISREGARD EXISTING JURISPRUDENCE PRONOUNCED BY THIS HONORABLE SUPREME COURT AND TO REVERSE THE ORDER DATED JULY 7, 2006 OF THE TRIAL COURT (REGIONAL TRIAL COURT, PASIG CITY, BRANCH 152) ISSUED IN CRIMINAL CASE NO. 128370 GRANTING THE MOTION TO DISMISS THE CASE OF BIGAMY AGAINST PETITIONER, INASMUCH AS THE ISSUANCE OF THE SAID ORDER IS BASED ON THE FINDINGS AND/OR FACTS OF THE CASE IN THE DECISION OF THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 72, IN CIVIL CASE NO. 01-6043 AND THE CONCLUDING AND DISPOSITIVE PORTION IN THE SAID DECISION WHICH STATES THAT, AFTER PERUSAL OF THE EVIDENCE ON RECORD AND THE TESTIMONIES OF WITNESSES x x x, THE MARRIAGE BETWEEN PETITIONER JAMES WALTER P. CAPILI AND PRIVATE RESPONDENT SHIRLEY G. TISMO, IS HEREBY NULL AND VOID.
2. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE DECLARATION OF NULLITY OF MARRIAGE BETWEEN PETITIONER JAMES WALTER P. CAPILI AND SHIRLEY G. TISMO BY THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 72 IN ITS DECISION IN CIVIL CASE NO.

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[6] *Id*. at 52. (Emphasis in the original)

[7] *Id*. at 56-57.

01-6043, IS ON THE GROUND THAT IT IS BIGAMOUS IN NATURE, DESPITE THE ABSENCE OF ANY SUCH FINDINGS OR FACTS ON WHICH IT IS BASED IN VIOLATION OF ARTICLE VIII, SECTION 14 OF THE 1987 CONSTITUTION, AND IN CONCLUDING THAT THE SAID DECLARATION OF NULLITY OF MARRIAGE IS NOT A GROUND FOR DISMISSAL OF THE BIGAMY CASE AGAINST THE PETITIONER, WHICH RULING IS NOT IN ACCORDANCE WITH THE FACTS OF THE CASE OF THE SAID DECISION AND WHICH IS CONTRARY TO APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE.

3. THE CASE OF TENEBRO V. COURT OF APPEALS SPEAKS FOR ITSELF. IT IS AN EXCEPTION TO EXISTING JURISPRUDENCE INVOLVING DECLARATION OF NULLITY OF MARRIAGE AND IS APPLICABLE ONLY TO THE SET OF FACTS IN THE SAID CASE, AND THE GROUND FOR DECLARATION OF NULLITY OF MARRIAGE IS PSYCHOLOGICAL INCAPACITY, HENCE, THERE IS NO LEGAL BASIS FOR ABANDONING EXISTING JURISPRUDENCE AS WHERE IN THE INSTANT CASE THE GROUND FOR DECLARATION OF NULLITY OF MARRIAGE IS VIOLATIVE OF ARTICLE 3 IN RELATION TO ARTICLE 4 OF THE FAMILY CODE.

4. THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE USE BY RESPONDENT SHIRLEY G. TISMO OF THE SURNAME "CAPILI" IS ILLEGAL INASMUCH AS THE DECISION OF THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 72 IN CIVIL CASE NO. 01-6043 DECLARING NULL AND VOID THE MARRIAGE BETWEEN JAMES WALTER P. CAPILI AND SHIRLEY G. TISMO HAD LONG BECOME FINAL AND UNAPPEALABLE AS OF THE DATE OF THE SAID DECISION ON DECEMBER 1, 2004 AND DULY RECORDED IN THE RECORDS OF ENTRIES IN THE CORRESPONDING BOOK IN THE OFFICE OF THE CIVIL REGISTRAR OF PASIG CITY AND THE NATIONAL STATISTICS OFFICE.[8]

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[8] *Id*. at 20.

In essence, the issue is whether or not the subsequent declaration of nullity of the second marriage is a ground for dismissal of the criminal case for bigamy.

We rule in the negative.

Article 349 of the Revised Penal Code defines and penalizes the crime of bigamy as follows:

> Art. 349. *Bigamy*. – The penalty of *prision 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.

The elements of the crime of bigamy, therefore, are: (1) the offender has been legally married; (2) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity.[9]

In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004.

It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999 during the subsistence of a valid first marriage between petitioner and Karla Y. Medina-Capili contracted on September 3, 1999. Notably, the RTC of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of petitioner for the crime of bigamy.

Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage,

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[9] *Mercado v. Tan*, 391 Phil. 809, 818-819 (2000).

so long as the first marriage was still subsisting when the second marriage was celebrated.

In *Jarillo v. People*,[10] the Court affirmed the accused's conviction for bigamy ruling that the crime of bigamy is consummated on the celebration of the subsequent marriage without the previous one having been judicially declared null and void, *viz.*:

> **The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated**. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.
>
> **The outcome of the civil case for annulment of petitioner's marriage to [private complainant] had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.**
>
> Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding. In this case, even if petitioner eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.[11]

In like manner, the Court recently upheld the ruling in the aforementioned case and ruled that what makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid first marriage. It further held that the parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity

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[10] G.R. No. 164435, September 29, 2009, 601 SCRA 236.

[11] *Id*. at 245-246. (Emphasis in the original.)

of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of the first marriage assumes the risk of being prosecuted for bigamy.[12]

Finally, it is a settled rule that the criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law.[13] It is clear then that the crime of bigamy was committed by petitioner from the time he contracted the second marriage with private respondent. Thus, the finality of the judicial declaration of nullity of petitioner's second marriage does not impede the filing of a criminal charge for bigamy against him.

WHEREFORE, premises considered, the petition is **DENIED.** The Decision dated February 1, 2008 and Resolution dated July 24, 2008 of the Court of Appeals in CA-G.R. CR No. 30444 are hereby **AFFIRMED.**

SO ORDERED.

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

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[12] *Merlinda Cipriano Montañez v. Lourdes Tajolosa Cipriano*, G.R. No. 181089, October 22, 2012.

[13] *Teves v. People*, G.R. No. 188775, August 24, 2011, 656 SCRA 307, 314.

FIRST DIVISION

[G.R. No. 184622. July 3, 2013]

PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (POTC) and PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT), *petitioners, vs.* **VICTOR AFRICA, ERLINDA I. BILDNER, SYLVIA K. ILUSORIO, HONORIO POBLADOR III, VICTORIA C. DELOS REYES, JOHN BENEDICT SIOSON, and JOHN/JANE DOES,** *respondents.*

[G.R. Nos. 184712-14. July 3, 2013]

PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (POTC) and PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT), *petitioners, vs.* **HON. JENNY LIN ALDECOA-DELORINO, PAIRING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY-BRANCH 138, VICTOR AFRICA, purportedly representing PHILCOMSAT, and JOHN/JANE DOES,** *respondents.*

[G.R. No. 186066. July 3, 2013]

PHILCOMSAT HOLDINGS CORPORATION, represented by CONCEPCION POBLADOR, *petitioner, vs.* **PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT), represented by VICTOR AFRICA,** *respondent.*

[G.R. No. 186590. July 3, 2013]

PHILCOMSAT HOLDINGS CORPORATION, represented by ERLINDA I. BILDNER, *petitioner, vs.* **PHILCOMSAT HOLDINGS CORPORATION, represented by ENRIQUE L. LOCSIN,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATIONS; SECURITIES REGULATION CODE (R.A. NO. 8799); INTRA-CORPORATE DISPUTES; THE REGIONAL TRIAL COURT (BRANCH 138) HAD JURISDICTION OVER THE ELECTION CONTEST BETWEEN THE ILLUSORIO-AFRICA GROUP AND NIETO-LOCSIN GROUPS WHICH INVOLVED INTRA-CORPORATE CONTROVERSIES AMONG THE STOCKHOLDERS AND OFFICERS OF THE CORPORATIONS.— Both Civil Case No. 04-1049 of the RTC (Branch 138) in Makati City and SB Civil Case No. 0198 of the Sandiganbayan involved intra-corporate controversies among the stockholders and officers of the corporations. It is settled that there is an intra-corporate controversy when the dispute involves any of the following relationships, to wit: (*a*) between the corporation, partnership or association and the public; (*b*) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (*c*) between the corporation, partnership or association and its stockholders, partners, members or officers; and (*d*) among the stockholders, partners or associates themselves. Consequently, we agree with the CA's consolidated decision promulgated on September 30, 2008 that the RTC (Branch 138), not the Sandiganbayan, had jurisdiction because Civil Case No. 04-1049 did not involve a sequestration-related incident but an intra-corporate controversy. Originally, Section 5 of Presidential Decree (P.D.) No. 902-A vested the original and exclusive jurisdiction over cases involving the following in the SEC, to wit: x x x (b) **Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation**, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right as such entity; (c) **Controversies in the election** or appointment **of directors,** trustees, **officers** or managers **of such corporations**, partnership or associations; x x x Upon the enactment of Republic Act No. 8799 (*The Securities Regulation Code*), effective on August 8, 2000, the jurisdiction of the SEC over intra-corporate

controversies and the other cases enumerated in Section 5 of P.D. No. 902-A was transferred to the Regional Trial Court pursuant to Section 5.2 of the law. x x x To implement Republic Act No. 8799, the Court promulgated its resolution of November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide the cases enumerated in Section 5 of P.D. No. 902-A. Among the RTCs designated as special commercial courts was the RTC (Branch 138) in Makati City, the trial court for Civil Case No. 04-1049. On March 13, 2001, the Court adopted and approved the *Interim Rules of Procedure for Intra-Corporate Controversies under Republic Act No. 8799* in A.M. No. 01-2-04-SC, effective on April 1, 2001, whose Section 1 and Section 2, Rule 6 state: Section 1. *Cases covered*. – The provisions of this rule shall apply to **election contests** in stock and non-stock corporations. Section 2. *Definition*. – An **election contest** refers to **any controversy or dispute involving** title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, **the manner and validity of elections**, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. Conformably with Republic Act No. 8799, and with the ensuing resolutions of the Court on the implementation of the transfer of jurisdiction to the Regional Trial Court, the RTC (Branch 138) in Makati had the authority to hear and decide the election contest between the parties herein. There should be no disagreement that jurisdiction over the subject matter of an action, being conferred by law, could neither be altered nor conveniently set aside by the courts and the parties.

2. ID.; ID.; ID.; SECTION 2 OF EXECUTIVE ORDER NO. 14 HAD NO APPLICATION HEREIN SIMPLY BECAUSE THE SUBJECT MATTER INVOLVED IS AN INTRA-CORPORATE CONTROVERSY AND NOT ANY INCIDENTS ARISING FROM, INCIDENTAL TO, OR RELATED TO ANY CASE INVOLVING ASSETS WHOSE NATURE AS ILL-GOTTEN WEALTH WAS YET TO BE DETERMINED.— Section 2 of Executive Order No. 14 had no application herein simply because the subject matter involved

was an intra-corporate controversy, not any incident arising from, incidental to, or related to any case involving assets whose nature as ill-gotten wealth was yet to be determined. In *San Miguel Corporation v. Kahn*, the Court held that: x x x De los Angeles' complaint, in fine, is confined to the issue of the validity of the assumption by the corporation of the indebtedness of Neptunia Co., Ltd., allegedly for the benefit of certain of its officers and stockholders, an issue evidently distinct from, and not even remotely requiring inquiry into the matter of whether or not the 33,133,266 SMC shares sequestered by the PCGG belong to Marcos and his cronies or dummies (on which, issue, as already pointed out, de los Angeles, in common with the PCGG, had in fact espoused the affirmative). **De los Angeles' dispute**, as stockholder and director of SMC, with other SMC directors, **an intra-corporate one, to be sure, is of no concern to the Sandiganbayan, having no relevance whatever to the ownership of the sequestered stock. The contention, therefore, that in view of this Court's ruling as regards the sequestered SMC stock above adverted to, the SEC has no jurisdiction over the de los Angeles complaint, cannot be sustained and must be rejected. The dispute** concerns acts of the board of directors claimed to amount to fraud and misrepresentation which may be detrimental to the interest of the stockholders, or **is one arising out of intra-corporate relations between and among stockholders, or between any or all of them and the corporation of which they are stockholders**.

3. REMEDIAL LAW; SANDIGANBAYAN; THE JURISDICTION OF THE SANDIGANBAYAN HAS BEEN HELD NOT TO EXTEND TO EVEN A CASE INVOLVING A SEQUESTERED COMPANY NOTWITHSTANDING THAT THE MAJORITY MEMBERS OF THE BOARD OF DIRECTORS WERE PCGG NOMINEES.— The jurisdiction of the Sandiganbayan has been held not to extend even to a case involving a sequestered company notwithstanding that the majority of the members of the board of directors were PCGG nominees. The Court marked this distinction clearly in *Holiday Inn (Phils.), Inc. v. Sandiganbayan*, holding thusly: x x x **Likewise the Sandiganbayan correctly denied jurisdiction over the proposed complaint-in-intervention. The original and exclusive jurisdiction given to the**

Sandiganbayan over PCGG cases pertains to (a) cases *filed by the PCGG*, pursuant to the exercise of its powers under Executive Order Nos. 1, 2 and 14. as amended by the Office of the President, and Article XVIII, Section 26 of the Constitution, *i.e.*, where the principal cause of action is the recovery of ill-gotten wealth, as well as all incidents arising from, incidental to, or *related to such cases* and (b) *cases filed by those who wish to question or challenge the commission's acts or orders in such cases*. Evidently, petitioner's proposed complaint-in-intervention is an ordinary civil case that does not pertain to the Sandiganbayan. As the Solicitor General stated, the complaint is not directed against PCGG as an entity, but against a private corporation, in which case it is not *per se*, a PCGG case. In the cases now before the Court, what are sought to be determined are the propriety of the election of a party as a Director, and his authority to act in that capacity. Such issues should be exclusively determined only by the RTC pursuant to the pertinent law on jurisdiction because they did not concern the recovery of ill-gotten wealth.

4. REMEDIAL LAW; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES; LACK OF PRE-TRIAL IS NOT FATAL IN INTRA-CORPORATE ELECTION CASES.— Under Section 4 of Rule 6 (*Election Contests*) of the *Interim Rules of Procedure for Intra-Corporate Controversies*, which took effect on April 1, 2001 (A.M. No. 01-2-04-SC), issued pursuant to Republic Act No. 8799, the trial court, within two days from the filing of the complaint, may outrightly dismiss the complaint upon a consideration of the allegations thereof if the complaint is not sufficient in form and substance, or, if the complaint is sufficient, may order the issuance of summons which shall be served, together with a copy of the complaint, on the defendant within two days from its issuance. Should it find the need to hold a hearing to clarify specific factual matters, the trial court shall set the case for hearing, and the hearing shall be completed not later than 15 days from the date of the first hearing. The trial court is mandated to render a decision within 15 days from receipt of the last pleading, or from the date of the last hearing, as the case may be. The CA correctly pointed out that Rule 6 nowhere required that the RTC acting as a special

commercial court should first conduct a pre-trial conference before it could render its judgment in a corporate election contest. Hence, the RTC (Branch 138) in Makati properly heard the case of annulment of the election with dispatch in accordance with the guidelines set in the resolution in A.M. No. 01-2-04-SC. With the requirements of due process having been served, no defect infirmed the RTC's ruling to set aside the election, and to oust those illegally elected.

5. ID.; ID.; THE REGIONAL TRIAL COURT (BRANCH 138) RETAINED ITS JURISDICTION OVER THE CASE THAT WAS RIPE FOR ADJUDICATION DESPITE THE COURT'S REVOCATION OF ITS DESIGNATION AS A SPECIAL COMMERCIAL COURT.— While it is true that this Court meanwhile revoked on June 27, 2006 the designation of the RTC (Branch 138) to act as a special commercial court, through the resolution in A.M. No. 03-3-03-SC, the RTC (Branch 138) did not thereafter become bereft of the jurisdiction to decide the controversy because of the exception expressly stated in the resolution in A.M. No. 03-3-03-SC itself, to wit: x x x Upon the effectivity of this designation, all commercial cases pending before Branches 138 and 61 shall be transferred to RTC, Branch 149, Makati City, **except those which are already submitted for decision, which cases shall be decided by the acting presiding judges thereat**. x x x. Contrary to the assertion of the Nieto-PCGG group, the foregoing provision did not require the issuance of any special order stating that the case was already submitted for decision. It was sufficient, given the summary nature of intra-corporate controversies, especially election contests, that the trial court was done collating all the evidence from the pleadings (*i.e.*, pleadings, affidavits, documentary and other evidence attached thereto, and the answers of the witnesses to the clarificatory questions of the court given during the hearings), if deemed sufficient, or from the clarificatory hearings, if conducted. The purpose of the exception is to obviate the repetition of the gathering of evidence. It is clear from Section 9 of Rule 6 that after the collation of evidence, the only thing that remains is for the RTC to render its decision without issuing a special order declaring the case submitted for decision, *viz*: Section 9. *Decision*. – The Court shall render a decision within fifteen (15) days from receipt of the last pleading, or from the date of the last hearing, as

the case may be. The decision shall be based on the pleadings, affidavits, documentary and other evidence attached thereto and the answers of the witnesses to the clarificatory questions of the court given during the hearings.

6. ID.; ID.; ID.; ID.; DOCTRINE OF *STARE DECISIS ET NON QUIETA MOVERE;* JUSTIFIED THE APPLICATION TO CIVIL CASE NO. 04-1049 OF THE COURT'S RULING IN G.R. NO. 141796 AND G.R. NO. 141804 INVALIDATING THE PHILCOMSAT HOLDINGS CORPORATIONS (PHC) ELECTIONS CONDUCTED BY THE NIETO-PCGG GROUP.— It was not the principle of *res judicata*, as claimed by the Nieto-PCGG Group, that justified the application to Civil Case No. 04-1049 of the Court's ruling in G.R. No. 141796 and G.R. No. 141804 invalidating the PHC elections conducted by the Nieto-PCGG Group, but rather the doctrine of *stare decisis et non quieta movere*, which means "to adhere to precedents, and not to unsettle things which are established." Under the doctrine of *stare decisis*, when the Court has once laid down a principle of law as applicable to a certain state of facts, the courts will adhere to that principle, and apply it to all future cases in which the facts are substantially similar, regardless of whether the parties and property involved are the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved, not upon the judgment that results therefrom. It is in this particular sense that *stare decisis* differs from *res judicata*, because *res judicata* is based upon the judgment. The doctrine of *stare decisis* is grounded on the necessity for securing certainty and stability in judicial decisions.

7. ID.; ID.; ID.; ID.; PROPER MODE OF APPEAL IN INTRA-CORPORATE CASES IS BY PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT.— While it is true that judicial decisions should be given a prospective effect, such prospectivity did not apply to the June 15, 2005 ruling in G.R. No. 141796 and G.R. No. 141804 because the ruling did not enunciate a new legal doctrine or change the interpretation of the law as to prejudice the parties and undo their situations established under an old doctrine or prior interpretation. Indeed, the ruling only affirmed the compromise agreement consummated on June 28, 1996 and approved by the Sandiganbayan on June 8, 1998, and accordingly implemented through the cancellation of the shares in the names

of IRC and MLDC and their registration in the names of Atty. Ilusorio to the extent of 673 shares, and of the Republic to the extent of 4,727 shares. In a manner of speaking, the decision of the Court in G.R. No. 141796 and G.R. No. 141804 promulgated on June 15, 2005 declared the compromise agreement valid, and such validation properly retroacted to the date of the judicial approval of the compromise agreement on June 8, 1998. Consequently, although the assailed elections were conducted by the Nieto-PCGG group on August 31, 2004 but the ruling in G.R. No. 141796 and G.R. No. 141804 was promulgated only on June 15, 2005, the ruling was the legal standard by which the issues raised in Civil Case No. 04-1049 should be resolved.

8. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; PETITION FOR CONTEMPT AGAINST RESPONDENT BILDNER HAD NO BASIS; THE POWER TO PUNISH CONTEMPT SHOULD BE EXERCISED ON THE PRESERVATIVE, NOT ON THE VINDICTIVE PRINCIPLE.— The filing by Bildner and her counsel Atty. Manzanal of the complaint for perjury against Locsin and his counsel Atty. Labastilla in the Office of the City Prosecutor of Manila did not amount to unlawful interference with the processes of the CA. There is no denying that Bildner was within her right as a party in interest in the proceedings then pending in the CA to bring the perjury charge against Locsin and his counsel for their failure to aver in the certification against forum shopping attached to the petition for *certiorari* in C.A.-G.R. SP No. 98399 of the pendency of another petition in C.A.-G.R. SP No. 98087 despite their knowledge thereof. Her complaint for perjury could really be dealt with by the Office of the City Prosecutor of Manila independently from any action the CA would take on the issue of forum shopping. As such, the filing of the complaint did not interfere with the CA's authority over the petition in C.A.-G.R. SP No. 98399. In this regard, we deem to be appropriate to reiterate what the Court said on the nature of contempt of court in *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, *viz*: Misbehavior means something more than adverse comment or disrespect. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where

the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. Nonetheless, the Court states that the power to punish for contempt is inherent in all courts, and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and ultimately, to the due administration of justice. But such power should be exercised on the preservative, not on the vindictive, principle. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

9. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RESPONDENT BILDNER'S GROUP IS ENTITLED TO INJUNCTIVE RELIEF BECAUSE OF THE INDUBITABILITY OF ITS STANDING AS A PARTY IN INTEREST, SHOWED A CLEAR AND UNMISTAKABLE RIGHT TO BE PROTECTED.— Concerning the propriety of the issuance of the WPI to enjoin BPI from letting the Locsin Group withdraw funds or transact with BPI on PHC's deposits, the Court finds that the Bildner Group as the applicant had a right *in esse* to be protected by the injunctive relief. A right that is *in esse* is a clear and unmistakable right to be protected, and is one founded on or granted by law or is enforceable as a matter of law. The Bildner Group, because of the indubitability of its standing as a party in interest, showed a clear and unmistakable right to be protected. In granting the Bildner Group's application for the WPI, the RTC (Branch 62) emphasized the peculiarities of the case. Apparently, the Bildner Group relied on the fact that their election to the PHC Board of Directors was implemented and executed even prior to the WPI issued by the CA to stop the RTC (Branch 138) from implementing its decision in Civil Case No. 04-1049. The right

that the Bildner Group relied on in seeking the execution of the decision was enforceable as a matter of law, for it emanated from the validly issued decision that was immediately executory under the pertinent rule. On the other hand, the TRO and WPI the CA issued in C.A.-G. R. SP No. 98399 could not and did not have any restraining effect on the immediately executory nature of the decision rendered in Civil Case No. 04-1049, because the matter had been brought to the CA through the wrong remedy. Considering that the Bildner Group's clear right to an injunctive relief was established, coupled with the affirmance of the consolidated decision of the CA upholding the validity of the July 28, 2004 election of the Bildner Group as Directors and Officers of PHC, the decision promulgated in C.A.-G.R. SP No. 102437 to the effect that Bildner's standing as a party-in-interest was unclear, and that she failed to show a clear and unmistakable right to be protected by the writ of injunction, lost its ground. Accordingly, the reversal of the decision promulgated in C.A.-G.R. SP No. 102437, and the reinstatement of the WPI issued against BPI by the RTC (Branch 62) in Civil Case No. 07-840 are in order.

10. ID.; ID.; ID.; THE SUPREME COURT, NOT BEING A TRIER OF FACTS, WILL NOT RE-EXAMINE THE EVIDENCE.— The insistence by POTC and PHC (Nieto Group) that the RTC's decision in Civil Case No. 04-1049 was contrary to the facts and the evidence lacks merit. The Court is not a trier of facts, and thus should not reexamine the evidence in order to determine whether the facts were as POTC and PHC (Nieto Group) now insist they were. The Court must respect the findings of the CA sustaining the factual findings of the RTC in Civil Case No. 04-1049. As a rule, the findings of fact by the CA are not reviewed on appeal, but are binding and conclusive. The reason for this has been well stated in *J.R. Blanco v. Quasha*: To begin with, this Court is not a trier of facts. It is not its function to examine and determine the weight of the evidence supporting the assailed decision. In *Philippine Airlines, Inc. vs. Court of Appeals* (275 SCRA 621 [1997]), the Court held that factual findings of the Court of Appeals which are supported by substantial evidence are binding, final and conclusive upon the Supreme Court. So also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more

weight when the said court affirms the factual findings of the trial court." Moreover, well entrenched is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, which applies with greater force to the Petition under consideration because the factual findings by the Court of Appeals are in full agreement with what the trial court found.

APPEARANCES OF COUNSEL

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Kapunan Garcia & Castillo Law Offices for Philcomsat Holdings Corp.

Sikini C. Labastilla for petitioners in G.R. Nos. 184622 & 184712-14.

Bernadette Yanzon & Dennis R. Manzanal for respondents in G.R. Nos. 186066, 184622 & 184712-14 and for petitioner in G.R. No. 186590.

D E C I S I O N

BERSAMIN, *J.*:

An intra-corporate dispute involving a corporation under sequestration of the Presidential Commission on Good Government (PCGG) falls under the jurisdiction of the Regional Trial Court (RTC), not the Sandiganbayan.

The Cases

These consolidated appeals *via* petitions for review on *certiorari* include the following:

(*a*) G.R. No.184622 - the appeal from the dismissal by the Sandiganbayan of the petitioners' complaint for injunction docketed as Civil Case No. 0198 on the ground that the Sandiganbayan had no jurisdiction over the issue due to its being an intra-corporate dispute;

(*b*) G.R. Nos. 184712-14 and G.R. No. 186066 - the appeals of the Locsin Group (in representation of Philippine Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and Philcomsat Holdings Corporation (PHC) from the consolidated decision the Court of Appeals (CA) promulgated on September 30, 2008 in C.A.-G.R. SP No. 101225, C.A.-G.R. SP No. 98097 and C.A.-G.R. SP No. 98399; and

(*c*) G.R. No. 186590 - the appeal of the Ilusorio Group seeking the reversal of the decision promulgated by the CA on July 16, 2008 in C.A.-G.R. SP No. 102437.

Common Antecedents

POTC is a domestic corporation organized for the purpose of, among others, constructing, installing, maintaining, and operating communications satellite systems, satellite terminal stations and associated equipments and facilities in the Philippines.[1]

PHILCOMSAT is also a domestic corporation. Its purposes include providing telecommunications services through space relay and repeater stations throughout the Philippines.

PHC is likewise a domestic corporation, previously known as Liberty Mines, Inc., and is engaged in the discovery, exploitation, development and exploration of oil. In 1997, Liberty Mines, Inc. changed its name to PHC, declassified its shares, and amended its primary purpose to become a holding company.[2]

The ownership structure of these corporations implies that whoever had control of POTC necessarily held 100% control of PHILCOMSAT, and in turn whoever controlled PHILCOMSAT wielded 81% majority control of PHC. Records reveal that POTC has been owned by seven families through their individual members or their corporations, namely: (*a*) the Ilusorio Family; (*b*) the Nieto Family; (*c*) the Poblador Family;

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[1] *Rollo* (G.R. No. 186066), p. 90.

[2] *Id.* at 90-91.

(*d*) the Africa Family; (*e*) the Benedicto Family; (*f*) the Ponce Enrile Family; and (*g*) the Elizalde Family.[3]

Atty. Potenciano Ilusorio, the patriarch of the Ilusorio Family, owned shares of stock in POTC. A block consisting of 5,400 POTC shares of stock has become the bone of contention in a prolonged controversy among the parties. Atty. Ilusorio claimed that he had incurred the ire of Imelda Marcos during the regime of President Marcos, leading to the Marcos spouses' grabbing from him the POTC shares of stock through threats and intimidation and without any valuable consideration, and placing such shares under the names of their *alter egos*, namely: 3,644 shares in the name of Independent Realty Corporation (IRC); 1,755 shares in the name of Mid-Pasig Land Development (Mid-Pasig); and one share in the name of Ferdinand Marcos, Jr.[4]

On February 25, 1986, the EDSA People Power Revolution deposed President Marcos from power and forced him and his family to flee the country. On February 28, 1986, newly-installed President Corazon C. Aquino issued Executive Order No. 1 to create the PCGG whose task was to assist the President in the recovery of all ill-gotten wealth amassed by President Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, through the takeover or sequestration of all business enterprises and entities owned or controlled by them during President Marcos' administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationships.[5]

Subsequently, Jose Y. Campos, a self-confessed crony of President Marcos, voluntarily surrendered to the PCGG the properties, assets, and corporations he had held in trust for the deposed President. Among the corporations surrendered were IRC (which, in the books of POTC, held 3,644 POTC shares)

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[3] *Id.* at 91.

[4] *Id.*

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

and Mid-Pasig (which, in the books of POTC, owned 1,755 POTC shares). Also turned over was one POTC share in the name of Ferdinand Marcos, Jr.[6]

With Campos' surrender of IRC and Mid-Pasig to the PCGG, the ownership structure of POTC became as follows:

Owner	% of Shareholdings
Ilusorio, Africa, Poblador, Benedicto and Ponce Enrile Families	46.39%
PCGG (IRC and Mid-Pasig)	39.92%
Nieto Family	13.12%
Elizalde Family	0.57%
Total	100.00%

With 39.92% of the POTC shareholdings under its control, the PCGG obtained three out of the seven seats in the POTC Board of Directors. At the time, Manuel Nieto, Jr. was the President of both POTC and PHILCOMSAT. However, Nieto, Jr. had a falling out with other stockholders. To keep control of the POTC and PHILCOMSAT, Nieto, Jr. aligned with the PCGG nominees to enable him to wrest four out of seven seats in the POTC Board of Directors and five out of the nine seats in the PHILCOMSAT Board of Directors. Thus, Nieto, Jr. remained as the President of POTC and PHILCOMSAT.[7]

On July 22, 1987, the Government, represented by the PCGG, filed in the Sandiganbayan a Complaint for reconveyance, reversion, accounting, restitution and damages against Jose L. Africa, Manuel H. Nieto, Jr., President Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile and Atty. Potenciano Ilusorio.[8] The Complaint,

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[6] *Id.* at 92.

[7] *Id.* at 92-93.

[8] *Id.* at 93.

docketed as SB Civil Case No. 009, alleged that the defendants "acted in collaboration with each other as dummies, nominees and/or agents of defendants Ferdinand E. Marcos, Imelda R. Marcos and Ferdinand R. Marcos, Jr. in several corporations, such as the Mid-Pasig Land Development Corporation and the Independent Realty Corporation which, through manipulations by said defendants, appropriated a substantial portion of the shareholdings in Philippine Overseas Telecommunications Corporation and Philippine Communications Satellite Corporation held by the late Honorio Poblador, Jr., Jose Valdez and Francisco Reyes, thereby further advancing defendants' scheme to monopolize the telecommunications industry;" that through their illegal acts, they acquired ill-gotten wealth; that their acts constituted "breach of public trust and the law, abuse of rights and power, and unjust enrichment"; and that their ill-gotten wealth, real and personal, "are deemed to have been acquired (by them) for the benefit of the plaintiff (Republic) and are, therefore, impressed with constructive trust in favor of (the latter) and the Filipino people."[9]

The Complaint prayed that all the funds, properties and assets illegally acquired by the defendants, or their equivalent value, be reconveyed or reverted to the Government; and that the defendants be ordered to render an accounting and to pay damages.[10]

In his Amended Answer with Cross-Claim (against the Marcoses) and Third-Party Complaint against Mid-Pasig and IRC, Atty. Ilusorio denied having acquired ill-gotten wealth and having unjustly enriched himself by conspiring with any of the defendants in committing a breach of public trust or abuse of right or of power, stating that "he has never held any public office nor has he been a government employee"; and that he was never a dummy or agent of the Marcoses. He interposed the affirmative defense that he owned 5,400 POTC shares of stock, having acquired them through his honest toil, but the

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[9] *Id.* at 93-94.

[10] *Id.*

Marcoses had taken the shares from him through threats and intimidation and without valuable consideration and then placed the shares in the names of their *alter egos*; and that he thus became "the hapless victim of injustice," with the right to recover the shares and their corresponding dividends.[11]

On June 28, 1996, after a decade of litigation, the Republic, IRC and Mid-Pasig, and the PCGG (acting through PCGG Commissioner Hermilo Rosal) entered into a compromise agreement with Atty. Ilusorio, whereby Atty. Ilusorio recognized the ownership of the Republic over 4,727 of the POTC shares of stock in the names of IRC and Mid-Pasig, and, in turn, the Republic acknowledged his ownership of 673 of the POTC shares of stock and undertook to dismiss Civil Case No. 009 as against him.

The compromise agreement relevantly stated:

> WHEREAS, this Compromise Agreement covers the full, comprehensive and final settlement of the claims of the GOVERNMENT against ILUSORIO in Civil Case No. SB-009, pending before the Third Division of the Sandiganbayan; the Cross-Claim involving several properties located in Parañaque, Metro Manila; and the Third-Party Complaint filed by ILUSORIO, in the same case, involving the Five Thousand Four Hundred (5,400) shares of stocks registered in the names of Mid-Pasig Land Development Corporation (MLDC) and Independent Realty Corporation (IRC), respectively, in the Philippine Overseas Telecommunications Corporation (POTC);
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> x x x x x x x x x

President Ramos approved the compromise agreement, and directed its submission to the Sandiganbayan for approval through his marginal note dated October 5, 1996.[12]

It was not until June 8, 1998, or nearly two years from its execution, however, that the Sandiganbayan approved the compromise agreement, the resolution for which reads:

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[11] *Id.* at 94-95.

[12] *Id.* at 95.

WHEREFORE, and as prayed for in the Motion dated June 3, 1998, which is hereby granted.

1. The foregoing Compromise Agreement dated June 28, 1996 executed by and between the plaintiff and defendant Potenciano T. Ilusorio is hereby approved, the same not being contrary to law, good morals and public policy. The parties thereto are hereby enjoined to strictly abide by and comply with the terms and conditions of the said Compromise Agreement.

2. The complaint as against defendant Potenciano T. Ilusorio only in the above-entitled case No. 0009 is hereby dismissed.

3. The Motions for Injunction and Contempt, respectively, filed by defendant Potenciano T. Ilusorio against the Government/PCGG, its officers and agents, in Civil Case No. 0009 are hereby withdrawn;

4. The Third-Party Complaint and the Cross-Claim of defendant Potenciano T. Ilusorio are hereby dismissed; and

5. The Board of Directors, President and Corporate Secretary of the Philippine Overseas Telecommunications Corporation are hereby ordered to issue the corresponding stock certificates to, and in the names of Potenciano T. Ilusorio, Mid-Pasig Land Development Corporation, and Independent Realty Corporation, respectively.[13]

The result was the redistribution of the POTC shareholdings as follows:

Owner	% of Shareholdings
Ilusorio, Africa, Poblador, Benedicto and Ponce Enrile Families	51.37%
PCGG (IRC and Mid-Pasig)	34.94%
Nieto Family	13.12%
Elizalde Family	0.57%
Total	100.00%

[13] *Id.* at 97.

The Ilusorio Family's shareholding became 18.12%, while that of the PCGG (through IRC and Mid-Pasig) was reduced to 34.94%. With its reduced shareholdings, the PCGG's number of seats in the POTC Board settled at only two. The Ilusorio Family continued its alliance with the Africa, Poblador, Benedicto and Ponce Enrile Families. In effect, the compromise agreement tilted the control in POTC, PHILCOMSAT and PHC, such that the alliance between the Nieto Family and the PCGG, theretofore dominant, became the minority.[14]

After assuming the Presidency in mid-1998, President Estrada nominated through the PCGG Ronaldo Salonga and Benito Araneta, the latter a nephew of Nieto, Jr., to the POTC Board of Directors to represent the IRC and Mid-Pasig shareholdings.[15]

As to the PHILCOMSAT Board of Directors, however, President Estrada through the PCGG nominated four nominees, namely: Salonga, Araneta, Carmelo Africa and Edgardo Villanueva. The nomination of the four ignored the reduction of the IRC and Mid-Pasig shareholdings in POTC that should have correspondingly reduced the board seats in PHILCOMSAT that the PCGG was entitled to from four to only three.[16]

On August 16, 1998, Mid-Pasig, represented by Salonga, filed in the Sandiganbayan in Civil Case No. 009 a Motion to Vacate the order dated June 8, 1998 approving the compromise agreement. On October 2, 1998, IRC, also represented by Salonga, filed a similar motion. Both motions insisted that the compromise agreement did not bind Mid-Pasig and IRC for not being parties thereto, although they held substantial interests in the POTC shareholdings subject of the compromise agreement; and that the compromise agreement was void because its terms were contrary to law, good morals and public policy for being grossly and manifestly disadvantageous to the Government.[17]

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[14] *Id.* at 98.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 99.

Aside from supporting the position taken by Mid-Pasig and IRC, PCGG added that the compromise agreement was fatally defective for lack of any PCGG resolution authorizing Commissioner Rosal to enter into the compromise agreement in behalf of the Government.[18]

On his part, Atty. Ilusorio vigorously opposed the motions.[19]

On August 28, 1998, PHILCOMSAT stockholders held an informal gathering at the Manila Golf Club for the apparent purpose of introducing the new PCGG nominees to the stockholders. During the proceedings, however, Atty. Luis Lokin, Jr. announced that the gathering was being considered as a Special PHILCOMSAT Stockholders' Meeting. Those in attendance then proceeded to elect as Directors and Officers of PHILCOMSAT Nieto, Jr., Lourdes Africa, Honorio Poblador III, Salvador Hizon, Salonga, Araneta, Carmelo Africa, and Edgardo Villanueva (Nieto Group-PCGG).[20]

As a consequence, other PHILCOMSAT stockholders (namely, Ilusorio, Katrina Ponce Enrile, Fidelity Farms, Inc., Great Asia Enterprises and JAKA Investments Corporation) instituted a Complaint with application for the issuance of temporary restraining order (TRO) and writ of preliminary injunction (WPI) in the Securities and Exchange Commission (SEC) assailing the election of the Directors and Officers on several grounds, such as the lack of sufficient notice of the meeting, the lack of quorum, and the lack of qualifying shares of those who were elected. They maintained that by reason of POTC's 100% beneficial ownership of PHILCOMSAT, there should have been a notice to POTC, which, upon a proper board meeting, should have appointed proxies to attend the PHILCOMSAT Stockholders' Meeting. The case was docketed as SEC Case No. 09-98-6086.[21]

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 100.

The SEC issued a TRO, and, later on, a WPI enjoining the Nieto Group-PCGG from acting as Directors and Officers of PHILCOMSAT and from representing themselves as such.[22]

Salonga, Araneta, Africa and Villanueva commenced in the CA a special civil action for *certiorari* to nullify the WPI issued by the SEC (C.A.-G.R. SP NO. 49205). On October 15, 1998, however, the CA dismissed the petition for *certiorari* because of the petitioners' failure to furnish a copy of the petition to the SEC. The dismissal became final and executory.[23]

Still, Salonga, Araneta, Africa and Villanueva brought in the CA another petition assailing the WPI issued by the SEC (C.A.-G.R. SP No. 49328). The CA also dismissed their petition on October 26, 1999.[24]

For their part, Nieto, Jr. and Lourdes Africa likewise went to the CA to assail the WPI issued by the SEC (C.A.-G.R. SP No. 49770), but on April 19, 2001, the CA dismissed the petition. Nieto, Jr. initially intended to appeal the dismissal, but the Court denied his motion for extension of time to file petition for review on *certiorari*.[25]

Following the enactment of Republic Act No. 8799 (*Securities Regulation Code*),[26] SEC Case No. 09-98-6086 was transferred to the RTC in Makati City, which re-docketed it as Civil Case No. 01-840 and raffled it to Branch 138.[27]

Meanwhile, on January 18, 1999, POTC held a Special Stockholders' Meeting, at which the following were elected as Directors of POTC, namely: Roberto S. Benedicto, Atty. Victor Africa, Sylvia Ilusorio, Honorio Poblador III, Cristina Agcaoili, Katrina Ponce Enrile, and Nieto, Jr. The elected Directors, except

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[22] *Id.*

[23] *Id.*

[24] *Id.* at 100-101.

[25] *Id.* at 101.

[26] Approved on July 19, 2000.

[27] *Rollo* (G.R. No. 186066), p. 101.

Nieto, Jr., eventually formed the Africa-Ilusorio Group. Thereafter, the Board of Directors held an organizational meeting during which they elected the following as the Officers of POTC, namely: Roberto S. Benedicto (Chairman); Atty. Victor Africa (Vice-Chairman); Sylvia Ilusorio (President); Katrina Ponce Enrile (Vice President); Rafael Poblador (Treasurer); Kitchie Benedicto (Assistant Treasurer); and Atty. Victoria de los Reyes (Corporate Secretary).[28]

On December 20, 1999, the Sandiganbayan promulgated a resolution in SB Civil Case No. 009 denying IRC and Mid-Pasig's motions to vacate the order approving the compromise agreement, *viz*:

> WHEREFORE, premises considered, third-party defendant Mid-Pasig's Motion to Vacate Resolution Approving Compromise Agreement dated August 16, 1998 and third party defendant Independent Realty Corporation's Manifestation and Motion dated October 2, 1998 and the redundant and inappropriate concurrence of the PCGG and the OSG are hereby denied for lack of merit.
>
> The Court also declares all POTC shares in the name of Mid-Pasig and IRC as null and void. Accordingly, out of the 5,400 POTC shares, six hundred seventy three (673) is hereby directed to be issued in the name of Potenciano Ilusorio and four thousand seven hundred twenty seven (4,727) in the name of the Republic of the Philippines. The Board of Directors, President and Corporate Secretary of the POTC are hereby ordered to comply with this requirement within ten (10) days from receipt of this Resolution.[29]

In compliance with the resolution, POTC Corporate Secretary Victoria de los Reyes effected the cancellation of the shares registered in the names of IRC and Mid-Pasig and issued Certificate of Stocks No. 131 covering the 4,727 POTC shares in the name of the Republic. Thereafter, Certificate of Stocks No. 131 was transmitted to then Chief Presidential Legal Counsel and PCGG Chairman Magdangal Elma, who acknowledged receipt. Through its resolution dated January 12, 2000, the

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[28] *Id.*

[29] *Id.* at 102.

Sandiganbayan noted the POTC Corporate Secretary's compliance.[30]

As earlier mentioned, the implementation of the Sandiganbayan's resolution dated December 20, 1999 resulted in the re-distribution of the shareholdings in POTC in the manner earlier shown.

On March 16, 2000, the PCGG filed in this Court its petition assailing the resolution of the Sandiganbayan dated December 20, 1999 (G.R. No. 141796 entitled *Republic of the Philippines, represented by the Presidential Commission on Good Government v. Sandiganbayan and Potenciano T. Ilusorio, substituted by Ma. Erlinda Ilusorio Bildner*).

IRC and Mid-Pasig also filed in this Court their own petition to assail the resolution dated December 20, 1999 (G.R. No. 141804 entitled *Independent Realty Corporation and Mid-Pasig Land Development Corporation v. Sandiganbayan and Potenciano T. Ilusorio, substituted by Ma. Erlinda Ilusorio Bildner*).

On March 29, 2000, this Court issued a TRO to enjoin the Sandiganbayan from executing its assailed resolution.[31]

On September 6, 2000, President Estrada nominated another set to the PHILCOMSAT Board of Directors, namely: Carmelo Africa, Federico Agcaoili, Pacifico Marcelo and Edgardo Villanueva. Thereby, Africa and Villanueva were retained as PHILCOMSAT Directors, while Agcaoili and Marcelo replaced Araneta and Salonga.[32]

Subsequently, POTC, through the Africa-Bildner Group, decided to hold a Special Stockholders' Meeting on September 22, 2000. POTC Corporate Secretary de los Reyes issued a Notice of Meeting. Attempting to stop the Stockholders' Meeting, Nieto, Jr., Araneta and Salonga filed in this Court in G.R. No.

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[30] *Id.*

[31] *Id.*

[32] *Id.* at 103-104.

141796 and G.R. No.141804 a Motion for Leave to Intervene with urgent manifestation for contempt of court, praying, among others, that POTC Corporate Secretary de los Reyes be cited in contempt and/or disbarred for issuing the Notice of Meeting.[33]

The Special Stockholders' Meeting on September 22, 2000 was attended by stockholders representing 81.32% of the outstanding capital stock of POTC (including PCGG). During the meeting, a new set of POTC Board of Directors were elected, namely: Nieto, Jr., Katrina Ponce Enrile, Victor V. Africa, Sylvia K. Ilusorio, Honorio A. Poblador III, Carmelo Africa and PCGG Commissioner Jorge Sarmiento (the latter two being nominated by PCGG).[34]

POTC then convened a Special Stockholders' Meeting of PHILCOMSAT, at which the following were elected as Directors: Nieto, Jr., Francisca Benedicto, Katrina Ponce Enrile, Sylvia Ilusorio, Honorio Poblador III, and government representatives Africa, Marcelo, Villanueva and Agcaoili (the latter four being nominated by PCGG).[35]

In line with existing corporate policy requiring the elected Directors to accept their election before assuming their positions, all the elected Directors (including Nieto, Jr.) were requested to sign acceptance letters to be submitted to POTC Corporate Secretary de los Reyes. A few days later, however, Nieto, Jr. refused to accept and instead opted to assail the validity of the September 22, 2000 POTC Special Stockholders' Meeting.[36]

By virtue of the September 22, 2000 elections, the Africa-Bildner Group, together with the PCGG nominees, took control of the management and operations of POTC and PHILCOMSAT.[37]

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[33] *Id.* at 104.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 105.

[37] *Id.* at 106.

In March 2002, President Gloria Macapagal-Arroyo named Enrique L. Locsin and Manuel D. Andal as new PCGG nominees to sit in the POTC and PHILCOMSAT Boards of Directors. Julio Jalandoni was named as the third new PCGG nominee to the PHILCOMSAT Board of Directors.[38]

On April 29, 2002, POTC, through the Africa-Ilusorio Group, decided to hold a stockholders' meeting. Notices for the meeting were dispatched to all stockholders of record, including the Republic. However, the meeting was adjourned for failure to obtain a quorum because of the absence of several stockholders, including the proxy for the Republic.[39]

On December 3, 2003, Atty. Jose Ma. Ozamiz, a stockholder of PHC, sent a letter-complaint informing the SEC that PHC had not conducted its annual stockholders' meetings since 2001. His letter-complaint was docketed as SEC Case No. 12-03-03.[40]

On December 29, 2003, the SEC issued the following Order in SEC Case No. 12-03-03, to wit:

PREMISES CONSIDERED, the Commission in the exercise of its regulatory authority over corporations and associations registered with it hereby issues the following directives:

1. The board of directors, responsible officers of Philcomsat Holdings, Inc (PHI) (sic) shall organize a COMELEC composed of three members within ten (10) days from date of actual receipt of this Order. One member to be nominated by the group of Atty. Jose Ma. Ozamiz, the second member to be nominated by the group of either Mr. Manuel H. Nieto or Mr. Carmelo P. Africa, Jr. and the third member a neutral party, to be jointly nominated by both groups. Failure on the part of the contending parties to designate their common nominee, the SEC shall be constrained to designate the neutral party.

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[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* at 107.

By letter dated January 8, 2004, Philip Brodett and Locsin communicated to the SEC that:

1. PHC and its directors and officers are not averse to the holding of meetings of its stockholders annually. PHC's inability to hold its annual stockholders' meeting in the past years can be attributed to the following: previous attempts of the group of Mesdames Cristina Ilusorio and Sylvia Ilusorio and Mr. Carmelo Africa (for brevity the "Ilusorio Group") to control PHC without legal basis; delay in the completion of PHC's audited financial statements for the years 2001, 2002 and 2003 was caused by the Ilusorio Group and the pending dispute as to who between the Ilusorio Group, on one hand, and the group of Ambassador Manuel Nieto, Jr. Philippine Government, on the other, properly constitutes the governing board of directors and officers of the parent companies of PHC's, namely the Philcomsat and POTC;

Considering the aforesaid pending dispute as to who really controls the mother companies of PHC, it would be advisable and practicable that the annual meetings of the stockholders and the election of the directors and officers of Philcomsat and POTC should precede those of PHC. In view thereof, and for practical reasons and good order's sake, it was suggested that perhaps the Commission should direct the holding of the annual stockholders' meetings and election of directors and officers of both Philcomsat and POTC at a date or dates prior to those of PHC.

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4. x x x. Considering the foregoing, it is believed and humbly submitted that the 'COMELEC' directed to be organized under the Order is unnecessary considering that its would-be functions (we note that the Order did not state what are the functions of said COMELEC) can and will be performed by the Nomination Committee and the special committee of inspectors.

Considering the foregoing, it is respectfully requested and prayed that the said Order dated 5 January 2004 of the Commission be reconsidered and set aside. To enable PHC to hold an orderly and controversy-free meeting of its stockholders and election of directors this year, it is likewise requested that the Commission first direct and cause PHC's parent companies, namely Philcomsat and POTC,

to hold their respective stockholders' meeting and election and directors and officers prior to those of PHC.[42]

On May 6, 2004, the SEC ruled as follows:

Based on the foregoing premises, the Commission, in the exercise of its regulatory authority as well as supervision corporations and pursuant to its power under Section 5 (k) of the Securities Regulation Code (SRC) which states: "*Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision*," hereby orders the following:

1. The board of directors, responsible officers of Philcomsat Holdings, Corporation ("PHC") shall immediately convene the COMELEC to consider the proposed election and annual meeting of subject corporation.

2. The board of directors and other responsible PHC officers are also enjoined to prepare proper notices of the intended annual meeting and all the necessary documents required by Section 20 of the SRC rules within the stated period provided thereunder in time for the scheduled annual meeting set by the Commission.

3. For the purpose of the meeting, Attys. Myla Gloria C. Amboy and Nicanor Patricio are hereby designated as the SEC representatives to observe the PHC meeting.

4. The PHC and all its responsible directors or officers are hereby directed to hold a meeting for the purpose of conducting the election of the board of directors of the PHC on 28 May 2004 at 10:00 a.m. To be held at the principal office of the corporation.

5. Failure on the part of the authorized person to set/call the meeting within five (5) days from date hereof, Atty. Ozamiz shall be authorized to call the meeting and to provide other stockholders with notice required under the Corporation Code, the Securities Regulation Code and By-laws of the corporation. In such event, Atty. Ozamiz shall preside in said meeting until at least a majority of the PHC stockholders present shall have chosen one of their members as the presiding officer in the meeting.

6. The board of directors and authorized officers of PHC are hereby directed for the last time to submit the calendar of activities

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[42] *Id.* at 107-109.

for the forthcoming meeting within five (5) days from date of this Order. The petitioning stockholder, Atty. Ozamiz, is likewise directed to submit his proposed calendar of activities which shall be used in case of failure on the part of PHC to submit the aforesaid calendar.[43]

On June 7, 2004, the SEC received PCGG's comment through Commissioner Victoria A. Avena, to wit:

1. For the sake of accuracy, we respectfully draw attention to the fact that Messrs. Enrique L. Locsin and Manuel Andal are nominee-directors representing the Republic of the Philippines, through the PCGG, in the board of directors of the Philippine Overseas Telecommunications Corporation ("POTC") and the board of directors of Philippine Communications Satellite Corporation ("Philcomsat"), but not of Philcomsat Holdings Corporation ("PHC"). The third government nominee-director in Philcomsat is Mr. Julio Jalandoni. In February of 2004, Mr. Guy de Leon was nominated by President Gloria Macapagal-Arroyo as a third director for POTC in the event elections.

2. Based on the records of PCGG, it is true and correct that POTC has not held an uncontested annual meeting since its last uncontested stockholders' meeting in the year 1999.

3. Based on records of PCGG, it is true and correct that Philcomsat has not had an uncontested annual meeting since its special stockholders' meeting in the year 2000.

4. The Republic owns forty percent (40%) of the outstanding capital stock of POTC; Philcomsat is a wholly-owned subsidiary of POTC; and Philcomsat owns approximately eighty-five percent (85%) of the outstanding capital stock of PHC.

5. Because of the non-holding of elections for the board of directors of POTC, Philcomsat and PHC, the incumbent respective boards thereof have been holding office as "hold-over" directors, and opposing stockholders have contested their legitimacy.

6. The incumbent board of directors having actual corporate control of POTC and Philcomsat have invited government nominee-directors Messrs. Locsin and Andal, and Mr. Julio Jalandoni in respect of Philcomsat, to respectively occupy seats in said boards rendered vacant by resignations.

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[43] *Id.* at 109-110.

7. However, Messrs. Locsin, Andal and Jalandoni have not physically and actually assumed said positions, because of their request for assumption thereof on the basis of election for the board of directors through stockholders' meetings for the purpose.

8. In view of the ownership structure of POTC, Philcomsat and PHC and the rump boards that have resulted over the years, the more judicious mode towards a truly fair election of directors based on an accurate identification of stockholder representation in PHC (including in respect of government shares) would be to determine issues of representation in Philcomsat and POTC.

9. Accordingly, annual stockholders' meetings and election of directors of the board must first be held for POTC, and then for Philcomsat, then for PHC.[44]

On July 8, 2004, the SEC directed thuswise:

On the bases of the mandatory provision of Sec. 50 of the Corporation Code on calling of annual meeting and the PCGG's comment/manifestation which should be given weight, the following are hereby directed to:

1. POTC and Philcomsat, their respective board of directors or their duly authorized representatives are hereby directed to constitute, within ten (10) days from the date of actual receipt hereof, their COMELEC to be composed of the PCGG nominee/director to act as the neutral party, a representative from the Africa Group and one representative from Nieto Group to perform any and all acts necessary for the determination of the legitimate stockholders of the corporation qualified to vote or be represented in the corporate meetings and ensure a clean, orderly, and credible election of POTC and Philcomsat.

2. POTC is likewise directed to conduct its annual stockholders' meeting not later than 5 August 2004 while Philcomsat shall hold its annual stockholders' meeting on or before 12 August 2004. Thereafter, PHC shall call its annual stockholders' meeting not later than August 31, 2004.

3. PHC, on the other hand, its board of directors or duly authorized representative are ordered to submit a revised calendar of activities for the forthcoming 31 August 2004 annual stockholders' meeting within five (5) days from actual receipt of this Order. The said date

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

for the Annual Stockholders' Meeting shall not be postponed unless with prior Order of the Commission. A nomination's (sic) Committee (NOMELEC) shall be constituted pursuant to the corporation's Manual on Corporate Governance submitted to this Commission. This Committee shall be composed of three (3) voting members and one (1) non-voting member in the person of the HR Director/Manager pursuant to x x x Section 2.2.2.1 of the said Manual. One representative each from the Africa Group and the Nieto Group and a nominee/ representative of the PCGG (to act as an independent member) shall comprise three (3) voting members. The committee shall perform the functions outlined in Sections 2.2.2.1.1, 2.2.2.1.2, 2.2.2.1.3 and 2.2.2.1.4 of the Manual in connection with the forthcoming election. Failure to submit the names of the representative of each group within ten (10) days from receipt of this Order shall authorize the Commission to appoint persons to represent each group. Failure or refusal on the part of the corporation to hold the stockholders' meeting on the scheduled date shall authorize the petitioning shareholder to call and preside in the said meeting pursuant to Section 50 of the Corporation Code. All previous orders inconsistent herewith are hereby revoked.

4. Let the Corporate Finance Department (CFD) of this Commission be furnished with a copy of this Order for its appropriate action on the matter.

5. To ensure protection of the interest of all outstanding capital stocks, including minority shareholders, Attys. Nicanor P. Patricio Jr. and Myla Gloria A. Amboy are hereby designated as SEC representatives to attend and supervise the said Annual Stockholders' Meeting.[45]

On July 26, 2004, the SEC clarified its immediately preceding order, as follows:

Pending consideration by the Commission is the letter dated 22 July 2004 of Mr. Enrique Locsin, Nominees/Director of the Presidential Commission on Good Government To POTC and Philcomsat, seeking to enjoin the holding of any and all meetings of POTC, Philcomsat and/or PHC, contrary to the 8 July 2004 SEC Order and requesting the correction of the date of the Order cited in the 22 July 2004 Stay Order.

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[45] *Id.* at 111-112.

In order to clarify the Order issued by the Commission on July 8, 2004 and 22 July 2004, the following explications are hereby made:

First. The SEC Order of 8 July 2004 which states in part:

> POTC is likewise directed to conduct its annual stockholders' meeting not later than 5 August 2004 while Philcomsat shall hold its annual stockholders' meeting on or before 12 August 2004. Thereafter, PHC shall call its annual stockholders' meeting not later than August 31, 2004, should be interpreted to mean that the stockholders' meeting of POTC, Philcomsat and PHC should be held successively, in the order mentioned, that is, POTC first, then Philcomsat, and lastly, PHC. This was the intention of the Commission in issuing the said Order (July 8, 2004).

To further clarify and ensure that the meetings shall be conducted on specific dates, the Order of July 8, 2004 is hereby modified and the dates of the meetings are hereby scheduled as follows:

1. For POTC — July 28, 2004
2. For Philcomsat — August 12, 2004
3. For PHC — August 31, 2004

Second. One of the relevant orders was inadvertently referred to in the Stay Order of 22 July 2004 as "June 8, 2004," which should have been actually written as "July 8, 2004." Hence, the same should be properly corrected.

Accordingly, POTC, Philcomsat and Philcomsat Holdings Corporation (PHC) are hereby reminded to strictly adhere to the schedule dates of meetings of the said corporations set forth in this Order. POTC, Philcomsat and PHC are further reminded to also comply with the manner of the conduct of their respective meetings as provided in the Order of the Commission dated July 8, 2004.

As requested, let the 22 July 2004 Stay Order, particularly paragraphs 1, 2, and 3 thereof, be corrected to reflect the correct date of the Order cited therein as "**July 8, 2004" not "June 8, 2004**."[46]

On July 28, 2004, the Africa-Bildner Group held successive stockholders' meetings for POTC and PHILCOMSAT. Elected

[46] *Id.* at 112-113.

as Directors during the POTC stockholders' meeting were Katrina Ponce Enrile, Victor Africa, Erlinda Bildner and Honorio Poblador III, all from the Africa-Bilder Group. Although absent from the meeting, Nieto, Jr., Locsin and Andal of the Nieto–PCGG Group were also elected as Directors. Resultantly, the groups were represented on a 4:3 ratio. Victor Africa was designated as the POTC proxy to the PHILCOMSAT stockholders' meeting. Locsin and Andal were also elected as PHILCOMSAT Directors. However, Nieto, Jr., Locsin and Andal did not accept their election as POTC and PHILCOMSAT Directors.[47]

On August 5, 2004, the Nieto-PCGG Group conducted the annual stockholders' meeting for POTC at the Manila Golf Club. Elected were Nieto, Jr. as President and Guy de Leon, a government nominee to POTC, as Chairman. At the same meeting, the Nieto-PCGG Group, through its elected Board of Directors, issued a proxy in favor of Nieto, Jr. and/or Locsin authorizing them to represent POTC and vote the POTC shares in the PHILCOMSAT stockholders' meeting scheduled on August 9, 2004.[48]

On August 9, 2004, the Nieto-PCGG Group held the stockholders' meeting for PHILCOMSAT at the Manila Golf Club. Immediately after the stockholders' meeting, an organizational meeting was held, and Nieto, Jr. and Locsin were respectively elected as Chairman and President of PHILCOMSAT. At the same meeting, PHILCOMSAT (Nieto-PCGG Group) issued a proxy in favor of Nieto, Jr. and/or Locsin authorizing them to represent PHILCOMSAT and vote the PHILCOMSAT shares in the stockholders' meeting of PHC scheduled on August 31, 2004.[49]

On August 11, 2004, POTC (Africa-Bildner Group), Victor Africa, Honorio Poblador III and Katrina Ponce Enrile filed a Complaint for injunction with prayer for TRO and WPI in the

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[47] *Id.* at 113-114.

[48] *Id.* at 114.

[49] *Id.*

RTC in Makati City (Branch 133) against Nieto, Jr., Luis Lokin, Jr., and Alma Kristina O. Alobba seeking to enjoin the latter from acting as Directors and Officers of POTC (Civil Case No. 04-935).

On August 27, 2004, the RTC (Branch 133) dismissed Civil Case No. 04-935 for lack of jurisdiction over the subject matter, explaining its action thusly:

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After a perusal of the complaint and of the memoranda filed, with particular attention on the authorities cited, the Court is of the opinion that it has no jurisdiction over the case but the Sandiganbayan.[50]

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Thereafter, the Africa-Bildner Group filed a motion for reconsideration.

Earlier, on August 18, 2004, PHC (Nieto-PCGG Group) submitted to the SEC a final list of candidates for Independent Directors of PHC for the 2004-2005 term, to wit:

Please be informed that in connection with the annual stockholders' meeting of PHILCOMSAT HOLDINGS CORPORATION (PHC) to be held on August 31, 2004, and in compliance with the Order dated 8 July 2004 of the Securities and Exchange Commission in SEC Case No. 12-03-03 entitled "In the matter of Philcomsat Holdings Corporation, For: Calling of Meeting," the Board of Directors of PHC, at its meeting today constituted the Nomination Committee with the following persons as its members:

Voting Members:

1. Luis K. Lokin, Jr. (representative of the Nieto Group)

2. Enrique L. Locsin (representative of the PCGG)

3. Vacant (to be designated by the Securities and Exchange Commission in default of the designation of representative by the Africa group)

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[50] *Id.* at 114-115.

Non-voting member:

1. Philip G. Brodett

The said Nomination Committee which shall act upon the affirmative vote of at least two (2) of its voting members, shall have the following powers, duties and functions:

(1) To pre-screen and shortlist all candidates nominated to become members of the board of directors in accordance with the qualifications and disqualifications and the procedures prescribed in the Corporation's Manual on Corporate Governance and the Securities Regulation Code (SRC) and its Implementing Rules and Regulations (SRC Rules);

(2) To submit to the Securities and Exchange Commission and the Philippine Stock Exchange the Final List of candidates for Independent Directors as required under the SEC Rules;

(3) To act as the committee of inspectors with powers to pass upon the validity of proxies, to canvass and tally the votes for the election of directors and to certify the winning directors based on the votes garnered;

(4) To do such acts or things as may from time to time be directed or delegated by the Board.[51]

On August 20, 2004, the SEC issued an order, pertinently stating:

On separate dates, the group of Atty. Victor Africa ("Africa Group') and the group of Ambassador Nieto ("Nieto group") conducted their respective annual stockholders' meetings. The Africa group held successive meetings for POTC and Philcomsat on July 28, 2004, while the Nieto group held similar meetings for POTC and Philcomsat on August 5 and August 9, respectively. On all these meetings, where the SEC representative was present (except the Philcomsat meeting of the Africa group), the Commission noted the following observations:

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In light of the foregoing, the Commission hereby upholds the validity of the stockholders' meetings conducted by the Nieto Group

[51] *Id.* at 115-116.

in view of the clear compliance by the said group with the condition set forth by the Commission in its Orders of July 8 and 26, 2004.

Meanwhile, the PHC meeting shall proceed as scheduled on August 31, 2004. The Officers and Directors of PHC are hereby reminded to strictly conform to the conditions stated in the July 8 and 26 Orders.

The President and the Corporate Secretary of PHC and its Stock and Transfer Agent are hereby ordered to submit to the Commission the certified list of stockholders and the stock and transfer book of PHC on or before August 25, 2004.

Due to the failure of the Africa group to nominate their representative to the PHC NOMELEC, Atty. Victoria De Los Reyes is hereby designated as the representative of the Africa group in the forthcoming August 31, 2004 PHC meeting.

The Corporation Finance Department is hereby directed to monitor PHC's compliance with the laws, rules and regulations relative to the calling of the stockholders' meeting and to make the necessary action to ensure such compliance.

The Orders of 8 July 2004 and 26 July 2004 insofar as not inconsistent with this Order shall remain in full force and effect.[52]

On August 23, 2004, the Africa Group commenced Civil Case No. 01-555 in the RTC in Makati City (Branch 61), praying for the issuance of a TRO or WPI to "enjoin Philcomsat Holdings Corporation from recognizing defendants Nieto[, Jr.] and Lokin as the representatives of PHILCOMSAT," and to prevent Nieto, Jr. and Lokin from acting as Directors and Officers for and on behalf of POTC and PHILCOMSAT.

On August 30, 2004, the RTC denied the motion for the issuance of TRO and WPI.[53]

On August 26, 2004, the Nomination Committee (NOMELEC) of PHC (Nieto Group) met to conduct the validation of the proxies and the evaluation and prequalification of the nominees for election as Independent Directors. After a majority vote of its voting

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[52] *Id.* at 116-118.

[53] *Id.* at 118.

members, the NOMELEC recognized and validated the proxy submitted by Locsin.

On August 27, 2004, the Nieto Group submitted to the SEC the final list of candidates for Independent Directors of PHC for the term 2004-2005. The list contained the names of Benito Araneta and Roberto Abad, both nominated by Brodett. The list was submitted by NOMELEC members Lokin, Jr., Locsin and Brodett.

On the same date, POTC and PHILCOMSAT (Africa Group), through Atty. Victor Africa, filed in the CA a petition for *certiorari* and prohibition (with prayer for TRO and WPI) seeking to annul and set aside the orders issued on July 8, 2004, July 26, 2004 and August 20, 2004 issued in SEC Case No. 12-03-03 (C.A.-G.R. SP No. 85959).[54]

On August 31, 2004, the CA promulgated in C.A.-G.R. SP No. 85959 a resolution granting a TRO, pertinently stating:

> In the meantime, since the petition questions the jurisdiction of public respondents in issuing the assailed Orders dated July 8, 2004, July 26, 2004 and August 20, 2004, and the implementation of the same will render moot and academic any and all orders, resolutions and decisions of this Court, this Court hereby TEMPORARILY RESTRAINS respondents, their officers, agents and other persons acting for and in their behalf, from enforcing, implementing and executing the aforesaid assailed Orders within a period of sixty (60) days or until sooner revoked.[55]

The CA later granted the application for WPI, and enjoined the respondents therein, their agents, officers, representatives and other persons acting for and in their behalf from executing, enforcing and implementing the assailed SEC orders issued on July 8, 2004, July 26, 2004 and August 20, 2004 pending final resolution of the petition, or unless the WPI was sooner lifted.[56]

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

[55] *Rollo* (G.R. No. 184622), pp. 277-278.

[56] *Id.* at 279-282.

Also on August 31, 2004, the PHC (Nieto Group) conducted its annual stockholders' meeting. The Officers elected were Locsin as Director and Acting Chairman; Oliverio Laperal as Director and Vice Chairman; Nieto, Jr. as Director, President and Chief Executive Officer; Brodett as Director and Vice President; Manuel D. Andal as Director, Treasurer and Chief Financial Officer; Roberto San Jose as Director and Corporate Secretary; Julio Jalandoni, Lokin, Jr., Prudencio Somera, Roberto Abad, and Benito Araneta as Directors.[57]

On September 10, 2004, PHILCOMSAT (Africa Group), represented by Victor Africa, filed in the RTC in Makati City (Branch 138) a complaint against PHC, Lokin, Jr., Locsin and Brodett (Civil Case No. 04-1049) seeking the following reliefs, to wit:

1. The proceedings of the Nomination Committee be invalidated for having been in violation of the Manual of Corporate Governance of defendant PHC;

2. The act of the Nomination Committee in validating the proxy issued in favor of Manuel Nieto and/or defendant Enrique Locsin and in invalidating the proxy issued in favor of Victor Africa be annulled;

3. The elections held and the proclamation of winners during the Annual Stockholders' Meeting of defendant PHC held on 31 August 2004 be annulled;

4. Defendant PHC be directed to recognize Atty. Victor Africa as the proxy of plaintiff and that he be allowed to vote the shares standing in the name of plaintiff at subsequent elections for the members of the board of directors of defendant PHC.[58]

On October 21, 2004, PHILCOMSAT (Nieto Group) and Lokin, Jr. filed their Answer with Grounds for Dismissal and Compulsory Counterclaims, averring therein, among others, as follows:

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[57] *Rollo* (G.R. No. 186066), p. 120.

[58] *Id.* at 120-121.

37. The instant complaint must be DISMISSED for lack of capacity and/or authority of the alleged representative, Victor V. Africa, to file the same and sue the defendants on behalf of Philcomsat.

38. While the Complaint names Philcomsat as the plaintiff, allegedly represented by Victor Africa, at no time did [P]hilcomsat, through its duly constituted Board of Directors, authorize him to file the same.

39. Victor Africa bases his authority upon the Secretary Certificate, alleging that the Philcomsat Board of Directors, during its meeting held on 28 July 2004, authorized him to file legal actions on behalf of the corporation.

40. It is respectfully averred, however, that Philcomsat, through its duly constituted Board of Directors DID NOT HOLD any meeting on 28 July 2004, and DID NOT AUTHORIZE Africa to file any action or to do any act or deed on its behalf. The Secretary's Certificate he represented is not signed by Atty. Luis K. Lokin, Jr., the duly-elected Corporate Secretary of Philcomsat.

x x x x x x x x x

50. There was no Philcomsat Board meeting held or authorized to be held on 28 July 2004. Neither was there any authority vested upon Victor Africa to file this nuisance suit, which is only aimed at needlessly harassing defendants and the other lawful stockholders of Philcomsat and PHC and the public at large.

51. For lack of any factual and legal basis of the alleged authority of the person instituting and verifying the instant complaint, it must be declared as a NUISANCE SUIT and immediately DISMISSED by the Honorable Court, pursuant to Section 1 (b) of the Interim Rules.

52. Furthermore, not only does Africa lack any authority to file the instant action, the complaint itself is devoid of any meritorious legal basis.

53. The relevant facts are as follows: In 2003, a stockholder of PHC filed a letter-complaint (later docketed as SEC Case No. 12-03-03) with the SEC, alleging the non-holding of the annual stockholders' meeting since 2002. Hearings were conducted wherein the officers and directors of POTC and Philcomsat were required to be present and to file their comments. Victor Africa actively

participated in the proceedings before the SEC, in his alleged capacity as officer of POTC, Philcomsat and PHC.

54. In view of the government interest in POTC which is the sole beneficial owner of Philcomsat, which in turn, is the 80% stockholder of PHC, and the fact that POTC and Philcomsat are under sequestration, the PCGG was likewise directed to file their comments on the matters raised by the parties. PCGG, through then Commissioner Victoria Avena, asserted that the government holds 40% interest in POTC. x x x.

55. Thereafter, the SEC issued the aforestated Order on 08 July 2004, directing the officers of POTC and Philcomsat to conduct their respective stockholders' meetings. Before the rendition of the 08 July 2004 Order, the Africa group did not conduct any stockholders' meeting of POTC or Philcomsat, but they would later claim that they had agreed, as early as 02 July 2004, to hold the meetings on 08 July 2004. Given the timing of the meeting, however, which was held after the 08 July 2004 SEC Order, no credence could be given to such self-serving claim. The timing and dates are more than mere convenient coincidences.

56. After POTC and Philcomsat duly held their respective stockholders' meetings on 05 August 2004 and 09 August 2004, the SEC upheld the validity of their meetings in its Order dated 20 August 2004.

57. Thereafter, Africa initiated a series of actions in different tribunals in an attempt to basically prevent the POTC and Philcomsat Directors and Officers from acting in their capacity as such.[59]

On November 18, 2004, PCGG expressly adopted the Answer of PHILCOMSAT (Nieto Group) as its own Answer in Civil Case No. 04-1049.[60]

On December 7, 2004, the RTC denied the Africa Group's Motion for Reconsideration assailing the order issued on August 27, 2004 in Civil Case No. 04-935.

Whereupon, POTC (Africa Group) went to the CA on *certiorari* to annul and set aside the orders issued on August

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[59] *Id.* at 121-122.

[60] *Id.* at 122.

27, 2004 and December 7, 2004 in Civil Case No. 04-935 by the RTC (Branch 133). The suit, docketed as C.A.-G.R. SP NO. 88664, was dismissed by the CA on July 5, 2005, the decision pertinently stating:

> x x x We thus have to address one crucial issue: Was the lower court correct in ruling that the Sandiganbayan had jurisdiction over the instant case?
>
> It was.
>
> It must be stressed that the petitioners' complaint essentially questions the legality by which the private respondents are exercising control over the assets and operations of a sequestered corporation. They posit that the private respondents are usurpers and have no right to sit in the board of directors or act as corporate officers of the POTC. Evidently, these issues are "arising from, incidental to, or related to" the sequestration case against POTC which, under the law, should be addressed by the Sandiganbayan.
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> x x x x x x x x x
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> All told, the lower court did not commit grave abuse of discretion amounting to lack of or in excess of jurisdiction in dismissing the instant complaint for lack of jurisdiction, the same being vested in the Sandiganbayan.[61]

On June 15, 2005, this Court rendered its decision in G.R. No. 141796 and G.R. No. 141804 by affirming the validity of the compromise agreement dated June 28, 1996 between the PCGG and Atty. Ilusorio, holding:

> With the imprimatur of no less than the former President Fidel V. Ramos and the approval of the Sandiganbayan, the Compromise Agreement must be accorded utmost respect. Such amicable settlement is not only allowed but even encouraged. x x x.
>
> Having been sealed with court approval, the Compromise Agreement has the force of *res judicata* between the parties and should be complied with in accordance with its terms. Pursuant thereto, Victoria C. de los Reyes, Corporate Secretary of the POTC, transmitted to Mr. Magdangal B. Elma, then Chief Presidential Legal

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[61] *Id.* at 123.

Counsel and Chairman of PCGG, Stock Certificate No. 131 dated January 10, 2000, issued in the name of the Republic of the Philippines, for 4,727 POTC shares. Thus, the Compromise Agreement was partly implemented.[62]

On July 5, 2005, the Africa Group, citing the decision in G.R. No. 141796 and G.R. No. 141804, filed a Manifestation with *Ex-Parte* Motion to Resolve in Civil Case No. 04-1049.[63]

Also on July 5, 2005, the CA promulgated its decision in C.A.-G.R. SP No. 88664, dismissing the petition for *certiorari* (brought to assail the dismissal by the RTC (Branch 133) of the complaint in Civil Case No. 04-935).[64]

On August 18, 2005, PHILCOMSAT (Nieto Group), through Locsin, submitted a Counter-Manifestation, contending that the decision in G.R. No. 141796 and G.R. No. 141804 did not operate to automatically nullify the proceedings during the stockholders' meeting of PHC on August 31, 2004.[65]

On August 19, 2005, the RTC (Branch 138), apprised of the pendency of motions for reconsideration in G.R. No. 141796 and G.R. No. 141804, held in abeyance its action upon the parties' respective manifestations until after the resolution of the pending motions for reconsideration.[66]

On September 7, 2005, the Court denied the motions for reconsideration in G.R. No. 141796 and G.R. No. 141804, stating:

Obviously, petitioners' motions for reconsideration are devoid of merit. The matters they raise are mere reiterations of the previous arguments in their petitions already considered and exhaustively

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[62] *Id.* at 123-124.

[63] *Id.* at 124.

[64] *Id.* at 180-188; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, but since retired), with the concurrence of Associate Justice Rebecca De Guia-Salvador and Associate Justice Aurora Santiago Lagman (retired).

[65] *Id.* at 124.

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

passed upon in our July 27, 2005 (sic) Decision. Indeed, we find no cogent reason to deviate from our Decision.

As regards the second incident, respondent Bildner seeks a clarification on the effect of the TRO, issued by this Court on March 29, 2000, restraining the implementation of the challenged Sandiganbayan Resolution dated December 20, 1999 in Civil Case No. 0009.

It may be recalled that in our June 15, 2005 Decision, we dismissed these consolidated petitions assailing the Sandiganbayan Resolution of December 20, 1999. This Resolution (1) denied petitioners' separate motions to vacate the Sandiganbayan Order dated June 8, 1998 approving the Compromise Agreement; (2) declared the 5,400 POTC shares registered in the names of petitioners IRC and MLDC null and void as they categorically admitted that such shares are ill-gotten wealth of deposed President Marcos and his Family, and that the same were surrendered to the Government which now owns the same; and (3) ordered the Corporate Secretary of POTC, within 10 days from receipt of the Resolution, to issue 4,727 POTC shares in the name of the Republic, and 673 POTC shares in the name of Potenciano Ilusorio, pursuant to the approved Compromise Agreement. In compliance with the Sandiganbayan Resolution, Atty. Victoria C. de los Reyes, Corporate Secretary of the POTC, on January 10, 2000, transmitted to Mr. Justice Magdangal B. Elma, then Chief Presidential Legal Counsel and Chairman of Philippine Commission on Good Government (PCGG), Stock Certificate No. 131 (of even date) issued in the name of the Republic of the Philippines, for 4,727 POTC shares. Thus, the Compromise Agreement was partly implemented.

In her present motion for clarification, respondent Bildner alleges *inter alia* that, on March 29, 2000 or more than two (2) months after the Compromise Agreement had been implemented on January 10, 2000, this Court issued a TRO restraining its implementation.

There is no need for us to make a clarification being sought by respondent Bildner in her motion. Suffice it to say that when the TRO was issued on March 29, 2000, the Sandiganbayan Resolution of December 20, 1999 directing the issuance of POTC shares in the names of the Republic and Potenciano Ilusorio in accordance with the Compromise Agreement had been partially implemented on January 10, 2000 or more than two (2) months earlier by POTC

Corporate Secretary Victoria C. de los Reyes. She already transmitted to then PCGG Chairman Magdangal B. Elma Stock Certificate No. 131 issued in the name of the Republic of the Philippines, for 4,727 POTC shares. This was never mentioned by petitioners in their petitions. In fact, even before the petitions in these cases were filed, the implementation of the Compromise Judgment had been partially effected. We were thus misled in issuing the TRO. In any case, the TRO has become moot and academic, the same having no more legal force as the act sought to be restrained had been partially implemented and considering our Decision in this case.

WHEREFORE, petitioners' instant motions for reconsideration are DENIED with FINALITY. On respondent Bildner's motion for clarification, the same is considered moot and academic.[67]

In the meantime, the RTC (Branch 138) required the parties to submit their respective memoranda in Civil Case No. 04-1049. Both parties complied.[68]

On September 14, 2005, the Africa Group brought a special civil action for *certiorari* and *prohibition* in this Court assailing the decision promulgated on July 5, 2005 in C.A.-G.R. SP No. 88664 (G.R. No. 171799).[69]

On September 22, 2005, POTC and PHILCOMSAT (Africa-Ilusorio Group) elected a new set of Directors and Officers. Ma. Erlinda I. Bildner was elected as the Chairman of the Boards of Directors of both POTC and PHILCOMSAT.[70]

On September 26, 2005, POTC and PHILCOMSAT (Nieto Group) initiated a Complaint for injunction and damages with prayer for TRO and WPI in the Sandiganbayan (SB Civil Case No. 0198).[71]

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[67] *Id.* at 125-126.

[68] *Id.* at 126.

[69] *Id.*

[70] *Id.*

[71] *Id.* at 127.

The Sandiganbayan issued a TRO in SB Civil Case No. 0198, enjoining the Africa-Ilusorio Group from acting as Officers and Directors of POTC and PHILCOMSAT.[72]

On June 5, 2006, the Court dismissed G.R. No. 171799, *viz*:

Considering the allegations, issues and arguments adduced in the petition for *certiorari* and prohibition with prayer for writ of preliminary injunction and/or temporary restraining order dated 14 September 2005, the Court Resolves to DISMISS the petition for failure to sufficiently show that the questioned judgment of the Court of Appeals is tainted with grave abuse of discretion.[73]

On October 14, 2006, the RTC (Branch 138) rendered its decision in Civil Case No. 04-1049, thus:

In the case at bar, the Nieto Group did not specifically deny plaintiff's allegation that their votes during the 2004 annual stockholders' meeting for POTC and Philcomsat mainly relied on the IRC and Mid- Pasig shares. Upon the promulgation of the above-cited Supreme Court Decision dated 15 June 2005, even as early as 1986, both IRC and Mid- Pasig corporations have no more right or interest over the subject POTC shares which was already surrendered by Jose Y. Campos to the Government. Mid-Pasig and IRC themselves were sequestered, and then voluntarily surrendered as part of the res covered by the Campos Compromise Agreement. Insofar as Mid-Pasig and IRC are concerned, they have already relinquished all rights or interest over all POTC shares registered in their names in favor of the Republic represented by PCGG, even as early as 1986. Hence, the Supreme Court Decision, in effect, invalidates the elections held by the Nieto Group in the annual stockholders' meeting of POTC and Philcomsat on 5 August 2004 and 9 August 2004, for not having the majority control of the said corporation. In turn, the defendant Nieto Group could not have, therefore, issued a valid proxy nor could they have appointed defendant Locsin as Philcomsat's representative to the PHC annual stockholders' meeting.

WHEREFORE, judgment is hereby rendered invalidating the proxy issued in favor Manuel Nieto and/or defendant Locsin for purposes

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[72] *Id.*

[73] *Id.* at 130.

of the Annual Stockholders' Meeting for the year 2004 and declaring the proxy issued in favor of Victor V. Africa for the said purpose, valid. Corollarily, the elections held and the proclamation of winners during the annual stockholders' meeting of defendant PHC held on 31 August 2004 is hereby annulled.[74]

On October 23, 2006, the RTC (Branch 138) dismissed Civil Case No. 01-840 for lack of jurisdiction. Subsequently, the RTC (Branch 138) denied the petitioners' Motion for Reconsideration, and treated it instead as a notice of appeal.[75]

On March 1, 2007, PHC (Nieto Group) and Brodett appealed the decision dated October 14, 2006 rendered in Civil Case No. 04-1049 to the CA *via* a petition for review (CA-G.R. SP NO. 98097). On March 27, 2007, the Africa-Ilusorio Groups submitted their comment (with opposition to the application for TRO and WPI).[76]

On March 21, 2007, POTC and PHILCOMSAT (Nieto Group) brought to the CA a petition for *certiorari* (with prayer for TRO and WPI), similarly assailing the decision rendered on October 14, 2006 in Civil Case No. 04-1049 (C.A.-G.R. SP No. 98399).[77]

On March 27, 2007, PHILCOMSAT (Africa Group) sought the execution of the decision rendered on October 14, 2006 in Civil Case No. 04-1049 by the RTC (Branch 138). Although on April 4, 2007, PHC (Nieto Group), Locsin and Brodett opposed the motion for execution, the RTC (Branch 138) granted the motion on April 12, 2007, to wit:

WHEREFORE, premises considered, the Court hereby grants the plaintiff's Motion. Let a writ of execution be issued directing the implementation of the following orders:

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[74] *Id.* at 130-131.

[75] *Id.* at 131.

[76] *Id.*

[77] *Id.* at 132.

1) the individuals elected by defendant Locsin in the 2004 PHC ASM, and so proclaimed to be PHC's board of directors, namely: Enrique Locsin, Julio Jalandoni, Manuel Andal, Luis Lokin, Jr., Prudencio Somera, Jr., Manuel H. Nieto, Jr., Roberto V. San Jose, Philip Brodett, Oliverio Laperal, Benito Araneta and Roberto Abad and all their representatives or agents are enjoined from continuing to act as PHC board of directors;

2) the proxy of plaintiff issued to Victor V. Africa is declared valid and thus, the individuals elected by plaintiff's proxy in the 2004 PHC ASM namely: Victor V. Africa, Erlinda I. Bildner, Katrina Ponce Enrile, Honorio Poblador III, Federico Agcaoili, Sylvia K. Ilusorio and Jose Ma. Ozamiz are declared as the valid board of directors of PHC; and

3) the defendants are directed to render an accounting of funds of PHC since 2004 up to the present within 15 days from the finality of this Order.[78]

On April 18, 2007, PHC (Nieto Group) and Brodett filed their Reply with Reiteration of the Urgent Application for Temporary Restraining Order and Preliminary Injunction in C.A.-G.R. SP NO. 98097. On April 20, 2007, they filed a Supplemental Petition with Urgent Application for Temporary Restraining Order and Preliminary Injunction, alleging that, upon motion of respondent (Africa Group), the RTC had issued an order dated April 12, 2007 directing the issuance of a writ of execution to implement the decision dated October 14, 2006.[79]

On April 18, 2007, the RTC (Branch 138) issued a writ of execution of the decision dated October 14, 2006.[80]

On April 24, 2007, the PHC (Africa Group) held an organizational meeting of its Board of Directors pursuant to the decision dated October 14, 2006 as well as the order dated April 12, 2007 and the writ of execution dated April 20, 2007, all issued in Civil Case No. 04-1049. At that organizational meeting, Victor V. Africa, Federico R. Agcaoili, Erlinda I.

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

[79] *Id.* at 133.

[80] *Id.*

Bildner, Katrina C. Ponce Enrile, Sylvia K. Ilusorio, Honorio Poblador III, Jose Ozamiz, Prudencio Somera, Pablo Lobregat and Oliverio Laperal were elected as Directors. On the same occasion, the following were elected as Officers of PHC, namely: Honorio Poblador III as Chairman; Oliverio Laperal as Vice-Chairman; Erlinda I. Bildner as President; Lorna P. Kapunan as Vice President; Pablo Lobregat as Vice-President; Katrina Ponce Enrile as Treasurer; Rafael Poblador as Assistant Treasurer; John Benedict Sioson as Corporate Secretary; and Dennis R. Manzanal as Assistant Corporate Secretary.[81]

On April 30, 2007, PHILCOMSAT (Africa Group) filed an Urgent Motion to Lift the TRO in C.A.-G.R. SP No. 98399.[82]

On May 2, 2007, PHC (Nieto Group) presented a Manifestation in C.A.-G.R. SP NO. 98097, alleging that they were informed that POTC and PHILCOMSAT had filed a petition dated March 14, 2007 in this Court which involved substantially the same issues raised in C.A.-G.R. SP No. 98097.[83]

On May 10, 2007, the CA directed POTC and PHILCOMSAT (Nieto Group) to comment on the Urgent Motion to Lift the TRO filed in C.A.-G.R. SP NO. 98399.[84]

On May 17, 2007, the CA issued a resolution in C.A.-G.R. SP No. 98097, to wit:

> WHEREFORE, petitioners' application for a temporary restraining order/writ of preliminary injunction to enjoin the execution of the Decision dated October 14, 2006 of the court *a quo* in Civil Case No. 04-1049 is merely NOTED as the same has been rendered moot and academic.
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> The issues having been joined with the filing of the comment and reply, the petition for review is considered submitted for decision.[85]

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[81] *Id.* at 133-134.

[82] *Id.* at 134.

[83] *Id.*

[84] *Id.* at 135.

[85] *Id.*

On June 8, 2007, the CA dismissed the petition in C.A.-G.R. CV NO. 88360 for being an improper mode of appeal.[86]

On June 12, 2007, POTC and PHILCOMSAT (Nieto Group) filed their Reply with Urgent Motion to Resolve the Application for Preliminary Injunction in CA-G.R. SP No. 98399. The CA granted the Urgent Motion to Resolve on June 25, 2007, and issued the WPI on the same date.[87]

On August 17, 2007, POTC and PHILCOMSAT (Africa-Ilusorio Group) brought a petition for *certiorari* to annul and set aside the CA's resolution dated June 25, 2007 in C.A.-G.R. SP No. 98399.[88]

Earlier, on August 15, 2007, the Sandiganbayan issued its resolution dismissing the Complaint of POTC and PHILCOMSAT (Nieto Group) in SB Civil Case No. 0198, to wit:

WHEREFORE, in view of the foregoing, the Court hereby resolves as follows:

1) The Urgent Motion to Dismiss dated September 29, 2005 of the defendant is hereby GRANTED. Accordingly, the plaintiffs' Complaint dated September 20, 2005 is hereby ordered DISMISSED.

2) The following motions and pleadings are considered MOOT AND ACADEMIC in view of the dismissal of the case.

a. Motion to Consider and Declare Defendants in Default dated October 21, 2005 of the plaintiffs;

b. Motion for Consolidation with SB Civil Case No. 0009 dated September 24, 2006 of the plaintiffs;

c. Petition to Show Cause dated April 25, 2007 filed by the plaintiffs; and

d. Motion for Leave to Intervene and to Admit Complaint-In-Intervention dated May 16, 2007 filed by the PCGG.

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[86] *Id.*

[87] *Id.* at 136.

[88] *Id.*

3) The Court hereby REPRIMANDS Enrique L. Locsin and Atty. Sikini C. Labastilla for omitting material facts in their Complaint and Urgent Motion for Special Raffle and WARNS that a repetition of the same or similar acts in the future shall be dealt with more severely.[89]

POTC and PHILCOMSAT (Nieto Group) moved for reconsideration on September 5, 2007, and later supplemented the motion.[90]

On November 5, 2007, Atty. Sikini C. Labastilla filed in the CA a petition to cite Erlinda I. Bildner and her lawyer Atty. Dennis R. Manzanal for indirect contempt of court (C.A.-G.R. SP No. 101225), and prayed that the petition be consolidated with C.A.-G.R. SP No. 98399. The consolidation was allowed on December 12, 2007.[91]

On November 13, 2007, President Arroyo named new nominees to the POTC Board of Directors, namely: Daniel C. Gutierrez, Allan S. Montaño, and Retired Justice Santiago J. Ranada; and to the PHILCOMSAT Board of Directors, namely: Ramon P. Jacinto, Abraham R. Abesamis, and Rodolfo G. Serrano, Jr.[92]

On November 19, 2007, POTC held its Annual Stockholders' Meeting and Organizational Meeting of the Board of Directors. Elected were Daniel C. Gutierrez as Director and Chairman; Erlinda I. Bildner as Director and Vice Chairman; Katrina Ponce Enrile as Director and President/CEO; Marietta K. Ilusorio as Director and Treasurer; Francisca Benedicto Paulino, Pablo L. Lobregat, Allan Montaño, Honario A. Poblador III and Justice Ranada as Directors; Rafael A. Poblador as Assistant Treasurer; and Victoria C. de los Reyes as Corporate Secretary.[93]

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[89] *Id.* at 137-138.

[90] *Id.* at 138.

[91] *Id.*

[92] *Id.* at 138-139.

[93] *Id.* at 139.

On the same date, PHILCOMSAT held its Annual Stockholders' Meeting and Organizational Meeting of the Board of Directors. Elected were: Abraham R. Abesamis as Director and Chairman; Pablo L. Lobregat as Director and Vice-Chairman; Ramon Jacinto as Director and Chairman of the Executive Committee; Erlinda I. Bildner as Director and President/CEO; Marietta K. Ilusorio as Director and Vice President; Katrina Ponce Enrile as Director and Treasurer; Lorna P. Kapunan, Honorio A. Poblador III and Rodolfo G. Serrano, Jr. as Directors; Rafael A. Poblador as Assistant Treasurer; and John Benedict L. Sioson as Corporate Secretary.[94]

Thereafter, Concepcion A. Poblador of the Nieto Group filed a Complaint for injunction and declaration of nullity (with prayer for TRO and WPI) with the Sandiganbayan, seeking to enjoin the PCGG from recognizing the stockholders' meeting held on November 19, 2007 (Civil Case No. 07-0001).

Meanwhile, PHC (Africa Group), through Erlinda I. Bildner, filed a Complaint for injunction against the Bank of the Philippine Islands (BPI) with the RTC (Branch 62) in Makati City, seeking to enjoin BPI from allowing further disbursements of PHC funds to unauthorized persons comprising those who were no longer members of the PHC Board of Directors due to the nullification of their election.

On the basis of the Complaint, the RTC (Branch 62) issued an order on December 13, 2007, as follows:

> FOREGOING CONSIDERED, pending final adjudication on the principal action raised herein and subject to the posting of the indemnity bond in the sum of Three Million Pesos (Php 3,000,000.00) issued in favor of the defendant Bank of the Philippine Islands and defendant intervener PHC represented by Enrique M. Locsin, let a writ of preliminary injunction issue, enjoining the said defendant bank, its employees, officers, and representatives from allowing the defendant intervener, Locsin Group, their officers, employees, agents, and/or representatives to inquire, withdraw, and/or in any manner transact relative to any and all Philcomsat Holdings Corporation

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[94] *Id.* at 139-140.

accounts maintained with Bank of the Philippine Islands until further orders from this Court.

Finally, the defendant bank is hereby ordered to submit to this Court the latest (as of receipt of this Order) bank statements and/or certificates of all PHC accounts deposited with its bank within ten (10) days from notice thereof.[95]

On December 14, 2007, POTC and PHILCOMSAT (Africa Group) filed in C.A.-G.R. SP NO. 98399 a Manifestation and Urgent Motion to Withdraw Petition, praying that the petition be considered withdrawn, and that the WPI issued on June 25, 2007 be immediately lifted. In support of the motion, POTC and PHILCOMSAT (Africa Group) averred:

(1) On 21 March 2007, Mr. Enrique Locsin (Locsin) purportedly representing POTC and PHILCOMSAT filed the instant petition, assailing the decision issued by the Regional Trial Court (RTC) of Makati Branch 138 in Civil Case No. 04-1049 x x x.

x x x x x x x x x

(3) What Mr. Locsin has deliberately failed and/or refused to divulge to this Honorable Court upon filing the instant petition are the following facts: (1) Mr. Locsin and his group are exactly the same set of individuals who comprise the respondents in Civil Case No. 04-1049, the decision which is now herein assailed; and that (2) Mr. Locsin and his group, purportedly, representing earlier or two weeks prior to the filing of the instant petition, already filed an appeal also with this Honorable Court, albeit pending in a different division, docketed as CA-G.R. SP No. 98097, raising exactly the same issues and seeking identical reliefs as they are now pending in the case at bar.

x x x x x x x x x

(5) The difficulty in resolving the present controversy lodged before this Honorable Court stems from the fact that even the legitimate POTC and PHILCOMSAT representatives become apparently undeterminable.

x x x x x x x x x

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[95] *Id.* at 140.

(9) Nonetheless, the conflicting claims over POTC and PHILCOMSAT have finally come to resolution with the recent developments.

(10) On 13 November 2007, the government appointed its new nominees to POTC and PHILCOMSAT. For POTC, the government, through Undersecretary Enrique D. Perez with the directive of President Gloria Macapagal Arroyo, appointed Atty. Daniel C. Gutierrez, Atty. Allan S. Montaño and Justice Santiago J. Ranada (Ret.) to the POTC board and represent the government's 34.9% shareholdings in the board of directors of POTC. In the same manner and for an akin purpose, the government appointed Mr. Ramon P. Jacinto, Mr. Rodolfo G. Serrano, Jr. and Radm. Abraham R. Abesamis (Ret.) to represent the government's 34.9% shareholdings on the board of directors of PHILCOMSAT. Although this Honorable Court may take judicial notice of these appointments, to evidence such new appointments, copies of the proxy issued by the Republic of the Philippines to Undersecretary Perez and the "I desire" letter of the Office of the President for the government's nominees to PHILCOMSAT, both dated 13 November 2007, and the list of nominees of Undersecretary Perez for POTC and his letter to PCGG Chairman Camilo Sabio, both dated 19 November 2007, are attached and made integral parts hereof as Annexes "B", "C" and "D", respectively.

(11) Needless to state, with the designation and their selection of the new government nominees to POTC and PHILCOMSAT, the old nominees, namely: Mr. Locsin, Mr. Manuel Andal, Mr. Julio Jalandoni and Mr. Guy de Leon are automatically replaced. This is an undeniable fact and had always been the procedure in the appointment and replacement of government nominees to the board of companies where the government has a substantial interest.

(12) Following the said appointment of new nominees, necessarily, annual stockholders meetings of both POTC and PHILCOMSAT were conducted and held on 19 November 2007 in order to elect the new directors of the respective boards of the two companies. During the said meetings, where over 90% of the shareholders were present and/or duly represented, the stockholders elected the new board of directors of POTC and PHILCOMSAT. These elections are evidenced by the Secretary's Certificates duly executed by the Corporate Secretaries of POTC and PHILCOMSAT, copies of which are attached and made integral parts hereof as Annexes "E" and "F", respectively.

(13) Thus, the new government nominees, together with the private shareholders of POTC and Philcomsat are joined together in a unified board of directors for the two companies. In fact, after the new sets of directors had been elected, both companies conducted their respective organizational and board meetings.

(14) At the board meetings of POTC and Philcomsat held on 4 December 2007, POTC and PHILCOMSAT have decided, as the new, unassailably legitimate and only board of directors of POTC and PHILCOMSAT, to authorize the withdrawal of the instant petition filed in the name of POTC and PHILCOMSAT. The boards likewise in their resolutions, disallowed other persons to represent their companies. Copies of these resolutions issued by POTC and PHILCOMSAT are attached and made integral parts hereof as Annexes "G" and "H", respectively.

(15) Thus, based on the foregoing, POTC and PHILCOMSAT, who are supposedly the petitioners in this case, move for the immediate withdrawal of the petition dated 14 March 2007 and the immediate lifting of the Writ of Preliminary Injunction dated 25 June 2007.[96]

The Urgent Motion to Withdraw Petition was opposed in a Comment and Opposition filed on February 13, 2008 that averred as follows:

x x x x x x x x x

4. Through the malicious motion to withdraw, there is a veiled attempt, to have this Honorable Court uphold and recognize the validity of the supposed meetings held by rump boards on November 19, 2007. This is a matter that is properly cognizable only by the Sandiganbayan.

5. In fact, there is already a pending complaint before the Sandiganbayan that assails the supposed November 19, 2007 meetings stated in the motion to withdraw.

6. The Sandiganbayan, acting through the Fifth Division, granted the issuance of a Temporary Restraining Order on December 21, 2007, to prevent and prohibit any recognition of these November 19, 2007 meetings. x x x.

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[96] *Id.* at 140-142.

12. Petitioners, however, are compelled to address the misleading allegations and conclusions in the motion to withdraw. It is respectfully manifested that these alleged November 19, 2007 meetings were not called by the legitimate boards of petitioners POTC and Philcomsat. Only the legitimate boards, here represented by Mr. Locsin, can properly act upon any change in the government nominees, and it is only the legitimate boards that can install them. As manifested by petitioners to this Honorable Court, since there are no more legal challenges to the respective Boards of Directors of petitioners originally led by Ronaldo Salonga and Manuel Nieto, Jr., since 1998, only the successors of these boards, here represented by Mr. Locsin, can properly represent petitioners POTC and PHILCOMSAT.

12.1. The issue was settled with the dismissal of the appeal in CA G.R. CV No. 88360, which stemmed from the original petition filed in 1998 by Potenciano Ilusorio, Katrina Ponce-Enrile, and their family owned corporations, to question the election of the Nieto-Salonga board. The appeal was dismissed by the Honorable Court of Appeals in its Resolution dated June 8, 2007, a copy of which is hereto attached as Annex B.

13. It is significant that the manifestation and motion to withdraw made admissions that recognize the validity of the boards represented by Mr. Locsin. While petitioners do not admit to the genuineness or due execution of the Secretary's Certificates which were not signed by the duly-elected Corporate Secretary x x x, it must be noted that the authority of Mr. Locsin to file the instant petition was recognized and admitted therein. It was only claimed that such authority "was lost" when he was allegedly replaced, which replacement, as discussed above, is still disputed. Thus, even the rump boards admit that the filing of this petition by Mr. Locsin was duly authorized by POTC and PHILCOMSAT.[97]

x x x x x x x x x

On December 21, 2007, the Sandiganbayan (Fifth Division) issued an order in Civil Case No. 07-0001, to wit:

x x x x x x x x x

Wherefore, finding the complaint to be sufficient in form and substance and considering the necessity to maintain the status quo

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

lest grave and irreparable injury would result to plaintiff pending the hearing of the main incident (Injunction and Declaration of Nullity), let a TEMPORARY RESTRAINING ORDER issue ordering the defendants, their agents, executives and other persons acting upon their instructions, from recognizing or acting pursuant to the 19 November 2007 stockholders meetings of POTC and PHILCOMSAT. The restraining order is good for twenty (20) days from notice to defendants or any of their representatives.[98]

x x x x x x x x x

On May 7, 2008, the PCGG passed Resolution No. 2008-009, *viz*:

NOW, THEREFORE, be it RESOLVED, as it is hereby RESOLVED, that:

1. The PCGG recognize the validity of the 19 November 2007 POTC/Philcomsat stockholders' meeting and confirm as valid the election of the following government nominees: Atty. Daniel C. Gutierrez, Justice Santiago J. Ranada and Atty. Allan S. Montano to the Board of Directors of POTC and Radm. Abraham R. Abesamis, Mr. Ramon P. Jacinto and Mr. Rodolfo G. Serrano, Jr. to the Board of Directors of Philcomsat;

2. The PCGG recognize the validity of the 11 December 2007 and 18 January 2008 special stockholders' meetings of Philcomsat subsidiaries, PHC and TCI, at which the new government nominees were also elected as members of their respective Board of Directors subject to the "I Desire" letter of the President requiring the nomination and installation of Mr. Enrique Locsin in PHC vice Mr. Rodolfo Serrano;

3. The PCGG direct the old government nominees and their appointed Corporate Secretaries under pain of contempt to submit to the Commission within ten (10) days from their receipt of the Resolution:

> a. A complete set of Minutes of the Meetings of the Boards of Directors, Executive Committee, Legal Committee, Audit Committee and all other committees with a Certification under oath of the completeness thereof from 1998 up to the present;

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[98] *Id.* at 144.

b. A complete and updated list of stockholders of the corporations with their last known addresses and number of shares duly certified by the Corporate Secretary and/or Stock Transfer Agent;

c. Copies of all audited and interim financial statements of these corporations; and

d. The stock transfer book and stock certificate booklet of PHC and TCI.

4. The PCGG request the Securities and Exchange Commission ("SEC") and the Philippine Stock Exchange ("PSE") to regulate and monitor POTC, Philcomsat, PHC and TCI, to cooperate with the new government nominees and assist them in complying with the reportorial requirements of these corporations, including, but not limited to, compelling the old government nominees and their appointed officers to submit copies of the documents referred to above;

RESOLVED, FURTHER, that the Commission Secretary be directed to furnish copies of this Resolution to the old government nominees/directors of POTC, Philcomsat, PHC and TCI namely Enrique Locsin, Manuel Andal, Julio Jalandoni, Guy De Leon, Benito Araneta and Ronaldo Salonga, to the new government nominees Daniel Gutierrez, Santiago Ranada, Allan Montano, Abraham Abesamis, Ramon Jacinto, Rodolfo Serrano, Jr. Enrique Locsin and to the SEC, PSE and BSP for their guidance, observation and compliance.[99]

On July 16, 2008, the CA rendered its assailed decision in C.A.-G.R. SP No. 102437, annulling and setting aside the order dated December 13, 2007 and the WPI issued on December 17, 2007 by the RTC (Branch 62).[100]

On February 13, 2009, the CA denied the motion for reconsideration.[101]

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[99] *Id.* at 144-145.

[100] *Rollo* (G.R. No. 186590), pp. 52-65.

[101] *Id.* at 67-70.

On September 30, 2008, the CA promulgated its assailed consolidated decision in C.A.-G.R. SP No. 98097, C.A.-G.R. SP No. 98399 and C.A.- G.R. SP No. 101225, dismissing the petitions.[102] The CA held that the RTC acted within its jurisdiction in resolving the intra-corporate dispute; that the conduct of pre-trial was not required in corporate election cases; that the RTC had the authority to decide Civil Case No. 04-1049; that the decision of the RTC was valid and correct; and that the petition for contempt filed against Atty. Sikini C. Labastilla was without basis. The CA lifted and dissolved the WPI issued on June 25, 2007.[103]

On December 23, 2008, the CA denied the motion for reconsideration.[104]

Issues

G.R. No. 184622

WHETHER THE SANDIGANBAYAN'S REFUSAL TO TAKE COGNIZANCE OF THE CONTROVERSY ON THE GROUND THAT THE SAME IS AN INTRA-CORPORATE CONTROVERSY IS IMPROPER AND AGAINST JURISPRUDENCE.[105]

G.R. Nos. 184712-14

WHETHER THE SANDIGANBAYAN HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER SEQUESTERED CORPORATIONS, SEQUESTRATION-RELATED CASES, AND ANY AND OVER ALL INCIDENTS ARISING FROM, INCIDENTAL TO, OR RELATED TO SUCH CASES.[106]

WHETHER THE SEQUESTRATION OVER POTC AND PHILCOMSAT REMAINS DESPITE THE APPROVAL OF THE

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[102] *Rollo* (G.R. No. 186066), pp. 87-175; penned by Associate Justice Teresita Dy-Liacco Flores (retired), and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Hakim S. Abdulwahid.

[103] *Id.* at 175.

[104] *Id.* at 177-179.

[105] *Rollo* (G.R. No. 184622), p. 27.

[106] *Rollo* (G.R. Nos. 184712-14), p. 30.

PCGG-ILUSORIO COMPROMISE AGREEMENT IN G.R. NOS. 141796 AND 141804.[107]

WHETHER THE MAKATI RTC MAY RENDER JUDGMENT ON THE COMPLAINT PURSUANT TO THE INTERIM RULES WHEN THE SAID COURT HAS NOT BEEN DESIGNATED AS A SPECIAL COMMERCIAL COURT BY THE SUPREME COURT.[108]

WHETHER THE ORDER TO CONDUCT PRE-TRIAL AND THE SUBMISSION OF THE PRE-TRIAL BRIEFS IS MANDATORY UNDER ALL CASES FILED UNDER THE INTERIM RULES.[109]

G.R. No. 186590

WHETHER THE COURT OF APPEALS ERRED WHEN IT NULLIFIED THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT.[110]

G.R. No. 186066

WHETHER OR NOT THE CA ERRED IN RULING THAT THE REGIONAL TRIAL COURT OF MAKATI HAD JURISDICTION OVER CIVIL CASE NO. 04-1049;

WHETHER OR NOT THE CA ERRED IN RULING THAT THE DECISION IN G.R. NOS. 141796 AND 141804 FINALLY SETTLED THE ISSUES IN CIVIL CASE NO. 04-1049 AND CONSEQUENTLY ANNULLED THE POTC PROXY IN FAVOR OF MESSRS. NIETO AND LOCSIN;

WHETHER OR NOT THE CA ERRED IN RULING THAT BRANCH 138 COULD STILL ACT ON AND DECIDE CIVIL CASE NO. 04-1049 DESPITE THIS HONORABLE COURT'S REVOCATION OF ITS DESIGNATION AS SPECIAL COMMERCIAL COURT OF RTC MAKATI CITY;

WHETHER OR NOT THE CA ERRED IN RULING THAT PRE-TRIAL AND TRIAL CAN BE DISPENSED WITH IN CIVIL CASE NO. 01-1049;

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[107] *Id.* at 37.

[108] *Id.* at 39.

[109] *Id.* at 41.

[110] *Rollo* (G.R. No. 186590), p. 20.

WHETHER OR NOT THE CA ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT WHICH WAS CONTRARY TO THE FACTS AND EXISTING JURISPRUDENCE.[111]

The Court reduces the issues for resolution to two main ones, namely:

(*a*) Did RTC (Branch 138) have jurisdiction over the intra-corporate controversy (election contest)?

(*b*) Who among the contending parties or groups held the controlling interest in POTC and, consequently, in PHILCOMSAT and PHC?

In G.R. Nos. 184712-14, the petitioners postulate that the Sandiganbayan had original and exclusive jurisdiction over sequestered corporations, sequestration-related cases, and any and over all incidents arising from, or incidental or related to such cases;[112] that it was error on the part of the CA to conclude that the Sandiganbayan was automatically ousted of jurisdiction over the sequestered assets once the complaint alleged an intra-corporate dispute due to the sequestered assets being *in custodia legis* of the Sandiganbayan;[113] that the sequestration of POTC and PHILCOMSAT remained despite the approval of the compromise agreement in G.R. No. 141796 and G.R. No. 141804; that because the proceedings involving the shares of the Nieto, Africa and Ponce Enrile Families were still pending and had not yet been finally resolved,[114] the RTC could not render a valid judgment on the dispute because it had not been designated as a Commercial Court;[115] and that the conduct of a pre-trial and the submission of a pre-trial brief were mandatory under all cases filed under the Interim Rules.[116]

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[111] *Rollo* (G.R. No. 186066), pp. 41-42.

[112] *Rollo* (G.R. Nos. 184712-14), p. 30.

[113] *Id.* at 32.

[114] *Id.* at 37.

[115] *Id.* at 39.

[116] *Id.* at 41.

In its Comment, PHILCOMSAT counters that the rulings in *Olaguer* and *Del Moral* were not applicable because such cases arose from different factual settings;[117] that the RTC had ample authority to rule upon the intra-corporate dispute;[118] and that the conduct of pre-trial was not mandatory in corporate election cases.[119]

In G.R. No. 184622, the petitioners claim that the Sandiganbayan committed an error in refusing to take cognizance of the injunction suit they had filed on the ground that it was an intra-corporate dispute; that the Sandiganbayan thereby went against the spirit and intent of the Court's rulings stressing the importance of protecting sequestered assets and recovering ill-gotten wealth;[120] and that the Court's pronouncement in G.R. No. 171799 affirming the status of POTC shares as sequestered shares was more than enough reason for the Sandiganbayan to take cognizance of the injunction suit.[121]

In its Comment,[122] respondent Ilusorio-Africa Group counter that the injunction suit was not within the jurisdiction of the Sandiganbayan; and that Locsin had no authority to institute the injunction suit due to his election being a patent nullity considering that the proxies issued by IRC and Mid-Pasig could not be given effect after the Court had affirmed the ruling of the Sandiganbayan on IRC and Mid-Pasig's shareholdings in POTC.[123]

In G.R. No. 186590, PHILCOMSAT posits that the trial court properly issued the injunction against PHC after receiving

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[117] *Id.* at 490.

[118] *Id.* at 492.

[119] *Id.* at 493.

[120] *Rollo* (G.R. No. 184622), p. 27.

[121] *Id.* at 29.

[122] Victor Africa, acting *pro se*, submitted a Comment with the manifestation that the Comment of the other respondents was the more appropriate pleading, *id.* at 103-107.

[123] *Rollo* (G.R. No. 184622), pp. 148-151.

evidence of massive looting of corporate funds that led to PHC's external auditor being suspended as found by Senate Committees and the SEC.[124]

In its Comment, PHC states that PHILCOMSAT failed to establish its right *in esse* or the existence of a right to be protected so as to warrant the issuance of the injunctive writ in its favor.[125]

In G.R. No. 186066, PHC argues that the CA erred in ruling that the RTC (Branch 138) was clothed with authority to decide Civil Case No. 04-1049 because POTC and PHILCOMSAT were under sequestration of the PCGG; that, accordingly, all issues and controversies arising or related or incidental to the sequestration fell under the sole and exclusive original jurisdiction of the Sandiganbayan;[126] that the CA erred in appreciating the nature of Civil Case No. 04-1049; that the controversy, albeit involving an intra-corporate dispute, was still cognizable by the Sandiganbayan because POTC and PHILCOMSAT shares were under sequestration;[127] that the ruling in G.R. Nos. 141796 and 141804 does not constitute *res judicata*; that even assuming that the RTC (Branch 138) had jurisdiction, its authority was revoked prior to the issuance of its assailed judgment;[128] and that PHC was denied due process due to the RTC's open violation of the Interim Rules.[129]

In its Comment, PHILCOMSAT counters that the insistence of PHC that the sequestration of PHILCOMSAT automatically took away the jurisdiction of the RTC and conferred it to the Sandiganbayan was misplaced;[130] that the rulings in *Olaguer* and *Del Moral* are not on all fours with this case;[131] that the

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[124] *Rollo* (G.R. No. 186590), p. 31.

[125] *Id.* at 466.

[126] *Rollo* (G.R. No. 186066), p. 42.

[127] *Id.* at 49.

[128] *Id.* at 59-60.

[129] *Id.* at 62-63.

[130] *Id.* at 557.

[131] *Id.*

issue of the shares being ill-gotten was already settled in G.R. Nos. 141796 and 141804;[132] that the RTC (Branch 138) had ample authority to decide the intra-corporate controversy because the case, being already submitted for decision, remained cognizable by the same branch;[133] and that the conduct of the pre-trial was not required in election cases.[134]

RULING OF THE COURT

We **DENY** the petitions in G.R. No. 184622, G.R. Nos.184712-14, and G.R. No.186066; but **GRANT** the petition in G.R. No. 186590.

1.
RTC (Branch 138) had jurisdiction over the election contest between the Ilusorio-Africa Groups and Nieto-Locsin Groups

Both Civil Case No. 04-1049 of the RTC (Branch 138) in Makati City and SB Civil Case No. 0198 of the Sandiganbayan involved intra-corporate controversies among the stockholders and officers of the corporations. It is settled that there is an intra-corporate controversy when the dispute involves any of the following relationships, to wit: (*a*) between the corporation, partnership or association and the public; (*b*) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (*c*) between the corporation, partnership or association and its stockholders, partners, members or officers; and (*d*) among the stockholders, partners or associates themselves.[135]

Consequently, we agree with the CA's consolidated decision promulgated on September 30, 2008 that the RTC (Branch 138), not the Sandiganbayan, had jurisdiction because Civil Case No.

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[132] *Id.* at 560.

[133] *Id.* at 564-565.

[134] *Id.* at 565.

[135] *Yujuico v. Quiambao*, G.R. No. 168639, January 29, 2007, 513 SCRA 243, 254.

04-1049 did not involve a sequestration-related incident but an intra-corporate controversy.

Originally, Section 5 of Presidential Decree (P.D.) No. 902-A vested the original and exclusive jurisdiction over cases involving the following in the SEC, to wit:

x x x x x x x x x

(a) Devices or schemes employed by, or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organization registered with the Commission;

(b) **Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation**, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right as such entity;

(c) **Controversies in the election** or appointment **of directors,** trustees, **officers** or managers **of such corporations**, partnership or associations;

(d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payment in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respective fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.[136]

Upon the enactment of Republic Act No. 8799 (*The Securities Regulation Code*), effective on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and the other cases enumerated in Section 5 of P.D. No. 902-A was transferred

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[136] Section 5, PD 902-A. See also Section 1, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799.

to the Regional Trial Court pursuant to Section 5.2 of the law, which provides:

> 5.2. The Commission's jurisdiction over all cases enumerated in Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court; *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

To implement Republic Act No. 8799, the Court promulgated its resolution of November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide the cases enumerated in Section 5 of P.D. No. 902-A. Among the RTCs designated as special commercial courts was the RTC (Branch 138) in Makati City, the trial court for Civil Case No. 04-1049.

On March 13, 2001, the Court adopted and approved the *Interim Rules of Procedure for Intra-Corporate Controversies under Republic Act No. 8799* in A.M. No. 01-2-04-SC, effective on April 1, 2001, whose Section 1 and Section 2, Rule 6 state:

> Section 1. *Cases covered*. – The provisions of this rule shall apply to **election contests** in stock and non-stock corporations.
>
> Section 2. *Definition*. – An **election contest** refers to **any controversy or dispute involving** title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, **the manner and validity of elections**, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. (bold underscoring supplied)

Conformably with Republic Act No. 8799, and with the ensuing resolutions of the Court on the implementation of the transfer

of jurisdiction to the Regional Trial Court, the RTC (Branch 138) in Makati had the authority to hear and decide the election contest between the parties herein. There should be no disagreement that jurisdiction over the subject matter of an action, being conferred by law, could neither be altered nor conveniently set aside by the courts and the parties.[137]

To buttress its position, however, the Nieto-Locsin Group relied on Section 2 of Executive Order No. 14,[138] which expressly mandated that the PCGG "shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof."

The reliance was unwarranted.

Section 2 of Executive Order No. 14 had no application herein simply because the subject matter involved was an intra-corporate controversy, not any incident arising from, incidental to, or related to any case involving assets whose nature as ill-gotten wealth was yet to be determined. In *San Miguel Corporation v. Kahn,*[139] the Court held that:

> The subject matter of his complaint in the SEC does not therefore fall within the ambit of this Court's Resolution of August 10, 1988 on the cases just mentioned, to the effect that, citing PCGG v. Pena, *et al*., all cases of the Commission regarding 'the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees, whether civil or criminal, are lodged within the exclusive and original jurisdiction of the Sandiganbayan,' and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme

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[137] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559.

[138] Section 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof.

[139] G.R. No. 85339, August 11, 1989, 176 SCRA 447, 461-462.

Court." **His complaint does not involve any property illegally acquired or misappropriated by Marcos, *et al*., or "any incidents arising from, incidental to, or related to" any case involving such property**, but assets indisputably belonging to San Miguel Corporation which were, in his (de los Angeles') view, being illicitly committed by a majority of its board of directors to answer for loans assumed by a sister corporation, Neptunia Co., Ltd.

De los Angeles' complaint, in fine, is confined to the issue of the validity of the assumption by the corporation of the indebtedness of Neptunia Co., Ltd., allegedly for the benefit of certain of its officers and stockholders, an issue evidently distinct from, and not even remotely requiring inquiry into the matter of whether or not the 33,133,266 SMC shares sequestered by the PCGG belong to Marcos and his cronies or dummies (on which, issue, as already pointed out, de los Angeles, in common with the PCGG, had in fact espoused the affirmative). **De los Angeles' dispute**, as stockholder and director of SMC, with other SMC directors, **an intra-corporate one, to be sure, is of no concern to the Sandiganbayan, having no relevance whatever to the ownership of the sequestered stock. The contention, therefore, that in view of this Court's ruling as regards the sequestered SMC stock above adverted to, the SEC has no jurisdiction over the de los Angeles complaint, cannot be sustained and must be rejected. The dispute** concerns acts of the board of directors claimed to amount to fraud and misrepresentation which may be detrimental to the interest of the stockholders, or **is one arising out of intra-corporate relations between and among stockholders, or between any or all of them and the corporation of which they are stockholders**.[140]

Moreover, the jurisdiction of the Sandiganbayan has been held not to extend even to a case involving a sequestered company notwithstanding that the majority of the members of the board of directors were PCGG nominees. The Court marked this distinction clearly in *Holiday Inn (Phils.), Inc. v. Sandiganbayan*,[141] holding thusly:

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[140] Bold emphases were supplied.

[141] G.R. No. 85576, June 8, 1990, 186 SCRA 447, 453 (italicized portions are part of the original text, but bold emphases are supplied).

The subject-matter of petitioner's proposed complaint-in-intervention involves basically, an interpretation of contract, *i.e.*, whether or not the right of first refusal could and/or should have been observed, based on the Addendum/Agreement of July 14, 1988, which extended the terms and conditions of the original agreement of January 1, 1976. **The question of whether or not the sequestered property was lawfully acquired by Roberto S. Benedicto has no bearing on the legality of the termination of the management contract by NRHDC's Board of Directors. The two are independent and unrelated issues and resolution of either may proceed independently of each other**. Upholding the legality of Benedicto's acquisition of the sequestered property is not a guarantee that HIP's management contract would be upheld, for only the Board of Directors of NRHDC is qualified to make such a determination.

Likewise, the Sandiganbayan correctly denied jurisdiction over the proposed complaint-in-intervention. The original and exclusive jurisdiction given to the Sandiganbayan over PCGG cases pertains to (a) cases *filed by the PCGG*, pursuant to the exercise of its powers under Executive Order Nos. 1, 2 and 14. as amended by the Office of the President, and Article XVIII, Section 26 of the Constitution, *i.e.*, where the principal cause of action is the recovery of ill-gotten wealth, as well as all incidents arising from, incidental to, or *related to such cases* and (b) *cases filed by those who wish to question or challenge the commission's acts or orders in such cases*.

Evidently, petitioner's proposed complaint-in-intervention is an ordinary civil case that does not pertain to the Sandiganbayan. As the Solicitor General stated, the complaint is not directed against PCGG as an entity, but against a private corporation, in which case it is not *per se*, a PCGG case.

In the cases now before the Court, what are sought to be determined are the propriety of the election of a party as a Director, and his authority to act in that capacity. Such issues should be exclusively determined only by the RTC pursuant to the pertinent law on jurisdiction because they did not concern the recovery of ill-gotten wealth.

2.
Lack of pre-trial was not fatal in intra-corporate election contests

Under Section 4 of Rule 6 (*Election Contests*) of the *Interim Rules of Procedure for Intra-Corporate Controversies*, which took effect on April 1, 2001 (A.M. No. 01-2-04-SC), issued pursuant to Republic Act No. 8799, the trial court, within two days from the filing of the complaint, may outrightly dismiss the complaint upon a consideration of the allegations thereof if the complaint is not sufficient in form and substance, or, if the complaint is sufficient, may order the issuance of summons which shall be served, together with a copy of the complaint, on the defendant within two days from its issuance. Should it find the need to hold a hearing to clarify specific factual matters, the trial court shall set the case for hearing, and the hearing shall be completed not later than 15 days from the date of the first hearing. The trial court is mandated to render a decision within 15 days from receipt of the last pleading, or from the date of the last hearing, as the case may be.

The CA correctly pointed out that Rule 6 nowhere required that the RTC acting as a special commercial court should first conduct a pre-trial conference before it could render its judgment in a corporate election contest. Hence, the RTC (Branch 138) in Makati properly heard the case of annulment of the election with dispatch in accordance with the guidelines set in the resolution in A.M. No. 01-2-04-SC. With the requirements of due process having been served, no defect infirmed the RTC's ruling to set aside the election, and to oust those illegally elected.

3.
RTC (Branch 138) retained its jurisdiction over the case that was ripe for adjudication

While it is true that this Court meanwhile revoked on June 27, 2006 the designation of the RTC (Branch 138) to act as a special commercial court, through the resolution in A.M. No. 03-3-03-SC, the RTC (Branch 138) did not thereafter become bereft of the jurisdiction to decide the controversy because of

the exception expressly stated in the resolution in A.M. No. 03-3-03-SC itself, to wit:

x x x x x x x x x

Upon the effectivity of this designation, all commercial cases pending before Branches 138 and 61 shall be transferred to RTC, Branch 149, Makati City, **except those which are already submitted for decision, which cases shall be decided by the acting presiding judges thereat**. x x x.

Contrary to the assertion of the Nieto-PCGG group, the foregoing provision did not require the issuance of any special order stating that the case was already submitted for decision. It was sufficient, given the summary nature of intra-corporate controversies, especially election contests, that the trial court was done collating all the evidence from the pleadings (*i.e.*, pleadings, affidavits, documentary and other evidence attached thereto, and the answers of the witnesses to the clarificatory questions of the court given during the hearings), if deemed sufficient, or from the clarificatory hearings, if conducted. The purpose of the exception is to obviate the repetition of the gathering of evidence. It is clear from Section 9 of Rule 6 that after the collation of evidence, the only thing that remains is for the RTC to render its decision without issuing a special order declaring the case submitted for decision, *viz*:

Section 9. *Decision*. – The Court shall render a decision within fifteen (15) days from receipt of the last pleading, or from the date of the last hearing, as the case may be. The decision shall be based on the pleadings, affidavits, documentary and other evidence attached thereto and the answers of the witnesses to the clarificatory questions of the court given during the hearings.

4.
Ruling in G.R. No. 141796 and G.R. No. 141804 was properly applied to Civil Case No. 04-1049

It was not the principle of *res judicata*, as claimed by the Nieto-PCGG Group, that justified the application to Civil Case No. 04-1049 of the Court's ruling in G.R. No. 141796 and

G.R. No. 141804 invalidating the PHC elections conducted by the Nieto-PCGG Group, but rather the doctrine of *stare decisis et non quieta movere*, which means "to adhere to precedents, and not to unsettle things which are established."[142]

Under the doctrine of *stare decisis*, when the Court has once laid down a principle of law as applicable to a certain state of facts, the courts will adhere to that principle, and apply it to all future cases in which the facts are substantially similar, regardless of whether the parties and property involved are the same.[143] The doctrine of *stare decisis* is based upon the legal principle or rule involved, not upon the judgment that results therefrom. It is in this particular sense that *stare decisis* differs from *res judicata*, because *res judicata* is based upon the judgment.[144]

The doctrine of *stare decisis* is grounded on the necessity for securing certainty and stability in judicial decisions, thus:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[145]

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[142] *Black's Law Dictionary*, Fifth Edition.

[143] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618.

[144] *Id.* at 618-619.

[145] *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005, 475 SCRA 65, 75-76.

The question of who held the majority shareholdings in POTC and PHILCOMSAT was definitively laid to rest in G.R. No. 141796 and G.R. No. 141804, whereby the Court upheld the validity of the compromise agreement the Government had concluded with Atty. Ilusorio. Said the Court:–

> With the imprimatur of no less than the former President Fidel V. Ramos and the approval of the Sandiganbayan, the Compromise Agreement must be accorded utmost respect. **Such amicable settlement is not only allowed but even encouraged**. Thus, in *Republic vs. Sandiganbayan*, we held:
>
> > 'It is advocated by the PCGG that respondent Benedicto retaining a portion of the assets is anathema to, and incongruous with, the zero-retention policy of the government in the pursuit for the recovery of *all* ill-gotten wealth pursuant to Section 2(a) of Executive Order No. 1. **While full recovery is ideal, the PCGG is not precluded from entering into a Compromise Agreement which entails reciprocal concessions if only to expedite recovery so that the remaining 'funds, assets and other properties may be used to hasten national economic recovery'** (3rd WHEREAS clause, Executive Order No. 14-A). **To be sure, the so-called zero retention mentioned in Section 2(a) of Executive Order No. 1 had been modified to read**:
> >
> > > **'WHEREAS, the Presidential Commission on Good Government was created on February 28, 1986 by Executive Order No. 1 to assist the President in the recovery of *ill-gotten wealth* accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates';**
> >
> > **which undoubtedly suggests a departure from the former goal of total restitution.**
>
> x x x x x x x x x
>
> **The authority of the PCGG to enter into Compromise Agreements in civil cases and to grant immunity, under certain circumstances, in criminal cases is now settled and established**. In *Republic of the Philippines and Jose O. Campos, Jr. vs. Sandiganbayan, et al.* (173 SCRA 72 [1989]), **this Court categorically stated that amicable settlements and**

> **compromises are not only allowed but actually encouraged in civil cases. A specific grant of immunity from criminal prosecutions was also sustained**. In *Benedicto vs. Board of Administrators of Television Stations RPN, BBC, and IBC* (207 SCRA 659 [1992]), **the Court ruled that the authority of the PCGG to validly enter into Compromise Agreement for the purpose of avoiding litigation or putting an end to one already commenced was indisputable**. x x x (italics supplied)

Having been sealed with court approval, the Compromise Agreement has the force of *res judicata* between the parties and should be complied with in accordance with its terms. Pursuant thereto, Victoria C. de los Reyes, Corporate Secretary of the POTC, transmitted to Mr. Magdangal B. Elma, then Chief Presidential Legal Counsel and Chairman of PCGG, Stock Certificate No. 131 dated January 10, 2000, issued in the name of the Republic of the Philippines, for 4,727 POTC shares. Thus, the Compromise Agreement was partly implemented.[146]

As a result of the Government having expressly recognized that 673 POTC shares belonged to Atty. Ilusorio, Atty. Ilusorio and his group gained the majority control of POTC.

Applying the ruling in G.R. No. 141796 and G.R. No. 141804 to Civil Case No. 04-1049, the RTC (Branch 138) correctly concluded that the Nieto-PCGG Group, because it did not have the majority control of POTC, could not have validly convened and held the stockholders' meeting and election of POTC officers on August 5, 2004 during which Nieto, Jr. and PCGG representative Guy De Leon were respectively elected as President and Chairman; and that there could not be a valid authority for Nieto, Jr. and/or Locsin to vote the proxies of the group in the PHILCOMSAT meeting.

For the same reason, the POTC proxies used by Nieto, Jr. and Locsin to elect themselves respectively as Chairman and President of PHILCOMSAT; and the PHILCOMSAT proxies

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[146] *Republic v. Sandiganbayan*, G.R. No. 141796 and G.R. No. 141804, June 15, 2006, 460 SCRA 146, 167-169 (bold emphases are part of the original text).

used by Nieto, Jr. and Locsin in the August 31, 2004 PHC elections to elect themselves respectively as President and Acting Chairman of PHC, were all invalid for not having the support of the majority shareholders of said corporations.

While it is true that judicial decisions should be given a prospective effect, such prospectivity did not apply to the June 15, 2005 ruling in G.R. No. 141796 and G.R. No. 141804 because the ruling did not enunciate a new legal doctrine or change the interpretation of the law as to prejudice the parties and undo their situations established under an old doctrine or prior interpretation. Indeed, the ruling only affirmed the compromise agreement consummated on June 28, 1996 and approved by the Sandiganbayan on June 8, 1998, and accordingly implemented through the cancellation of the shares in the names of IRC and MLDC and their registration in the names of Atty. Ilusorio to the extent of 673 shares, and of the Republic to the extent of 4,727 shares. In a manner of speaking, the decision of the Court in G.R. No. 141796 and G.R. No. 141804 promulgated on June 15, 2005 declared the compromise agreement valid, and such validation properly retroacted to the date of the judicial approval of the compromise agreement on June 8, 1998.

Consequently, although the assailed elections were conducted by the Nieto-PCGG group on August 31, 2004 but the ruling in G.R. No. 141796 and G.R. No. 141804 was promulgated only on June 15, 2005, the ruling was the legal standard by which the issues raised in Civil Case No. 04-1049 should be resolved.

5.
Proper mode of appeal in intra-corporate cases is by petition for review under Rule 43

In *Dee Ping Wee v. Lee Hiong Wee*,[147] the Court has expounded that the appropriate mode of appeal for an aggrieved party in an intra-corporate dispute is a petition for review under Rule 43 of the *Rules of Court*, to wit:

[147] G.R. No. 169345, August 25, 2010, 629 SCRA 145.

Verily, the first part of Section 4, Rule 1 of the Interim Rules is categorical. Save for the exceptions clearly stated therein, the provision enunciates that a decision and order issued under the Interim Rules shall be enforceable immediately after the rendition thereof. In order to assail the decision or order, however, the second part of the provision speaks of an appeal or petition that needs to be filed by the party concerned. In this appeal or petition, a restraining order must be sought from the appellate court to enjoin the enforcement or implementation of the decision or order. Unless a restraining order is so issued, the decision or order rendered under the Interim Rules shall remain to be immediately executory.

On September 14, 2004, the Court issued a Resolution in A.M. No. 04-9-07-SC to rectify the situation wherein "lawyers and litigants are in a quandary on how to prevent under appropriate circumstances the execution of decisions and orders in cases involving corporate rehabilitation and intra-corporate controversies." To address the "need to clarify the proper mode of appeal in [cases involving corporate rehabilitation and intra-corporate controversies] in order to prevent cluttering the dockets of the courts with appeals and/or petitions for *certiorari*," the Court thereby resolved that:

> 1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the **Interim Rules of Procedure Governing Intra-Corporate Controversies** under Republic Act No. 8799 shall be appealable to the Court of Appeals through a **petition for review under Rule 43 of the Rules of Court**.
>
> 2. **The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court**. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141 as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days. (Emphases ours.)

x x x x x x x x x

The issue that needs to be resolved at this point is whether or not petitioners pursued the correct remedy in questioning the RTC

Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093. Corollary to this is whether or not the petitions for *certiorari* filed by petitioners could have been treated as petitions for review under Rule 43 of the Rules of Court, in accordance with the provisions of the Resolution in A.M. No. 04-9-07-SC, such that petitioners can be considered to have availed themselves of the proper remedy in assailing the rulings of the RTC.

We answer in the negative.

The term "petition" in the third and fourth paragraphs of A.M. No. 04-9-07-SC, cannot be construed as to include a petition for *certiorari* under Rule 65 of the Rules of Court. The rationale for this lies in the essential difference between a petition for review under Rule 43 and a petition for *certiorari* under Rule 65 of the Rules of Court.

x x x x x x x x x

The RTC Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 are final orders that disposed of the whole subject matter or terminated the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. As the RTC was unquestionably acting within its jurisdiction, all errors that it might have committed in the exercise of such jurisdiction are errors of judgment, which are reviewable by a timely appeal.

x x x x x x x x x

The Court of Appeals (12th Division) was, therefore, correct in dismissing the petition for *certiorari* in CA-G.R. SP No. 85878, which assailed the RTC Decision in Civil Case No. Q-04-091. x x x[148]

The rule providing that a petition for review under Rule 43 of the *Rules of Court* is the proper mode of appeal in intra-corporate controversies, as embodied in A. M. No. 04-9-07-SC, has been in effect since October 15, 2004. Hence, the filing by POTC and PHC (Nieto Group) of the petition for *certiorari* on March 21, 2007 (C.A.-G.R. SP No. 98399) was inexcusably improper and ineffectual. By virtue of its being an extraordinary remedy, *certiorari* could neither replace nor substitute an adequate

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[148] *Id.* at 168-173 (bold emphases are part of the original text).

remedy in the ordinary course of law, like appeal in due course.[149] Indeed, the appeal under Rule 43 of the *Rules of Court* would have been adequate to review and correct even the grave abuse of discretion imputed to the RTC.[150]

As a consequence of the impropriety and ineffectuality of the remedy chosen by POTC and PHC (Nieto Group), the TRO and the WPI initially issued by the CA in C.A.-G.R. SP No. 98399 did not prevent the immediately executory character of the decision in Civil Case No. 04-1049.

6.
Petition for contempt against Bildner had no basis

The filing by Bildner and her counsel Atty. Manzanal of the complaint for perjury against Locsin and his counsel Atty. Labastilla in the Office of the City Prosecutor of Manila did not amount to unlawful interference with the processes of the CA. There is no denying that Bildner was within her right as a party in interest in the proceedings then pending in the CA to bring the perjury charge against Locsin and his counsel for their failure to aver in the certification against forum shopping attached to the petition for *certiorari* in C.A.-G.R. SP No. 98399 of the pendency of another petition in C.A.-G.R. SP No. 98087 despite their knowledge thereof. Her complaint for perjury could really be dealt with by the Office of the City Prosecutor of Manila independently from any action the CA would take on the issue of forum shopping. As such, the filing of the complaint did not interfere with the CA's authority over the petition in C.A.-G.R. SP No. 98399.

In this regard, we deem to be appropriate to reiterate what the Court said on the nature of contempt of court in *Lorenzo*

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[149] Section 1, Rule 65, *Rules of Court*.

[150] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 594-595.

Shipping Corporation v. Distribution Management Association of the Philippines,[151] *viz*:

> Misbehavior means something more than adverse comment or disrespect. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.

Nonetheless, the Court states that the power to punish for contempt is inherent in all courts, and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and ultimately, to the due administration of justice. But such power should be exercised on the preservative, not on the vindictive, principle. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[152]

7.
Bildner Group entitled to injunctive relief

Concerning the propriety of the issuance of the WPI to enjoin BPI from letting the Locsin Group withdraw funds or transact with BPI on PHC's deposits, the Court finds that the Bildner Group as the applicant had a right *in esse* to be protected by the injunctive relief. A right that is *in esse* is a clear and unmistakable right to be protected, and is one founded on or

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[151] G.R. No. 155849, August 31, 2011, 656 SCRA 331, 349-350.

[152] *Bank of the Philippine Islands v. Calanza*, G.R. No. 180699, October 13, 2010, 633 SCRA 186, 193.

granted by law or is enforceable as a matter of law.[153] The Bildner Group, because of the indubitability of its standing as a party in interest, showed a clear and unmistakable right to be protected.

In granting the Bildner Group's application for the WPI, the RTC (Branch 62) emphasized the peculiarities of the case. Apparently, the Bildner Group relied on the fact that their election to the PHC Board of Directors was implemented and executed even prior to the WPI issued by the CA to stop the RTC (Branch 138) from implementing its decision in Civil Case No. 04-1049. The right that the Bildner Group relied on in seeking the execution of the decision was enforceable as a matter of law, for it emanated from the validly issued decision that was immediately executory under the pertinent rule. On the other hand, the TRO and WPI the CA issued in C.A.-G. R. SP No. 98399 could not and did not have any restraining effect on the immediately executory nature of the decision rendered in Civil Case No. 04-1049, because the matter had been brought to the CA through the wrong remedy.

Considering that the Bildner Group's clear right to an injunctive relief was established, coupled with the affirmance of the consolidated decision of the CA upholding the validity of the July 28, 2004 election of the Bildner Group as Directors and Officers of PHC, the decision promulgated in C.A.-G.R. SP No. 102437 to the effect that Bildner's standing as a party-in-interest was unclear, and that she failed to show a clear and unmistakable right to be protected by the writ of injunction, lost its ground.

Accordingly, the reversal of the decision promulgated in C.A.-G.R. SP No. 102437, and the reinstatement of the WPI issued against BPI by the RTC (Branch 62) in Civil Case No. 07-840 are in order.

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[153] *Tomawis v. Tabao-Caudong*, G.R. No. 166547, September 12, 2007, 533 SCRA 68, 85; *Lim v. BPI Agricultural Development Bank*, G. R. No. 179230; March 9, 2010, 614 SCRA 696, 702.

8.
Supreme Court, not being a trier of facts, will not reexamine the evidence

The insistence by POTC and PHC (Nieto Group) that the RTC's decision in Civil Case No. 04-1049 was contrary to the facts and the evidence lacks merit.

The Court is not a trier of facts, and thus should not reexamine the evidence in order to determine whether the facts were as POTC and PHC (Nieto Group) now insist they were. The Court must respect the findings of the CA sustaining the factual findings of the RTC in Civil Case No. 04-1049. As a rule, the findings of fact by the CA are not reviewed on appeal, but are binding and conclusive.[154] The reason for this has been well stated in *J.R. Blanco v. Quasha*:[155]

> To begin with, this Court is not a trier of facts. It is not its function to examine and determine the weight of the evidence supporting the assailed decision. In *Philippine Airlines, Inc. vs. Court of Appeals* (275 SCRA 621 [1997]), the Court held that factual findings of the Court of Appeals which are supported by substantial evidence are binding, final and conclusive upon the Supreme Court. So also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court." Moreover, well entrenched is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, which applies with greater force to the Petition under consideration because the factual findings by the Court of Appeals are in full agreement with what the trial court found.

We affirm, therefore, the appealed consolidated decision promulgated in C.A.-G.R. SP No. 101225, C.A.-G.R. SP No. 98097 and C.A.-G.R. SP No. 98399, and dismiss the petitions

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[154] *W-Red Construction and Development Corp. v. Court of Appeals*, G.R. No. 122648, August 17, 2000, 338 SCRA 341, 345.

[155] G.R. No. 133148, November 17, 1999, 318 SCRA 373, 382.

of the Locsin/Nieto-PCGG Group filed in G.R. Nos. 184712-14 and G.R. No. 186066.

WHEREFORE, the Court **DENIES** the petitions for review on *certiorari* in G.R. No. 184622, G.R. Nos. 184712-14, and G.R. No. 186066; **AFFIRMS** the resolution promulgated on August 15, 2007 by the Sandiganbayan in Civil Case No. 0198 and the consolidated decision promulgated on September 30, 2008 in C.A.-G.R. SP No. 101225, C.A.-G.R. SP No. 98097 and C.A.-G.R. SP No. 98399; **GRANTS** the petition for review on *certiorari* in G.R. No. 186590, and, accordingly, **ANNULS** and **SETS ASIDE** the decision promulgated on July 16, 2008 in C.A.-G.R. SP No. 102437; **AFFIRMS** the order issued on December 13, 2007 by the Regional Trial Court, Branch 62, in Makati City; and **REINSTATES** the writ of injunction issued on December 17, 2007 against Bank of Philippine Islands.

The Court **DIRECTS** the Locsin/Nieto-PCGG Group to render an accounting of all the funds and other assets received from the **PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION**, **PHILIPPINE HOLDINGS CORPORATION** and **PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION** since September 1, 2004, and to return such funds to the respective corporations within thirty days from the finality of this decision.

Costs of suit to be paid by the Group of Enrique L. Locsin and Manuel H. Nieto, Jr.

SO ORDERED.

Sereno, C.J., Brion,[*] *Villarama, Jr.,* and *Reyes, JJ.*, concur.

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[*] In lieu of Associate Justice Teresita Leonardo-De Castro, who inhibited due to her prior participation in the Sandiganbayan, per the raffle of December 3, 2008.

FIRST DIVISION

[G.R. No. 184908. July 3, 2013]

MAJOR JOEL G. CANTOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS; ELEMENTS OF THE CRIME; PRESENT IN CASE AT BAR.— The Sandiganbayan did not commit a reversible error in its decision convicting petitioner of malversation of public funds, which is defined and penalized under Article 217 of the Revised Penal Code, as amended. x x x Thus, the elements of malversation of public funds under Article 217 of the Revised Penal Code are: 1. that the offender is a public officer; 2. that he had the custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. We note that all the above-mentioned elements are here present. Petitioner was a public officer occupying the position of Commanding Officer of the 22nd FSU of the AFP Finance Center, PSG. By reason of his position, he was tasked to supervise the disbursement of the Special Duty Allowances and other Maintenance Operating Funds of the PSG personnel, which are indubitably public funds for which he was accountable. Petitioner in fact admitted in his testimony that he had complete control and custody of these funds. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the fees to his personal use.

2. ID.; ID.; ID.; PETITIONER FAILED TO OVERCOME THE PRESUMPTION IN ARTICLE 217 OF THE REVISED PENAL CODE WHICH STATES THAT THE FAILURE OF A PUBLIC OFFICER TO HAVE DULY FORTHCOMING ANY PUBLIC FUNDS OR PROPERTY WITH WHICH HE IS CHARGEABLE, UPON DEMAND

BY ANY DULY AUTHORIZED OFFICER, IS *PRIMA FACIE* EVIDENCE THAT HE HAS PUT SUCH MISSING FUND OR PROPERTY TO HIS PERSONAL USES.— In convicting petitioner, the Sandiganbayan cites the presumption in Article 217 of the Revised Penal Code, as amended, which states that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is *prima facie* evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if petitioner is able to present adequate evidence that can nullify any likelihood that he put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated. In this case, however, petitioner failed to overcome this *prima facie* evidence of guilt. He failed to explain the missing funds in his account and to restitute the amount upon demand. His claim that the money was taken by robbery or theft is self-serving and has not been supported by evidence. In fact, petitioner even tried to unscrew the safety vault to make it appear that the money was forcibly taken. Moreover, petitioner's explanation that there is a possibility that the money was taken by another is belied by the fact that there was no sign that the steel cabinet was forcibly opened. We also take note of the fact that it was only petitioner who had the keys to the steel cabinet. Thus, the explanation set forth by petitioner is unsatisfactory and does not overcome the presumption that he has put the missing funds to personal use.

3. ID.; ID.; ID.; DIRECT EVIDENCE OF MISAPPROPRIATION IS NOT NECESSARY; ALL THAT IS NECESSARY FOR CONVICTION IS SUFFICIENT PROOF THAT THE ACCOUNTABLE OFFICER HAD RECEIVED PUBLIC FUNDS, THAT HE DID NOT HAVE THEM IN HIS POSSESSION WHEN DEMAND THEREFORE WAS MADE, AND HE COULD NOT SATISFACTORILY EXPLAIN HIS FAILURE TO DO SO.— Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. All that is necessary

for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts. To our mind, the evidence in this case is thoroughly inconsistent with petitioner's claim of innocence. Thus, we sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

APPEARANCES OF COUNSEL

Napoleon F. Segundera, Jr. for petitioner.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Major Joel G. Cantos appeals the Decision[1] of the Sandiganbayan in Criminal Case No. SB-07-A/R-0008, which affirmed with modification the judgment[2] of the Regional Trial Court (RTC) of Manila, Branch 47, convicting him of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended.

In an Information[3] dated February 19, 2003, Major Cantos was charged as follows:

That on or about December 21, 2002 or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Commanding Officer of the 22nd

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[1] *Rollo*, pp. 10-21. Penned by Presiding Justice Diosdado M. Peralta (now a member of this Court) with Associate Justices Rodolfo A. Ponferrada and Alexander G. Gesmundo concurring. The assailed decision was promulgated on July 31, 2008.

[2] Records, Vol. II, pp. 606-616. Penned by Presiding Judge Augusto T. Gutierrez.

[3] Records, Vol. I, pp. 1-2.

Finance Service Center, based in the Presidential Security Group, Malacañang Park, Manila and as such is accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, did then and there, wi[l]lfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit the amount of THREE MILLION TWO HUNDRED SEVENTY THOUSAND PESOS (₱3,270,000.00), Philippine Currency, from such public funds received by him by reason of his Office to the damage and prejudice of the Government in the aforestated amount.

CONTRARY TO LAW.

Upon motion by the prosecution, the trial court issued an Order[4] granting the amendment of the date of the commission of the offense from December 21, 2002 to December 21, 2000, the error being merely clerical. When arraigned, Major Cantos entered a plea of not guilty.[5]

At the trial, the prosecution presented as witness Major Eligio T. Balao, Jr.[6] He testified that on December 21, 2000, he reported for duty as Disbursing Officer at the 22nd Finance Service Unit (FSU), Presidential Security Group (PSG), Malacañang Park, Manila. At that time, he did not notice any unusual incident in the office. He picked up some Bureau of Internal Revenue (BIR) forms which he filed with the BIR Office at the Port Area, Manila. He returned to the office at around 10:00 a.m. At around 12:00 noon, his commanding officer, Major Cantos, called him to his

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[4] Records, Vol. II, pp. 571-573.

[5] Records, Vol. I, p. 141.

[6] The prosecution also presented Lt. Col. Al I. Perreras, Gilda Genguyon, Imelda Pabilan and Federico Tumabcao. However, the oral testimonies of Gilda Genguyon, Imelda Pabilan and Federico Tumabcao were dispensed with after Atty. Teodoro Jumamil, counsel for the accused, offered to stipulate, which offer was accepted by Assistant City Prosecutor Elen Tumaliuan "that if the witnesses will testify, they will testify in accordance with their affidavits attached to the records of this case all dated January 3, 2001, and that he will no longer cross-examine them; thus there is no more need for the witnesses to be placed in the witness stand." (*Rollo*, p. 74.)

office and informed him that the money he (Major Cantos) was handling, the Special Duty Allowance for the month of December, and other Maintenance Operating Expenses in the amount of more or less ₱3 Million was missing from his custody. Shocked, he asked Major Cantos where he kept the money, to which the latter replied that he placed it in the steel cabinet inside his room. He then inquired why Major Cantos did not use the safety vault, but Major Cantos did not reply.[7]

Major Balao further testified that Major Cantos asked him to get a screwdriver so he went out of the office and got one from his vehicle. He gave the screwdriver to Major Cantos, who used it to unscrew the safety vault. Then, he left the office and handed the screwdriver to Sgt. Tumabcao. After a few minutes, Major Cantos instructed him to go to the house of Major Conrado Mendoza in Taguig to get the safety vault's combination number. However, Major Mendoza was not around. When he returned to the office at around 4:00 p.m., the National Bureau of Investigation (NBI) personnel took his fingerprints. He learned that all the personnel of the 22nd FSU were subjected to fingerprinting. Thereafter, Col. Espinelli tried to force him to admit that he took the money, but he maintained that he was not the one who took it.[8]

In his defense, Major Cantos testified that on July 2000, he was assigned as the Commanding Officer of the 22nd FSU of the PSG, Malacañang Park, Manila. His duty was to supervise the disbursement of funds for the PSG personnel and to perform other finance duties as requested by the PSG Commander, Gen. Rodolfo Diaz. On December 19, 2000, he received a check from Director Aguas in the amount of ₱1,975,000 representing the Special Allowance of PSG personnel. Accompanied by two personnel, he went to the Land Bank branch just across Pasig River and encashed the check. He placed the money in a duffel bag and kept it inside the steel cabinet in his office together with the ₱1,295,000 that was earlier also entrusted to him by

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[7] TSN, May 31, 2005, pp. 7-12; records, Vol. I, pp. 272-277.

[8] *Id*. at 12-18; *id*. at 277-282.

Gen. Diaz. Major Cantos added that as far as he knows, he is the only one with the keys to his office. Although there was a safety vault in his office, he opted to place the money inside the steel cabinet because he was allegedly previously informed by his predecessor, Major Conrado Mendoza, that the safety vault was defective. He was also aware that all personnel of the 22nd FSU had unrestricted access to his office during office hours.[9]

Major Cantos also narrated that on December 20, 2000, he arrived at the office at around 9:00 a.m. and checked the steel filing cabinet. He saw that the money was still there. He left the office at around 4:00 p.m. to celebrate with his wife because it was their wedding anniversary. On the following day, December 21, 2000, he reported for work around 8:30 a.m. and proceeded with his task of signing vouchers and documents. Between 9:00 a.m. to 10:00 a.m., he inspected the steel cabinet and discovered that the duffel bag which contained the money was missing. He immediately called then Capt. Balao to his office and asked if the latter saw someone enter the room. Capt. Balao replied that he noticed a person going inside the room, but advised him not to worry because he is bonded as Disbursing Officer.[10]

In a state of panic, Major Cantos asked for Capt. Balao's help in finding the money. Capt. Balao asked him how the money was lost and why was it not in the vault, to which he replied that he could not put it there because the vault was defective. Capt. Balao then suggested that they should make it appear that the money was lost in the safety vault. In pursuit of this plan, Capt. Balao went out of the office and returned with a pair of pliers and a screwdriver. Upon his return, Capt. Balao went directly to the vault to unscrew it. At this point, Major Cantos told him not to continue anymore as he will just inform Gen. Diaz about the missing funds. Major Cantos was able to contact Gen. Diaz through his mobile phone and was

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[9] TSN, November 17, 2005, pp. 4-21; records, Vol. II, pp. 408-426; TSN, February 21, 2006, pp. 4-11; records, vol. II, pp. 470-477.

[10] *Id.* at 22-31; *id.* at 427-436.

advised to just wait for Col. Espinelli. When Col. Espinelli arrived at the office, Col. Espinelli conducted an investigation of the incident.[11]

Lt. Col. Al I. Perreras, Executive Officer of the Judge Advocate General Office (JAGO), likewise conducted an investigation of the incident. His testimony was however dispensed with as the counsels stipulated that he prepared the Investigation Report, and that if presented, the same would be admitted by defense counsel.[12] It likewise appears from the evidence that Police Inspector Jesus S. Bacani of the Philippine National Police (PNP) administered a polygraph examination on Major Cantos and the result showed that he was telling the truth.[13]

On April 27, 2007, the RTC rendered a decision convicting Major Cantos of the crime charged, to wit:

> WHEREFORE, in view of the foregoing premises, the Court finds the accused Major Joel G. Cantos GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, under paragraph 4 of Article 217 of the Revised Penal Code, and, there being no mitigating or aggravating circumstance present, hereby sentences him to an indeterminate penalty of imprisonment for a period of ten (10) years and one (1) day of *Prision Mayor*, as minimum, to Eighteen (18) Years, eight (8) months and one (1) day of *Reclusion Temporal*, as maximum; to reimburse the AFP Finance Service Center, Presidential Security Group, Armed Forces of the Philippines the amount of Three Million Two Hundred Seventy Thousand Pesos (₱3,270,000.00); to pay a fine of Three Million Two Hundred Seventy Thousand Pesos (₱3,270,000.00); to suffer perpetual special disqualification from holding any public office; and to pay the costs.
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> SO ORDERED.[14]

In rendering a judgment of conviction, the RTC explained that although there was no direct proof that Major Cantos

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[11] *Id*. at 32-40; *id*. at 437-445.

[12] Records, Vol. I, p. 200.

[13] Sandiganbayan records, p. 32.

[14] Records, Vol. II, p. 616.

appropriated the money for his own benefit, Article 217 of the Revised Penal Code, as amended, provides that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. The RTC concluded that Major Cantos failed to rebut this presumption.

Aggrieved, Major Cantos appealed to the Sandiganbayan questioning his conviction by the trial court.

On July 31, 2008, the Sandiganbayan promulgated the assailed Decision, the dispositive portion of which reads as follows:

> **IN VIEW OF THE FOREGOING,** the Decision promulgated on May 3, 2007 in Criminal Case No. 03-212248 of the Regional Trial Court, National Capital Judicial Region, Branch 47, Manila finding the accused-appellant Major Joel G. Cantos **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code is hereby **AFFIRMED,** with the modification that instead of being convicted of malversation through negligence, the Court hereby convicts the accused of malversation through misappropriation. The penalty imposed by the lower court is also likewise **AFFIRMED.**
>
> **SO ORDERED.**[15]

The Sandiganbayan sustained the ruling of the RTC. It held that in the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received public funds and that he did not have them in his possession when demand therefor was made. There is even no need of direct evidence of personal misappropriation as long as there is a shortage in his account and petitioner cannot satisfactorily explain the same. In this case, the Sandiganbayan found petitioner liable for malversation through misappropriation because he failed to dispute the presumption against him. The Sandiganbayan noted that petitioner's claim that the money was taken by robbery or theft has not been supported by sufficient evidence, and is at most, self-serving.

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[15] *Rollo*, p. 20.

Contending that the Sandiganbayan Decision erred in affirming his conviction, Major Cantos filed a motion for reconsideration. In its Resolution[16] dated October 6, 2008, however, the Sandiganbayan denied the motion.

Hence, the present petition for review on *certiorari*. Petitioner assails the Decision of the Sandiganbayan based on the following grounds:

I

THE HONORABLE SANDIGANBAYAN ERRED IN AFFIRMING PETITIONER'S CONVICTION FOR MALVERSATION DESPITE ABSENCE OF EVIDENCE SHOWING THAT THE FUNDS WERE CONVERTED TO THE PERSONAL USE OF PETITIONER.

II.

THE HONORABLE SANDIGANBAYAN ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS OF THE MERE PRESUMPTION CREATED BY ARTICLE 217, PARAGRAPH 4, OF THE REVISED PENAL CODE IN VIEW OF THE ATTENDANT CIRCUMSTANCES IN THE PRESENT CASE.[17]

Essentially, the basic issue for our resolution is: Did the Sandiganbayan err in finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds?

Petitioner argues that mere absence of funds is not sufficient proof of misappropriation which would warrant his conviction. He stresses that the prosecution has the burden of establishing his guilt beyond reasonable doubt. In this case, petitioner contends that the prosecution failed to prove that he appropriated, took, or misappropriated, or that he consented or, through abandonment or negligence, permitted another person to take the public funds.

On the other hand, the People, represented by the Office of the Special Prosecutor (OSP), argues that petitioner, as an accountable officer, may be convicted of malversation of public funds even if there is no direct evidence of misappropriation.

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[16] *Id*. at 23.

[17] *Id*. at 36.

The OSP asserts that the only evidence required is that there is a shortage in the officer's account which he has not been able to explain satisfactorily.

The petition must fail.

The Sandiganbayan did not commit a reversible error in its decision convicting petitioner of malversation of public funds, which is defined and penalized under Article 217 of the Revised Penal Code, as amended, as follows:

> Art. 217. *Malversation of public funds or property. – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:
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> x x x x x x x x x
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> 4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.
>
> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.
>
> **The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.** (Emphasis and underscoring supplied.)

Thus, the elements of malversation of public funds under Article 217 of the Revised Penal Code are:

1. that the offender is a public officer;

2. that he had the custody or control of funds or property by reason of the duties of his office;

3. that those funds or property were public funds or property for which he was accountable; and

4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[18]

We note that all the above-mentioned elements are here present. Petitioner was a public officer occupying the position of Commanding Officer of the 22nd FSU of the AFP Finance Center, PSG. By reason of his position, he was tasked to supervise the disbursement of the Special Duty Allowances and other Maintenance Operating Funds of the PSG personnel, which are indubitably public funds for which he was accountable. Petitioner in fact admitted in his testimony that he had complete control and custody of these funds. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the fees to his personal use.

In convicting petitioner, the Sandiganbayan cites the presumption in Article 217 of the Revised Penal Code, as amended, which states that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is *prima facie* evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if petitioner is able to present adequate evidence that can nullify any likelihood that he put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated.

In this case, however, petitioner failed to overcome this *prima facie* evidence of guilt. He failed to explain the missing funds in his account and to restitute the amount upon demand. His claim that the money was taken by robbery or theft is self-serving and has not been supported by evidence. In fact, petitioner even tried to unscrew the safety vault to make it appear that the

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[18] *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, February 4, 2008, 543 SCRA 487, 505-506.

money was forcibly taken. Moreover, petitioner's explanation that there is a possibility that the money was taken by another is belied by the fact that there was no sign that the steel cabinet was forcibly opened. We also take note of the fact that it was only petitioner who had the keys to the steel cabinet.[19] Thus, the explanation set forth by petitioner is unsatisfactory and does not overcome the presumption that he has put the missing funds to personal use.

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.[20] All that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.[21] To our mind, the evidence in this case is thoroughly inconsistent with petitioner's claim of innocence. Thus, we sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

WHEREFORE, the petition is **DENIED.** The Decision dated July 31, 2008 of the Sandiganbayan in Criminal Case No. SB-07-A/R-0008 convicting Major Joel G. Cantos of the crime of Malversation of Public Funds is **AFFIRMED and UPHELD.**

With costs against the petitioner.

SO ORDERED.

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

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[19] TSN, February 21, 2006, p. 10; records, Vol. II, p. 476.

[20] *Cabello v. Sandiganbayan, et al.,* 274 Phil. 369, 378 (1991).

[21] *Davalos, Sr. v. People,* 522 Phil. 63, 71 (2006).

SECOND DIVISION

[G.R. No. 185734. July 3, 2013]

ALFREDO C. LIM, JR., *petitioner, vs.* **SPOUSES TITO S. LAZARO and CARMEN T. LAZARO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; LIEN ON ATTACHED PROPERTY CONTINUES UNTIL THE JUDGMENT IS SATISFIED, OR THE ATTACHMENT DISCHARGED OR VACATED IN THE SAME MANNER PROVIDED BY LAW.— By its nature, preliminary attachment, under Rule 57 of the Rules of Court (Rule 57), is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during its pendency which may be resorted to by a litigant to preserve and protect certain rights and interests during the interim, awaiting the ultimate effects of a final judgment in the case. In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected. In this relation, while the provisions of Rule 57 are silent on the length of time within which an attachment lien shall continue to subsist after the rendition of a final judgment, jurisprudence dictates that the said lien ***continues until the debt is paid, or the sale is had under execution issued on the judgment or until the judgment is satisfied, or the attachment discharged or vacated in the same manner provided by law***.

2. ID.; ID.; ID.; THE DISCHARGE OF THE WRIT OF PRELIMINARY ATTACHMENT AGAINST THE PROPERTIES OF RESPONDENT IS IMPROPER; THE LIEN SECURITY OBTAINED BY AN ATTACHMENT EVEN BEFORE JUDGMENT, IS IN THE NATURE OF A VESTED INTEREST WHICH AFFORDS SPECIFIC

SECURITY FOR THE SATISFACTION OF THE DEBT PUT IN SUIT.— Applying these principles, the Court finds that the discharge of the writ of preliminary attachment against the properties of Sps. Lazaro was improper. Records indicate that while the parties have entered into a compromise agreement which had already been approved by the RTC in its January 5, 2007 Amended Decision, the obligations thereunder have yet to be fully complied with – particularly, the payment of the total compromise amount of ₱2,351,064.80. Hence, given that the foregoing debt remains unpaid, the attachment of Sps. Lazaro's properties should have continued to subsist. In *Chemphil Export & Import Corporation v. CA*, the Court pronounced that a writ of attachment is not extinguished by the execution of a compromise agreement between the parties. x x x The case at bench admits of peculiar character in the sense that it involves a compromise agreement. Nonetheless, x x x. **The parties to the compromise agreement should not be deprived of the protection provided by an attachment lien especially in an instance where one reneges on his obligations under the agreement**, as in the case at bench, where Antonio Garcia failed to hold up his own end of the deal, so to speak. x x x. In fine, the Court holds that the writ of preliminary attachment subject of this case should be restored and its annotation revived in the subject TCTs, re-vesting unto Lim, Jr. his preferential lien over the properties covered by the same as it were before the cancellation of the said writ. Lest it be misunderstood, the lien or security obtained by an attachment even before judgment, is in the nature of a vested interest which affords specific security for the satisfaction of the debt put in suit. Verily, the lifting of the attachment lien would be tantamount to an abdication of Lim, Jr.'s rights over Sps. Lazaro's properties which the Court, absent any justifiable ground therefor, cannot allow.

APPEARANCES OF COUNSEL

Jose S. Santos, Jr. for petitioner.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the July 10, 2008 Decision[2] and December 18, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 100270, affirming the March 29, 2007 Order[4] of the Regional Trial Court of Quezon City, Branch 223 (RTC), which lifted the writ of preliminary attachment issued in favor of petitioner Alfredo C. Lim, Jr. (Lim, Jr.).

The Facts

On August 22, 2005, Lim, Jr. filed a complaint[5] for sum of money with prayer for the issuance of a writ of preliminary attachment before the RTC, seeking to recover from respondents-spouses Tito S. Lazaro and Carmen T. Lazaro (Sps. Lazaro) the sum of ₱2,160,000.00, which represented the amounts stated in several dishonored checks issued by the latter to the former, as well as interests, attorney's fees, and costs. The RTC granted the writ of preliminary attachment application[6] and upon the posting of the required ₱2,160,000.00 bond,[7] issued the corresponding writ on October 14, 2005.[8] In this accord, three (3) parcels of land situated in Bulacan, covered by Transfer Certificates of Title (TCT) Nos. T-64940, T-64939, and

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[1] *Rollo,* pp. 8-20.

[2] *Id.* at 23-33. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca De Guia-Salvador and Vicente S. E. Veloso, concurring.

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

[4] *Id.* at 79. Penned by Presiding Judge Ramon A. Cruz.

[5] *Id.* at 39-43. Docketed as Civil Case No. Q-05-56123.

[6] *Id.* at 44. See September 15, 2005 RTC Order.

[7] *Id.* at 45. See September 29, 2005 RTC Order.

[8] *Id.* at 46-47. Issued by Atty. Joseph Ronald T. Abesa, Clerk of Court V.

T-86369 (subject TCTs), registered in the names of Sps. Lazaro, were levied upon.[9]

In their Answer with Counterclaim,[10] Sps. Lazaro averred, among others, that Lim, Jr. had no cause of action against them since: (*a*) Colim Merchandise (Colim), and not Lim, Jr., was the payee of the fifteen (15) Metrobank checks; and (*b*) the PNB and Real Bank checks were not drawn by them, but by Virgilio Arcinas and Elizabeth Ramos, respectively. While they admit their indebtedness to Colim, Sps. Lazaro alleged that the same had already been substantially reduced on account of previous payments which were apparently misapplied. In this regard, they sought for an accounting and reconciliation of records to determine the actual amount due. They likewise argued that no fraud should be imputed against them as the aforesaid checks issued to Colim were merely intended as a form of collateral.[11] Hinged on the same grounds, Sps. Lazaro equally opposed the issuance of a writ of preliminary attachment.[12]

Nonetheless, on September 22, 2006, the parties entered into a Compromise Agreement[13] whereby Sps. Lazaro agreed to pay Lim, Jr. the amount of ₱2,351,064.80 on an installment basis, following a schedule of payments covering the period from September 2006 until October 2013, under the following terms, among others: (*a*) that should the financial condition of Sps. Lazaro improve, the monthly installments shall be increased in order to hasten the full payment of the entire obligation;[14] and (*b*) that Sps. Lazaro's failure to pay any installment due or the dishonor of any of the postdated checks delivered in payment

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[9] *Id*. at 49-50. See October 27, 2005 Sheriff's return.

[10] *Id*. at 51-55.

[11] *Id*. at 52.

[12] *Id*. at 53-54.

[13] *Id*. at 59-62.

[14] *Id*. at 61. As stated in the September 22, 2006 Compromise Agreement, the payment of Sps. Lazaro's mortgage obligation annotated in the memorandum of encumbrances of TCT Nos. T-64940, T-64939, and T-86369 shall be proof of the improvement of their financial condition.

thereof shall make the whole obligation immediately due and demandable.

The aforesaid compromise agreement was approved by the RTC in its October 31, 2006 Decision[15] and January 5, 2007 Amended Decision.[16]

Subsequently, Sps. Lazaro filed an Omnibus Motion,[17] seeking to lift the writ of preliminary attachment annotated on the subject TCTs, which the RTC granted on March 29, 2007.[18] It ruled that a writ of preliminary attachment is a mere provisional or ancillary remedy, resorted to by a litigant to protect and preserve certain rights and interests pending final judgment. Considering that the case had already been considered closed and terminated by the rendition of the January 5, 2007 Amended Decision on the basis of the September 22, 2006 compromise agreement, the writ of preliminary attachment should be lifted and quashed. Consequently, it ordered the Registry of Deeds of Bulacan to cancel the writ's annotation on the subject TCTs.

Lim, Jr. filed a motion for reconsideration[19] which was, however, denied on July 26, 2007,[20] prompting him to file a petition for *certiorari*[21] before the CA.

The CA Ruling

On July 10, 2008, the CA rendered the assailed decision,[22] finding no grave abuse of discretion on the RTC's part. It observed that a writ of preliminary attachment may only be issued at the commencement of the action or at any time before entry of judgment. Thus, since the principal cause of action had already

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[15] *Id*. at 63-67.

[16] *Id*. at 69-73.

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

[18] *Id*. at 79.

[19] *Id*. at 80-82.

[20] *Id*. at 87. See July 26, 2007 RTC Order.

[21] *Id*. at 88-98.

[22] *Id*. at 23-33.

been declared closed and terminated by the RTC, the provisional or ancillary remedy of preliminary attachment would have no leg to stand on, necessitating its discharge.[23]

Aggrieved, Lim, Jr. moved for reconsideration[24] which was likewise denied by the CA in its December 18, 2008 Resolution.[25]

Hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the writ of preliminary attachment was properly lifted.

The Court's Ruling

The petition is meritorious.

By its nature, preliminary attachment, under Rule 57 of the Rules of Court (Rule 57), is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during its pendency which may be resorted to by a litigant to preserve and protect certain rights and interests during the interim, awaiting the ultimate effects of a final judgment in the case.[26] In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected.[27]

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

[24] *Id*. at 100-110.

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

[26] *Republic v. Estate of Alfonso Lim, Sr.*, G.R. No. 164800, July 22, 2009, 593 SCRA 404, 416.

[27] "The purposes of preliminary attachment are: (1) to seize the property of the debtor in advance of final judgment and to hold it for purposes of satisfying said judgment, as in the grounds stated in paragraphs (a) to (e) of Section 1, Rule 57 of the Rules of Court; or (2) to acquire jurisdiction

In this relation, while the provisions of Rule 57 are silent on the length of time within which an attachment lien shall continue to subsist after the rendition of a final judgment, jurisprudence dictates that the said lien ***continues until the debt is paid, or the sale is had under execution issued on the judgment or until the judgment is satisfied, or the attachment discharged or vacated in the same manner provided by law***.[28]

Applying these principles, the Court finds that the discharge of the writ of preliminary attachment against the properties of Sps. Lazaro was improper.

Records indicate that while the parties have entered into a compromise agreement which had already been approved by the RTC in its January 5, 2007 Amended Decision, the obligations thereunder have yet to be fully complied with – particularly, the payment of the total compromise amount of ₱2,351,064.80. Hence, given that the foregoing debt remains unpaid, the attachment of Sps. Lazaro's properties should have continued to subsist.

In *Chemphil Export & Import Corporation v. CA*,[29] the Court pronounced that a writ of attachment is not extinguished by the execution of a compromise agreement between the parties, *viz*:

> Did the compromise agreement between Antonio Garcia and the consortium discharge the latter's attachment lien over the disputed shares?
>
> CEIC argues that a writ of attachment is a mere auxiliary remedy which, upon the dismissal of the case, dies a natural death. Thus,

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over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected, as in paragraph (f) of the same provision." (*Philippine Commercial International Bank v. Alejandro*, G.R. No. 175587, September 21, 2007, 533 SCRA 738, 751-752).

[28] *Chemphil Export & Import Corporation v. CA*, G.R. Nos. 112438-39 and 113394, December 12, 1995, 251 SCRA 257, 288, citing *BF Homes, Incorporated v. CA*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262, 271-272. (Emphasis supplied)

[29] *Id*. at 287-290.

when the consortium entered into a compromise agreement, which resulted in the termination of their case, the disputed shares were released from garnishment.

We disagree. To subscribe to CEIC's contentions would be to totally disregard the concept and purpose of a preliminary attachment.

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The case at bench admits of peculiar character in the sense that it involves a compromise agreement. Nonetheless, x x x. **The parties to the compromise agreement should not be deprived of the protection provided by an attachment lien especially in an instance where one reneges on his obligations under the agreement**, as in the case at bench, where Antonio Garcia failed to hold up his own end of the deal, so to speak.

x x x x x x x x x

If we were to rule otherwise, we would in effect create a back door by which a debtor can easily escape his creditors. Consequently, we would be faced with an anomalous situation where a debtor, in order to buy time to dispose of his properties, would enter into a compromise agreement he has no intention of honoring in the first place. The purpose of the provisional remedy of attachment would thus be lost. It would become, in analogy, a declawed and toothless tiger. (Emphasis and underscoring supplied; citations omitted)

In fine, the Court holds that the writ of preliminary attachment subject of this case should be restored and its annotation revived in the subject TCTs, re-vesting unto Lim, Jr. his preferential lien over the properties covered by the same as it were before the cancellation of the said writ. Lest it be misunderstood, the lien or security obtained by an attachment even before judgment, is in the nature of a vested interest which affords specific security for the satisfaction of the debt put in suit.[30] Verily, the lifting

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[30] "The lien or security obtained by an attachment even before judgment, is a fixed and positive security, a specific lien, and, although whether it will ever be made available to the creditor depends on contingencies, its existence is in no way contingent, conditioned or inchoate. It is a vested interest, an actual and substantial security, affording specific security for satisfaction of the debt put in suit, which constitutes a cloud on the legal

of the attachment lien would be tantamount to an abdication of Lim, Jr.'s rights over Sps. Lazaro's properties which the Court, absent any justifiable ground therefor, cannot allow.

WHEREFORE, the petition is **GRANTED.** The July 10, 2008 Decision and the December 18, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100270 are **REVERSED** and **SET ASIDE,** and the March 29, 2007 Order of the Regional Trial Court of Quezon City, Branch 223 is **NULLIFIED.** Accordingly, the trial court is directed to **RESTORE** the attachment lien over Transfer Certificates of Title Nos. T-64940, T-64939, and T-86369, in favor of petitioner Alfredo C. Lim, Jr.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186366. July 3, 2013]

HEIRS OF JOSE FERNANDO, *petitioners, vs.* **REYNALDO DE BELEN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; MAY BE QUESTIONED AT ANY STAGE OF THE PROCEEDINGS.— The general rule is that the jurisdiction of a court may be questioned at any stage of the proceedings. Lack of jurisdiction is one of

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title, and is as specific as if created by virtue of a voluntary act of the debtor and stands upon as high equitable grounds as a mortgage." (*BF Homes, Incorporated v. CA, supra* note 28, at 272; citations omitted).

those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. So that, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.

2. ID.; ID.; ID.; WHILE JURISDICTION MAY BE ASSAILED AT ANY STAGE, A LITIGANT WHO PARTICIPATED IN THE COURT PROCEEDINGS BY FILING PLEADINGS AND PRESENTING HIS EVIDENCE CANNOT LATER ON QUESTION THE TRIAL COURT'S JURISDICTION WHEN JUDGMENT UNFAVORABLE TO HIM IS RENDERED.— After the entire proceedings fully participated in by the respondent, he cannot be allowed to question the result as having been rendered without jurisdiction. This is the teaching in *Tijam v. Sibonghanoy, et al.* as reiterated in *Soliven v. Fastforms Philippines, Inc.*, where the Court ruled: "While it is true that jurisdiction may be raised at any time, "this rule presupposes that estoppel has not supervened." In the instant case, ***respondent actively participated in all stages of the proceedings before the trial court*** and invoked its authority by asking for an affirmative relief. Clearly, respondent is estopped from challenging the trial court's jurisdiction, especially when an adverse judgment has been rendered." Similarly, as this Court held in *Pantranco North Express, Inc. v. Court of Appeals*, participation in all stages of the case before the trial court, that included invoking its authority in asking for affirmative relief, effectively barred the respondent by estoppel from challenging the court's jurisdiction. The Court has consistently upheld the doctrine that while jurisdiction may be assailed at any stage, a litigant who participated in the court proceedings by filing pleadings and presenting his evidence cannot later on question the trial court's jurisdiction when judgement unfavorable to him is rendered.

3. ID.; ID.; ID.; RESPONDENT'S OWN ANSWER TO THE COMPLAINT BELIES HIS ARGUMENT THAT THE

ASSESSED VALUE OF THE SUBJECT PROPERTY PLACES THE CASE OUTSIDE THE JURISDICTION OF THE REGIONAL TRIAL COURT.— Moreover, and of equal significance, the facts of this case demonstrate the inapplicability of RA 7691. The argument of respondent that the assessed value of the subject property places the case outside the jurisdiction of the Regional Trial Court is belied by respondent's own Answer which states that: x x x "16. That the defendant's ownership and possession over the parcel of land ought to be recovered by the plaintiff is valid and legal as evidenced by the following: x x x (c) Deed of Absolute Sale by Florentino San Luis in favor of Reynaldo Santos de Belen dated June 4, 1979 (Annex "3" hereof) and the corresponding receipt of the purchase price of ₱60,000.00 dated June 19, 1979 (Annex "4" hereof)." thereby showing that way back in 1979 or nineteen (19) years before this case was instituted, the value of the property was already well covered by the jurisdictional amount for cases within the jurisdiction of the RTC.

APPEARANCES OF COUNSEL

Cresenciano C. Santiago for petitioners.
Venustiano S. Roxas & Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks the reversal of the 11 February 2009 Decision[1] of the Court of Appeals in CA-G.R. CV No. 87588, setting aside the 28 October 2005 Decision[2] of the Regional Trial Court (RTC), Branch 10 of Malolos City, Bulacan, which rendered a favorable finding for the petitioners in a complaint for recovery of possession docketed as Civil Case No. 180-M-98.

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Josefina Guevara-Salonga and Romeo F. Barza. CA *rollo*, pp. 112-119.

[2] Penned by Judge Victoria Villalon-Pornillos. Records, pp. 237-248.

The Facts

This case emanated from a complaint for *Recovery of Possession*[3] filed on 6 March 1998 by the petitioners against Reynaldo De Belen, herein respondent, before the RTC, Branch 10 of Malolos, Bulacan, involving a parcel of land covered by Original Certificate of Title (OCT) No. RO-487 (997) registered in the name of the late Jose, married to Lucila Tinio and Apolonia Fernando, wife of Felipe Galvez, consisting of 124,994 square meters, more or less, which is situated in Baliuag, Bulacan.

In the said complaint, it was alleged that petitioners are the children of the late Jose and they are in the process of partitioning their inheritance. However, they could not properly accomplish the partition due to the presence of the respondent who intruded into a portion of their property and conducted quarrying operations in its immediate vicinity for so many years, without their knowledge and permission.[4]

Petitioners, therefore, wrote a letter[5] dated 8 April 1997 to the respondent which was unheeded; thus, a *barangay* conciliation was resorted to. For failure of the respondent to appear, a Certification[6] was issued by the Barangay Lupon that led to the filing of the complaint before the RTC of Malolos, Bulacan docketed as Civil Case No. 180-M-98 to assert and defend their right over the subject property and for the respondent to vacate the premises and pay rental arrearages in the amount of ₱24,000.00, attorney's fees of ₱10,000.00 and exemplary damages of ₱20,000.00

Instead of filing an Answer, respondent Reynaldo De Belen filed a Motion to Dismiss[7] dated 22 June 1998, setting forth

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

[4] *Id*. at 2.

[5] *Id*. at 8.

[6] Exhibit "C" of the Complaint, *id*. at 9.

[7] *Id*. at 20-25.

the following grounds: (1) lack of jurisdiction; (2) lack of cause of action; (3) ambiguity as to the portion of the lot De Belen occupies; and, (4) incomplete statement of material facts, the complaint having failed to state the identity, location and area of the lot sought to be recovered.

The petitioners filed their Opposition[8] on 17 July 1998, averring that the complaint states a cause of action and respondent need not be confused because the estate under OCT No. RO-487 (997) is actually known as Psu-39080 with an area of 124,994 square meters divided into Lot 1 (80,760 square meters), Lot 2 (22,000 square meters), and Lot 3 (21,521 square meters). Likewise, petitioners also stated that their father, Jose and the latter's sister, Antonia A. Fernando, were co-owners *pro-indiviso* of the subject property and that as indicated in their demand letter, they represent the heirs of Jose and Antonia A. Fernando, both deceased many years ago. Although, a matter of proof to be presented in the course of the trial, petitioners nonetheless advanced that Antonia Fernando predeceased her brother Jose and she died without issue; thus, her undivided share was consolidated with that of her brother.

Finding lack of merit, the motion was denied in an Order[9] dated 3 November 1998, with the trial court ordering herein petitioners to amend the complaint by indicating the details desired by the respondent in order for the latter to file a responsive pleading.

On 12 February 1999, the Amended Complaint[10] with its attachment was filed to which the respondent moved for a Bill of Particulars,[11] specifically questioning the legal basis for the complaint since the entire property appears to be co-owned by Jose and Antonia Fernando and it was not particularized in the complaint as to what specific portion belongs to each of the co-owners.

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[8] *Id*. at 27-28.

[9] *Id*. at 39-41.

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

[11] *Id*. at 71-74.

In addition, the respondent, in his *Answer*,[12] claimed that even the Bill of Particulars[13] did not clearly show the exact identity, personal circumstances and relationship of the individual heirs of the decedent, location, area and size of the subject property. Also, prescription, estoppel and laches had set in as against the petitioners.

The respondent further argued that the Amended Complaint was prematurely filed due to the fact that the Certification to File Action was issued in violation of the prescribed procedure. The respondent likewise insisted on his right of possession over the subject property as evidenced by the successive transfer from Felipe Galvez to Carmen Galvez on 11 March 1955; from Carmen Galvez to Florentino San Luis to Reynaldo De Belen on 4 June 1979, and the receipt for the purchase price of ₱60,000.00 dated 19 June 1979. He asserted that from the date of his purchase, he has been in exclusive, continuous, open and public possession of said parcel of land.

Trial on the merits ensued which eventually resulted in the 28 October 2005 Decision of the RTC which is favorable to the petitioners. Thus:

> IN VIEW OF THE FOREGOING, judgment is hereby RENDERED:
>
> (a) Declaring as null and void and without legal force and effect the "Kasulatan Ng Pagbibilihang Tuluyan Ng Tumana" dated March 11, 1955 executed by Felipe Galvez in favor of Carmen Galvez; "Kasulatan Ng Pagbibiling Tuluyan Ng Tumana dated July 28, 1958, registered as Doc. No. 945; Page 59, Book XXIV; Series of 1958 of Notary Public Fermin Samson executed by Carme[n] Galvez married to Luis Cruz in favor of Florentino San Luis; and "Kasulatan Ng Bilihang Tuluyan Ng Lupang Tumana" dated June 04, 1979 executed by Florentino R. San Luis married to Agripina Reyes in favor of defendant Reynaldo Santos de Belen, entered as Doc. No. 199; Page No. 41; Book No. 79; Series of 1979 covering

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[12] *Id*. at 80-89.

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

9,838 square meters of a parcel of land designated as Lot 1303-B per approved subdivision plan in Cad. Case No. 17, Record No. 788 submitted before the defunct CFI of Bulacan and granted in a Decision dated December 29, 1929;

(b) Ordering the reconveyance of the disputed subject property in question including all improvements thereon as above-described by the defendant to the plaintiffs herein;

(c) Ordering the defendant to pay plaintiffs the amount of ₱10,000.00 a month from March 06, 1998 with legal interest until the subject property is actually returned to the plaintiffs;

(d) Ordering the defendant to pay plaintiffs the amount of ₱10,000.00 as attorney's fees;

(e) Ordering the defendant to pay plaintiff's the costs of suit.[14]

Aggrieved, respondent appealed to the Court of Appeals raising the issues on jurisdiction for failure of the petitioners to state the assessed value of the subject property, absence of evidence proving the lawful ownership of the petitioners and the grant of affirmative reliefs which were not alleged or prayed for.

On 11 February 2009, the Court of Appeals issued the assailed decision setting aside the decision of the RTC for want of jurisdiction and declaring further that the Amended Complaint must be dismissed.

Hence, the petition at bench seeking the reversal of the aforementioned decision.

The Issue

The core issue for resolution is whether or not the Court of Appeals committed reversible error in holding that the RTC did not acquire jurisdiction for failure to allege in the complaint the assessed value of the subject property.

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[14] *Id.* at 247-248.

Our Ruling

The general rule is that the jurisdiction of a court may be questioned at any stage of the proceedings.[15] Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[16] So that, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.[17]

A reading of both the complaint and the amended complaint shows that petitioners failed to state the assessed value of the disputed lot. This fact was highlighted by the Court of Appeals when it ruled:

> Instant complaint for Recovery of Possession failed to specify the assessed value of the property subject matter of the action. "What determines the nature of the action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought." (*Bejar, et. al. v. Caluag*, G.R. No. 171277, February 12, 2007). The allegations in the complaint and the relief sought by the party determine the nature of the action if the title or designation is not clear. The complaint, in the case at bar, is bereft of any allegation which discloses the assessed value of the property subject matter thereof. The court *a quo* therefore,

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[15] *Vargas v. Caminas*, G.R. No. 137869 and G.R. No. 137940, 12 June 2008, 554 SCRA 305, 321.

[16] *Geonzon Vda. De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008, 565 SCRA 192, 198 citing *Francel Realty Corporation v. Sycip*, 506 Phil. 407, 415 (2005).

[17] *De Rossi v. NLRC*, 373 Phil. 17, 26-27 (1999) citing *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, 31 August 1994, 236 SCRA 78, 90.

did not acquire jurisdiction over instant action. The Amended Complaint does not state a valid cause of action.[18]

Facially, the above disposition finds support from the provisions of Republic Act 7691 (RA 7691),[19] the law in effect when the case was filed. Section 1 of RA 7691, amending Section 19 of *Batas Pambansa Bilang* 129, pertinently states:

"**Section 1.** Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:

"Section 19. Jurisdiction in civil cases. – Regional Trial Courts shall exercise exclusive original jurisdiction.

"(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

"(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000,00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

x x x x x x x x x.

Thereby guided, the Court of Appeals no longer dwelt on the other issues and matters raised before it.

Jurisprudence has it that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may

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[18] CA's 11 February 2009 Decision in CA-G.R. CV No. 87588. CA *rollo*, p. 117.

[19] Entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURT, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980."

be raised.[20] As held in the case of *Solmayor v. Arroyo*,[21] it is not the function of this Court to analyze and weigh evidence all over again. This is premised on the presumed thorough appreciation of the facts by the lower courts. Such that, when the trial court and the appellate court, as in this case, reached opposite conclusions, a review of the facts may be done. There is a permissible scope of judicial review on the factual findings of the lower courts as crystallized in *Treñas v. People of the Philippines*,[22] where the Court cited contradictory findings of the Court of Appeals and the trial court as one of the instances where the resolution of the petition requires a review of the factual findings of the lower courts and the evidence upon which they are based.

So too are we reminded that procedural rules are intended to ensure the proper administration of law and justice and the rules of procedure ought not to be applied in a very rigid sense, for they are adopted to secure, not override, substantial justice.[23]

We, accordingly, review the records of this case and note the facts and evidence ignored by the appellate court. We observe that at the initial stage of this case when the respondent questioned the jurisdiction of the RTC in a Motion to Dismiss, he solely assailed the vagueness of the complaint for failure to allege the specific identity of the subject property and for being prematurely filed. The trial court in its 3 November 1998 Order, settled the issue by declaring that the allegations in the complaint make out for a case of recovery of ownership and that the petitioners need not wait for the lapse of one year from the 8 April 1997 demand letter to maintain the *accion reinvidicatoria*. The trial court went on to explain that the complaint clearly gives the defendant, herein respondent, notice of their exclusive and absolute

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[20] *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*, 473 Phil. 64, 90 (2004) citing *Calvo v. Vergara*, 423 Phil. 939, 947 (2001).

[21] 520 Phil. 854, 871 (2006).

[22] G.R. No. 195002, 25 January 2012, 664 SCRA 355, 363-364.

[23] *Morales v. The Board of Regents of the University of the Philippines*, 487 Phil. 449, 465 (2004).

claim of ownership over the entire property covered by the OCT No. RO-487 (997).

From the said Order, the respondent never raised any objection and did not even opt to elevate the matter to a higher court *via* a *certiorari* case which is a remedy for the correction of errors of jurisdiction. If indeed respondent was not convinced of the trial court's ruling, he could have availed of such remedy which is an original and independent action that does not proceed from the trial that would lead to the judgment on the merits. As aptly cited in the case of *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City*,[24] when the issue is jurisdiction, an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment.

On the contrary, the respondent acquiesced to the 3 November 1998 Order of the trial court for him to file his Answer,[25] whereby, he asserted ownership over the portion of the subject property which he occupied. He attached the following proof of his ownership, to wit: a) Deed of Absolute Sale by Felipe Galvez in favor of Carmen Galvez dated 11 March 1955;[26] b) Deed of Absolute Sale by Carmen Galvez in favor of Florentino San Luis dated 28 July 1958;[27] c) Deed of Absolute Sale by Florentino San Luis in favor of Reynaldo Santos De Belen dated 4 June 1979[28] and the corresponding receipt of the purchase price of ₱60,000.00 dated 19 June 1979.[29]

When the pre-trial conference was concluded, the trial court issued several Pre-Trial Orders,[30] specifying the identity and

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[24] 542 Phil. 587, 597 (2007).

[25] Records, pp. 80-84.

[26] Annex "1", *id*. at 85.

[27] Annex "2", *id*. at 86-87.

[28] Annex "3", *id*. at 88.

[29] Annex "4", *id*. at 89.

[30] *Id*. at 113-115; 120-121; 124 and 145-146.

coverage of the subject property being claimed by the petitioners as well as that portion occupied by the respondent, simplification of facts involved, and the issues which primarily centered on the validity of the transfer or disposition made by Felipe Galvez of the paraphernal property of his wife Antonia Fernando from which transfer the respondent succeeded his right over the portion he occupied.

During the trial, the petitioners were able to prove that indeed they are the rightful heirs of Jose and Antonia Fernando and that they have right of ownership over the property covered by OCT No. RO-487 (997) as described in Plan Psu-39080 of Lots 1302-B and 1303 prepared by Geodetic Engineer Alfredo C. Borja on 15 September 1997.[31] It was also proved through the admission of the respondent that he has been occupying a portion of Lot 1303 which is the Sapang Bayan, the old river, titled in the name of Jose and Antonia Fernando. Thus, it was ruled that the Deed of Sale in respondent's favor which was traced from the transfer made by Felix Galvez on 11 March 1955, without any participation of Antonia Fernando was likewise without any settlement of property between the said husband and wife and the property remained to be the paraphernal property of Antonia. Consequently, the trial court declared that the sale between Felipe Galvez and Carmen Galvez and its subsequent transfers are ***void ab initio***, as Felipe Galvez was neither the owner nor administrator of the subject property.

Further, the trial court went on to state that respondent has not proved his status as a purchaser in good faith and for value taking cue from the facts and circumstances as well as the numerous entries found at the dorsal sides of OCT No. RO-487 (997) which should have put any of the buyers on guard.

After the entire proceedings fully participated in by the respondent, he cannot be allowed to question the result as having been rendered without jurisdiction. This is the teaching in *Tijam*

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[31] Exhibit "A", *id*. at 180.

v. Sibonghanoy, et al.[32] as reiterated in *Soliven v. Fastforms Philippines, Inc.*,[33] where the Court ruled:

"While it is true that jurisdiction may be raised at any time, "this rule presupposes that estoppel has not supervened." In the instant case, ***respondent actively participated in all stages of the proceedings before the trial court*** and invoked its authority by asking for an affirmative relief. Clearly, respondent is estopped from challenging the trial court's jurisdiction, especially when an adverse judgment has been rendered." (Italics ours)

Similarly, as this Court held in *Pantranco North Express, Inc. v. Court of Appeals*,[34] participation in all stages of the case before the trial court, that included invoking its authority in asking for affirmative relief, effectively barred the respondent by estoppel from challenging the court's jurisdiction. The Court has consistently upheld the doctrine that while jurisdiction may be assailed at any stage, a litigant who participated in the court proceedings by filing pleadings and presenting his evidence cannot later on question the trial court's jurisdiction when judgement unfavorable to him is rendered.

Moreover, and of equal significance, the facts of this case demonstrate the inapplicability of RA 7691. The argument of respondent that the assessed value of the subject property places the case outside the jurisdiction of the Regional Trial Court is belied by respondent's own Answer which states that:

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"16. That the defendant's ownership and possession over the parcel of land ought to be recovered by the plaintiff is valid and legal as evidenced by the following:[35]

x x x x x x x x x

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[32] 131 Phil. 556, (1968).

[33] 483 Phil. 416, 422 (2004).

[34] G.R. No. 105180, 5 July 1993, 224 SCRA 477, 491.

[35] Records, p. 81.

(c) Deed of Absolute Sale by Florentino San Luis in favor of Reynaldo Santos de Belen dated June 4, 1979 (Annex "3" hereof)[36] and the corresponding receipt of the purchase price of ₱60,000.00 dated June 19, 1979 (Annex "4" hereof)."[37]

thereby showing that way back in 1979 or nineteen (19) years before this case was instituted, the value of the property was already well covered by the jurisdictional amount for cases within the jurisdiction of the RTC.

WHEREFORE, we **GRANT** the petition and **REVERSE** the assailed Decision of the Court of Appeals. The Regional Trial Court Decision is **AFFIRMED.** Let the records of this case be remanded to the RTC, Branch 10, Malolos, Bulacan for execution.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188217. July 3, 2013]

FERNANDO M. ESPINO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[36] *Id*. at 88.

[37] *Id*. at 89.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO DUE PROCESS; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; THE PROSECUTOR IS NOT REQUIRED TO BE ABSOLUTELY ACCURATE IN DESIGNATING THE OFFENSE BY ITS FORMAL NAME IN THE LAW; DUE PROCESS IS NOT VIOLATED AS LONG AS THE ACCUSED WAS SUFFICIENTLY APPRAISED OF THE FACTS THAT PERTAINED TO THE CRIME CHARGED.— Article 3, Section 14, paragraph 2 of the 1987 Constitution, requires the accused to be "informed of the nature and cause of the accusation against him" in order to adequately and responsively prepare his defense. The prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law. As explained by the Court in *People v. Manalili*:It is hornbook doctrine, however, that "**what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information** or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law." x x x. This doctrine negates the due process argument of the accused, because he was sufficiently apprised of the facts that pertained to the charge and conviction for *estafa.*

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; THE CONTROLLING WORDS OF THE INFORMATION ARE FOUND IN ITS BODY; THE PROSECUTOR'S STATEMENT IN THE INFORMATION SPECIFYING THE CHARGES AS *ESTAFA* UNDER ARTICLE 315, PARAGRAPH 1 (b) OF THE REVISED PENAL CODE, DID NOT BIND THE TRIAL COURT INSOFAR AS THE CHARACTERIZATION OF THE NATURE OF THE ACCUSATION IS CONCERNED.— While the fiscal mentioned Article 315 and specified paragraph 1(b), the controlling words of the Information are found in its body. Accordingly, the Court explained the doctrine in *Flores v. Layosa* as follows: The Revised Rules of Criminal Procedure

provides that an information shall be deemed sufficient if it states, among others, the designation of the offense given by the statute and the acts of omissions complained of as constituting the offense. However, the Court has clarified in several cases that **the designation of the offense, by making reference to the section or subsection of the statute punishing, it [sic] is not controlling; what actually determines the nature and character of the crime charged are the facts alleged in the information.** The Court's ruling in U.S. *v*. Lim San is instructive: x x x Notwithstanding the apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried.** The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice x x x. Clearly, the fiscal's statement in the Informations specifying the charges as *estafa* under Article 315, paragraph 1(b) of the RPC, did not bind the trial court insofar as the characterization of the nature of the accusation was concerned. The statement never limited the RTC's discretion to read the Information in the context of the facts alleged.

3. ID.; ID.; ID.; ID.; ALTHOUGH ACCUSED WAS CHARGED WITH *ESTAFA* UNDER ARTICLE 315, PARAGRAPH 1(b) OF THE REVISED PENAL CODE, THE ELEMENTS OF *ESTAFA* UNDER PARAGRAPH 2(a) FOR WHICH HE WAS CONVICTED OF WAS SUFFICIENTLY ALLEGED IN THE INFORMATION.— The crime charged was *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code. Its elements are as follows: (1) that money, goods, or other personal properties are 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 is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender. However, the crime the

accused was convicted of was *estafa* under Article 315, paragraph 2(a). The elements of this crime are as follows: (1) that there is a false pretense, fraudulent act or fraudulent means; (2) that the false pretense, fraudulent act or fraudulent means is made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party relies on the false pretense, fraudulent act, or fraudulent means, that is, he is induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means and (4) that as a result thereof, the offended party suffered damage. The six Informations are all similar in content except in the amounts and the check numbers. x x x Are the elements of *estafa* under paragraph 2(a) present in the Information? Arguably so, because the accused represented to the injured party that he would be delivering the commission to Mr. Banaag; and because of this representation, KN Inc. turned over checks payable to Mr. Banaag to the accused. In turn, the accused rediscounted the checks for money, to the detriment of both Mr. Banaag and KN Inc. However, this set of facts seems to miss the precision required of a criminal conviction. *Estafa* under paragraph 2(a) is swindling by means of false pretense, and the words of the law bear this out: Article 315. x x x 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 fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. x x x. In this case, there was no use of a fictitious name, or a false pretense of power, influence, qualifications, property, credit, agency, or business. At the most, the situation could be likened to an imaginary transaction, although the accused was already trusted with the authority to deliver commissions to Mr. Banaag. The pretense was in representing to the injured party that there was a deliverable commission to Mr. Banaag, when in fact there was none.

4. CRIMINAL LAW; SWINDLING AND OTHER DECEITS; *ESTAFA* THROUGH ABUSE OF CONFIDENCE UNDER PARAGRAPH 1(b); COMMITTED IN CASE AT BAR.— Instead of unduly stretching this point, the Court deems it wiser to give the offense its true, formal name – that of *estafa* through abuse of confidence under paragraph 1(b). Paragraph

1(b) provides liability for *estafa* committed 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 that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. This at least, is very clearly shown by the factual allegations of the Informations. First, personal property in the form of the checks was received by the offender in trust or on commission, with the duty to deliver it to Mr. Banaag. Even though the accused misrepresented the existence of a deliverable commission, it is a fact that he was obliged by KN Inc., the injured party, to deliver the check and account for it. Second, the accused rediscounted the checks to his aunt-in-law. Third, this rediscounting resulted in the wrongful encashment of the checks by someone who was not the payee and therefore not lawfully authorized to do so. Finally, this wrongful encashment prejudiced KN Inc., which lost the proceeds of the check. When accounting was demanded from the accused, he could not conjure any justifiable excuse. His series of acts precisely constitutes *estafa* under Article 315, paragraph 1(b).

5. ID.; ID.; *ESTAFA* CAN BE COMMITTED WITH THE ATTENDANCE OF BOTH MODES OF COMMISSION, THAT IS, ABUSE OF CONFIDENCE AND DECEIT EMPLOYED, AGAINST THE SAME VICTIM AND CAUSING DAMAGE TO HIM.— Nevertheless, this Court need not make such a detailed and narrow analysis. In *Ilagan v. Court of Appeals*, it stated that *estafa* can be committed by means of both modes of commission in the following way: x x x[E]stafa can be committed **with the attendance of both modes of commission, that is, abuse of confidence and deceit employed against the same victim and causing damage to him.** Thus, where an agent deliberately misrepresented to the landowner the real position of the prospective buyer of the land in order to induce said owner to agree to a lower price and, thereafter, the agent sold the land for the higher amount which was actually agreed upon by him and the buyer, and he then clandestinely misappropriated the excess, the crime of *estafa* was committed under both modes and **he could be**

charged under either. The above discussion leads to the conclusion that the Information in this case may be interpreted as charging the accused with **both** *estafa* under paragraph 1(b) and *estafa* under paragraph 2(a). It is a basic and fundamental principle of criminal law that one act can give rise to two offenses, all the more when a single offense has multiple modes of commission. Hence, the present Petition cannot withstand the tests for review as provided by jurisprudential precedent. While the designation of the circumstances attending the conviction for *estafa* could have been more precise, there is no reason for this Court to review the findings when both the appellate and the trial courts agree on the facts. We therefore adopt the factual findings of the lower courts in totality, bearing in mind the credence lent to their appreciation of the evidence.

APPEARANCES OF COUNSEL

Altamira Cas Alaba & Collado Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 Petition for Review assailing the Court of Appeals (CA) Decision[1] dated 24 February 2009 in CA-G.R. CR. No. 31106, which affirmed the Regional Trial Court (RTC) Decision[2] in Criminal Case Nos. 02-01226 to 31 convicting the accused of *estafa* under Article 315, paragraph 2(a); and the CA Resolution[3] dated 25 May 2009 denying the Motion for Reconsideration of the accused in the same case.

The RTC decided on the basis of the following facts:

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[1] *Rollo*, pp. 37-60; penned by Associate Justice Portia Alino-Hormachuelos, and Associate Justices Jose Catral Mendoza (now a member of this Court) and Ramon M. Bato, Jr. concurring.

[2] *Id*. at 64-81; penned by Judge Leoncia Real-Dimagiba, Regional Trial Court, Branch 194, Parañaque City.

[3] *Id*. at 62-63.

The accused was a senior sales executive in charge of liaising with import coordinators of the company Kuehne and Nagel, Inc. (KN Inc.).[4] His duties included the delivery of its commissions to the import coordinators.[5]

On 14 October 2002, the Fiscal's Office of Paranaque charged the accused with six (6) counts of *estafa* under Article 315, paragraph 1(b) for allegedly rediscounting checks that were meant to be paid to the company's import coordinators.[6]

During trial, the prosecution presented witnesses who testified to the fact that the endorsements of the payee on six checks were forged,[7] and that the checks were rediscounted by the accused's aunt-in-law.[8] She later testified to her participation in the rediscounting and encashment of the checks.[9]

The accused testified for himself, claiming that what precipitated the charges was his employer's discontent after he had allegedly lost an account for the company.[10] He was eventually forced to resign and asked to settle some special arrangements with complainant.[11] Alongside being made to submit the resignation, he was also asked to sign a sheet of paper that only had numbers written on it.[12] He complied with these demands under duress, as pressure was exerted upon him by complainants.[13] Later on, he filed a case for illegal dismissal,[14] in which he

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[4] *Id*. at 64.

[5] *Id*.

[6] Records, pp. 1, 39, 41, 43, 45, 47.

[7] *Rollo,* pp. 68-74.

[8] *Id*. at 78.

[9] Records, pp. 1373-1386.

[10] *Rollo,* p. 74.

[11] *Id*. at 75.

[12] *Id*. at 76.

[13] *Id*.

[14] *Id*. at 77.

denied having forged the signature of Mr. Banaag at the dorsal portion of the checks.[15]

In rebuttal, the prosecution presented the testimony of the aunt-in-law of the accused, to prove that the accused had called her to ask if she could rediscount some checks, and that she agreed to do so upon his assurance that he knew the owner of those checks.[16]

After trial, the RTC convicted the accused of *estafa* under Article 315, paragraph 2(a).[17] In response, he filed a Motion for Reconsideration,[18] arguing that the trial court committed a grave error in convicting him of *estafa* under paragraph 2(a), which was different from paragraph 1(b) of Article 315 under which he had been charged. He also alleged that there was no evidence to support his conviction.[19] Thus, he contended that his right to due process of law was thereby violated.[20]

In turn, the prosecution argued that jurisprudence had established that the nature and character of the crime charged are determined by the facts alleged in the information, and not by a reference to any particular section of the law.[21] Subsequently, the RTC denied the Motion.[22]

The accused then elevated the case to the CA[23] on the same grounds that he cited in his Motion, but it denied his appeal,[24] stating that the alleged facts sufficiently comprise the elements

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[15] Records, pp. 1237-1238.

[16] *Id.* at 1373-1386.

[17] *Rollo,* p. 80.

[18] Records, pp. 854-865.

[19] *Rollo,* p. 82.

[20] *Id.* at 82-83.

[21] Records, p. 890.

[22] *Rollo,* pp. 82-84; Annex "D".

[23] *Id.* at 85-86; Annex "E".

[24] *Id.* at 36; Annex "A".

of *estafa* as enumerated in Article 315, paragraph 2(a).[25] His subsequent Motion for Reconsideration was likewise dismissed.

The accused thus filed this Petition for Review under Rule 45.

In the present Petition, the accused raises his right to due process.[26] Specifically, he claims that he was denied due process when he was convicted of *estafa* under Article 315, paragraph 2(a) of the Revised Penal Code (RPC) despite being charged with *estafa* under Article 315, paragraph 1(b).[27] He argues that the elements constituting both modes of *estafa* are different, and that this difference should be reflected in the Information.[28] According to him, a charge under paragraph 1(b) would not merit a conviction under paragraph 2(a).[29] Thus, he emphasizes the alleged failure to inform him of the nature and cause of the accusation against him.[30]

The issue that must be determined is whether a conviction for *estafa* under a different paragraph from the one charged is legally permissible.

Article 3, Section 14, paragraph 2 of the 1987 Constitution, requires the accused to be "informed of the nature and cause of the accusation against him" in order to adequately and responsively prepare his defense. The prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law. As explained by the Court in *People v. Manalili*:

It is hornbook doctrine, however, that "**what determines the real nature and cause of the accusation against an accused is the actual**

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[25] *Id*. at 51.

[26] *Id*. at 13.

[27] *Id*. at 13-18.

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

[29] *Id*. at 18.

[30] *Id*. at 17.

recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law." x x x. (Emphasis supplied)[31]

This doctrine negates the due process argument of the accused, because he was sufficiently apprised of the facts that pertained to the charge and conviction for *estafa*.

First, while the fiscal mentioned Article 315 and specified paragraph 1(b), the controlling words of the Information are found in its body. Accordingly, the Court explained the doctrine in *Flores v. Layosa* as follows:

The Revised Rules of Criminal Procedure provides that an information shall be deemed sufficient if it states, among others, the designation of the offense given by the statute and the acts of omissions complained of as constituting the offense. However, the Court has clarified in several cases that **the designation of the offense, by making reference to the section or subsection of the statute punishing, it [sic] is not controlling; what actually determines the nature and character of the crime charged are the facts alleged in the information.** The Court's ruling in U.S. *v.* Lim San is instructive:

x x x Notwithstanding the apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried.** The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice x x x. (Emphases supplied)[32]

Clearly, the fiscal's statement in the Informations specifying the charges as *estafa* under Article 315, paragraph 1(b) of the RPC,[33] did not bind the trial court insofar as the characterization

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[31] 355 Phil. 652, 688 (1988).

[32] 479 Phil. 1020, 1033-1034 (2004).

[33] *Supra* note 6.

of the nature of the accusation was concerned. The statement never limited the RTC's discretion to read the Information in the context of the facts alleged. The Court further explains the rationale behind this discretion in this manner:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, **its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information.** That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. **The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth.** If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute**. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal.** In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights... If he performed the acts alleged, in the manner, stated, the law determines what the name of the crime is and fixes the penalty therefore. **It is the province of the court alone to say what the crime is** or what it is named x x x. (Emphases supplied)[34]

Any doubt regarding the matter should end with the Court's conclusion:

> Thus, notwithstanding the discrepancy between the mode of commission of the estafa as alleged in the *Information* (which states that petitioners committed estafa under Article 315), or as claimed by the People in their *Comment* (that petitioners committed estafa

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[34] *Flores v. Layosa*, *supra* note 32 at 1034.

under Article 318) and the absence of the words "fraud" or "deceit" in the *Information*, the Court agrees with the Sandiganbayan and the RTC that the factual allegations therein sufficiently inform petitioners of the acts constituting their purported offense and satisfactorily allege the elements of estafa in general committed through the offense of falsification of public document. As the Sandiganbayan correctly held:

> Every element of which the offense is composed must be alleged in the complaint or information by making reference to the definition and the essentials of the specific crimes. This is so in order to fully apprise the accused of the charge against him and for him to suitably prepare his defense since he is presumed to have no independent knowledge of the facts that constitute the offense. It is not necessary, however, that the imputations be in the language of the statute. **What is important is that the crime is described in intelligible and reasonable certainty**. (Emphasis supplied)[35]

Moreover, the Court declared that in an information for *estafa*, the use of certain technical and legal words such as "fraud" or "deceit," is not necessary to make a proper allegation thereof.[36]

Thus, the only important question left to be answered is whether the facts in the Information do indeed constitute the crime of which the accused was convicted. In other words, was the RTC correct in convicting him of *estafa* under Article 315, paragraph 2(a) instead of paragraph 1(b)? The answer to this question, however, requires further reflection.

The crime charged was *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code. Its elements are as follows: (1) that money, goods, or other personal properties are 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 is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation or

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[35] *Id*. at 1034-1035.

[36] *Id*. at 1037.

conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[37]

However, the crime the accused was convicted of was *estafa* under Article 315, paragraph 2(a). The elements of this crime are as follows: (1) that there is a false pretense, fraudulent act or fraudulent means; (2) that the false pretense, fraudulent act or fraudulent means is made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party relies on the false pretense, fraudulent act, or fraudulent means, that is, he is induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means and (4) that as a result thereof, the offended party suffered damage.[38]

The six Informations are all similar in content except in the amounts and the check numbers. One of them reads as follows:

That on or about the 17th day of July, 2000, in the City of Paranaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the Senior Sales Executive of the complainant Kuehne and Nagel Inc. herein represented by Honesto Raquipiso, tasked with liasoning with the import coordinators of the complainant's various clients including the delivery of their commissions, said accused received in trust from the complainant Metrobank check no. 1640443816 in the amount of ₱12,675.00 payable to Mr. Florante Banaag, import coordinator of Europlay, with the obligation to deliver the same but said accused failed to deliver said check in the amount of ₱12,675.00 and instead, once in possession of the same, forged the signature of Mr. Banaag and had the check rediscounted and far from complying with his obligation, despite demands to account and/or remit the same, with unfaithfulness and/or abuse of confidence, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert the proceeds thereof to his own personal use and benefit, to the damage and prejudice of the said complainant, in the amount of ₱12,675.00.[39]

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[37] *Libuit v. People*, G.R. No. 154363, 13 September 2005, 469 SCRA 610, 616.

[38] *R.R. Paredes v. Calilung*, G.R. No. 156055, 5 March 2007, 517 SCRA 369, 393.

[39] Records, p. 1.

Are the elements of *estafa* under paragraph 2(a) present in the above-quoted Information? Arguably so, because the accused represented to the injured party that he would be delivering the commission to Mr. Banaag; and because of this representation, KN Inc. turned over checks payable to Mr. Banaag to the accused. In turn, the accused rediscounted the checks for money, to the detriment of both Mr. Banaag and KN Inc. However, this set of facts seems to miss the precision required of a criminal conviction. *Estafa* under paragraph 2(a) is swindling by means of false pretense, and the words of the law bear this out:

> Article 315.
>
> x x x x x x x x x
>
> 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 fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. x x x.

In this case, there was no use of a fictitious name, or a false pretense of power, influence, qualifications, property, credit, agency, or business. At the most, the situation could be likened to an imaginary transaction, although the accused was already trusted with the authority to deliver commissions to Mr. Banaag. The pretense was in representing to the injured party that there was a deliverable commission to Mr. Banaag, when in fact there was none.

Instead of unduly stretching this point, the Court deems it wiser to give the offense its true, formal name – that of *estafa* through abuse of confidence under paragraph 1(b).

Paragraph 1(b) provides liability for *estafa* committed 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 that obligation be totally or partially

guaranteed by a bond; or by denying having received such money, goods, or other property. This at least, is very clearly shown by the factual allegations of the Informations.

First, personal property in the form of the checks was received by the offender in trust or on commission, with the duty to deliver it to Mr. Banaag. Even though the accused misrepresented the existence of a deliverable commission, it is a fact that he was obliged by KN Inc., the injured party, to deliver the check and account for it. Second, the accused rediscounted the checks to his aunt-in-law. Third, this rediscounting resulted in the wrongful encashment of the checks by someone who was not the payee and therefore not lawfully authorized to do so. Finally, this wrongful encashment prejudiced KN Inc., which lost the proceeds of the check. When accounting was demanded from the accused, he could not conjure any justifiable excuse. His series of acts precisely constitutes *estafa* under Article 315, paragraph 1(b).

Nevertheless, this Court need not make such a detailed and narrow analysis. In *Ilagan v. Court of Appeals*, it stated that *estafa* can be committed by means of both modes of commission in the following way:

> x x x[E]stafa can be committed **with the attendance of both modes of commission, that is, abuse of confidence and deceit employed against the same victim and causing damage to him.** Thus, where an agent deliberately misrepresented to the landowner the real position of the prospective buyer of the land in order to induce said owner to agree to a lower price and, thereafter, the agent sold the land for the higher amount which was actually agreed upon by him and the buyer, and he then clandestinely misappropriated the excess, the crime of *estafa* was committed under both modes and **he could be charged under either**. (Emphases supplied)[40]

The above discussion leads to the conclusion that the Information in this case may be interpreted as charging the accused with **both** *estafa* under paragraph 1(b) and *estafa* under paragraph 2(a). It is a basic and fundamental principle of criminal

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[40] G.R. No. 110617, 29 December 1994, 239 SCRA 575, 587.

law that one act can give rise to two offenses,[41] all the more when a single offense has multiple modes of commission. Hence, the present Petition cannot withstand the tests for review as provided by jurisprudential precedent. While the designation of the circumstances attending the conviction for *estafa* could have been more precise, there is no reason for this Court to review the findings when both the appellate and the trial courts agree on the facts. We therefore adopt the factual findings of the lower courts in totality, bearing in mind the credence lent to their appreciation of the evidence.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED.** The assailed Decision dated 24 February 2009 and Resolution dated 25 May 2009 of the Court of Appeals in CA-G.R. CR. No. 31106 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188711. July 3, 2013]

TAN BROTHERS CORPORATION OF BASILAN CITY through its Owner/Manager, MAURO F. TAN, *petitioner, vs.* **EDNA R. ESCUDERO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LABOR OFFICIALS ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS ACCORDED

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[41] *People v. Nelmida,* G.R. No. 184500, 11 September 2012.

NOT ONLY RESPECT BUT ALSO FINALITY.— [I]n petitions for review on *certiorari* like the one at bench, the scope of this Court's judicial review of decisions of the CA is generally confined only to errors of law and does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Whether Escudero has abandoned her job or was illegally dismissed are questions of fact better left for determination by quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters. Corollarily, the rule is settled that the factual findings of the Labor Arbiter and the NLRC, especially when affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence. Time and again, we have reiterated the dictum that the Supreme Court is not a trier of facts and this applies with greater force in labor cases.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT AS A GROUND TO TERMINATE EMPLOYMENT, DEFINED AND EXPLAINED.— As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 of the Labor Code. To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.

3. ID.; ID.; ID.; ID.; ABANDONMENT IS NEGATED BY THE EMPLOYEE'S FILING OF A COMPLAINT FOR

ILLEGAL DISMISSAL; CHARGE OF ABANDONMENT, NOT ESTABLISHED IN CASE AT BAR.— On the theory that the same is proof enough of the desire to return to work, the immediate filing of a complaint for illegal dismissal – more so when it includes a prayer for reinstatement – has been held to be totally inconsistent with a charge of abandonment. While it is true that Escudero's complaint prayed for separation pay in lieu of reinstatement, Tan Brothers loses sight of the fact, however, that it had the burden of proving its own allegation that Escudero had abandoned her employment in July 2003. As allegation is not evidence, the rule has always been to the effect that a party alleging a critical fact must support his allegation with substantial evidence which has been construed to mean such relevant evidence as a reasonable mind will accept as adequate to support a conclusion. Confronted with Escudero's assertion that she reported for work despite irregular payment of her salaries and was forced to stop doing so after her wages were not paid in May 2004, the record shows that Tan Brothers proffered nothing beyond bare allegations to prove that Escudero had abandoned her employment in July 2003. It is, on the other hand, doctrinal that abandonment is a matter of intention and cannot, for said reason, be lightly inferred, much less legally presumed from certain equivocal acts. Viewed in the light of Escudero's persistence in reporting for work despite the irregular payment of her salaries starting July 2003, we find that her subsequent failure to do so as a consequence of Tan Brothers' non-payment of her salaries in May 2004 is hardly evincive of an intention to abandon her employment. Indeed, mere absence or failure to report for work, even after a notice to return work has been served, is not enough to amount to an abandonment of employment. Considering that a notice directing Escudero to return to work was not even issued in the premises, we find that the CA committed no reversible error in ruling out Tan Brothers' defense of abandonment.

4. ID.; ID.; ID.; WHERE THE CIRCUMSTANCES MAKE OUT A CLEAR CASE OF CONSTRUCTIVE DISMISSAL.— Neither are we inclined to disturb the CA's finding that Escudero was constructively dismissed by Tan Brothers which, as employer, had the burden of proving that said employee was dismissed for a just and valid cause. Constructive dismissal

occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. The test is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. Much though Tan Brothers may now be inclined to disparage the same as mere alibis, the fact that Escudero was deprived of office space, was not given further work assignment and was not paid her salaries until she was left with no choice but stop reporting for work all combine to make out a clear case of constructive dismissal.

5. ID.; ID.; ID.; ID.; RELIEFS GRANTED TO A CONSTRUCTIVELY DISMISSED EMPLOYEE.— Having been constructively dismissed, Escudero was correctly found entitled to backwages and attorney's fees by the Labor Arbiter, the NLRC and the CA. Under Article 279 of the *Labor Code*, as amended, employees who have been illegally terminated from employment are entitled to the twin reliefs of reinstatement without loss of seniority rights and to the payment of full back wages corresponding to the period from their illegal dismissal up to actual reinstatement. Reinstatement is a restoration to the state from which one has been removed or separated, while the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal. Proper where reinstatement is not advisable or feasible as when antagonism already caused a severe strain in the relationship between the employer and the employee, separation pay may also be awarded where, as here, reinstatement is no longer practical or in the best interest of the parties or when the employee decides not to be reinstated anymore.

APPEARANCES OF COUNSEL

Al Harith D. Sali for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PEREZ, *J.*:

The elements of abandonment of employment as a defense against a charge of illegal dismissal are primarily at issue in this Rule 45 Petition for Review on *Certiorari* which seeks the reversal of the 16 February 2009 Decision[1] rendered by the Twenty First Division of the Court of Appeals (CA), Mindanao Station, in CA-G.R. SP No. 01028-MIN,[2] the decretal portion of which states:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolutions of public respondent National Labor Relations Commission (NLRC), 5th Division, Cagayan De Oro City, in NLRC CA No. M-008350-2005 (RAB IX 09-00255-2004), promulgated on November 30, 2005 and January 31, 2006, respectively, are hereby AFFIRMED. Costs against petitioner,
>
> SO ORDERED.[3]

The Facts

In July 1991, respondent Edna R. Escudero (Escudero) was hired as bookkeeper by petitioner Tan Brothers Corporation of Basilan City (Tan Brothers), a corporation primarily engaged in the real estate business. On 1 September 2004, Escudero filed against Tan Brothers a complaint for illegal dismissal, underpayment of wages, cost of living allowance and 13th month pay which was docketed before the arbitral level of the Regional Arbitration Branch No. IX of the National Labor Relations Commission (NLRC) as NLRC Case No. RAB-09-09-00255-2004. In support of the complaint, Escudero alleged in her position paper that, starting July 2003, her monthly salary of ₱2,500.00 was not paid on time by Tan Brothers. After having the

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[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Mario V. Lopez.

[2] *Rollo*, pp. 9-19.

[3] *Id*. at 18-19.

corporation's office remodeled in the early part of 2004, Tan Brothers allegedly rented out the office space Escudero used to occupy and ceased giving her further assignments. Eventually constrained to stop reporting for work because of her dire financial condition, Escudero claimed that Tan Brothers "shrewdly maneuvered" her illegal dismissal from employment.[4]

In its position paper, on the other hand, Tan Brothers averred that Escudero was paid a daily wage of ₱155.00, and she abandoned her employment when she stopped reporting for work in July 2003. Aside from taking with her most of the corporation's payrolls, vouchers and other material documents evidencing due payment of wages and labor standard benefits, Tan Brothers maintained that, without its knowledge and consent, Escudero appropriated for herself an Olivetti typewriter worth ₱15,000.00. With Escudero's refusal to heed its demands for the return of the typewriter, Tan Brothers asseverated that it was left with no choice but to lodge a complaint with the barangay authorities of Seaside, Isabela City on 6 September 2004. In support of its claim of due payment of its employees' wages and benefits, Tan Brothers submitted copies of its remaining vouchers and payrolls from 24 December 1997 to 31 July 2000 which were prepared by Escudero and the result of the inspection conducted by the Department of Labor and Employment (DOLE) Regional Office No. 9 that cleared it of violations of labor standard laws.[5]

On 24 November 2004, Labor Arbiter Joselito B. De Leon rendered a decision, finding Tan Brothers guilty of constructively dismissing Escudero from employment. Rejecting Tan Brothers' claim that Escudero resigned from and/or abandoned her employment, the Labor Arbiter ruled that the former circumvented the substantive and procedural requirements of due process when it withheld the latter's salaries and stopped utilizing her services despite her presence at work. Also brushed aside was Tan Brothers' claim regarding the typewriter allegedly taken by Escudero on the ground that the cause of action relative thereto,

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

[5] *Id*. at 72-74.

if any, pertained to the regular courts. While giving credence to the pieces of documentary evidence adduced by Tan Brothers to prove due payment of wages and labor standard benefits to its employees, the Labor Arbiter ruled that, as a consequence of her constructive dismissal, Escudero was entitled to separation pay in the sum of ₱48,508.80 and backwages in the sum of ₱68,720.80 or a total of ₱117,229.60 in monetary awards.[6]

On appeal, the Labor Arbiter's decision was affirmed *in toto* in the 30 November 2005 Resolution issued by the Fifth Division of the NLRC in NLRC CA No. M-008350-2005. Echoing the Labor Arbiter's conclusion that Escudero was constructively dismissed, the NLRC further ruled that Tan Brothers' claim of loss of the typewriter, having been made after said employee's institution of the case *a quo*, was retaliatory and a mere afterthought.[7] Its motion for reconsideration of the foregoing resolution[8] denied for lack of merit in the NLRC's Resolution dated 31 January 2006,[9] Tan Brothers filed the Rule 65 petition for *certiorari* docketed before the CA as CA-G.R. SP No. 01028-MIN. In support of its petition, Tan Brothers faulted the NLRC with grave abuse of discretion for not finding that Escudero abandoned her employment despite her admission that she unilaterally stopped reporting for work. On the theory that abandonment is a serious misconduct which constituted a just cause for termination of employment under Article 282 of the *Labor Code of the Philippines*, it was, likewise, argued that the award of backwages and separation pay in favor of Escudero were bereft of legal basis.[10]

On 16 February 2009, the CA rendered the herein assailed decision, denying Tan Brothers' petition and affirming the NLRC's resolution of its appeal. Finding that Escudero was constructively dismissed when Tan Brothers stopped paying her

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[6] *Id*. at 71-77.

[7] *Id*. at 79-82.

[8] *Id*. at 83-86.

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

[10] *Id*. at 50.

salaries and giving her work assignments, the CA ruled out abandonment absent any showing that the former intended to sever the employer-employee relationship with the latter. Considered not established by an employee's mere absence or failure to report to work, abandonment was likewise held to be contradicted by the filing of an action for illegal dismissal. The CA also gave a short shrift to Tan Brothers' claim that Escudero took its typewriter and corporate records for lack of showing that the latter was confronted with and was given an opportunity to refute the charges against her.[11] Tan Brothers' motion for reconsideration of the decision[12] was denied for lack of merit in the CA's 26 June 2009 Resolution.[13] Hence, this petition.[14]

The Issues

Tan Brothers essentially argues that Escudero abandoned her employment and that the same was not negated by the filing of her complaint for illegal dismissal more than one year after she stopped reporting for work.[15]

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears stressing that, in petitions for review on *certiorari* like the one at bench, the scope of this Court's judicial review of decisions of the CA is generally confined only to errors of law[16] and does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.[17] Whether Escudero has

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[11] *Id*. at 46-56.

[12] *Id*. at 57-62.

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

[14] *Id*. at 31-44.

[15] *Id*. at 38-42.

[16] *DMA Shipping Philippines, Inc. v. Cabillar*, 492 Phil. 631, 638 (2005).

[17] *Flourish Maritime Shipping v. Almanzor*, G.R. No. 177948, 14 March 2008, 548 SCRA 712, 717.

abandoned her job or was illegally dismissed are questions of fact better left for determination by quasi-judicial agencies[18] which have acquired expertise because their jurisdiction is confined to specific matters.[19] Corollarily, the rule is settled that the factual findings of the Labor Arbiter and the NLRC, especially when affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.[20] Time and again, we have reiterated the dictum that the Supreme Court is not a trier of facts and this applies with greater force in labor cases.[21]

As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[22] It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 of the Labor Code.[23] To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[24] Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact

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[18] *Mame v. Court of Appeals*, G.R. No. 167953, 4 April 2007, 520 SCRA 552, 531.

[19] *Crewlink, Inc. v. Teringtering*, G.R. No. 166803, 11 October 2012, 684 SCRA 12, 19.

[20] *Calipay v. National Labor Relations Commission*, G.R. No. 166411, 3 August 2010, 626 SCRA 409, 421.

[21] *Perez v. The Medical City General Hospital*, 519 Phil. 129, 133 (2006).

[22] *DUP Sound Phils. v. Court of Appeals*, G.R. No. 168317, 21 November, 2011, 660 SCRA 461, 470.

[23] *CRC Agricultural Trading v. National Labor Relations Commission*, G.R. No. 177664, 23 December 2009, 609 SCRA 138,148.

[24] *Columbus Philippine Bus Corp. v. NLRC*, 417 Phil. 81, 100 (2001).

that the employee simply does not want to work anymore.[25] It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[26]

Repeating its defense of abandonment, Tan Brothers argues that Escudero unilaterally stopped reporting for work in July 2003. In addition to the latter's prolonged absence from work, Tan Brothers calls our attention to Escudero's supposed appropriation of the corporation's typewriter and records which supposedly evinced her intention to sever the parties' employer-employee relations. It is argued that, having committed the foregoing infraction to get even with her employer, it would have been unthinkable for Escudero to plan on further reporting for work. Considering that the complaint did not pray for reinstatement and was filed only on 1 September 2004 or more than one year after Escudero's supposed last attendance at work, Tan Brothers also fault the CA for applying the rule that abandonment is negated by the employee's filing of a complaint for illegal dismissal. Ultimately, Tan Brothers maintains that the award of backwages and separation pay should have been disallowed in view of Escudero's abandonment of her employment.[27]

On the theory that the same is proof enough of the desire to return to work,[28] the immediate filing of a complaint for illegal dismissal – more so when it includes a prayer for reinstatement – has been held to be totally inconsistent with a charge of abandonment.[29] While it is true that Escudero's complaint prayed for separation pay in lieu of reinstatement, Tan Brothers loses sight of the fact, however, that it had the burden of proving its

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[25] *MSMG-UWP v. Hon. Ramos*, 383 Phil. 329, 372 (2000).

[26] *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, 23 October 2009, 604 SCRA 362, 369.

[27] *Rollo*, pp. 39-42.

[28] *Pentagon Steel Corporation v. Court of Appeals*, G.R. No. 174141, 26 June 2009, 591 SCRA 160, 173.

[29] *Chavez v. NLRC*, 489 Phil. 444, 460 (2005).

own allegation that Escudero had abandoned her employment in July 2003. As allegation is not evidence, the rule has always been to the effect that a party alleging a critical fact must support his allegation with substantial evidence[30] which has been construed to mean such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[31] Confronted with Escudero's assertion that she reported for work despite irregular payment of her salaries and was forced to stop doing so after her wages were not paid in May 2004, the record shows that Tan Brothers proffered nothing beyond bare allegations to prove that Escudero had abandoned her employment in July 2003.

It is, on the other hand, doctrinal that abandonment is a matter of intention[32] and cannot, for said reason, be lightly inferred, much less legally presumed from certain equivocal acts.[33] Viewed in the light of Escudero's persistence in reporting for work despite the irregular payment of her salaries starting July 2003, we find that her subsequent failure to do so as a consequence of Tan Brothers' non-payment of her salaries in May 2004 is hardly evincive of an intention to abandon her employment. Indeed, mere absence or failure to report for work, even after a notice to return work has been served, is not enough to amount to an abandonment of employment.[34] Considering that a notice directing Escudero to return to work was not even issued in the premises, we find that the CA committed no reversible error in ruling out Tan Brothers' defense of abandonment.

The same may be said of the CA's rejection of the employer's contention that the employee signified her intention to sever the parties' employer-employee relationship when she illegally

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[30] *De Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91, 102 (1999).

[31] *Ingusan v. Court of Appeals*, 505 Phil. 518, 524 (2005).

[32] *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, 23 November 2007, 538 SCRA 375, 386.

[33] *Garden of Memories Park v. National Labor Relations Commission*, G.R. No. 160278, 8 February 2012, 665 SCRA 293, 309.

[34] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).

appropriated for herself the corporation's typewriter and took its payrolls, vouchers and other material documents. Since unsubstantiated accusation, without more, is not synonymous with guilt,[35] the CA correctly brushed aside Escudero's supposed infraction which Tan Brothers reported to the *barangay* authorities of Seaside, Isabela City only on 6 September 2004 or after the filing of the complaint *a quo.* In order to terminate an employee's services for a just cause, moreover, it is essential that the two-notice requirement must be complied with by the employer, to wit: a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefor.[36] The requirement of these notices is not a mere technicality, but a requirement of due process to which every employee is entitled.[37]

Neither are we inclined to disturb the CA's finding that Escudero was constructively dismissed by Tan Brothers which, as employer, had the burden of proving that said employee was dismissed for a just and valid cause.[38] Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[39] The test is whether a reasonable person in the employee's position would have felt compelled to

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[35] *Pepsi Cola Distributors of the Philippines v. National Labor Relations Commission*, 338 Phil. 773, 781 (1997).

[36] *Mantle Trading Services, Inc. v. NLRC*, G.R. No. 166705, 28 July 2009, 594 SCRA 180, 190-191.

[37] *CRC Agricultural Trading v. NLRC, supra* note 23 at 150.

[38] *Suldao v. Cimech System Construction, Inc.*, 536 Phil. 976, 981 (2006).

[39] *The University of Immaculate Conception v. National Labor Relations Commission*, G.R. No. 181146, 26 January 2011, 640 SCRA 608, 618-619.

give up his position under the circumstances.[40] Much though Tan Brothers may now be inclined to disparage the same as mere alibis, the fact that Escudero was deprived of office space, was not given further work assignment and was not paid her salaries until she was left with no choice but stop reporting for work all combine to make out a clear case of constructive dismissal.

Having been constructively dismissed, Escudero was correctly found entitled to backwages and attorney's fees by the Labor Arbiter, the NLRC and the CA. Under Article 279 of the *Labor Code*, as amended, employees who have been illegally terminated from employment are entitled to the twin reliefs of reinstatement without loss of seniority rights and to the payment of full back wages[41] corresponding to the period from their illegal dismissal up to actual reinstatement.[42] Reinstatement is a restoration to the state from which one has been removed or separated,[43] while the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal.[44] Proper where reinstatement is not advisable or feasible as when antagonism already caused a severe strain in the relationship between the employer and the employee,[45] separation pay may also be awarded where, as here, reinstatement is no longer practical or in the best interest of the parties or when the employee decides not to be reinstated anymore.[46]

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[40] *Philippine Veterans Bank v. National Labor Relations Commission*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 213.

[41] *Henlin Panay Company v. National Labor Relations Commission, supra*, note 26 at 371.

[42] *Valdez v. National Labor Relations Commission*, 349 Phil. 760, 768 (1998).

[43] *DUP Sound Phils. v. Court of Appeals*, *supra* note 22 at 472.

[44] *Chronicle Securities Corporation v. National Labor Relations Commission*, 486 Phil. 560, 570 (2004).

[45] *Leopard Security Investigation Agency v. Quitoy*, G.R. No. 186344, 20 February 2013.

[46] *Velasco v. National Labor Relations Commission*, 525 Phil. 749, 754 (2006).

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 01028-MIN is **AFFIRMED *in toto*.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192179. July 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LITO HATSERO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONTRADICTIONS IN THE TESTIMONIES AND MEDICAL RECORDS REFER ONLY TO IRRELEVANT MATTERS AND HAVE NOTHING TO DO WITH THE ELEMENTS OF THE CRIME.— Upon careful examination of the records of the case, we agree with the Court of Appeals that these alleged contradictions refer only to irrelevant and collateral matters, and have nothing to do with the elements of the crime charged and proven. As observed by the Court of Appeals, Barroa, in shock, fled the scene after the first stabbing, and may have merely failed to see a second one, possibly inflicted by accused-appellant's companion. Even if this were the case, accused-appellant cannot escape from criminal liability from the death of Mamerto Gravo. It is clear from the records that both wounds were fatal (since vital organs were hit) and that accused-appellant inflicted the first stab wound. This first stab wound caused the death of Mamerto Gravo, even in the absence of a second wound. Considering the shock experienced by Alex Barroa when he saw the victim

getting stabbed by a person who, just moments before, appeared to have made a friendly offer of a drink, we cannot fault Barroa for failing to observe the exact part of the body where the icepick of accused-appellant hit Mamerto Gravo. Barroa specified that he was stunned by what he saw, and ran towards the gate of the dance hall, while accused-appellant ran towards the store of Yulo. In such confusion, it is understandable that he was not able to take an immediate second look to verify what he saw. What is important is that he positively identified accused-appellant as the person who stabbed Mamerto Gravo after handing him a drink.

2. ID.; ID.; DEFENSE OF ALIBI CANNOT PROSPER IN THE FACE OF POSITIVE IDENTIFICATION OF THE WITNESS; PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF COMMISSION, NOT ESTABLISHED.— In the face of this positive identification, accused-appellant puts up the defense of alibi, claiming that he was sleeping in his house at the time of the incident. It has been consistently held by this Court that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. In the case of accused-appellant, however, it was established in his very own direct testimony that his house is within the immediate vicinity of the scene of the crime[.] x x x Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. In the case at bar, it is even weaker because of the failure of the accused-appellant to prove that it was physically impossible for him to be at the *locus delicti* at the time of the crime, and in the face of the positive identification made by Alex Barroa.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— We have held that "[t]he essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape." The manner Mamerto Gravo was stabbed by accused-appellant has treachery written all over it. We cannot think of any other reason accused-appellant would make the friendly gesture of offering a drink to a person he intended to

kill, other than to intentionally lure the latter into a false sense of security.

4. ID.; MURDER; CIVIL LIABILITIES; AWARD OF CIVIL INDEMNITY AND DAMAGES, MODIFIED.— [C]ivil liabilities awarded by the Court of Appeals require modification in accordance with prevailing jurisprudence. It is settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. Since there was no award of moral damages in the lower courts, we hereby hold accused-appellant Hatsero additionally liable for the amount of ₱50,000.00 in moral damages pursuant to the Decision of this Court in *People v. Malicdem.* Likewise in accordance to the amounts awarded in *Malicdem,* where the accused was similarly convicted of the crime of murder qualified by treachery, the Court modifies the amount of civil indemnity and exemplary damages to ₱75,000.00 and ₱30,000.00, respectively. Furthermore, since the receipted expenses of the victim's family was less than ₱25,000.00, temperate damages in said amount should be awarded *in lieu* of actual damages. Finally, all monetary awards should earn interest in conformity with current 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.*:

This is an Appeal from the Decision[1] dated June 22, 2009 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00690,

[1] *Rollo*, pp. 2-18; penned by Associate Justice Franchito N. Diamante with Associate Justices Edgardo L. de los Santos and Rodil V. Zalameda, concurring.

which affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 17 of Roxas City finding accused-appellant Lito Hatsero guilty beyond reasonable doubt of the crime of murder.

Accused-appellant Hatsero was charged with the crime of murder qualified by treachery in an Information dated March 14, 2001. He entered a plea of not guilty to the offense charged. Trial thereafter ensued, with the prosecution presenting the alleged eyewitness Alex Barroa; the victim's widow, Nimfa Gravo; and Pilar, Capiz Municipal Health Officer Dr. Ramon Nolasco, Jr. The defense, on the other hand, presented accused-appellant himself, as well as Robinson Benigla, the *Barangay* Captain of Bgy. Dulangan, Pilar, Capiz at the time of the incident.

Thirty-eight-year old truck driver **Alex Barroa** testified that the victim, Mamerto Gravo, was the first cousin of his wife. He knew accused-appellant Hatsero as a hauler or "*pakyador*" of sugarcane in their place.

On August 27, 2000, at 12:30 a.m., Barroa was with Gravo, celebrating the *barangay* fiesta at the dance hall of Sitio Tunga, Barangay Dulangan, Pilar, Capiz. Barroa and Gravo were about to go home when they passed by a group drinking behind the dance hall, in front of the store of a certain Yulo. He recognized accused-appellant Hatsero as one of the drinkers, but failed to recognize his companion who was seated in a dark place. Accused-appellant Hatsero invited Gravo to have a drink. While Gravo was holding the glass, accused-appellant Hatsero stabbed him, and ran towards the store. Gravo was not armed when this happened. Barroa saw everything since he was only about 58 inches away from them. Barroa was stunned with what he saw, but he managed to run towards the door of the gate of the dance hall, where he got people to help him bring Gravo via a tricycle to the Bailan District Hospital. Barroa then had the incident recorded with the *Barangay* Captain.[3]

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[2] CA *rollo*, pp. 33-38.

[3] TSN, March 25, 2003, pp. 3-5.

Nimfa Gravo, the widow of the victim, knew the accused-appellant as a worker in a cane field. She was at home when her husband was killed, and was merely informed of the incident by her neighbor, Eva Fuentes. She immediately ran to the dance hall, but her husband had been carried to the hospital when she arrived at the scene. She spent ₱15,000.00 at the funeral parlor and presented the receipt as evidence. She actually spent ₱100,000.00 in funeral expenses, but claimed that she no longer had the receipts. At the time of his death, her husband was 51 years old, in good health, and was continuously employed.[4]

Dr. Ramon Nolasco, Jr., the Municipal Health Officer of Pilar, Capiz, was not the one who conducted the *post-mortem* examination of Mamerto Gravo, but was presented in lieu of Dr. Freddie Bucayan, who was already in the United States and no longer connected with the office. He acknowledged that the Municipal Health Office conducted the *post-mortem* examination of Mamerto Gravo, based on the Medical Certificate issued by Dr. Bucayan and the *Post-mortem* Examination Report.[5]

According to said documents, Gravo sustained two wounds. The first was around 3.3 centimeters in length, 8 centimeters wide, and 6.4 centimeters deep. It had clean cut edges and clotted blood around it. The wound was located at the right armpit, stretching down Gravo's right side and back. The point of entry was at the back of the body. The weapon used, which was pointed and probably bladed, hit the lungs and the blood vessels of the lungs. The second wound was located at the right side of the thorax, and was also fatal. The cause of death was cardio-pulmonary arrest arising from hemorrhagic shock secondary to injury of the lungs.[6]

Accused-appellant **Lito Hatsero** was 33 years old at the time of his testimony. He was a lumberjack chainsaw operator. He testified that he was sleeping in his house at around 12:30 a.m.,

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[4] TSN, May 19, 2003, pp. 2-5.

[5] TSN, July 30, 2003, pp. 3-5.

[6] *Id*. at 7-11; sketch was presented as Exhibit D (records, p. 171).

on August 27, 2000. Earlier in the evening, however, he went with his children to the dance hall. He asserted that he left the dance hall at around 10:00 p.m., denied having killed Mamerto Gravo, and believed that he was implicated because he refused Mamerto Gravo's wife's request to be a witness when she asked him to pinpoint the real killer. He denied knowing Alex Barroa, and claimed that the latter's testimony is incredible as he was wrong as regards the number of wounds inflicted.[7]

Robinson Benigla,[8] a fisherman, was the *Barangay* Captain of Brgy. Dulangan, Pilar, Capiz at the time of the incident. He denied receiving any report of the killing of Mamerto Gravo and thus did not cause a blotter of the same. He attested that there was no record of the killing in the *barangay*. He claimed that he did not meet Alex Barroa early in the morning of August 28, 2000.[9]

On August 22, 2006, the trial court rendered its Decision convicting accused-appellant Hatsero of the crime of murder. The dispositive portion of the Decision is as follows:

> **WHEREFORE,** premises considered, accused Lito Hatsero is hereby found guilty beyond reasonable doubt of the **crime of *murder*** and he is sentenced to suffer the penalty of ***reclusion perpetua*** and to indemnify the heirs of the deceased in the sum of *Fifty Thousand Pesos* (₱50,000.00), with subsidiary imprisonment in case of insolvency, and the sum of *Sixty Thousand Pesos* (₱60,000.000) for funeral and hospital expenses.[10]

The trial court held that the accused-appellant was positively identified as the assailant, that the eyewitness account was categorical and consistent, and that there was no showing of ill motive on the part of the prosecution witnesses. The defense, on the other hand, failed to conclusively establish that it was

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[7] TSN, March 3, 2005, pp. 2-8.

[8] Identified in some parts of the records as "Robinhood Benigla."

[9] TSN, September 1, 2005, pp. 3-6.

[10] CA *rollo*, p. 38.

physically impossible for the accused-appellant to be at the scene of the crime at the approximate time of its commission.[11]

Accused-appellant Hatsero elevated the case to the Court of Appeals which rendered its Decision affirming the conviction, to wit:

> **WHEREFORE,** the decision of the Regional Trial Court, Branch 17 of Roxas City dated August 22, 2006, finding accused-appellant Lito Hatsero guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED** with the **MODIFICATION** as to the amount of damages only. Accused-appellant should indemnify the heirs of the victim the following amount[s]: (i) Fifteen Thousand Pesos (₱15,000.00) as actual damages; (ii) Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of the victim; and (iii) Twenty[-]Five Thousand Pesos (₱25,000.00) as exemplary damages.[12]

The Court of Appeals agreed with the assessment of the trial court that Alex Barroa described the stabbing incident in a clear and convincing manner. The disparities between the testimonies of Barroa and Dr. Nolasco do not make Barroa's testimony less credible since Barroa fled the scene after the first stabbing, and may have merely failed to witness a second one. The Court of Appeals likewise reiterated that the defense failed to prove that Barroa was moved by any improper motive, giving rise to the presumption that his testimony is entitled to full faith and credit.[13]

The Court of Appeals, however, modified the civil damages as follows: (1) the award of ₱60,000.00 for funeral and hospital expenses was reduced to ₱15,000.00, the amount duly substantiated by a receipt; (2) accused-appellant was ordered additionally liable for the amount of ₱50,000.00 as indemnity for the death of Mamerto Gravo; and (3) accused-appellant was

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[11] *Id*. at 37-38.

[12] *Rollo*, p. 17.

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

also made additionally liable for the amount of ₱25,000.00 as exemplary damages.

Accused-appellant appealed to this Court through a Notice of Appeal.[14] On February 22, 2010, accused-appellant filed a Manifestation[15] stating that he will no longer file a supplemental brief as all relevant matters have already been taken up in his Appellant's Brief with the Court of Appeals, thus bringing before us the same assignment of error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED FOR THE CRIME OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[16]

Accused-appellant's bone of contention is that the testimony of the lone eyewitness, Alex Barroa, is glaring with contradictions. Specifically, accused-appellant points out the following: (1) while the testimony of Barroa only indicated that there was one wound inflicted, the medical examination showed that there were two fatal wounds found in the body of Mamerto Gravo; (2) Barroa claimed that he saw Mamerto Gravo get stabbed on his left armpit, but the medical examination showed that the wounds were inflicted at the right side of his body; (3) Barroa claimed that accused-appellant used an icepick to stab Mamerto Gravo, but the medical examination yielded that the first wound was caused by a pointed and probably bladed instrument, while the second wound was caused by a bladed instrument which may be different from the first; and (4) Dr. Nolasco admitted that there was a possibility that there were two assailants.

Upon careful examination of the records of the case, we agree with the Court of Appeals that these alleged contradictions refer only to irrelevant and collateral matters, and have nothing to do with the elements of the crime charged and proven. As observed by the Court of Appeals, Barroa, in shock, fled the scene after

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[14] *Id*. at 19.

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

[16] CA *rollo*, p. 26.

the first stabbing, and may have merely failed to see a second one, possibly inflicted by accused-appellant's companion. Even if this were the case, accused-appellant cannot escape from criminal liability from the death of Mamerto Gravo. It is clear from the records that both wounds were fatal (since vital organs were hit) and that accused-appellant inflicted the first stab wound. This first stab wound caused the death of Mamerto Gravo, even in the absence of a second wound.

Considering the shock experienced by Alex Barroa when he saw the victim getting stabbed by a person who, just moments before, appeared to have made a friendly offer of a drink, we cannot fault Barroa for failing to observe the exact part of the body where the icepick of accused-appellant hit Mamerto Gravo. Barroa specified that he was stunned by what he saw, and ran towards the gate of the dance hall, while accused-appellant ran towards the store of Yulo.[17] In such confusion, it is understandable that he was not able to take an immediate second look to verify what he saw. What is important is that he positively identified accused-appellant as the person who stabbed Mamerto Gravo after handing him a drink.

In the face of this positive identification, accused-appellant puts up the defense of alibi, claiming that he was sleeping in his house at the time of the incident. It has been consistently held by this Court that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[18] In the case of accused-appellant, however, it was established in his very own direct testimony that his house is within the immediate vicinity of the scene of the crime:

Q Where were you when the incident happened on August 27, 2000 on or about 12:30 in the morning?

A I was in my house.

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[17] TSN, March 25, 2003, p. 5.

[18] *People v. Ballesteros*, 349 Phil. 366, 375 (1998).

Q Is it not a fact that your house is near the dance hall when Mamerto Gravo was hit?

A Yes, sir.

Q Since there was a benefit dance near your house, you did not enter the benefit dance?

A Earlier that night, I was there in the dance hall but at about 10:00 in the evening, I went up my house bringing along my child.[19]

Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. In the case at bar, it is even weaker because of the failure of the accused-appellant to prove that it was physically impossible for him to be at the *locus delicti* at the time of the crime, and in the face of the positive identification made by Alex Barroa.[20]

Furthermore, we have time and again ruled that factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.[21]

Accused-appellant also assails the finding that treachery attended the killing of Mamerto Gravo. According to accused-appellant, it was not established that he consciously and deliberately used the icepick in killing the victim in such a way as to insure his safety from any retaliation or that the attack was sudden as to give the victim no opportunity to defend himself.[22]

We disagree. We have held that "[t]he essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed

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[19] TSN, March 3, 2005, pp. 6-7.

[20] See *People v. Bonifacio*, 426 Phil. 511, 520-521 (2002).

[21] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 208-209.

[22] CA *rollo*, pp. 29-30.

and unsuspecting victim no chance to resist or escape."[23] The manner Mamerto Gravo was stabbed by accused-appellant has treachery written all over it. We cannot think of any other reason accused-appellant would make the friendly gesture of offering a drink to a person he intended to kill, other than to intentionally lure the latter into a false sense of security.

In all, we find no cogent reason to overturn the factual findings of the appellate court. However, civil liabilities awarded by the Court of Appeals require modification in accordance with prevailing jurisprudence. It is settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[24] Since there was no award of moral damages in the lower courts, we hereby hold accused-appellant Hatsero additionally liable for the amount of ₱50,000.00 in moral damages pursuant to the Decision of this Court in *People v. Malicdem*.[25] Likewise in accordance to the amounts awarded in *Malicdem*, where the accused was similarly convicted of the crime of murder qualified by treachery, the Court modifies the amount of civil indemnity and exemplary damages to ₱75,000.00 and ₱30,000.00, respectively. Furthermore, since the receipted expenses of the victim's family was less than ₱25,000.00, temperate damages in said amount should be awarded *in lieu* of actual damages.[26]

Finally, all monetary awards should earn interest in conformity with current jurisprudence.

WHEREFORE, the Decision of the Court of Appeals on June 22, 2009 in CA-G.R. CEB-CR-H.C. No. 00690, which affirmed with modification the Decision of the Regional Trial

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[23] *People v. Barde*, *supra* note 21 at 215.

[24] *People v. Tolentino*, 570 Phil. 255, 284 (2008).

[25] G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206.

[26] *People v. Abaño*, G.R. No. 188323, February 21, 2011, 643 SCRA 587, 591.

Court of Roxas City finding accused-appellant Lito Hatsero **GUILTY** beyond reasonable doubt of the crime of Murder, is hereby **AFFIRMED with MODIFICATION** that accused-appellant Lito Hatsero is further **ORDERED** to pay the heirs of Mamerto Gravo the amounts of ₱75,000.00 as civil indemnity, ₱30,000.00 as exemplary damages, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

Costs on accused-appellant Lito Hatsero.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192394. July 3, 2013]

ROY D. PASOS, *petitioner, vs.* **PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL BOND REQUIREMENT; APPEAL BOND OF AT LEAST 90% OF THE ADJUDGED AMOUNT CONSTITUTES SUBSTANTIAL COMPLIANCE.— The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and effectively renders the judgment final and executory. As provided in Article 223 of the Labor Code, as amended, in case of a judgment involving a monetary award, an appeal by

the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. However, not only in one case has this Court relaxed this requirement in order to bring about the immediate and appropriate resolution of cases on the merits. In *Quiambao v. National Labor Relations Commission*, this Court allowed the relaxation of the requirement when there is substantial compliance with the rule. x x x In the instant case, the Labor Arbiter in his decision ordered PNCC to pay petitioner back wages amounting to ₱422,630.41 and separation pay of ₱37,662 or a total of ₱460,292.41. When PNCC filed an appeal bond amounting to ₱422,630.41 or **at least 90% of the adjudged amount,** there is no question that this is substantial compliance with the requirement that allows relaxation of the rules.

2. REMEDIAL LAW; CIVIL PROCEDURE; REQUIREMENT OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; AUTHORITY OF THE HEAD OF THE PERSONNEL SERVICES DEPARTMENT OF A CORPORATION TO SIGN THE VERIFICATION UPHELD DESPITE THE ABSENCE OF A BOARD RESOLUTION TO THAT EFFECT.— While we agree with petitioner that in *Cagayan Valley*, the requisite board resolution was submitted though belatedly unlike in the instant case, this Court still recognizes the authority of Mr. Erece, Jr. to sign the verification and certification on behalf of PNCC sans a board resolution or secretary's certificate as we have allowed in *Pfizer, Inc. v. Galan*, one of the cases cited in *Cagayan Valley*. In *Pfizer*, the Court ruled as valid the verification signed by an employment specialist as she was in a position to verify the truthfulness and correctness of the allegations in the petition despite the fact that no board resolution authorizing her was ever submitted by Pfizer, Inc. even belatedly. We believe that like the employment specialist in Pfizer, Mr. Erece, Jr. too, as head of the Personnel Services Department of PNCC, was in a position to assure that the allegations in the pleading have been prepared in good faith and are true and correct.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYMENT; PROJECT EMPLOYEE, DEFINED AND EXPLAINED.— Under Article 280 of the

Labor Code, as amended, a project employee is one whose "employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season." Thus, the principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.

4. ID.; ID.; ID.; FAILURE OF THE EMPLOYER TO FILE TERMINATION REPORTS AFTER EVERY PROJECT COMPLETION PROVES THAT AN EMPLOYEE IS NOT A PROJECT EMPLOYEE.— [R]ecords clearly show that PNCC did not report the termination of petitioner's supposed project employment for the NAIA II Project to the DOLE. Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry," requires employers to submit a report of an employee's termination to the nearest public employment office every time an employee's employment is terminated due to a completion of a project. PNCC submitted as evidence of its compliance with the requirement supposed photocopies of its termination reports, each listing petitioner as among the employees affected. Unfortunately, none of the reports submitted pertain to the NAIA II Project. Moreover, DOLE NCR verified that petitioner is not included in the list of affected workers based on the termination reports filed by PNCC on August 11, 17, 20 and 24, 1998 for petitioner's supposed dismissal from the NAIA II Project effective August 4, 1998. This certification from DOLE was not refuted by PNCC. In *Tomas Lao Construction v. NLRC*, we emphasized the indispensability of the reportorial requirement: x x x We have consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees. Nowhere in the New Labor Code is it provided that the reportorial requirement is dispensed with. The fact is that Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indicators of project employment.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; CONTRACT EXPIRATION OR PROJECT COMPLETION IS NOT A VALID CAUSE FOR DISMISSAL OF A REGULAR EMPLOYEE.— Petitioner's regular employment was terminated by PNCC due to contract expiration or project completion, which are both not among the just or authorized causes provided in the Labor Code, as amended, for dismissing a regular employee. Thus, petitioner was illegally dismissed.

6. ID.; ID.; ID.; ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT IF STRAINED RELATION WAS NEITHER ALLEGED NOR PROVED.— Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee is entitled to reinstatement, full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement. We agree with petitioner that there was no basis for the Labor Arbiter's finding of strained relations and order of separation pay in lieu of reinstatement. This was neither alleged nor proved.

7. ID.; ID.; ID.; BACK WAGES AND ATTORNEY'S FEES AWARDED TO AN ILLEGALLY DISMISSED EMPLOYEE.— As to the back wages due petitioner, there is likewise no basis in deducting therefrom back wages equivalent to six months "representing the maximum period of confinement [PNCC] can require him to undergo medical treatment." Besides, petitioner was not dismissed on the ground of disease but expiration of term of project employment. x x x Petitioner is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, as provided in Article 111 of the Labor Code, as amended, and following this Court's pronouncement in *Exodus International Construction Corporation v. Biscocho*. In line with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) per annum from the date of petitioner's dismissal until the finality of this decision. Thereafter, it shall earn 12% legal interest until fully paid in accordance with the guidelines in *Eastern Shipping Lines, Inc. v. Court of Appeals*.

APPEARANCES OF COUNSEL

Flores & Hayudini Law Offices for petitioner.
Henry B. Salazar and *Glenna Jean R. Ogan* for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the March 26, 2010 Decision[1] and May 26, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107805. The appellate court had affirmed the Decision[3] of the National Labor Relations Commission (NLRC) dismissing the illegal dismissal complaint filed by petitioner Roy D. Pasos against respondent Philippine National Construction Corporation (PNCC).

The antecedent facts follow:

Petitioner Roy D. Pasos started working for respondent PNCC on April 26, 1996. Based on the PNCC's "Personnel Action Form Appointment for Project Employment" dated April 30, 1996,[4] petitioner was designated as "Clerk II (Accounting)" and was assigned to the "NAIA – II Project." It was likewise stated therein:

PARTICULARS: Project employment starting on **April 26, 1996 to July 25, 1996.** This contract maybe terminated at anytime for cause as provided for by law and/or existing Company Policy. This maybe terminated if services are unsatisfactory, or when it shall no longer needed, as determined by the Company. If services are still needed beyond the validity of this contract, the Company shall extend

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[1] *Rollo*, pp. 51-67. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Marlene Gonzales-Sison and Florito S. Macalino concurring.

[2] *Id.* at 100.

[3] Records, pp. 182-194.

[4] *Id.* at 42.

your services. After services are terminated, the employee shall be under no obligation to re-employ with the Company nor shall the Company be obliged to re-employ the employee.[5] (Emphasis supplied.)

Petitioner's employment, however, did not end on July 25, 1996 but was extended until August 4, 1998, or more than two years later, based on the "Personnel Action Form – Project Employment" dated July 7, 1998.[6]

Based on PNCC's "Appointment for Project Employment" dated November 11, 1998,[7] petitioner was rehired on even date as "Accounting Clerk (Reliever)" and assigned to the "PCSO – Q.I. Project." It was stated therein that his employment shall end on February 11, 1999 and may be terminated for cause or in accordance with the provisions of Article 282 of the Labor Code, as amended. However, said employment did not actually end on February 11, 1999 but was extended until February 19, 1999 based on the "Personnel Action Form-Project Employment" dated February 17, 1999.[8]

On February 23, 1999, petitioner was again hired by PNCC as "Accounting Clerk" and was assigned to the "SM-Project" based on the "Appointment for Project Employment" dated February 18, 1999.[9] It did not specify the date when his employment will end but it was stated therein that it will be "co-terminus with the completion of the project." Said employment supposedly ended on August 19, 1999 per "Personnel Action Form – Project Employment" dated August 18, 1999,[10] where it was stated, "[t]ermination of [petitioner's] project employment due to completion of assigned phase/stage of work or project effective at the close of office hour[s] on 19 August 1999."

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[5] *Id.*

[6] *Id.* at 43.

[7] *Id.* at 44.

[8] *Id.* at 45.

[9] *Id.* at 46.

[10] *Id.* at 47.

However, it appears that said employment was extended per "Appointment for Project employment" dated August 20, 1999[11] as petitioner was again appointed as "Accounting Clerk" for "SM Project (Package II)." It did not state a specific date up to when his extended employment will be, but it provided that it will be "co-terminus with the x x x project." In "Personnel Action Form – Project Employment" dated October 17, 2000,[12] it appears that such extension would eventually end on October 19, 2000.

Despite the termination of his employment on October 19, 2000, petitioner claims that his superior instructed him to report for work the following day, intimating to him that he will again be employed for the succeeding SM projects. For purposes of reemployment, he then underwent a medical examination which allegedly revealed that he had pneumonitis. Petitioner was advised by PNCC's physician, Dr. Arthur C. Obena, to take a 14-day sick leave.

On November 27, 2000, after serving his sick leave, petitioner claims that he was again referred for medical examination where it was revealed that he contracted Koch's disease. He was then required to take a 60-day leave of absence.[13] The following day, he submitted his application for sick leave but PNCC's Project Personnel Officer, Mr. R.S. Sanchez, told him that he was not entitled to sick leave because he was not a regular employee.

Petitioner still served a 60-day sick leave and underwent another medical examination on February 16, 2001. He was then given a clean bill of health and was given a medical clearance by Dr. Obena that he was fit to work.

Petitioner claims that after he presented his medical clearance to the Project Personnel Officer on even date, he was informed that his services were already terminated on October 19, 2000

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[11] *Id.* at 48.

[12] *Id.* at 49.

[13] *Id.* at 50.

and he was already replaced due to expiration of his contract. This prompted petitioner on February 18, 2003 to file a complaint[14] for illegal dismissal against PNCC with a prayer for reinstatement and back wages. He argued that he is deemed a regular employee of PNCC due to his prolonged employment as a project employee as well as the failure on the part of PNCC to report his termination every time a project is completed. He further contended that his termination without the benefit of an administrative investigation was tantamount to an illegal dismissal.

PNCC countered that petitioner was hired as a project employee in several projects with specific dates of engagement and termination and had full knowledge and consent that his appointment was only for the duration of each project. It further contended that it had sufficiently complied with the reportorial requirements to the Department of Labor and Employment (DOLE). It submitted photocopies of three Establishment Termination Reports it purportedly filed with the DOLE. They were for: (1) the "PCSO-Q.I. Project" for February 1999;[15] (2) "SM Project" for August 1999;[16] and (3) "SM Project" for October 2000,[17] all of which included petitioner as among the affected employees. The submission of termination reports by PNCC was however disputed by petitioner based on the verifications[18] issued by the DOLE NCR office that he was not among the affected employees listed in the reports filed by PNCC in August 1998, February 1999, August 1999 and October 2000.

On March 28, 2006, the Labor Arbiter rendered a Decision[19] in favor of petitioner. The *fallo* reads:

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[14] *Id.* at 2.

[15] *Id.* at 25.

[16] *Id.* at 28.

[17] *Id.* at 31.

[18] *Id.* at 51-54.

[19] *Id.* at 89-93.

WHEREFORE, premises considered, the complainant had attained regular employment thereby making his termination from employment illegal since it was not for any valid or authorized causes. Consequently, Respondent is ordered to pay complainant his full backwages less six (6) months computed as follows:

Backwages:

Feb. 18, 2000 – March 28, 2006 = 73.33 mos.
₱6,277.00 x 73.33 = ₱460,292.41

Less:
₱6,277.00 X 6 mos. = 37,662.00
₱422,630.41

The reinstatement could not as well be ordered due to the strained relations between the parties, that in lieu thereof, separation pay is ordered paid to complainant in the amount of ₱37,662.00 [₱6,277.00 x 6].

SO ORDERED.[20]

The Labor Arbiter ruled that petitioner attained regular employment status with the repeated hiring and rehiring of his services more so when the services he was made to render were usual and necessary to PNCC's business. The Labor Arbiter likewise found that from the time petitioner was hired in 1996 until he was terminated, he was hired and rehired by PNCC and made to work not only in the project he had signed to work on but on other projects as well, indicating that he is in fact a regular employee. He also noted petitioner's subsequent contracts did not anymore indicate the date of completion of the contract and the fact that his first contract was extended way beyond the supposed completion date. According to the Labor Arbiter, these circumstances indicate that the employment is no longer a project employment but has graduated into a regular one. Having attained regular status, the Labor Arbiter ruled that petitioner should have been accorded his right to security of tenure.

Both PNCC and petitioner appealed the Labor Arbiter's decision. PNCC insisted that petitioner was just a project employee

[20] *Id.* at 92-93.

and his termination was brought about by the completion of the contract and therefore he was not illegally dismissed. Petitioner, on the other hand, argued that his reinstatement should have been ordered by the Labor Arbiter since there was no proof that there were strained relations between the parties. He also questioned the deduction of six months pay from the back wages awarded to him and the failure of the Labor Arbiter to award him damages and attorney's fees. Petitioner likewise moved to dismiss PNCC's appeal contending that the supersedeas bond in the amount of ₱422,630.41 filed by the latter was insufficient considering that the Labor Arbiter's monetary award is ₱460,292.41. He also argued that the person who verified the appeal, Felix M. Erece, Jr., Personnel Services Department Head of PNCC, has no authority to file the same for and in behalf of PNCC.

On October 31, 2008, the NLRC rendered its Decision granting PNCC's appeal but dismissing that of petitioner. The dispositive portion reads:

> WHEREFORE, premises considered, the appeal of respondent is GRANTED and the Decision dated 28 March 2006 is REVERSED and SET ASIDE.
>
> A new Decision is hereby issued ordering respondent Philippine National Construction Corporation to pay completion bonus to complainant Roy Domingo Pasos in the amount of ₱25,000.
>
> Complainant's appeal is DISMISSED for lack of merit.
>
> SO ORDERED.[21]

As to the procedural issues raised by petitioner, the NLRC ruled that there was substantial compliance with the requirement of an appeal bond and that Mr. Erece, Jr., as head of the Personnel Services Department, is the proper person to represent PNCC. As to the substantive issues, the NLRC found that petitioner was employed in connection with certain construction projects and his employment was co-terminus with each project as evidenced by the Personnel Action Forms and the Termination

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[21] *Id.* at 193.

Report submitted to the DOLE. It likewise noted the presence of the following project employment indicators in the instant case, namely, the duration of the project for which petitioner was engaged was determinable and expected completion was known to petitioner; the specific service that petitioner rendered in the projects was that of an accounting clerk and that was made clear to him and the service was connected with the projects; and PNCC submitted termination reports to the DOLE and petitioner's name was included in the list of affected employees.

Petitioner elevated the case to the CA via a petition for *certiorari* but the appellate court dismissed the same for lack of merit.

Hence this petition. Petitioner argues that the CA erred when it:

I.

SUSTAINED THAT THE AMOUNT OF THE BOND POSTED BY THE RESPONDENTS FOR PURPOSES OF APPEAL WAS SUFFICIENT NOTWITHSTANDING THAT THE SAME IS LESS THAN THE ADJUDGED AMOUNT.

II.

SUSTAINED THAT FELIX M. ERECE, JR., HEAD OF RESPONDENT PNCC'S PERSONNEL SERVICE DEPARTMENT, IS DULY AUTHORIZED TO REPRESENT RESPONDENT IN THIS CASE NOTWITHSTANDING THE ABSENCE OF ANY BOARD RESOLUTION OR SECRETARY'S CERTIFICATE OF THE RESPONDENT STATING THAT INDEED HE WAS DULY AUTHORIZED TO INSTITUTE [THESE] PROCEEDINGS.

III.

SUSTAINED THAT PETITIONER WAS A PROJECT EMPLOYEE DESPITE THE FACT THAT RESPONDENT PNCC HAD NOT SUBMITTED THE REQUISITE TERMINATION REPORTS IN ALL OF THE ALLEGED PROJECTS WHERE THE PETITIONER WAS ASSIGNED.

IV.

SUSTAINED THAT THE PETITIONER IS A PROJECT EMPLOYEE DESPITE THE CIRCUMSTANCE THAT THE ACTUAL WORK

UNDERTAKEN BY THE PETITIONER WAS NOT LIMITED TO THE WORK DESCRIBED IN HIS ALLEGED APPOINTMENT AS A PROJECT EMPLOYEE.

V.

FAILED TO FIND THAT AT SOME TIME, THE EMPLOYMENT OF THE PETITIONER WAS UNREASONABLY EXTENDED BEYOND THE DATE OF ITS COMPLETION AND AT OTHER TIMES THE SAME DID NOT BEAR A DATE OF COMPLETION OR THAT THE SAME WAS READILY DETERMINABLE AT THE TIME OF PETITIONER'S ENGAGEMENT THEREBY INDICATING THAT HE WAS NOT HIRED AS A PROJECT EMPLOYEE.

VI.

FAILED TO ORDER THE REINSTATEMENT OF THE PETITIONER BY FINDING THAT THERE WAS STRAINED RELATIONS BETWEEN THE PARTIES NOTWITHSTANDING THAT THE RESPONDENT NEVER EVEN ALLEGED NOR PROVED IN ITS PLEADINGS THE CIRCUMSTANCE OF STRAINED RELATIONS.

VII.

SUSTAINED THE FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION TO RECTIFY THE ERROR COMMITTED BY LABOR ARBITER LIBO-ON IN DEDUCTING THE EQUIVALENT OF SIX MONTHS PAY OF BACKWAGES DESPITE THE MANDATE OF THE LABOR CODE THAT WHEN THERE IS A FINDING OF ILLEGAL DISMISSAL, THE PAYMENT OF FULL BACKWAGES FROM DATE OF DIMISSAL [UP TO] ACTUAL REINSTATEMENT SHOULD BE AWARDED.

VIII.

SUSTAINED THE FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION TO RECTIFY THE ERROR COMMITTED BY LABOR ARBITER LIBO-ON IN FAILING TO AWARD DAMAGES AND ATTORNEY'S FEES TO THE PETITIONER.[22]

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[22] *Rollo*, pp. 16-17.

Petitioner contends that PNCC's appeal from the Labor Arbiter's decision should not have been allowed since the appeal bond filed was insufficient. He likewise argues that the appellate court erred in heavily relying in the case of *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*[23] which enumerated the officials and employees who can sign the verification and certification without need of a board resolution. He contends that in said case, there was substantial compliance with the requirement since a board resolution was submitted albeit belatedly unlike in the instant case where no board resolution was ever submitted even belatedly.

As to the substantive issue, petitioner submits that the CA erroneously concluded that he was a project employee when there are indicators which point otherwise. He contends that even if he was just hired for the NAIA 2 Project from April 26, 1996 to July 25, 1996, he was made to work until August 4, 1998. He also avers the DOLE had certified that he was not among the employees listed in the termination reports submitted by PNCC which belies the photocopies of termination reports attached by PNCC to its pleadings listing petitioner as one of the affected employees. Petitioner points out that said termination reports attached to PNCC's pleadings are mere photocopies and were not even certified by the DOLE-NCR as true copies of the originals on file with said office. Further, he argues that in violation of the requirement of Department Order No. 19 that the duration of the project employment is reasonably determinable, his contracts for the SM projects did not specify the date of completion of the project nor was the completion determinable at the time that petitioner was hired.

PNCC counters that documentary evidence would show that petitioner was clearly a project employee and remained as such until his last engagement. It argues that the repeated rehiring of petitioner as accounting clerk in different projects did not make him a regular employee. It also insists that it complied with the reportorial requirements and that it filed and reported

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[23] G.R. No. 151413, February 13, 2008, 545 SCRA 10.

the termination of petitioner upon every completion of project to which he was employed.

In sum, three main issues are presented before this Court for resolution: (1) Should an appeal be dismissed outright if the appeal bond filed is less than the adjudged amount? (2) Can the head of the personnel department sign the verification and certification on behalf of the corporation sans any board resolution or secretary's certificate authorizing such officer to do the same? and (3) Is petitioner a regular employee and not a mere project employee and thus can only be dismissed for cause?

Substantial compliance with appeal bond requirement

The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and effectively renders the judgment final and executory. As provided in Article 223 of the Labor Code, as amended, in case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

However, not only in one case has this Court relaxed this requirement in order to bring about the immediate and appropriate resolution of cases on the merits.[24] In *Quiambao v. National Labor Relations Commission*,[25] this Court allowed the relaxation of the requirement when there is substantial compliance with the rule. Likewise, in *Ong v. Court of Appeals*,[26] the Court held that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the appellant shows willingness to post a

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[24] See *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013, 1029 (1998).

[25] G.R. No. 91935, March 4, 1996, 254 SCRA 211, 216.

[26] G.R. No. 152494, September 22, 2004, 438 SCRA 668, 678.

partial bond. The Court held that "[w]hile the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the Rules or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond."

In the instant case, the Labor Arbiter in his decision ordered PNCC to pay petitioner back wages amounting to ₱422,630.41 and separation pay of ₱37,662 or a total of ₱460,292.41. When PNCC filed an appeal bond amounting to ₱422,630.41 or **at least 90% of the adjudged amount,** there is no question that this is substantial compliance with the requirement that allows relaxation of the rules.

Validity of the verification and certification signed by a corporate officer on behalf of the corporation without the requisite board resolution or secretary's certificate

It has been the constant holding of this Court in cases instituted by corporations that an individual corporate officer cannot exercise any corporate power pertaining to the corporation without authority from the board of directors pursuant to Section 23, in relation to Section 25 of the Corporation Code which clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. However, we have in many cases recognized the authority of some corporate officers to sign the verification and certification against forum-shopping. Some of these cases were enumerated in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*[27] which was cited by the appellate court:

> In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of

[27] *Supra* note 23.

her authority to represent the company; in *Novelty Philippines, Inc. v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[28] (Citations omitted.)

While we agree with petitioner that in *Cagayan Valley*, the requisite board resolution was submitted though belatedly unlike in the instant case, this Court still recognizes the authority of Mr. Erece, Jr. to sign the verification and certification on behalf of PNCC sans a board resolution or secretary's certificate as we have allowed in *Pfizer, Inc. v. Galan*,[29] one of the cases cited in *Cagayan Valley*. In *Pfizer*, the Court ruled as valid the verification signed by an employment specialist as she was in a position to verify the truthfulness and correctness of the allegations in the petition[30] despite the fact that no board resolution authorizing her was ever submitted by Pfizer, Inc. even belatedly. We believe that like the employment specialist in Pfizer, Mr.

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[28] *Id.* at 18-19.

[29] G.R. No. 143389, May 25, 2001, 358 SCRA 240.

[30] *Id.* at 247.

Erece, Jr. too, as head of the Personnel Services Department of PNCC, was in a position to assure that the allegations in the pleading have been prepared in good faith and are true and correct.

Even assuming that the verification in the appeal filed by PNCC is defective, it is well settled that rules of procedure in labor cases maybe relaxed. As provided in Article 221 of the Labor Code, as amended, "rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." Moreover, the requirement of verification is merely formal and not jurisdictional. As held in *Pacquing v. Coca-Cola Philippines, Inc.*:[31]

> As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[32]

Duration of project employment should be determined at the time of hiring

In the instant case, the appointments issued to petitioner indicated that he was hired for specific projects. This Court is

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[31] G.R. No. 157966, January 31, 2008, 543 SCRA 344.

[32] *Id.* at 356-357.

convinced however that although he started as a project employee, he eventually became a regular employee of PNCC.

Under Article 280 of the Labor Code, as amended, a project employee is one whose "employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season." Thus, the principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[33]

In the case at bar, petitioner worked continuously for more than two years after the supposed three-month duration of his project employment for the NAIA II Project. While his appointment for said project allowed such extension since it specifically provided that in case his "services are still needed beyond the validity of [the] contract, the Company shall extend [his] services," there was no subsequent contract or appointment that specified a particular duration for the extension. His services were just extended indefinitely until "Personnel Action Form – Project Employment" dated July 7, 1998 was issued to him which provided that his employment will end a few weeks later or on August 4, 1998. While for first three months, petitioner can be considered a project employee of PNCC, his employment thereafter, when his services were extended without any specification of as to the duration, made him a regular employee of PNCC. And his status as a regular employee was not affected by the fact that he was assigned to several other projects and there were intervals in between said projects since he enjoys security of tenure.

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[33] *Goma v. Pamplona Plantation, Incorporated*, G.R. No. 160905, July 4, 2008, 557 SCRA 124, 135; *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, G.R. No. 170181, June 26, 2008, 555 SCRA 537, 550.

Failure of an employer to file termination reports after every project completion proves that an employee is not a project employee

As a rule, the findings of fact of the CA are final and conclusive and this Court will not review them on appeal.[34] The rule, however, is subject to the following exceptions:

The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[35]

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[34] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 459, citing *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150; *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

[35] *Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010, 628 SCRA 404, 413-414, cited in *Co v. Vargas*, *id.* at 459-460.

In this case, records clearly show that PNCC did not report the termination of petitioner's supposed project employment for the NAIA II Project to the DOLE. Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry," requires employers to submit a report of an employee's termination to the nearest public employment office every time an employee's employment is terminated due to a completion of a project. PNCC submitted as evidence of its compliance with the requirement supposed photocopies of its termination reports, each listing petitioner as among the employees affected. Unfortunately, none of the reports submitted pertain to the NAIA II Project. Moreover, DOLE NCR verified that petitioner is not included in the list of affected workers based on the termination reports filed by PNCC on August 11, 17, 20 and 24, 1998 for petitioner's supposed dismissal from the NAIA II Project effective August 4, 1998. This certification from DOLE was not refuted by PNCC. In *Tomas Lao Construction v. NLRC*,[36] we emphasized the indispensability of the reportorial requirement:

> Moreover, if private respondents were indeed employed as "project employees," petitioners should have submitted a report of termination to the nearest public employment office every time their employment was terminated due to completion of each construction project. The records show that they did not. Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. We have consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees. Nowhere in the New Labor Code is it provided that the reportorial requirement is dispensed with. The fact is that Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indicators of project employment.[37]

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[36] G.R. No. 116781, September 5, 1997, 278 SCRA 716.

[37] *Id.* at 729-730.

A regular employee dismissed for a cause other than the just or authorized causes provided by law is illegally dismissed

Petitioner's regular employment was terminated by PNCC due to contract expiration or project completion, which are both not among the just or authorized causes provided in the Labor Code, as amended, for dismissing a regular employee. Thus, petitioner was illegally dismissed.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee is entitled to reinstatement, full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement.

We agree with petitioner that there was no basis for the Labor Arbiter's finding of strained relations and order of separation pay in lieu of reinstatement. This was neither alleged nor proved. Moreover, it has long been settled that the doctrine of strained relations should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. As held in *Globe-Mackay Cable and Radio Corporation v. NLRC*:[38]

> Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.
>
> Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.[39]

As to the back wages due petitioner, there is likewise no basis in deducting therefrom back wages equivalent to six months

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[38] G.R. No. 82511, March 3, 1992, 206 SCRA 701.

[39] *Id.* at 712.

"representing the maximum period of confinement [PNCC] can require him to undergo medical treatment." Besides, petitioner was not dismissed on the ground of disease but expiration of term of project employment.

Regarding moral and exemplary damages, this Court rules that petitioner is not entitled to them. Worth reiterating is the rule that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Likewise, exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner.[40] Apart from his allegations, petitioner did not present any evidence to prove that his dismissal was attended with bad faith or was done oppressively.

Petitioner is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, as provided in Article 111 of the Labor Code, as amended, and following this Court's pronouncement in *Exodus International Construction Corporation v. Biscocho*.[41]

In line with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) per annum from the date of petitioner's dismissal until the finality of this decision.[42] Thereafter, it shall earn 12% legal interest until fully paid[43] in accordance with the guidelines in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[44]

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[40] *Triple Eight Integrated Services, Inc. v. NLRC,* 359 Phil. 955, 970-971 (1998).

[41] G.R. No. 166109, February 23, 2011, 644 SCRA 76, 91.

[42] *Torres v. Rural Bank of San Juan, Inc.*, G.R. No. 184520, March 13, 2013, p. 14, citing *Aliling v. Feliciano,* G.R. No. 185829, April 25, 2012, 671 SCRA 186, 221.

[43] *Id.*, citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division),* G.R. No. 172149, February 8, 2010, 612 SCRA 10, 26-27.

[44] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

WHEREFORE, the petition is **GRANTED.** The assailed March 26, 2010 Decision and May 26, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107805 are hereby **REVERSED.** The decision of the Labor Arbiter is hereby **REINSTATED** with the following **MODIFICATIONS:**

1) respondent PNCC is **DIRECTED** to pay petitioner Roy D. Pasos **full back wages** from the time of his illegal dismissal on October 19, 2000 up to the finality of this Decision, with interest at 6% per annum, and 12% legal interest thereafter until fully paid;

2) respondent PNCC is **ORDERED** to reinstate petitioner Pasos to his former position or to a substantially equivalent one, without loss of seniority rights and other benefits attendant to the position; and

3) respondent PNCC is **DIRECTED** to pay petitioner Pasos attorney's fees equivalent to 10% of his total monetary award.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197360. July 3, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD CREDO *A.K.A.* "ONTOG," RANDY CREDO and ROLANDO CREDO *Y* SAN BUENAVENTURA,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; CRIMINAL AND CIVIL LIABILITY; BOTH ARE EXTINGUISHED UPON THE DEATH OF THE ACCUSED WHILE HIS CASE IS PENDING APPEAL.—** As a consequence of Rolando's death while this case is pending appeal, both his criminal and civil liability *ex delicto* were extinguished pursuant to Article 89 of the Revised Penal Code. The said provision of law states that criminal liability is totally extinguished by "the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment."

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.—** Corollary to the principle that appellate courts generally will not interfere with the factual findings of the trial court is the rule that when the credibility of an eyewitness is at issue, due deference and respect is given by the appellate courts to the assessment made by the trial courts, absent any showing that the trial courts overlooked facts and circumstances of substance that would have affected the final outcome of the case. "As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record." We agree with the findings of both the trial court and the Court of Appeals which gave weight to the accounts of the two eyewitnesses, Russel and Francis. Their respective testimonies positively and categorically identified appellants as the perpetrators of the crime. Their statements on the witness stand also corroborate each other on material aspects.

3. **ID.; ID.; ID.; WHERE INCONSISTENCIES IN THE STATEMENTS OF WITNESSES DO NOT IMPAIR THEIR CREDIBILITY.—** The inconsistency in the respective statements of Francis and Russel with respect to who among the three appellants actually dealt the final blow on the victim is understandable considering that they witnessed the scene from different vantage points. Francis definitely had a clearer

view as he was nearer the scene of the crime (3-4 meters) whereas Russel was much farther as evidenced by the fact that from where he was watching, he was unable to recognize the victim as his father. All the same, both were one in saying that at least one of the appellants returned to where the victim was prostrate to give him another blow. The aforementioned inconsistency is, moreover, a minor detail that does not affect the credibility of Russel and Francis as eyewitnesses. Likewise, the other inconsistencies pointed out by appellants pertain "only to collateral or trivial matters and has no substantial effect on the nature of the offense." The primordial consideration is that both Russel and Francis were present at the scene of the crime and that they positively identified appellants as the perpetrators of the crime charged. This Court has been consistent in ruling that "although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant."

4. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF RELATIVES; BOTH REQUIRE THE PRESENCE OF UNLAWFUL AGGRESSION TO BE VALID.—** [B]oth self-defense and defense of relatives require that unlawful aggression be present in order to be held valid. "For the accused to be entitled to exoneration based on self-defense or defense of relatives, complete or incomplete, it is essential that there be unlawful aggression on the part of the victim, for if there is no unlawful aggression, there would be nothing to prevent or repel. For unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude."

5. **ID.; ID.; ID.; ID.; THERE WAS NO VALID SELF-DEFENSE OR VALID DEFENSE OF A RELATIVE IN THE ABSENCE OF UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM.—** As found by the trial court, there can be no unlawful aggression on the part of Joseph because at the time of the incident, he was only holding a lemon and an egg. According to the trial court, the fact that Joseph was unarmed effectively belied the allegation of Ronald that he was prompted to retaliate in self-defense when Joseph first hacked and hit him on his neck. The trial court further pointed out that if Joseph indeed hacked Ronald on the neck, "it is

surprising that the latter did not suffer any injury when according to them (Ronald, Rolando and Flora Credo), Joseph was running fast and made a hard thrust on Ronald, hitting the latter's neck." Since the criterion for determining whether there is a valid self-defense and a valid defense of relatives require that there be unlawful aggression perpetrated by the victim on the one making the defense or on his relative, it is safe to conclude that when the trial court held that there can be no valid self-defense because there was no unlawful aggression on the part of the victim, it was, in effect, likewise saying that there can be no valid defense of a relative for lack of an essential requisite. In other words, when the trial court made a ruling on the claim of self-defense, it, at the same time, also necessarily passed upon the issue of defense of a relative.

6. ID.; MURDER; CONSPIRACY, PRESENCE OF; THE CONCERTED ACTS OF THE ACCUSED BEFORE, DURING AND AFTER THE INCIDENT SHOW UNITY OF PURPOSE AND DESIGN.— In the present case, the prosecution witnesses were one in saying that prior to the hacking incident, they saw all three appellants walking together towards the direction of the "*bingohan*" and that all three were each carrying a bolo. Appellants, therefore, deliberately sought Joseph out to confront him about the altercation incident between him and Randy. Likewise, the two eyewitnesses confirm each other's respective statements that all three appellants were armed with a bolo with which they repeatedly hacked the victim, who fell to the ground; after which, appellants left the scene of the crime. While no evidence was presented to show that appellants met beforehand and came to an agreement to harm Joseph, their concerted acts before, during and after the incident all point to a unity of purpose and design.

7. ID.; ID.; ABUSE OF SUPERIOR STRENGTH ATTENDED THE COMMISSION OF THE CRIME.— There is abuse of superior strength when the perpetrators of a crime deliberately used excessive force, thereby rendering the victim incapable of defending himself. "The notorious inequality of forces creates an unfair advantage for the aggressor." Here, there can be no denying that appellants took advantage of their superior strength to ensure the successful execution of their crime. This is evident from the fact that there were three of them against the victim who was alone. More importantly, their victim was unarmed while the three of them were each armed with a bolo.

8. ID.; ID.; AWARD OF CIVIL INDEMNITY AS WELL AS MORAL, EXEMPLARY AND TEMPERATE DAMAGES.— [T]he Court of Appeals was correct in increasing the lower court's award of civil indemnity from ₱50,000.00 to ₱75,000.00. Regardless of the penalty imposed by the trial court, the correct amount of civil indemnity is ₱75,000.00, pursuant to the ratiocination of the Court in the above-cited case of *People v. Anticamara*. The Court of Appeals, however, erred when it increased the amount of moral damages from ₱50,000.00 to ₱75,000.00. In accordance with the pronouncement of the Court in the *Anticamara Case*, the correct sum should be ₱50,000.00. In connection with the award of exemplary damages, the Court of Appeals correctly reduced the amount from ₱50,000.00 to ₱30,000.00 in line with current jurisprudence. Finally, pursuant to the ruling of the Court in *People v. Villanueva*, "when actual damages proven by receipts during the trial amount to less than ₱25,000, *as in this case*, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted." As a result, the Court of Appeals likewise correctly held that, since the receipted expenses of Joseph's family amounted to only ₱14,300.00, temperate damages in the amount of ₱25,000.00 in lieu of actual damages should be awarded.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 04113 promulgated on 28 February

[1] *Rollo*, pp. 2-18; Penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan concurring.

2011. The decision of the Court of Appeals affirmed, with modifications, the Decision[2] dated 14 July 2009 of the Regional Trial Court, Branch 31, Pili, Camarines Sur, in Criminal Case No. P-3819 finding accused-appellants Ronald Credo *a.k.a.* "Ontog," Randy Credo and Rolando Credo *y* San Buenaventura guilty beyond reasonable doubt of murder for the death of Joseph Nicolas.

Factual Antecedents

The amended Information[3] filed against appellants reads:

> That on June 22, 2005 at around 10:30 in the evening at Zone 4 Barangay San JOSE, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, with intent to take the life of JOSEPH NICOLAS *Y* arroyo (sic), willfully, unlawfully and feloniously attack and hack the latter with a bolo, wounding him in the different parts of the body, per autopsy report marked as Annex "A" hereof, thereby causing the direct and immediate death of said JOSEPH NICOLAS *y* ARROYO.
>
> Abuse of superior strength being attendant in the commission of the crime, the same will qualify the offense committed to murder.
>
> ACTS CONTRARY TO LAW.

Based on the respective testimonies of the witnesses for the prosecution, the following sequence of events was gathered:

On 22 June 2005, at around 10:30 in the evening, the victim, Joseph Nicolas (Joseph), was at a "*bingohan*" in Zone 3 of Brgy. San Nicolas, Pili, Camarines Sur, together with his wife

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[2] CA *rollo*, pp. 81-95.

[3] Dated 1 March 2006. Records, p. 138. Appellants were originally charged with homicide (see Information dated 7 July 2005. Records, p. 1). Although the original Information stated that the commission of the crime was attended by abuse of superior strength, this circumstance was alleged as an aggravating circumstance only. Hence, the filing of an amended information alleging abuse of superior strength as a circumstance qualifying the crime to murder.

Maria and friends Manuel Chica (Manuel) and Ramon Tirao. Randy Credo (Randy) arrived at the "*bingohan*," approached Joseph and suddenly punched the latter on the chest, causing him to fall down. Randy then immediately ran away towards the direction of their house located at Zone 4. Joseph, on the other hand, stood up, gathered his things consisting of a lemon and an egg, and gave Randy a chase. The people at the "*bingohan*" all scampered away as a result of the commotion.[4] Joseph's friend Manuel proceeded towards Zone 3. There, he met Randy, who was already accompanied by his co-appellants: his brother Ronald Credo (Ronald) and their father Rolando Credo (Rolando). The three were each armed with a bolo.[5]

Meanwhile, when Joseph's children, Russel, Ramon, Roldan and Rea, heard that their father was in trouble, they decided to look for him in Zone 3. On their way, they met appellants, who suddenly started throwing stones at them, causing them to run away. Russel got separated from his siblings but he continued to look for his father. He came across appellants again in Zone 2 where he saw them hacking somebody with their bolos. That person later turned out to be their father. Russel saw that when all three appellants were done hacking their victim, Randy and Rolando went back to where the victim was lying and gave him another blow, saying in the Bicolano dialect, "*pang-dulce*" (for dessert).[6]

The scene was witnessed by another person, Francis Nicolas Credo (Francis), a resident of Zone 2.[7] According to Francis, at the time of the incident, he was in his bedroom preparing to go to sleep when he heard a commotion outside his house. He heard Roger Credo, the brother of Randy and Ronald, shout: "*Tama na Manoy, gadan na!*" (Enough brother, he is already dead!) Upon hearing these words, Francis went out of the bedroom, proceeded to their sala and peeped through the jalousies of the

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[4] *Rollo*, p. 4.

[5] *Id*.

[6] *Id*. at 5; TSN, 26 May 2009, p. 5.

[7] *Id*.

sala window. He saw appellants, all armed with a bolo, repeatedly hacking Joseph to death.[8] He saw the hacking incident very clearly because the place was lighted by a lamppost and the moon was shining brightly. Moreover, the distance between the crime scene and the window from where he was watching is only about 3 to 4 meters.[9] Francis was able to note that Joseph was unarmed and was, in fact, holding a lemon in his right hand and an egg in his left hand.[10]

Joseph died on the same day of the incident. He obtained six (6) hack wounds: one on the right ear, two on the left scapular area, one on the lumbar area, one on the right forearm and another one on the left lateral neck area which, according to the doctor who conducted the autopsy on the body of Joseph, was the most fatal wound.[11]

Rolando and Randy denied any participation in the hacking incident, claiming that it was Ronald alone who killed Joseph. They also claimed that the killing was done in defense of Ronald and Randy's mother whom Joseph was, at the time of the incident, about to hack.[12] Based on appellants' testimony, when Ronald heard of what happened between Randy and Joseph, Ronald left the house with a bolo in search of Joseph. When their parents learned that Ronald left to confront Joseph, they followed Ronald to the "*bingohan.*"[13] Rina Credo Hernandez, sister of Ronald and Randy, testified that while their parents and Ronald were walking back towards their house from the "*bingohan,*" Joseph suddenly emerged from the back of their house with a bolo. She saw that Joseph was brandishing the bolo and was about to attack their mother so she shouted a warning to their mother.

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

[9] CA *rollo*, pp. 83 and 91. See also TSN, 12 November 2007, p. 4.

[10] *Rollo*, p. 6.

[11] *Id*.

[12] *Id*.

[13] CA *rollo*, pp. 85-86.

Ronald came to her rescue and attacked Joseph,[14] resulting in the latter's death.

Ruling of the Regional Trial Court

The trial court found that appellants conspired in the commission of the crime and that the killing of Joseph was attended by abuse of superior strength. Hence, on 14 July 2009, the trial court rendered its decision finding appellants guilty beyond reasonable doubt of the crime of murder, sentencing them to suffer the penalty of *reclusion perpetua*, and ordering them to pay the widow of Joseph the amounts of ₱14,000.00 as actual damages, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[15]

Ruling of the Court of Appeals

On appeal, the Court of Appeals affirmed the judgment of conviction but modified the award of damages in the following manner: (1) civil indemnity was increased from ₱50,000.00 to ₱75,000.00; (2) the award of moral damages was likewise increased from ₱50,000.00 to ₱75,000.00; (3) the amount of exemplary damages was reduced from ₱50,000.00 to ₱30,000.00; and (4) temperate damages in the amount of ₱25,000.00 was imposed in place of actual damages.[16]

The Issues

In their Brief[17] filed before the Court of Appeals, appellants prayed for their acquittal, pleading the following grounds:

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE DEFENSE OF RELATIVES INTERPOSED BY ACCUSED-APPELLANT RONALD CREDO.

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[14] *Rollo,* p. 7.

[15] CA *rollo,* p. 95.

[16] *Rollo,* p. 17.

[17] CA *rollo,* pp. 57-79.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANTS ROLANDO CREDO AND RANDY CREDO [ARE] GUILTY OF THE CRIME CHARGED.

III

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE FLAWED AND INCONSISTENT.

IV

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING ABUSE OF SUPERIOR STRENGTH AS QUALIFYING CIRCUMSTANCE DESPITE THE PROSECUTION'S FAILURE TO PROVE ITS ATTENDANCE.

Appellants subsequently filed a Supplemental Brief[18] before this Court, alleging the following as additional assignment of errors:

[V]

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS CONSPIRED WITH EACH OTHER IN THE COMMISSION OF THE CRIME CHARGED.

[VI]

THE COURT OF APPEALS GRAVELY ERRED IN INCREASING THE AWARD OF CIVIL INDEMNITY FROM FIFTY THOUSAND PESOS (PHP50,000.00) TO SEVENTY-FIVE THOUSAND PESOS (PHP75,000.00).

Pending resolution of this appeal, the Court received a letter,[19] dated 13 September 2011, from P/Supt. Richard W. Schwarzkopf, Jr., Officer-in-Charge, Office of the Superintendent, New Bilibid Prison, informing the Court that Rolando had died at the New Bilibid Prison Hospital on 23 June 2011. Attached to his letter

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[18] *Rollo,* pp. 33-40.

[19] *Id*. at 41.

was a certified true copy of the certificate of death[20] of Rolando listing "Cardio respiratory Arrest" as the immediate cause of death.

As a consequence of Rolando's death while this case is pending appeal, both his criminal and civil liability *ex delicto* were extinguished pursuant to Article 89 of the Revised Penal Code. The said provision of law states that criminal liability is totally extinguished by "the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment."

This appeal shall, as a result, be decided as against Randy and Ronald only.

Our Ruling

The appeal has no merit.

At the outset, it bears repeating that factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive upon the Supreme Court.[21] Except for compelling or exceptional reasons, such as when they were sufficiently shown to be contrary to the evidence on record, the findings of fact of the Regional Trial Court will not be disturbed by this Court.[22] Thus, once a guilty verdict has been rendered, the appellant has the burden of clearly proving on appeal that the lower court committed errors in the appreciation of the evidence presented.[23] Here, there is no showing that the trial court or the Court of Appeals overlooked some material facts or committed any reversible error in their factual findings.

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[20] *Id*. at 42.

[21] *People v. Nazareno*, G.R. No. 196434, 24 October 2012, 684 SCRA 604, 608.

[22] *Id*.; *People v. Mediado*, G.R. No. 169871, 2 February 2011, 641 SCRA 366, 368.

[23] *People v. Angelio*, G.R. No. 197540, 27 February 2012, 667 SCRA 102, 108.

Trial court's assessment of the credibility of a witness accorded great weight

Appellants claim that the respective testimonies of Russel and Francis were marked with several inconsistencies that cast doubt on their veracity, especially considering that they are the son and the nephew, respectively, of the victim. They noted that Francis narrated that after Ronald hacked Joseph, Rolando left with his wife followed by Ronald and Randy. Russel, on the other hand, testified that after the three appellants hacked the victim, Randy and Rolando went back to where the victim was lying down and gave him another blow, saying, "*pang-dulce*." Moreover, Francis initially stated that after the hacking incident, the victim was left lying on the ground on his side. However, when again questioned by the court as to what he saw, Francis gave a different answer, saying that the victim was lying flat on the ground.[24]

This Court is not persuaded.

Corollary to the principle that appellate courts generally will not interfere with the factual findings of the trial court is the rule that when the credibility of an eyewitness is at issue, due deference and respect is given by the appellate courts to the assessment made by the trial courts, absent any showing that the trial courts overlooked facts and circumstances of substance that would have affected the final outcome of the case.[25] "As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record."[26]

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[24] CA *rollo*, p. 76.

[25] *People v. Angelio, supra* note 23 citing *People v. del Rosario*, G.R. No. 189580, 9 February 2011, 642 SCRA 625.

[26] *People v. Dante Dejillo and Gervacio "Dongkoy" Hoyle, Jr.*, G.R. No. 185005, 10 December 2012.

We agree with the findings of both the trial court and the Court of Appeals which gave weight to the accounts of the two eyewitnesses, Russel and Francis. Their respective testimonies positively and categorically identified appellants as the perpetrators of the crime. Their statements on the witness stand also corroborate each other on material aspects. Both Russel and Francis testified that they saw the appellants hacking a man. Although Francis was able to immediately recognize the victim as Joseph, Russel was to learn only later on that the appellants' victim was his own father. It is also worth noting that the statement of Russel and Francis claiming that all three of the appellants were holding a bolo at the time of the incident is corroborated by another witness: Manuel Chica. Manuel testified that after Randy and Joseph left the "*bingohan,*" he also left to follow the two. On his way, he met the three appellants all armed with a bolo.[27]

The pertinent portions of the respective testimonies of Francis and Russel on the matter are as follows:

PROS. FAJARDO:

x x x x x x x x x

Q Now, let's clarify, Mr. witness. If you could demonstrate actually the distance from where you are seated to anywhere of this courtroom, the place as you said the distance of that hacking incident happened [sic], can you do that?

x x x x x x x x x

PROS. FAJARDO:

Three (3) meters.

ATTY. PREVOSA [counsel for the defense]:

Three (3) to four (4) meters, your Honor.

PROS. FAJARDO:

x x x x x x x x x

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[27] TSN, 6 December 2006, pp. 12-14.

Q You mentioned the person being hacked by three (3) persons, right?

[FRANCIS N. CREDO]

A Yes, your Honor.

Q **Who were these three (3) persons hacking this other person as you said?**

A **Rolando Credo, Ronald Credo, Randy Credo.**

Q Why were you able to identify Rolando, Ronald, Randy Credo?

A I was able to identify the accused because other than the light there is a moonlight so I clearly identified the three (3) persons.[28] (Emphases supplied)

x x x x x x x x x

PROS. FAJARDO:

Q Now, after you were stoned, what did you and your group do?

x x x x x x x x x

[RUSSEL NICOLAS]

A We went on our separate way [sic] one of my brother Ramon went directly to our grandmother's house x x x and then I saw something.

Q What was that you saw?

A Then **I saw the three (3) Randy, Ontog, and Roland[o]** [sic].

Q Now, what did you observe when you saw this Randy, Rolando and Ontog?

A **I saw them hacking someone** but I was not able to eye that someone because I was not yet near them x x x.[29] (Emphases supplied)

x x x x x x x x x

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[28] TSN, 12 November 2007, p. 4.

[29] TSN, 26 May 2009, pp. 4-5.

It is worth mentioning as well that the following testimony of Russel confirms the statement of Francis that the hacking incident occurred just in front of their house,[30] giving him (Francis) a clear view of what transpired:

PROS. FAJARDO:

Q Now, in what particular place did you see Randy and Rolando and Ontog hacked [sic] this person?

[RUSSEL NICOLAS]

A In front of the house of Lolita Credo.

Q How is this Lolita Credo related to Francisco Credo?

A Lolita is the mother of Francisco.[31]

Both Francis and Russel likewise support each other's statement on the act of at least one of the appellants of going back to where Joseph was lying on the ground to give him another blow with a bolo. Thus:

PROS. FAJARDO:

x x x x x x x x x

Q When you peeped to [sic] your window, jalousie window, what was Rolando Credo doing?

[FRANCIS N. CREDO]

A The three (3) of them hacked the man and the man fell on the ground, while on the ground **he was again hacked** on the head by Ronald Credo.[32] (Emphasis supplied)

x x x x x x x x x

PROS. FAJARDO:

x x x x x x x x x

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[30] TSN, 12 November 2007, p. 3.

[31] TSN, 26 May 2009, p. 5.

[32] TSN, 12 November 2007, p. 4.

Q Now, what did you observe when you saw this Randy, Rolando and Ontog?

[RUSSEL NICOLAS]

A I saw them hacking someone but I was not able to eye that someone because I was not yet near them however, these Randy and Rolando **returned back and said *"pang dulce"* then hacked again**.[33] (Emphasis supplied)

x x x x x x x x x

The inconsistency in the respective statements of Francis and Russel with respect to who among the three appellants actually dealt the final blow on the victim is understandable considering that they witnessed the scene from different vantage points. Francis definitely had a clearer view as he was nearer the scene of the crime (3-4 meters) whereas Russel was much farther as evidenced by the fact that from where he was watching, he was unable to recognize the victim as his father. All the same, both were one in saying that at least one of the appellants returned to where the victim was prostrate to give him another blow.

The aforementioned inconsistency is, moreover, a minor detail that does not affect the credibility of Russel and Francis as eyewitnesses. Likewise, the other inconsistencies pointed out by appellants pertain "only to collateral or trivial matters and has no substantial effect on the nature of the offense."[34] The primordial consideration is that both Russel and Francis were present at the scene of the crime and that they positively identified appellants as the perpetrators of the crime charged.[35] This Court has been consistent in ruling that "although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency

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[33] TSN, 26 May 2009, p. 5.

[34] *People v. Mamaruncas*, G.R. No. 179497, 25 January 2012, 664 SCRA 182, 194.

[35] *People v. Osias*, G.R. No. 88872, 25 July 1991, 199 SCRA 574, 585 citing *People v. Cacho*, G.R. No. 60990, 23 September 1983, 124 SCRA 671.

in relating the principal occurrence and positive identification of the assailant."[36]

Finally, the attack of appellants on the credibility of Francis as a witness for the prosecution on the ground that the victim is the brother of Francis' mother – making Francis the nephew of the victim – loses significance when the relationship of Francis with the appellants is considered: appellant Rolando is his uncle, being the brother of his father, thereby making appellants Randy and Ronald his first cousins. As held by the Court of Appeals:

> Considering that appellants are also his close relatives, it is difficult to believe that Francis would point to appellants as the killers, if such were not true. Moreover, the lack of proof of ill-motive on the part of Francis, indicate that he testified, not to favor any of the parties in this case, but solely for the purpose of telling the truth and narrating what he actually witnessed. His testimony deserves full faith and credit.[37]

Requisites for valid defense of a relative not present

Randy contends that the trial court misconstrued the facts of this case when it held that the defense he interposed was self-defense. According to him, in view of the consistent and corroborating testimonies of the defense witnesses that he merely stepped-in to protect his mother from being hacked by the victim, the proper defense that should have been appreciated by the lower court is defense of relatives.

This argument is untenable.

The following excerpts from the Transcripts of Stenographic Notes (TSNs) of this case categorically show that appellant Ronald interposed not just defense of relatives but self-defense as well:

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[36] *People v. Mamaruncas*, *supra* note 34 at 194-195 citing *People v. Bernabe*, G.R. No. 185726, 16 October 2009, 604 SCRA 216, 231.

[37] *Rollo*, p. 11.

1. TSN of 12 August 2008:

ATTY. PREVOSA [counsel for the defense]:

x x x. This witness [Flora O. Credo, mother of Randy and Ronald] will testify on the theory of self-defense of the accused, x x x.[38]

2. TSN of 27 August 2008:

ATTY. PREVOSA:

The Witness [accused Rolando Credo] is being presented to testify [that] in order to safe [sic] himself and her [sic] mother, Ronald Nicolas [sic] was able to cause injury to Joseph Nicolas x x x.[39]

3. TSN of 14 January 2009:

ATTY. PREVOSA:

We are offering the testimony of this witness [accused Ronald Credo] to prove the following;

That he was able to harm to death the private complainant [sic] Joseph Nicolasin [sic] order to defend himself, relatives and his own family, x x x.[40]

Further, the following portions of the testimony of Flora Credo likewise clearly demonstrate that Ronald pleaded self-defense before the trial court:

THE COURT:

By the way, your son hacked for self-defense did you report that to the Police when you surrendered your son?

A No, your Honor, please.

x x x x x x x x x

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[38] TSN, 12 August 2008, p. 2.

[39] TSN, 27 August 2008, p. 2.

[40] TSN, 14 January 2009, p. 3.

Q You even surrendered your son to the Police so why did you not immediately tell the Police that your son killed Joseph Nicolas for self-defense?

A I said that, your Honor I directed that statement, your Honor.

x x x x x x x x x

Q When did you right then and there that you surrendered you [sic] son to tell the Police he hacked for self-defense?

A Yes, your Honor.

x x x x x x x x x

Q Do you have proof to show that indeed you informed the Police that your son the (sic) hacking is self-defense?

A Yes, your Honor. [41]

x x x x x x x x x

Thus, appellant Ronald cannot now claim that the defense he pleaded is defense of relatives only and does not include self-defense and that the trial court misappreciated the facts of this case when it considered self-defense instead of defense of relatives.

In any case, even if the claim of defense of a relative is taken into consideration, the same would still not be valid.

Article 11 of the Revised Penal Code provides, in part, as follows:

ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

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[41] TSN, 12 August 2008, p. 20.

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

x x x x x x x x x

Based on the afore-quoted provision, both self-defense and defense of relatives require that unlawful aggression be present in order to be held valid. "For the accused to be entitled to exoneration based on self-defense or defense of relatives, complete or incomplete, it is essential that there be unlawful aggression on the part of the victim, for if there is no unlawful aggression, there would be nothing to prevent or repel. For unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude."[42]

As found by the trial court, there can be no unlawful aggression on the part of Joseph because at the time of the incident, he was only holding a lemon and an egg. According to the trial court, the fact that Joseph was unarmed effectively belied the allegation of Ronald that he was prompted to retaliate in self-defense when Joseph first hacked and hit him on his neck. The trial court further pointed out that if Joseph indeed hacked Ronald on the neck, "it is surprising that the latter did not suffer any injury when according to them (Ronald, Rolando and Flora Credo), Joseph was running fast and made a hard thrust on Ronald, hitting the latter's neck."[43]

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[42] *People v. Caabay*, 456 Phil. 792, 820 (2003) citing *People v. Santos*, G.R. Nos. 99259-60, 255 SCRA 309 and *People v. Sarabia*, G.R. No. 106102, 29 October 1999, 317 SCRA 684.

[43] CA *rollo*, p. 92.

Since the criterion for determining whether there is a valid self-defense and a valid defense of relatives require that there be unlawful aggression perpetrated by the victim on the one making the defense or on his relative, it is safe to conclude that when the trial court held that there can be no valid self-defense because there was no unlawful aggression on the part of the victim, it was, in effect, likewise saying that there can be no valid defense of a relative for lack of an essential requisite. In other words, when the trial court made a ruling on the claim of self-defense, it, at the same time, also necessarily passed upon the issue of defense of a relative.

Appellants acted in conspiracy with one another in the execution of the crime

"Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime."[44]

In the present case, the prosecution witnesses were one in saying that prior to the hacking incident, they saw all three appellants walking together towards the direction of the "*bingohan*" and that all three were each carrying a bolo. Appellants, therefore, deliberately sought Joseph out to confront him about the altercation incident between him and Randy. Likewise, the two eyewitnesses confirm each other's respective statements that all three appellants were armed with a bolo with which they repeatedly hacked the victim, who fell to the ground; after which, appellants left the scene of the crime.

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[44] *People v. Campos*, G.R. No. 176061, 4 July 2011, 653 SCRA 99, 113 citing *People v. Pagalasan*, 452 Phil. 341, 363 and *People v. Martin*, G.R. No. 177571, 29 September 2008, 567 SCRA 42, 51.

While no evidence was presented to show that appellants met beforehand and came to an agreement to harm Joseph, their concerted acts before, during and after the incident all point to a unity of purpose and design. Indeed, "proof of a previous agreement and decision to commit the crime is not essential but the fact that the malefactors acted in unison pursuant to the same objective suffices."[45] Such proof "may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action and community of interest."[46]

Abuse of superior strength attended the commission of the crime

There is abuse of superior strength when the perpetrators of a crime deliberately used excessive force, thereby rendering the victim incapable of defending himself.[47] "The notorious inequality of forces creates an unfair advantage for the aggressor."[48]

Here, there can be no denying that appellants took advantage of their superior strength to ensure the successful execution of their crime. This is evident from the fact that there were three of them against the victim who was alone. More importantly, their victim was unarmed while the three of them were each armed with a bolo.

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[45] *People v. Agacer*, G.R. No. 177751, 14 December 2011, 662 SCRA 461, 470-471 citing *People v. Amodia*, G.R. No. 173791, 7 April 2009, 584 SCRA 518, 541.

[46] *People v. Mamaruncas, supra* note 34 at 199 citing *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, 18 February 2008, 546 SCRA 51, 66.

[47] *People v. Nazareno, supra* note 21 citing *People v. Beduya*, G.R. No. 175315, 9 August 2010, 627 SCRA 275,284.

[48] *People v. Nazareno, supra*.

Award of damages

In *People v. Anticamara*,[49] this Court laid down the standards in the proper award of damages in criminal cases, as follows:

> x x x the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. In *People v. Quiachon*, [the Court held that] even if the penalty of death is not to be imposed because of the prohibition in R.A. 9346, the civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As explained in *People v. Salome*, while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by law for a heinous offense is still death, and the offense is still heinous. Accordingly, the award of civil indemnity in the amount of ₱75,000.00 is proper.
>
> Anent moral damages, the same are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00.

Accordingly, the Court of Appeals was correct in increasing the lower court's award of civil indemnity from ₱50,000.00 to ₱75,000.00. Regardless of the penalty imposed by the trial court, the correct amount of civil indemnity is ₱75,000.00, pursuant to the ratiocination of the Court in the above-cited case of *People v. Anticamara.*

The Court of Appeals, however, erred when it increased the amount of moral damages from ₱50,000.00 to ₱75,000.00. In accordance with the pronouncement of the Court in the *Anticamara Case*, the correct sum should be ₱50,000.00.

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[49] G.R. No. 178771, 8 June 2011, 651 SCRA 489, 519-520 citing *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719 and *People v. Salome*,G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676.

In connection with the award of exemplary damages, the Court of Appeals correctly reduced the amount from ₱50,000.00 to ₱30,000.00 in line with current jurisprudence.[50]

Finally, pursuant to the ruling of the Court in *People v. Villanueva*,[51] "when actual damages proven by receipts during the trial amount to less than ₱25,000, *as in this case*, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted." As a result, the Court of Appeals likewise correctly held that, since the receipted expenses of Joseph's family amounted to only ₱14,300.00, temperate damages in the amount of ₱25,000.00 in lieu of actual damages should be awarded.

WHEREFORE, the appeal is hereby **DENIED.** The Decision of the Court of Appeals dated 28 February 2011 in CA-G.R. CR-HC No. 04113, finding appellants Ronald, Randy and Rolando, all surnamed Credo, guilty beyond reasonable doubt of murder is **AFFIRMED** with the **MODIFICATION** that the award of moral damages is reduced from ₱75,000.00 to ₱50,000.00.

The appeal with respect to the deceased appellant Rolando Credo is **DISMISSED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[50] *People v. Zapuiz*, G.R. No. 199713, 20 February 2013 and *People v. Pondivida*, G.R. No. 188969, 27 February 2013.

[51] 456 Phil. 14, 29 (2003).

FIRST DIVISION

[G.R. No. 198240. July 3, 2013]

LUISA NAVARRO MARCOS,* *petitioner, vs.* **THE HEIRS OF THE LATE DR. ANDRES NAVARRO, JR., namely NONITA NAVARRO, FRANCISCA NAVARRO MALAPITAN, SOLEDAD NAVARRO BROCHLER, NONITA BARRUN NAVARRO, JR., IMELDA NAVARRO, ANDRES NAVARRO III, MILAGROS NAVARRO YAP, PILAR NAVARRO, TERESA NAVARRO-TABITA, and LOURDES BARRUN-REJUSO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; REINSTATEMENT OF A CIVIL CASE IN ANOTHER DIVISION OF THE COURT OF APPEALS IS A FACT WHICH THE COURT OF APPEALS MAY TAKE JUDICIAL NOTICE OF.— The CA ruling that the dismissal of Civil Case No. 5215 has mooted the issue of PO2 Alvarez's disqualification as a witness can no longer be justified. Hence, we reverse the CA ruling. While we agree with the CA in considering the RTC's Orders which dismissed Civil Case No. 5215, we are unable to agree with its refusal to take judicial notice of the Decision of another CA Division which reinstated Civil Case No. 5215. Subsequent proceedings were even held in the reinstated Civil Case No. 5215 per Orders issued by the RTC which were already submitted to the CA. That Civil Case No. 5215 was reinstated is a fact that cannot be ignored.

2. ID.; ID.; DISQUALIFICATION OF A WITNESS MUST BE BASED ON THE GROUNDS SPECIFIED UNDER THE RULES.— As a handwriting expert of the PNP, PO2 Alvarez can surely perceive and make known her perception to others. We have no doubt that she is qualified as a witness. She cannot be disqualified as a witness since she possesses none of the

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* *Rollo*, pp. 14, 42. While Lydia Navarro Grageda is named as co-petitioner in the title of the petition, only Luisa Navarro Marcos has verified it.

disqualifications specified under the Rules. Respondents' motion to disqualify her should have been denied by the RTC for it was not based on any of these grounds for disqualification. The RTC rather confused the qualification of the witness with the credibility and weight of her testimony.

3. ID.; ID.; EXPERT WITNESS; THE TESTIMONY OF AN EXPERT WITNESS MAY NOT BE DECLARED AS HEARSAY BEFORE HER TESTIMONY IS OFFERED.— [W]e disagree with the RTC that PO2 Alvarez's testimony would be hearsay. Under Section 49, Rule 130 of the Rules on Evidence, PO2 Alvarez is allowed to render an expert opinion, as the PNP document examiner was allowed in *Tamani*. But the RTC already ruled at the outset that PO2 Alvarez's testimony is hearsay even before her testimony is offered and she is called to the witness stand. Under the circumstances, the CA should have issued a corrective writ of *certiorari* and annulled the RTC ruling.

4. ID.; ID.; ID.; WHILE THE USE OF OPINION OF AN EXPERT WITNESS IS NOT MANDATORY ON THE PART OF THE COURTS, SUCH OPINION MAY BE RECEIVED AS EVIDENCE IF CRUCIAL IN THE RESOLUTION OF THE CASE.— [T]he use of the word "may" in Section 49, Rule 130 of the Rules on Evidence signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Jurisprudence is also replete with instances wherein this Court dispensed with the testimony of expert witnesses to prove forgeries. However, we have also recognized that handwriting experts are often offered as expert witnesses considering the technical nature of the procedure in examining forged documents. More important, analysis of the questioned signature in the deed of donation executed by the late Andres Navarro, Sr. [is] crucial to the resolution of the case. In sum, the RTC should not have disqualified PO2 Alvarez as a witness. She has the qualifications of a witness and possesses none of the disqualifications under the Rules. The Rules allow the opinion of an expert witness to be received as evidence. In *Tamani*, we used the opinion of an expert witness. The value of PO2 Alvarez's expert opinion cannot be determined if PO2 Alvarez is not even allowed to testify on the handwriting examination she conducted.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo, & Ongsiako for petitioner.
Ruben A. Songco and *Ricardo Butalid* for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Luisa Navarro Marcos appeals the Decision[1] dated February 28, 2011 and Resolution[2] dated July 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 92460.

The antecedent facts follow:

Spouses Andres Navarro, Sr. and Concepcion Medina-Navarro died in 1958 and 1993, respectively. They left behind several parcels of land including a 108.3997-hectare lot (subject lot) located in Cayabon, Milagros, Masbate.[3]

The spouses were survived by their daughters Luisa Navarro Marcos, herein petitioner, and Lydia Navarro Grageda, and the heirs of their only son Andres Navarro, Jr. The heirs of Andres, Jr. are the respondents herein.[4]

Petitioner and her sister Lydia discovered that respondents are claiming exclusive ownership of the subject lot. Respondents based their claim on the Affidavit of Transfer of Real Property dated May 19, 1954 where Andres, Sr. donated the subject lot to Andres, Jr.[5]

Believing that the affidavit is a forgery, the sisters, through Assistant Fiscal Andres Marcos, requested a handwriting

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[1] *Id*. at 47-52. Penned by Associate Justice Mario V. Lopez with the concurrence of Associate Justices Magdangal M. De Leon and Franchito N. Diamante.

[2] *Id*. at 54-57.

[3] *Id*. at 48.

[4] *Id*.

[5] *Id*.

examination of the affidavit. The PNP handwriting expert PO2 Mary Grace Alvarez found that Andres, Sr.'s signature on the affidavit and the submitted standard signatures of Andres, Sr. were not written by one and the same person.[6]

Thus, the sisters sued the respondents for annulment of the deed of donation before the Regional Trial Court (RTC) of Masbate, where the case was docketed as Civil Case No. 5215.[7]

After the pre-trial, respondents moved to disqualify PO2 Alvarez as a witness. They argued that the RTC did not authorize the handwriting examination of the affidavit. They added that presenting PO2 Alvarez as a witness will violate their constitutional right to due process since no notice was given to them before the examination was conducted.[8] Thus, PO2 Alvarez's report is a worthless piece of paper and her testimony would be useless and irrelevant.[9]

In its Order[10] dated August 19, 2004, the RTC granted respondents' motion and disqualified PO2 Alvarez as a witness. The RTC ruled that PO2 Alvarez's supposed testimony would be hearsay as she has no personal knowledge of the alleged handwriting of Andres, Sr. Also, there is no need for PO2 Alvarez to be presented, if she is to be presented as an expert witness, because her testimony is not yet needed.

The sisters sought reconsideration of the order but the RTC denied their motion in an Order[11] dated October 11, 2005.

Aggrieved, the sisters filed a petition for *certiorari* before the CA, which however, dismissed their petition in the assailed Decision dated February 28, 2011 on the ground that the dismissal

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[6] *Id*.

[7] *Id*.

[8] *Id*. at 48-49.

[9] *Id*. at 211.

[10] CA *rollo*, pp. 24-25.

[11] *Id*. at 26.

of Civil Case No. 5215 has mooted the issue of PO2 Alvarez's disqualification as a witness.

Later, the CA likewise denied their motion for reconsideration in its Resolution dated July 29, 2011. The CA refused to take judicial notice of the decision of another CA Division which reinstated Civil Case No. 5215. The CA held that a CA Justice cannot take judicial notice of decisions or matters pending before another Division of the appellate court where he or she is not a member. The CA also held that the sisters were negligent for belatedly informing it that Civil Case No. 5215 was reinstated.

Hence, this appeal.

Petitioner argues that the CA erred in refusing to reconsider the assailed decision in light of the reinstatement of Civil Case No. 5215. Petitioner adds that the CA erred in not ruling that the RTC committed grave abuse of discretion in disqualifying PO2 Alvarez as a witness.[12] They stress that PO2 Alvarez will be presented as an expert witness to render an opinion on whether the disputed handwriting was indeed made by Andres, Sr. or whether it is a forgery.[13]

In their comment,[14] respondents counter that the CA properly disqualified PO2 Alvarez. They also agreed with the CA that her disqualification was mooted by the dismissal of Civil Case No. 5215.

We find in favor of petitioner.

The CA ruling that the dismissal of Civil Case No. 5215 has mooted the issue of PO2 Alvarez's disqualification as a witness can no longer be justified. Hence, we reverse the CA ruling. While we agree with the CA in considering the RTC's Orders[15] which dismissed Civil Case No. 5215, we are unable to agree

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[12] *Rollo,* p. 29.

[13] *Id.* at 35.

[14] *Id.* at 530-532.

[15] CA *rollo,* pp. 262, 267-268.

with its refusal to take judicial notice of the Decision[16] of another CA Division which reinstated Civil Case No. 5215. Subsequent proceedings were even held in the reinstated Civil Case No. 5215 per Orders[17] issued by the RTC which were already submitted to the CA. That Civil Case No. 5215 was reinstated is a fact that cannot be ignored.

We also agree with petitioner that the RTC committed grave abuse of discretion in disqualifying PO2 Alvarez as a witness. Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[18] Grave abuse of discretion arises when a lower court or tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.[19]

In *Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic of the Philippines*,[20] we said that a witness must only possess all the qualifications and none of the disqualifications provided in the Rules of Court. Section 20, Rule 130 of the Rules on Evidence provides:

> SEC. 20. *Witnesses; their qualifications.*– Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

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[16] *Id*. at 297-306.

[17] *Id*. at 307-308.

[18] *Deutsche Bank AG v. Court of Appeals,* G.R. No. 193065, February 27, 2012, 667 SCRA 82, 100.

[19] *Republic of the Philippines v. Hon. Ramon S. Caguioa, et al.*, G.R. No. 174385, February 20, 2013, p. 10.

[20] G.R. No. 188956, March 20, 2013, p. 5.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification.

Specific rules of witness disqualification are provided under Sections 21 to 24, Rule 130 of the Rules on Evidence. Section 21 disqualifies a witness by reason of mental incapacity or immaturity. Section 22 disqualifies a witness by reason of marriage. Section 23 disqualifies a witness by reason of death or insanity of the adverse party. Section 24 disqualifies a witness by reason of privileged communication.

In *Cavili v. Judge Florendo*,[21] we have held that the specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules. The Rules should not be interpreted to include an exception not embodied therein. We said:

The generosity with which the Rule allows people to testify is apparent. Interest in the outcome of a case, conviction of a crime unless otherwise provided by law, and religious belief are not grounds for disqualification.

Sections 19 and 20 of Rule 130 provide for specific disqualifications. Section 19 disqualifies those who are mentally incapacitated and children whose tender age or immaturity renders them incapable of being witnesses. Section 20 provides for disqualification based on conflicts of interest or on relationship. Section 21 provides for disqualification based on privileged communications. Section 15 of Rule 132 may not be a rule on disqualification of witnesses but it states the grounds when a witness may be impeached by the party against whom he was called.

There is no provision of the Rules disqualifying parties declared in default from taking the witness stand for non-disqualified parties. The law does not provide default as an exception. **The specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules**. It is a maxim of recognized utility and merit in the construction of statutes that an express exception, exemption, or saving clause

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[21] 238 Phil. 597, 602-603 (1987).

excludes other exceptions. x x x As a general rule, where there are express exceptions these comprise the only limitations on the operation of a statute and no other exception will be implied. x x x **The Rules should not be interpreted to include an exception not embodied therein.** (Emphasis supplied; citations omitted.)

As a handwriting expert of the PNP, PO2 Alvarez can surely perceive and make known her perception to others. We have no doubt that she is qualified as a witness. She cannot be disqualified as a witness since she possesses none of the disqualifications specified under the Rules. Respondents' motion to disqualify her should have been denied by the RTC for it was not based on any of these grounds for disqualification. The RTC rather confused the qualification of the witness with the credibility and weight of her testimony.

Moreover, Section 49, Rule 130 of the Rules of Evidence is clear that the opinion of an expert witness may be received in evidence, to wit:

SEC. 49. *Opinion of expert witness*.–The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

For instance, in *Tamani v. Salvador*,[22] we were inclined to believe that Tamani's signature was forged after considering the testimony of the PNP document examiner that the case involved simulated or copied forgery, such that the similarities will be superficial. We said that the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.

Thus, we disagree with the RTC that PO2 Alvarez's testimony would be hearsay. Under Section 49, Rule 130 of the Rules on Evidence, PO2 Alvarez is allowed to render an expert opinion,

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[22] G.R. No. 171497, April 4, 2011, 647 SCRA 132, 144.

as the PNP document examiner was allowed in *Tamani*. But the RTC already ruled at the outset that PO2 Alvarez's testimony is hearsay even before her testimony is offered and she is called to the witness stand. Under the circumstances, the CA should have issued a corrective writ of *certiorari* and annulled the RTC ruling.

True, the use of the word "may" in Section 49, Rule 130 of the Rules on Evidence signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts.[23] Jurisprudence is also replete with instances wherein this Court dispensed with the testimony of expert witnesses to prove forgeries.[24] However, we have also recognized that handwriting experts are often offered as expert witnesses considering the technical nature of the procedure in examining forged documents.[25] More important, analysis of the questioned signature in the deed of donation executed by the late Andres Navarro, Sr. in crucial to the resolution of the case.

In sum, the RTC should not have disqualified PO2 Alvarez as a witness. She has the qualifications of a witness and possesses none of the disqualifications under the Rules. The Rules allow the opinion of an expert witness to be received as evidence. In *Tamani*, we used the opinion of an expert witness. The value of PO2 Alvarez's expert opinion cannot be determined if PO2 Alvarez is not even allowed to testify on the handwriting examination she conducted.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the (1) Decision dated February 28, 2011 and Resolution dated July 29, 2011 of the Court of Appeals in CA-G.R. SP No. 92460, and (2) Orders dated August 19, 2004 and October 11, 2005 of the Regional Trial Court in Civil Case No. 5215. We **DENY**

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[23] *Tabao v. People*, G.R. No. 187246, July 20, 2011, 654 SCRA 216, 237.

[24] *Manzano, Jr. v. Garcia*, G.R. No. 179323, November 28, 2011, 661 SCRA 350, 357.

[25] *Mendez v. Court of Appeals*, G.R. No. 174937, June 13, 2012, 672 SCRA 200, 209.

respondents' motion to disqualify PO2 Mary Grace Alvarez as a witness.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 198534. July 3, 2013]

JENNY F. PECKSON, *petitioner, vs.* **ROBINSONS SUPERMARKET CORPORATION, JODY GADIA, ROENA SARTE, and RUBY ALEX,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MANAGEMENT PREROGATIVE; WHERE THE LATERAL TRANSFER OF AN EMPLOYEE WAS HELD AS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.— [T]here are various laws imposing all kinds of burdens and obligations upon the employer in relation to his employees, and yet as a rule this Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work. Indeed, labor laws discourage interference with an employer's judgment in the conduct of his business. x x x In *Philippine Japan Active Carbon Corporation v. NLRC*, it was held that the exercise of management's prerogative concerning the employees' work assignments is based on its assessment of the qualifications, aptitudes and competence of its employees, and by moving them around in the various areas of its business operations it

can ascertain where they will function with maximum benefit to the company. x x x As a privilege inherent in the employer's right to control and manage its enterprise effectively, its freedom to conduct its business operations to achieve its purpose cannot be denied. We agree with the appellate court that the respondents are justified in moving the petitioner to another equivalent position, which presumably would be less affected by her habitual tardiness or inconsistent attendance than if she continued as a Category Buyer, a "frontline position" in the day-to-day business operations of a supermarket such as Robinsons.

2. ID.; ID.; ID.; ID.; WHEN EMPLOYEE'S TRANSFER IS NOT UNREASONABLE, OR INCONVENIENT, OR PREJUDICIAL TO HIM AND IT DOES NOT INVOLVE DEMOTION IN RANK, OR DIMINUTION OF SALARIES AND BENEFITS, EMPLOYEE MAY NOT COMPLAIN THAT IT AMOUNTS TO A CONSTRUCTIVE DISMISSAL; PRINCIPLE APPLIED IN CASE AT BAR.— [A]s x x x held in *Philippine Japan Active Carbon Corporation*, when the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal. x x x Interestingly, although the petitioner claims that she was constructively dismissed, yet until the unfavorable decision of the LA on May 30, 2007, for seven (7) months she continued to collect her salary while also adamantly refusing to heed the order of Sarte to report to the Metroeast Depot. It was only on June 22, 2007, after the LA's decision, that she filed her "forced" resignation. Her deliberate and unjustified refusal to assume her new assignment is a form of neglect of duty, and according to the LA, an act of insubordination. We saw how the company sought every chance to hear her out on her grievances and how she ignored the memoranda of Sarte asking her to explain her refusal to accept her transfer. All that the petitioner could say was that it was a demotion and that her floating status embarrassed her before the suppliers and her co-employees.

3. ID.; ID.; ID.; ID.; WHERE THE EMPLOYER SUFFICIENTLY ESTABLISHED THAT THE TRANSFER OF AN EMPLOYEE WAS NOT TANTAMOUNT TO

CONSTRUCTIVE DISMISSAL.— In the case at bar, we agree with the appellate court that there is substantial showing that the transfer of the petitioner from Category Buyer to Provincial Coordinator was not unreasonable, inconvenient, or prejudicial to her. The petitioner failed to dispute that the job classifications of Category Buyer and Provincial Coordinator are similar, or that they command a similar salary structure and responsibilities. We agree with the NLRC that the Provincial Coordinator's position does not involve mere clerical functions but requires the exercise of discretion from time to time, as well as independent judgment, since the Provincial Coordinator gives appropriate recommendations to management and ensures the faithful implementation of policies and programs of the company. It even has influence over a Category Buyer because of its recommendatory function that enables the Category Buyer to make right decisions on assortment, price and quantity of the items to be sold by the store.

4. ID.; ID.; ID.; ID.; EMPLOYEE WAS ACCORDED DUE PROCESS AND HER DEFIANCE MAY HAVE BEEN CONSIDERED AS AN ACT OF INSUBORDINATION.— We also cannot sustain the petitioner's claim that she was not accorded due process and that the respondents acted toward her with discrimination, insensibility, or disdain as to force her to forego her continued employment. In addition to verbal reminders from Sarte, the petitioner was asked in writing twice to explain within 48 hours her refusal to accept her transfer. In the first, she completely remained silent, and in the second, she took four (4) days to file a mere one-paragraph reply, wherein she simply said that she saw the Provincial Coordinator position as a demotion, hence she could not accept it. Worse, she may even be said to have committed insubordination when she refused to turn over her responsibilities to the new Category Buyer, Padilla, and to assume her new responsibilities as Provincial Coordinator and report to the Metroeast Depot as directed. This was precisely the reason why the petitioner was kept on floating status. To her discredit, her defiance constituted a neglect of duty, or an act of insubordination, per the LA.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Bolos Reyes-Beltran Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

For resolution is the Petition for Review on *Certiorari*[1] of the Decision[2] dated June 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 109604 affirming the Decision[3] dated February 25, 2009 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-11-09316-06/NLRC LAC No. 002020-07, which upheld the dismissal[4] by the Labor Arbiter (LA) on May 30, 2007 of Jenny F. Peckson's (petitioner) complaint for constructive dismissal.

Antecedent Facts and Proceedings

The petitioner first joined the Robinsons Supermarket Corporation (RSC) as a Sales Clerk on November 3, 1987. On October 26, 2006, she was holding the position of Category Buyer when respondent Roena Sarte (Sarte), RSC's Assistant Vice-President for Merchandising, reassigned her to the position of Provincial Coordinator, effective November 1, 2006.[5] Claiming that her new assignment was a demotion because it was non-supervisory and clerical in nature, the petitioner refused to turn over her responsibilities to the new Category Buyer, or

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[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios, concurring; *id*. at 522-532.

[3] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; *id*. at 330-336.

[4] Issued by LA Arthur L. Amansec; *id*. at 453-459.

[5] *Id*. at 77.

to accept her new responsibilities as Provincial Coordinator. Jody Gadia (Gadia) and Ruby Alex (Alex) were impleaded because they were corporate officers of the RSC.

In a memorandum to the petitioner dated November 13, 2006,[6] the RSC, through Sarte, demanded an explanation from her within 48 hours for her refusal to accept her new assignment despite written and verbal demands. Sarte cited a company rule, Offenses Subject to Disciplinary Action No. 4.07, which provided that "[d]isobedience, refusal or failure to do assigned task or to obey superior's/official's orders/instructions, or to follow established procedures or practices without valid reason" would be meted the penalty of suspension.

The petitioner ignored the 48-hour deadline to explain imposed by Sarte. On November 23, 2006, Sarte issued her another memorandum,[7] reiterating her demand to explain in writing within 48 hours why she persistently refused to assume her new position, and warning her that this could be her final chance to present her side or be deemed to have waived her right to be heard.

In her one-paragraph reply submitted on November 27, 2006,[8] the petitioner stated that she could not accept the position of Provincial Coordinator since she saw it as a demotion. As it turned out, however, on November 9, 2006, the petitioner had already filed a complaint for constructive dismissal[9] against RSC, Sarte, Gadia and Alex (respondents).

On November 30, 2006, Sarte issued an instruction to the petitioner to report to RSC's Metroeast Depot to help prepare all shipping manifests for Cagayan de Oro and Bacolod, but as witnessed by RSC employees Raquel Torrechua and Alex, she did not obey as instructed.[10] Again on December 8, 2006, Sarte

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[6] *Id*. at 120.

[7] *Id*. at 121.

[8] *Id*. at 122.

[9] *Id*. at 57.

[10] *Id*. at 123.

issued a similar instruction, citing the need for certain tasks from the petitioner in preparation for the coming Christmas holidays, but the petitioner again refused to heed.[11]

As culled from the assailed appellate court decision,[12] the petitioner argued before the LA that the true organizational chart of the RSC showed that the position of Category Buyer was one level above that of the Provincial Coordinator, and that moreover, the job description of a Provincial Coordinator was largely clerical and did not require her to analyze stock levels and order points, or source new local and international suppliers, or monitor stock level per store and recommend items for replenishment, or negotiate better items and discounts from suppliers, duties which only a Category Buyer could perform. She also claimed that she was instructed to file a courtesy resignation in exchange for a separation pay of one-half salary per year of service.

The respondents in their position paper denied the correctness of the organizational chart presented by the petitioner. They maintained that her transfer was not a demotion since the Provincial Coordinator occupied a "Level 5" position like the Category Buyer, with the same work conditions, salary and benefits. But while both positions had no significant disparity in the required skill, experience and aptitude, the position of Category Buyer demanded the traits of punctuality, diligence and attentiveness because it is a frontline position in the day-to-day business operations of RSC which the petitioner, unfortunately, did not possess.

The respondents also raised the petitioner's record of habitual tardiness as far back as 1999, as well as poor performance rating in 2005. In addition to her performance rating of "2.8" out of "4.0" in 2005 equivalent to "*below expectation*," the petitioner was found to be tardy in June and July 2005,13 times, and for the entire 2005, 57 times; that she was suspended twice in 2006 for 20 instances of tardiness and absences from July

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[11] *Id*. at 124.

[12] *Id*. at 522-532.

to September 2006 alone.[13] We also note that the petitioner was suspended for seven (7) days in September and October 2005 for deliberately violating a company policy after she was seen having lunch with a company supplier.[14]

In her affidavit,[15] respondent Sarte denied that the reassignment of the petitioner as Provincial Coordinator was motivated by a desire to besmirch the name of the latter. She asserted that it was made in the exercise of management prerogative and sound discretion, in view of the sensitive position occupied by the Category Buyer in RSC's daily operations, *vis-à-vis* the petitioner's "*below expectation*" performance rating and habitual tardiness.

In dismissing the petitioner's complaint, the LA in its Decision[16] dated May 30, 2007 ruled that job reassignment or classification is a strict prerogative of the employer, and that the petitioner cannot refuse her transfer from Category Buyer to Provincial Coordinator since both positions commanded the same salary structure, high degree of responsibility and impeccable honesty and integrity. Upholding the employer's right not to retain an employee in a particular position to prevent losses or to promote profitability, the LA found no showing of any illegal motive on the part of the respondents in reassigning the petitioner. The transfer was dictated by the need for punctuality, diligence and attentiveness in the position of Category Buyer, which the petitioner clearly lacked. Moreover, the LA ruled that her persistent refusal to accept her new position amounted to insubordination, entitling the RSC to dismiss her from employment.

A month after the above ruling, or on June 22, 2007, the petitioner tendered her written "forced" resignation,[17] wherein

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[13] *Id*. at 107-119, 225-226, 268, 308.

[14] *Id*. at 212.

[15] *Id*. at 230-231.

[16] *Id*. at 453-459.

[17] *Id*. at 272.

she complained that she was being subjected to ridicule by clients and co-employees alike on account of her floating status since the time she refused to accept her transfer. She likewise claimed that she was being compelled to accept the position of Provincial Coordinator without due process.

On appeal, the NLRC in its Decision[18] dated February 25, 2009 sustained the findings of the LA. It agreed that the lateral transfer of the petitioner from Category Buyer to Provincial Coordinator was not a demotion amounting to constructive dismissal, since both positions belonged to Job Level 5 and between them there is no significant disparity in terms of the requirements of skill, experience and aptitude. Contrary to the petitioner's assertion, the NLRC found that the position of Provincial Coordinator is not a rank-and-file position but in fact requires the exercise of discretion and independent judgment, as well as appropriate recommendations to management to ensure the faithful implementation of its policies and programs; that it even exercises influence over the Category Buyer in that it includes performing a recommendatory function to guide the Category Buyer in making decisions on the right assortment, price and quantity of the items, articles or merchandise to be sold by the store.

The NLRC then reiterated the settled rule that management may transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination or bad faith or effected as a form of punishment without sufficient cause. It ruled that the respondents were able to show that the petitioner's transfer was not unreasonable, inconvenient or prejudicial, but was prompted by her failure to meet the demands of punctuality, diligence, and personal attention of the position of Category Buyer; that management wanted to give the petitioner a chance to improve her work ethic, but her obstinate refusal to assume her new position has prejudiced respondent RSC, even while

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[18] *Id*. at 330-336.

she continued to receive her salaries and benefits as Provincial Coordinator.

On petition for *certiorari* to the CA, the petitioner insisted that her transfer from Category Buyer to Provincial Coordinator was a form of demotion without due process, and that the respondents unjustifiably depicted her as remiss in her duties, flawed in her character, and unduly obstinate in her refusal to accept her new post.

In its Decision[19] dated June 8, 2011, the CA found no basis to deviate from the oft-repeated tenet that the findings of fact and conclusions of the NLRC when supported by substantial evidence are generally accorded not only great weight and respect but even finality, and are thus deemed binding.[20]

Petition for Review in the Supreme Court

Now on petition for review to this Court, the petitioner maintains that her lateral transfer from Category Buyer to Provincial Coordinator was a demotion amounting to constructive dismissal because her reassignment was not a valid exercise of management prerogative, but was done in bad faith and without due process. She claims that the respondents manipulated the facts to show that she was tardy; that they even surreptitiously drew up a new organizational chart of the Merchandising Department of RSC, soon after she filed her complaint for illegal dismissal, to show that the position of Provincial Coordinator belonged to Job Level 5 as the Category Buyer, and not one level below; that the company deliberately embarrassed her when it cut off her email access; that they sent memoranda to her clients that she was no longer a Category Buyer, and to the various Robinsons branches that she was now a Provincial Coordinator, while Milo Padilla (Padilla) was taking over her former position as Category Buyer; that for seven (7) months, they placed her on floating status and subjected her to mockery

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[19] *Id.* at 522-532.

[20] *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

and ridicule by the suppliers and her co-employees; that not only was there no justification for her transfer, but the respondents clearly acted in bad faith and with discrimination, insensibility and disdain to make her stay with the company intolerable for her.

Our Ruling

We find no merit in the petition.

This Court has consistently refused to interfere with the exercise by management of its prerogative to regulate the employees' work assignments, the working methods and the place and manner of work.

As we all know, there are various laws imposing all kinds of burdens and obligations upon the employer in relation to his employees, and yet as a rule this Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work. Indeed, labor laws discourage interference with an employer's judgment in the conduct of his business.[21]

In *Rural Bank of Cantilan, Inc. v. Julve*,[22] the Court had occasion to summarize the general jurisprudential guidelines affecting the right of the employer to regulate employment, including the transfer of its employees:

> Under the doctrine of management prerogative, every employer has the inherent right to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations

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[21] *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 539.

[22] 545 Phil. 619 (2007).

to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.

While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct and loyalty. In fact, the Labor Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.

Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.[23] (Citations omitted)

In *Philippine Japan Active Carbon Corporation v. NLRC*,[24] it was held that the exercise of management's prerogative concerning the employees' work assignments is based on its assessment of the qualifications, aptitudes and competence of its employees, and by moving them around in the various areas of its business operations it can ascertain where they will function with maximum benefit to the company.

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does

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[23] *Id.* at 624-625.

[24] 253 Phil. 149 (1989).

not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.[25]

As a privilege inherent in the employer's right to control and manage its enterprise effectively, its freedom to conduct its business operations to achieve its purpose cannot be denied.[26] We agree with the appellate court that the respondents are justified in moving the petitioner to another equivalent position, which presumably would be less affected by her habitual tardiness or inconsistent attendance than if she continued as a Category Buyer, a "frontline position" in the day-to-day business operations of a supermarket such as Robinsons.

If the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.

As we have already noted, the respondents had the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal, which as defined in *Blue Dairy Corporation v. NLRC*,[27] is a quitting because continued employment is rendered impossible, unreasonable or unlikely, or an offer involving a demotion in rank and diminution of pay:

> The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the

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[25] *Id*. at 153.

[26] *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

[27] *Id*.

transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

Thus, as further held in *Philippine Japan Active Carbon Corporation*,[28] when the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.[29]

But like all other rights, there are limits to the exercise of managerial prerogative to transfer personnel, and on the employer is laid the burden to show that the same is without grave abuse of discretion, bearing in mind the basic elements of justice and fair play.[30] Indeed, management prerogative may not be used as a subterfuge by the employer to rid himself of an undesirable worker.[31]

Interestingly, although the petitioner claims that she was constructively dismissed, yet until the unfavorable decision of the LA on May 30, 2007, for seven (7) months she continued to collect her salary while also adamantly refusing to heed the order of Sarte to report to the Metroeast Depot. It was only on June 22, 2007, after the LA's decision, that she filed her "forced" resignation. Her deliberate and unjustified refusal to assume

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[28] *Supra* note 24.

[29] *Id*. at 153.

[30] *Blue Dairy Corporation v. NLRC, supra* note 26.

[31] *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 93 (1997).

her new assignment is a form of neglect of duty, and according to the LA, an act of insubordination. We saw how the company sought every chance to hear her out on her grievances and how she ignored the memoranda of Sarte asking her to explain her refusal to accept her transfer. All that the petitioner could say was that it was a demotion and that her floating status embarrassed her before the suppliers and her co-employees.

The respondents have discharged the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal.

In *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*,[32] a machinist who had been employed with the petitioner company for 16 years was reduced to the service job of transporting filling materials after he failed to report for work for one (1) day on account of an urgent family matter. This is one instance where the employee's demotion was rightly held to be an unlawful constructive dismissal because the employer failed to show substantial proof that the employee's demotion was for a valid and just cause:

> In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. x x x.[33] (Citation omitted)

In the case at bar, we agree with the appellate court that there is substantial showing that the transfer of the petitioner from Category Buyer to Provincial Coordinator was not

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[32] 334 Phil. 84 (1997).

[33] *Id*. at 95.

unreasonable, inconvenient, or prejudicial to her. The petitioner failed to dispute that the job classifications of Category Buyer and Provincial Coordinator are similar, or that they command a similar salary structure and responsibilities. We agree with the NLRC that the Provincial Coordinator's position does not involve mere clerical functions but requires the exercise of discretion from time to time, as well as independent judgment, since the Provincial Coordinator gives appropriate recommendations to management and ensures the faithful implementation of policies and programs of the company. It even has influence over a Category Buyer because of its recommendatory function that enables the Category Buyer to make right decisions on assortment, price and quantity of the items to be sold by the store.[34]

We also cannot sustain the petitioner's claim that she was not accorded due process and that the respondents acted toward her with discrimination, insensibility, or disdain as to force her to forego her continued employment. In addition to verbal reminders from Sarte, the petitioner was asked in writing twice to explain within 48 hours her refusal to accept her transfer. In the first, she completely remained silent, and in the second, she took four (4) days to file a mere one-paragraph reply, wherein she simply said that she saw the Provincial Coordinator position as a demotion, hence she could not accept it. Worse, she may even be said to have committed insubordination when she refused to turn over her responsibilities to the new Category Buyer, Padilla, and to assume her new responsibilities as Provincial Coordinator and report to the Metroeast Depot as directed. This was precisely the reason why the petitioner was kept on floating status. To her discredit, her defiance constituted a neglect of duty, or an act of insubordination, per the LA.

Neither can we consider tenable the petitioner's contention that the respondents deliberately held her up to mockery and ridicule when they cut off her email access, sent memoranda to her clients that she was no longer a Category Buyer, and to the

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[34] *See* CA Decision; *rollo*, p. 530.

various Robinsons branches that she was now a Provincial Coordinator on floating status and that Padilla was taking over her position as the new Category Buyer. It suffices to state that these measures are the logical steps to take for the petitioner's unjustified resistance to her transfer, and were not intended to subject her to public embarrassment.

Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which labor officials' findings rest.

Finally, as reiterated in *Acebedo Optical*,[35] this Court is not a trier of facts, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Questions of fact are not entertained, and in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve.[36] Thus:

> Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.
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> As earlier stated, we find no basis for deviating from the oft espoused legal tenet that findings of facts and conclusion of the labor arbiter are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence, without any clear showing that such findings of fact, as affirmed by the NLRC, are

[35] *Supra* note 20.

[36] *Id*. at 541.

bereft of substantiation. More so, when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon us and will not normally be disturbed; x x x.[37] (Citations omitted)

It is our ruling, that the findings of fact and conclusion of the LA, as affirmed by the NLRC, are supported by substantial evidence, as found by the CA.

WHEREFORE, the premises considered, the Decision of the Court of Appeals dated June 8, 2011 in CA-G.R. SP No. 109604 is **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199932. July 3, 2013]

CAMILO A. ESGUERRA, *petitioner, vs.* **UNITED PHILIPPINES LINES, INC., BELSHIPS MANAGEMENT (SINGAPORE) PTE LTD., and/or FERNANDO T. LISING,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; WHEN THE SEAFARER'S INJURY SHOULD BE CLASSIFIED AS PERMANENT AND TOTAL DISABILITY.— The findings of the NLRC on the degree of the petitioner's disability are most in accord with the evidence on record. As ardently observed by the labor commission, the orthopedic surgeon

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[37] *Id.* at 541-543.

designated by the respondents, Dr. Chuasuan, and the petitioner's independent specialist, Dr. Sabado, were one in declaring that the petitioner is permanently unfit for sea duty. Dr. Sabado categorically pronounced the same in his certification dated February 15, 2009 while the import of Dr. Chuasuan's report on February 7, 2009 conveyed the similar conclusion when he stated: "[f]urther treatment would probably be of some benefit but will not guarantee (the petitioner's) fitness to work." The uncertain effect of further treatment intimates nothing more but that the injury sustained by the petitioner bars him from performing his customary and strenuous work as a seafarer/ fitter. As such, he is considered permanently and totally disabled. Permanent and total disability means "disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do." It is inconsequential whether the petitioner was actually recorded by the respondents to be driving a motorcycle. It does not preclude an award for disability because, in labor laws, disability need not render the seafarer absolutely helpless or feeble to be compensable; it is enough that it incapacitates to perform his customary work.

2. ID.; ID.; ID.; WHEN THE SEAFARER FAILED TO PROVE THAT HE IS ENTITLED TO SUPERIOR DISABILITY BENEFITS UNDER THE CBA, THE AWARD OF PERMANENT DISABILITY BENEFITS SHALL BE GOVERNED BY THE POEA-SEC.— To show that he is entitled to superior disability benefits under a CBA, the petitioner submitted copies of pages 9 and 10 of the purported PSU/ITF TCC Agreement and a copy of the complete text of a CBA between PSU-ALU-TUCP-ITF and Belships dated November 3, 2008. Neither of which, however, substantially establish his claim for the amount of US$142,560.00 permanent disability benefits. x x x [T]he inapplicability of the [CBA] provision to the petitioner must be sustained in view of the fact that the duration of the submitted copy of PSU-ALU-TUCP-ITF and Belships CBA is from November 1, 2008 until October 31, 2009 or outside the petitioner's employment period which expired as early as July 2008. In fine, the petitioner failed to proffer credible and competent evidence of his claim for superior disability benefits. What remains as competent basis for disability

award is the POEA-SEC[.] x x x Section 32, x x x states that a disability allowance of US$60,000.00 (US$50,000.00 x 120%) is granted for an impediment considered as total and permanent, such as that adjudged to have befallen the petitioner.

3. ID.; ID.; ID.; WHERE THE EMPLOYER WAS NOT NEGLIGENT IN AFFORDING MEDICAL ASSISTANCE TO A SEAFARER, AWARD OF MORAL AND EXEMPLARY DAMAGES MUST BE DENIED; BUT SEAFARER IS ENTITLED TO ATTORNEY'S FEES.— The CA correctly denied an award of moral and exemplary damages. The respondents were not negligent in affording the petitioner with medical treatment neither did they forsake him during his period of disability. However, the Court finds that the petitioner is entitled to attorney's fees pursuant to Article 2208(8) of the Civil Code which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.

APPEARANCES OF COUNSEL

R.C. Carrera Law Office for petitioner.
Esguerra & Blanco for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 26, 2011 and Resolution[3] dated December 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116631 which awarded disability benefits to Camilo Esguerra (petitioner) pursuant to the Philippine Overseas Employment Administration-Standard Employment

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[1] *Rollo*, pp. 8-47.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser, concurring; *id*. at 50-67.

[3] *Id*. at 140-144.

Contract for Seafarers (POEA-SEC) and not under the collective bargaining agreement (CBA) as previously adjudged by the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC).

The Facts

On October 26, 2007, United Philippines Lines, Inc. (UPLI), a Philippine-registered manning agency, in behalf of its principal, Belships Management (Singapore) Pte Ltd., (Belships), hired the petitioner to work as a fitter on board the vessel 'M/V Jaco Triumph' for a period of nine (9) months or until July 2008, subject to a one (1) month extension upon mutual agreement of the parties.[4]

Their contract of employment was approved by the POEA and it contained a clause stating that "[t]he current PSU/ITF TCC Agreement shall be considered to be incorporated into and to form part of this contract."[5]

On August 21, 2008, while the petitioner was welding wedges inside Hatch 5 of the vessel, a manhole cover accidentally fell and hit the petitioner on the head. The impact of the blow caused him pain on his neck and shoulders despite him wearing a protective helmet. He was given immediate medical attention and was kept under constant monitoring and observation.[6]

On September 11, 2008, the petitioner was medically repatriated to the Philippines where he arrived two (2) days later.[7]

On September 15, 2008, he consulted UPLI's accredited physician, Dr. Raymund Sugay of the Physicians' Diagnostic Center. After a physical examination, the petitioner was found

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[4] *Id*. at 243.

[5] *Id*. at 291.

[6] Jaco Triumph Shipping Ltd, Accident Report dated August 21, 2008; *id*. at 244.

[7] *Id*. at 52.

to be suffering from tenderness of paravertebral muscles along his back. The x-ray imaging of his spine showed no fractures but with straightening of the cervical spines. He was advised to undergo physical therapy.[8]

Thereafter, the petitioner was referred to UPLI's accredited physicians at the Metropolitan Medical Center where he was placed under the charge of orthopedic surgeon, Dr. William Chuasuan, Jr. (Dr. Chuasuan). After series of medical examinations, the petitioner was diagnosed with *Coccygodynia* and *Thoracolumbar Strain*. He was directed to continue his physical therapy sessions.[9]

On December 16, 2008, an interim Medical Report was issued by UPLI's accredited physicians, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon) and Dr. Robert Lim (Dr. Lim), who pronounced the petitioner's temporary disability as Grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk) under Section 32 of the POEA-SEC. The doctors recommended that the petitioner continue physical therapy for another six (6) to eight (8) weeks.[10]

Alleging that despite undergoing medical treatment and physical therapy sessions, his injuries did not heal and instead, his condition deteriorated, the petitioner filed before the LA a complaint for permanent disability benefits and sickness allowance with claims for damages and attorney's fees against UPLI, its President, Fernando T. Lising and Belships (respondents).[11]

He claimed that pursuant to the Philippine Seafarer's Union/ International Transport Workers Federation Total Crew Cost (PSU/ITF TCC) Agreement incorporated in his employment contract, he is entitled to the maximum permanent disability

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[8] *Id*. at 245-246.

[9] *Id*. at 250-253.

[10] *Id*. at 254.

[11] *Id*. at 277-289.

compensation of US$142,560.00[12] and sick wages equivalent to 130 days amounting to US$3,063.66.[13]

While the complaint was pending or on February 7, 2009, Dr. Chuasuan issued a report maintaining the Grade 11 disability assessment previously made on the petitioner's condition, *viz:*

> Patient has undergone 3 months of rehabilitation and claims only mild improvement of symptoms. Further treatment would probably be of some benefit but will not guarantee his fitness to work.
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> Interim disability of grade 11 stands.[14]

However, Drs. Cruz-Balbon and Lim raised the petitioner's assessment to Grade 8 or "moderate rigidity or two-thirds (2/3) loss of motion or lifting power" under Section 32 of the POEA-SEC in their medical report.[15] Based thereon, UPLI paid the petitioner sickness allowance of ₱133,843.47 for the period September 14, 2008 to January 12, 2009.[16]

Unconvinced of the final assessment made by UPLI's physicians, the petitioner consulted independent physician Dr. Raul Sabado (Dr. Sabado) of the Dagupan Orthopedic Center who, after examination, diagnosed him to be suffering from *Compression fracture vertebrae*, which is classified as Grade 1 disability. Dr. Sabado pronounced the petitioner permanently unfit for sea-faring duty in a medical certificate dated February 15, 2009.[17] The petitioner submitted such assessment to bolster his claim. He also submitted a copy of his Seaman's Employment Contract.[18] Likewise proffered in evidence was an alleged copy

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[12] *Id*. at 288.

[13] *Id*. at 286. However, in the prayer portion of his position paper, the petitioner asked for the amount of US$1,850.33 as sickwages for 130 days.

[14] *Id*. at 255.

[15] *Id*. at 53.

[16] *Id*. at 257-261.

[17] *Id*. at 149.

[18] *Id*. at 291.

of ITF Uniform "TCC" Collective Agreement under Sections 22 and 24[19] of which the petitioner is allegedly entitled to maximum permanent disability compensation of US$142,560.00 and sick wages equivalent to one hundred thirty (130) days or US$3,063.66. The petitioner also submitted a copy of a CBA between PSU-ALU-TUCP-ITF and Belships covering the M/V Jaco Triumph for the period November 1, 2008 to October 31, 2009.[20]

For their part, the respondents denied that the petitioner's employment was covered by a CBA and pointed out that the selected pages of the alleged CBA that he attached are misleading. They averred that he is entitled only to the benefits accorded to Grade 11 disability by the POEA-SEC as determined by the company's designated physicians.[21]

Ruling of the LA

On June 10, 2009, the LA rendered a Decision[22] according greater merit to the assessment made by the petitioner's independent doctor over the varying, hence, unreliable, assessments issued by the respondents' accredited physicians. The LA also noted that the several amounts for settlement offered by the respondents to the petitioner are indicative that he is indeed entitled to permanent disability benefits.

The LA rejected the respondents' assertion that the petitioner's employment was not covered by a CBA since the exact opposite was proven with certainty by the POEA-approved employment contract submitted by the petitioner. Anent the applicable basis of the award of permanent disability benefits, the LA found the attached pages of the ITF Uniform "TCC" Collective Agreement applicable and sufficient under which the petitioner is entitled to disability compensation and balance of the due sickness allowance under Sections 22 and 24 thereof. The LA awarded

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[19] *Id.* at 294-295.

[20] *Id.* at 101-113.

[21] *Id.* at 263-276.

[22] Rendered by LA Elias H. Salinas; *id.* at 152-161.

moral and exemplary damages in view of the bad faith exhibited by the respondents when they lured the petitioner into settlement by offering various amounts with no genuine intent to actually settle. The dispositive portion of the decision thus read:

> **WHEREFORE,** premises considered[,] judgment is hereby rendered ordering respondents United Philippine Lines, Inc. and Belships Management (Singapore) PTE Ltd. to jointly and severally pay (the petitioner) the peso equivalent at the time of actual payment of the sums of US$82,500.00 and US$271.92 as permanent total disability benefits and balance of sickness allowance respectively, pursuant to the mandate of the ITF Uniform "TCC" Collective Agreement. Respondents are further ordered to pay moral and exemplary damages to the (petitioner) in the amount of [₱]100,000.00 each plus the amount equivalent to ten percent (10%) of the judgment award as and by way of attorney's fees.
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> All claims are ordered dismissed for lack of merit.
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> SO ORDERED.[23]

Ruling of the NLRC

The NLRC agreed with the conclusions of the LA adding that there is actually no disparity between the assessment given by the company doctors and the petitioner's own physician as they uniformly found the petitioner to be permanently unfit for sea duty. Dr. Chuasuan categorically declared in his February 7, 2009 letter that "[f]urther treatment would probably be of some benefit but will not guarantee his fitness to work."[24] The final assessment made by the respondents' doctors also stated that the petitioner has lost 2/3 of his motion lifting power which can only mean that he is already permanently unfit for sea service. Regardless of the different disability grading given by the doctors, the petitioner is undoubtedly already permanently incapacitated. As such, the NLRC Decision[25] dated May 24, 2010 disposed as follows:

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[23] *Id*. at 161.

[24] *Id*. at 255.

[25] *Id*. at 162-174.

WHEREFORE, premises considered, the appeal of respondents is DISMISSED for lack of merit. The assailed Decision is hereby AFFIRMED.

SO ORDERED.[26]

The respondents moved for reconsideration but the motion was denied in the NLRC Resolution[27] dated July 30, 2011.

Ruling of the CA

The respondents sought recourse with the CA which found partial merit in their petition. The CA disagreed with the LA and the NLRC that there is adequate proof of the provisions of the CBA. The CA ruled that while the petitioner's employment contract states that the "current PSU/ITF TCC Agreement" is incorporated therein, what he attached to his *Position Paper* and *Motion to Dismiss Appeal and/or Opposition* is the CBA between PSU-ALU-TUCP-ITF and Belships which does not contain Sections 22 and 24 cited by him for his claim and relied upon by the LA in awarding the disability compensation. In fact, under the said agreement, entitlement to the maximum disability compensation of either US$110,000.00 or US$90,000.00 is accorded only to two classes of officers, *i.e.*, the class of radio officers and chief stewards or the class of electricians and electro technicians - neither of which does the petitioner belong to. The petitioner failed to discharge his burden of proving by substantial evidence his entitlement to superior benefits under the purported "ITF TCC CBA" as he merely submitted copies of the CBA between PSU-ALU-TUCP-ITF and Belships and not the relevant PSU/ITF TCC Agreement.

The CA sustained the final assessment of the respondents' physicians assigning Grade 8 disability to the petitioner which is compensable under Section 32 of the POEA-SEC or US$16,795.00 (33.59% of US$50,000.00). The awards for damages and attorney's fees were deleted for lack of bad faith

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[26] *Id.* at 173.

[27] *Id.* at 176-177.

on the part of the respondents who promptly provided the petitioner with medical assistance and sickness allowance from September 2008 to January 2009. Thus, the CA Decision[28] dated May 26, 2011 disposed as follows:

WHEREFORE, the petition for *certiorari* is **PARTLY GRANTED.** The May 24, 2010 *Decision* of public respondent NLRC is **SET ASIDE** and the June 10, 2009 *Decision* of the Labor Arbiter is **REINSTATED with MODIFICATION**, to read, *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered, ordering respondents United Philippine Lines, Inc. and Belships Management (Singapore) PTE Ltd. to jointly and severally pay (the petitioner) the sum of **US$16,795.00 or its equivalent in Philippine Currency at the prevailing exchange rate at the time of payment, representing permanent medical unfitness benefits, plus legal interest reckoned from the time it was due. The claims for moral and exemplary damages, and attorney's fees are dismissed for lack of merit.**
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> SO ORDERED.

SO ORDERED.[29] (Emphasis added)

Aggrieved, the petitioner interposed the present petition ascribing misappreciation of facts on the part of the CA.

The Court's Ruling

The petition is partially meritorious.

There is no question that the petitioner's injury is work-related and that he is entitled to disability benefits. The dispute lies in the degree of such injury and the applicable basis for the amount of benefits due for the same.

Preliminarily, it must be emphasized that this Court is not a trier of facts hence, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under

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[28] *Id*. at 50-67.

[29] *Id*. at 66.

Rule 45.[30] In the exercise of its power of review, the findings of fact of the CA are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. However, it is a recognized exception that when the CA's findings are contrary to those of the NLRC and LA, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[31]

The petitioner's injury should be classified as permanent and total disability.

The findings of the NLRC on the degree of the petitioner's disability are most in accord with the evidence on record. As ardently observed by the labor commission, the orthopedic surgeon designated by the respondents, Dr. Chuasuan, and the petitioner's independent specialist, Dr. Sabado, were one in declaring that the petitioner is permanently unfit for sea duty. Dr. Sabado categorically pronounced the same in his certification dated February 15, 2009[32] while the import of Dr. Chuasuan's report on February 7, 2009[33] conveyed the similar conclusion when he stated: "[f]urther treatment would probably be of some benefit but will not guarantee (the petitioner's) fitness to work." The uncertain effect of further treatment intimates nothing more but that the injury sustained by the petitioner bars him from performing his customary and strenuous work as a seafarer/ fitter. As such, he is considered permanently and totally disabled.

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[30] Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[31] *Dimagan v. Dacworks United, Incorporated,* G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

[32] *Rollo,* p. 149.

[33] *Id*. at 255.

Permanent and total disability means "disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do."[34]

It is inconsequential whether the petitioner was actually recorded by the respondents to be driving a motorcycle. It does not preclude an award for disability because, in labor laws, disability need not render the seafarer absolutely helpless or feeble to be compensable; it is enough that it incapacitates to perform his customary work.[35]

It is not unexpected for Drs. Cruz-Balbon and Lim to downplay the report of Dr. Chuasuan when they issued the Grade 8 final disability assessment. The Court is not naive of such interplay of force between the seafarer, the company and the latter's accredited physicians. As the medical coordinators of the hospital that represents the company in the conduct of medical evaluations, they are accustomed to do so in order to underrate the compensation the company must pay to the seafarer-claimant. This is precisely one of the reasons why the seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician.[36]

The award of permanent disability benefits shall be governed by the POEA-SEC.

Settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue. In labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[37] In disability claims,

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[34] *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671 (2007).

[35] *Id*.

[36] *Id*. at 670.

[37] *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavillion Hotel Chapter v. NLRC*, G.R. No. 179402, September 30, 2008, 567 SCRA 291, 305.

as in the case at bar, the employee bears the *onus* to prove by substantial evidence his own positive assertions.[38]

To show that he is entitled to superior disability benefits under a CBA, the petitioner submitted copies of pages 9 and 10 of the purported PSU/ITF TCC Agreement[39] and a copy of the complete text of a CBA between PSU-ALU-TUCP-ITF and Belships dated November 3, 2008.[40] Neither of which, however, substantially establish his claim for the amount of US$142,560.00 permanent disability benefits.

The two-paged evidence reflecting what is supposed to be Sections 22 and 24 of a PSU/ITF TCC Agreement is too trifling to adequately prove that it is indeed the agreement signed by Belships or that it even covers the petitioner. From the said piecemeal evidence, it is impossible to deduce whether it is indeed the correct CBA upon which the superior amount of permanent disability benefit claimed by the petitioner can be based. Neither can the complete text of CBA between PSU-ALU-TUCP-ITF and Belships be considered as satisfactory evidence. As correctly observed by the CA, the said agreement does not contain Sections 22 and 24 cited by the petitioner for his claim and relied upon by the LA in awarding the disability compensation. The provision therein that deals with disability compensation is Article 12 which reads:

Article 12
Disability Compensation

If a seafarer due to no fault of his own, suffers an occupational injury as a result of an accident or an occupational disease while serving on board or while travelling to or from the vessel on Company's business or due to marine peril, and as a result his ability to work is permanently reduced, partially or totally, and never to be declared fit, the Company shall pay him a disability compensation which

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[38] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 675.

[39] *Rollo*, pp. 294-295.

[40] *Id.* at 101-113.

including the amounts stipulated by the POEA's rules and regulations shall be maximum:

Radio Officers, Chief Stewards, Electricians, Electro Technicians	USD 110 000
Ratings	USD 90 000

x x x x x x x x x.[41]

The CA baselessly concluded that the provision is limited only to radio officers, chief stewards, electricians and electro technicians under which the petitioner cannot be categorized. As can be gleaned above, ratings are covered by disability compensation. It is not logical to limit the provision only to the officers as the union, PSU-ALU-TUCP-ITF, represents all Filipino crew members without exception.[42]

Nevertheless, the inapplicability of the provision to the petitioner must be sustained in view of the fact that the duration of the submitted copy of PSU-ALU-TUCP-ITF and Belships CBA is from November 1, 2008 until October 31, 2009[43] or outside the petitioner's employment period which expired as early as July 2008.

In fine, the petitioner failed to proffer credible and competent evidence of his claim for superior disability benefits. What remains as competent basis for disability award is the POEA-SEC, Section 20(B)(6) thereof provides, to wit:

> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

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[41] *Id*. at 108-109.

[42] *See* page 1 of the PSU-ALU-TUCP-ITF and Belships CBA; *id*. at 103.

[43] Article 27 of the PSU-ALU-TUCP-ITF and Belships CBA; *id*. at 112.

Section 32, on the other hand, states that a disability allowance of US$60,000.00 (US$50,000.00 x 120%) is granted for an impediment considered as total and permanent, such as that adjudged to have befallen the petitioner.

Anent sickness benefits, the Court finds that the respondents have already satisfied the same based on Section 20(B)(3) of the POEA-SEC. Under the said provision, upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. The receipts on record establish payment of the petitioner's sickness allowance from September 14, 2008 to January 12, 2009 or for a period of 120 days.[44]

Damages and Attorney's Fees

The CA correctly denied an award of moral and exemplary damages. The respondents were not negligent in affording the petitioner with medical treatment neither did they forsake him during his period of disability. However, the Court finds that the petitioner is entitled to attorney's fees pursuant to Article 2208(8) of the Civil Code[45] which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.[46]

WHEREFORE, foregoing considered, the petition is **PARTLY GRANTED.** The Decision dated May 26, 2011 and

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[44] *Id.* at 257-261.

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

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x.

[46] *Leonis Navigation Co. Inc. v. Villamater,* G.R. No. 179169, March 3, 2010, 614 SCRA 182, 201.

Resolution dated December 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116631 are hereby **AFFIRMED** with the **MODIFICATION** that respondents United Philippines Lines, Inc. and Belships Management (Singapore) Pte Ltd. are jointly and severally liable to pay petitioner Camilo Esguerra's permanent disability benefits in the amount of US$60,000.00 at the prevailing rate of exchange at the time of payment, plus legal interest reckoned from the time it was due. In addition, they shall also pay attorney's fees amounting to ten percent (10%) of the total award. The dismissal of the claims for moral and exemplary damages **STANDS.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 201061. July 3, 2013]

SALLY GO-BANGAYAN, *petitioner, vs.* **BENJAMIN BANGAYAN, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE, PRESENTATION OF; CONTINUED REFUSAL TO PRESENT EVIDENCE WAS DEEMED A WAIVER OF RIGHT TO PRESENT EVIDENCE.— We agree with the trial court that by her continued refusal to present her evidence, she was deemed to have waived her right to present them. As pointed out by the Court of Appeals, Sally's continued failure to present her evidence despite the opportunities given by the trial court showed her lack of interest to proceed with the case. Further, it was clear that Sally was delaying the case because she was waiting for the decision of the Court of Appeals on her petition

questioning the trial court's denial of her demurrer to evidence, despite the fact that the Court of Appeals did not issue any temporary restraining order as Sally prayed for. Sally could not accuse the trial court of failing to protect marriage as an inviolable institution because the trial court also has the duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed by one of the parties.

2. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; MARRIAGE SOLEMNIZED WITHOUT A LICENSE WAS NULL AND VOID *AB INITIO* AND NON-EXISTENT.— We see no inconsistency in finding the marriage between Benjamin and Sally null and void *ab initio* and, at the same time, non-existent. Under Article 35 of the Family Code, a marriage solemnized without a license, except those covered by Article 34 where no license is necessary, "shall be void from the beginning." In this case, the marriage between Benjamin and Sally was solemnized without a license. It was duly established that no marriage license was issued to them and that Marriage License No. N-07568 did not match the marriage license numbers issued by the local civil registrar of Pasig City for the month of February 1982. The case clearly falls under Section 3 of Article 35 which made their marriage void *ab initio.* The marriage between Benjamin and Sally was also non-existent. Applying the general rules on void or inexistent contracts under Article 1409 of the Civil Code, contracts which are absolutely simulated or fictitious are "inexistent and void from the beginning." Thus, the Court of Appeals did not err in sustaining the trial court's ruling that the marriage between Benjamin and Sally was null and void *ab initio* and non-existent.

3. ID.; ID.; ID.; ID.; WHEN THE SUBSEQUENT MARRIAGE WAS CONTRACTED WITHOUT A MARRIAGE LICENSE, SUCH MARRIAGE IS NOT BIGAMOUS.— While the Court of Appeals did not discuss bigamous marriages, it can be gleaned from the dispositive portion of the decision declaring that "[t]he rest of the decision stands" that the Court of Appeals adopted the trial court's discussion that the marriage between Benjamin and Sally is not bigamous. x x x For bigamy to exist, the second or subsequent marriage must have all the essential requisites for validity except for the existence of a prior marriage. In this case, there was really no subsequent

marriage. Benjamin and Sally just signed a purported marriage contract without a marriage license. The supposed marriage was not recorded with the local civil registrar and the National Statistics Office. In short, the marriage between Benjamin and Sally did not exist. They lived together and represented themselves as husband and wife without the benefit of marriage.

4. ID.; ID.; PROPERTY RELATIONS OF PARTIES WITHOUT THE BENEFIT OF MARRIAGE; ARTICLE 148 GOVERNS THE PROPERTY RELATIONS OF THE PARTIES; WITHOUT PROOF OF ACTUAL CONTRIBUTION, THERE CAN BE NO CO-OWNERSHIP.— The Court of Appeals correctly ruled that the property relations of Benjamin and Sally is governed by Article 148 of the Family Code[.] x x x Benjamin and Sally cohabitated without the benefit of marriage. Thus, only the properties acquired by them through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. Thus, both the trial court and the Court of Appeals correctly excluded the 37 properties being claimed by Sally which were given by Benjamin's father to his children as advance inheritance. Sally's Answer to the petition before the trial court even admitted that "Benjamin's late father himself conveyed a number of properties to his children and their respective spouses which included Sally x x x." As regards the seven remaining properties, we rule that the decision of the Court of Appeals is more in accord with the evidence on record. Only the property covered by TCT No. 61722 was registered in the names of Benjamin and Sally as spouses. The properties under TCT Nos. 61720 and 190860 were in the name of Benjamin with the descriptive title "married to Sally." The property covered by CCT Nos. 8782 and 8783 were registered in the name of Sally with the descriptive title "married to Benjamin" while the properties under TCT Nos. N-193656 and 253681 were registered in the name of Sally as a single individual. We have ruled that the words "married to" preceding the name of a spouse are merely descriptive of the civil status of the registered owner. Such words do not prove co-ownership. Without proof of actual contribution from either or both spouses, there can be no co-ownership under Article 148 of the Family Code.

APPEARANCES OF COUNSEL

Leny L. Mauricio for petitioner.
Marissa V. Manalo for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 17 August 2011 Decision[2] and the 14 March 2012 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 94226.

The Antecedent Facts

On 15 March 2004, Benjamin Bangayan, Jr. (Benjamin) filed a petition for declaration of a non-existent marriage and/or declaration of nullity of marriage before the Regional Trial Court of Manila, Branch 43 (trial court). The case was docketed as Civil Case No. 04109401. Benjamin alleged that on 10 September 1973, he married Azucena Alegre (Azucena) in Caloocan City. They had three children, namely, Rizalyn, Emmamylin, and Benjamin III.

In 1979, Benjamin developed a romantic relationship with Sally Go-Bangayan (Sally) who was a customer in the auto parts and supplies business owned by Benjamin's family. In December 1981, Azucena left for the United States of America. In February 1982, Benjamin and Sally lived together as husband

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

[2] *Rollo*, pp. 29-40. Penned by Associate Justice (now Supreme Court Associate Justice) Estela M. Perlas-Bernabe with Associate Justices Bienvenido L. Reyes (now also a Supreme Court Associate Justice) and Samuel H. Gaerlan, concurring.

[3] *Id.* at 52. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring.

and wife. Sally's father was against the relationship. On 7 March 1982, in order to appease her father, Sally brought Benjamin to an office in Santolan, Pasig City where they signed a purported marriage contract. Sally, knowing Benjamin's marital status, assured him that the marriage contract would not be registered.

Benjamin and Sally's cohabitation produced two children, Bernice and Bentley. During the period of their cohabitation, they acquired the following real properties:

(1) property under Transfer Certificate of Title (TCT) No. 61722 registered in the names of Benjamin and Sally as spouses;

(2) properties under TCT Nos. 61720 and 190860 registered in the name of Benjamin, married to Sally;

(3) properties under Condominium Certificate of Title (CCT) Nos. 8782 and 8783 registered in the name of Sally, married to Benjamin; and

(4) properties under TCT Nos. N-193656 and 253681 registered in the name of Sally as a single individual.

The relationship of Benjamin and Sally ended in 1994 when Sally left for Canada, bringing Bernice and Bentley with her. She then filed criminal actions for bigamy and falsification of public documents against Benjamin, using their simulated marriage contract as evidence. Benjamin, in turn, filed a petition for declaration of a non-existent marriage and/or declaration of nullity of marriage before the trial court on the ground that his marriage to Sally was bigamous and that it lacked the formal requisites to a valid marriage. Benjamin also asked the trial court for the partition of the properties he acquired with Sally in accordance with Article 148 of the Family Code, for his appointment as administrator of the properties during the pendency of the case, and for the declaration of Bernice and Bentley as illegitimate children. A total of 44 registered properties became the subject of the partition before the trial court. Aside from the seven properties enumerated by Benjamin in his petition, Sally named 37 properties in her answer.

After Benjamin presented his evidence, Sally filed a demurrer to evidence which the trial court denied. Sally filed a motion for reconsideration which the trial court also denied. Sally filed a petition for *certiorari* before the Court of Appeals and asked for the issuance of a temporary restraining order and/or injunction which the Court of Appeals never issued. Sally then refused to present any evidence before the trial court citing the pendency of her petition before the Court of Appeals. The trial court gave Sally several opportunities to present her evidence on 28 February 2008, 10 July 2008, 4 September 2008, 11 September 2008, 2 October 2008, 23 October 2008, and 28 November 2008. Despite repeated warnings from the trial court, Sally still refused to present her evidence, prompting the trial court to consider the case submitted for decision.

The Decision of the Trial Court

In a Decision[4] dated 26 March 2009, the trial court ruled in favor of Benjamin. The trial court gave weight to the certification dated 21 July 2004 from the Pasig Local Civil Registrar, which was confirmed during trial, that only Marriage License Series Nos. 6648100 to 6648150 were issued for the month of February 1982 and the purported Marriage License No. N-07568 was not issued to Benjamin and Sally.[5] The trial court ruled that the marriage was not recorded with the local civil registrar and the National Statistics Office because it could not be registered due to Benjamin's subsisting marriage with Azucena.

The trial court ruled that the marriage between Benjamin and Sally was not bigamous. The trial court ruled that the second marriage was void not because of the existence of the first marriage but because of other causes, particularly, the lack of a marriage license. Hence, bigamy was not committed in this case. The trial court did not rule on the issue of the legitimacy status of Bernice and Bentley because they were not parties to the case. The trial court denied Sally's claim for spousal support because she was not married to Benjamin. The trial court likewise

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[4] *Id.* at 107-123. Penned by Presiding Judge Roy G. Gironella.

[5] Records, Vol. 2, p. 461.

denied support for Bernice and Bentley who were both of legal age and did not ask for support.

On the issue of partition, the trial court ruled that Sally could not claim the 37 properties she named in her answer as part of her conjugal properties with Benjamin. The trial court ruled that Sally was not legally married to Benjamin. Further, the 37 properties that Sally was claiming were owned by Benjamin's parents who gave the properties to their children, including Benjamin, as advance inheritance. The 37 titles were in the names of Benjamin and his brothers and the phrase "married to Sally Go" was merely descriptive of Benjamin's civil status in the title. As regards the two lots under TCT Nos. 61720 and 190860, the trial court found that they were bought by Benjamin using his own money and that Sally failed to prove any actual contribution of money, property or industry in their purchase. The trial court found that Sally was a registered co-owner of the lots covered by TCT Nos. 61722, N-193656, and 253681 as well as the two condominium units under CCT Nos. 8782 and 8783. However, the trial court ruled that the lot under TCT No. 61722 and the two condominium units were purchased from the earnings of Benjamin alone. The trial court ruled that the properties under TCT Nos. 61722, 61720, and 190860 and CCT Nos. 8782 and 8783 were part of the conjugal partnership of Benjamin and Azucena, without prejudice to Benjamin's right to dispute his conjugal state with Azucena in a separate proceeding.

The trial court further ruled that Sally acted in bad faith because she knew that Benjamin was married to Azucena. Applying Article 148 of the Family Code, the trial court forfeited Sally's share in the properties covered under TCT Nos. N-193656 and 253681 in favor of Bernice and Bentley while Benjamin's share reverted to his conjugal ownership with Azucena.

The dispositive portion of the trial court's decision reads:

ACCORDINGLY, the marriage of BENJAMIN BANGAYAN, JR. and SALLY S. GO on March 7, 1982 at Santolan, Pasig, Metro Manila is hereby declared NULL and VOID *AB INITIO*. It is further declared NON-EXISTENT.

Respondent's claim as co-owner or conjugal owner of the thirty-seven (37) properties under TCT Nos. 17722, 17723, 17724, 17725, 126397, RT-73480, and RT-86821; in Manila, TCT Nos. 188949, 188950, 188951, 193035, 194620, 194621, 194622, 194623, 194624, 194625, 194626, 194627, 194628, 194629, 194630, 194631, 194632, 194633, 194634, 194635, 194636, 194637, 194638, 194639, 198651, 206209, 206210, 206211, 206213 and 206215 is DISMISSED for lack of merit. The registered owners, namely: Benjamin B. Bangayan, Jr., Roberto E. Bangayan, Ricardo B. Bangayan and Rodrigo B. Bangayan are the owners to the exclusion of *"Sally Go"* Consequently, the Registry of Deeds for Quezon City and Manila are directed to delete the words *"married to Sally Go"* from these thirty[-]seven (37) titles.

Properties under TCT Nos. 61722, 61720 and 190860, CCT Nos. 8782 and 8783 are properties acquired from petitioner's money without contribution from respondent, hence, these are properties of the petitioner and his lawful wife. Consequently, petitioner is appointed the administrator of these five (5) properties. Respondent is ordered to submit an accounting of her collections of income from these five (5) properties within thirty (30) days from notice hereof. Except for lot under TCT No. 61722, respondent is further directed within thirty (30) days from notice hereof to turn over and surrender control and possession of these properties including the documents of title to the petitioner.

On the properties under TCT Nos. N-193656 and N-253681, these properties are under co-ownership of the parties shared by them equally. However, the share of respondent is declared FORFEITED in favor of Bernice Go Bangayan and Bentley Go Bangayan. The share of the petitioner shall belong to his conjugal ownership with Azucena Alegre. The liquidation, partition and distribution of these two (2) properties shall be further processed pursuant to Section 21 of A.M. No. 02-11-10 of March 15, 2003.

Other properties shall be adjudicated in a later proceeding pursuant to Section 21 of A.M. No. 02-11-10.

Respondent's claim of spousal support, children support and counterclaims are DISMISSED for lack of merit. Further, no declaration of the status of the parties' children.

No other relief granted.

Furnish copy of this decision to the parties, their counsels, the Trial Prosecutor, the Solicitor General and the Registry of Deeds in Manila, Quezon City and Caloocan.

SO ORDERED.[6]

Sally filed a Verified and Vigorous Motion for Inhibition with Motion for Reconsideration. In its Order dated 27 August 2009,[7] the trial court denied the motion. Sally appealed the trial court's decision before the Court of Appeals.

The Decision of the Court of Appeals

In its 17 August 2011 Decision, the Court of Appeals partly granted the appeal. The Court of Appeals ruled that the trial court did not err in submitting the case for decision. The Court of Appeals noted that there were six resettings of the case, all made at the instance of Sally, for the initial reception of evidence, and Sally was duly warned to present her evidence on the next hearing or the case would be deemed submitted for decision. However, despite the warning, Sally still failed to present her evidence. She insisted on presenting Benjamin who was not around and was not subpoenaed despite the presence of her other witnesses.

The Court of Appeals rejected Sally's allegation that Benjamin failed to prove his action for declaration of nullity of marriage. The Court of Appeals ruled that Benjamin's action was based on his prior marriage to Azucena and there was no evidence that the marriage was annulled or dissolved before Benjamin contracted the second marriage with Sally. The Court of Appeals ruled that the trial court committed no error in declaring Benjamin's marriage to Sally null and void.

The Court of Appeals ruled that the property relations of Benjamin and Sally was governed by Article 148 of the Family Code. The Court of Appeals ruled that only the properties acquired by the parties through their actual joint contribution of money,

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[6] *Id.* at 122-123.

[7] *Id.* at 124-128.

property or industry shall be owned by them in common in proportion to their respective contribution. The Court of Appeals ruled that the 37 properties being claimed by Sally rightfully belong to Benjamin and his siblings.

As regards the seven properties claimed by both parties, the Court of Appeals ruled that only the properties under TCT Nos. 61720 and 190860 registered in the name of Benjamin belong to him exclusively because he was able to establish that they were acquired by him solely. The Court of Appeals found that the properties under TCT Nos. N-193656 and 253681 and under CCT Nos. 8782 and 8783 were exclusive properties of Sally in the absence of proof of Benjamin's actual contribution in their purchase. The Court of Appeals ruled that the property under TCT No. 61722 registered in the names of Benjamin and Sally shall be owned by them in common, to be shared equally. However, the share of Benjamin shall accrue to the conjugal partnership under his existing marriage with Azucena while Sally's share shall accrue to her in the absence of a clear and convincing proof of bad faith.

Finally, the Court of Appeals ruled that Sally failed to present clear and convincing evidence that would show bias and prejudice on the part of the trial judge that would justify his inhibition from the case.

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The assailed Decision and Order dated March 26, 2009 and August 27, 2009, respectively, of the Regional Trial Court of Manila, Branch 43, in Civil Case No. 04-109401 are hereby AFFIRMED with modification declaring TCT Nos. 61720 and 190860 to be exclusively owned by the petitioner-appellee while the properties under TCT Nos. N-193656 and 253681 as well as [CCT] Nos. 8782 and 8783 shall be solely owned by the respondent-appellant. On the other hand, TCT No. 61722 shall be owned by them and common and to be shared equally but the share of the petitioner-appellee shall accrue to the conjugal partnership under his first marriage while the share of respondent-appellant shall accrue to her. The rest of the decision stands.

SO ORDERED.[8]

Sally moved for the reconsideration of the Court of Appeals' decision. In its 14 March 2012 Resolution, the Court of Appeals denied her motion.

Hence, the petition before this Court.

The Issues

Sally raised the following issues before this Court:

(1) Whether the Court of Appeals committed a reversible error in affirming the trial court's ruling that Sally had waived her right to present evidence;

(2) Whether the Court of Appeals committed a reversible error in affirming the trial court's decision declaring the marriage between Benjamin and Sally null and void *ab initio* and non-existent; and

(3) Whether the Court of Appeals committed a reversible error in affirming with modification the trial court's decision regarding the property relations of Benjamin and Sally.

The Ruling of this Court

The petition has no merit.

Waiver of Right to Present Evidence

Sally alleges that the Court of Appeals erred in affirming the trial court's ruling that she waived her right to present her evidence. Sally alleges that in not allowing her to present evidence that she and Benjamin were married, the trial court abandoned its duty to protect marriage as an inviolable institution.

It is well-settled that a grant of a motion for continuance or postponement is not a matter of right but is addressed to the discretion of the trial court.[9] In this case, Sally's presentation

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[8] *Id.* at 40.

[9] See *Bautista v. Court of Appeals*, G.R. No. 157219, 28 May 2004, 430 SCRA 353.

of evidence was scheduled on 28 February 2008. Thereafter, there were six resettings of the case: on 10 July 2008, 4 and 11 September 2008, 2 and 28 October 2008, and 28 November 2008. They were all made at Sally's instance. Before the scheduled hearing of 28 November 2008, the trial court warned Sally that in case she still failed to present her evidence, the case would be submitted for decision. On the date of the scheduled hearing, despite the presence of other available witnesses, Sally insisted on presenting Benjamin who was not even subpoenaed on that day. Sally's counsel insisted that the trial court could not dictate on the priority of witnesses to be presented, disregarding the trial court's prior warning due to the numerous resettings of the case. Sally could not complain that she had been deprived of her right to present her evidence because all the postponements were at her instance and she was warned by the trial court that it would submit the case for decision should she still fail to present her evidence on 28 November 2008.

We agree with the trial court that by her continued refusal to present her evidence, she was deemed to have waived her right to present them. As pointed out by the Court of Appeals, Sally's continued failure to present her evidence despite the opportunities given by the trial court showed her lack of interest to proceed with the case. Further, it was clear that Sally was delaying the case because she was waiting for the decision of the Court of Appeals on her petition questioning the trial court's denial of her demurrer to evidence, despite the fact that the Court of Appeals did not issue any temporary restraining order as Sally prayed for. Sally could not accuse the trial court of failing to protect marriage as an inviolable institution because the trial court also has the duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed by one of the parties.[10]

Validity of the Marriage between Benjamin and Sally

Sally alleges that both the trial court and the Court of Appeals recognized her marriage to Benjamin because a marriage could

[10] *Id.*

not be non-existent and, at the same time, null and void *ab initio*. Sally further alleges that if she were allowed to present her evidence, she would have proven her marriage to Benjamin. To prove her marriage to Benjamin, Sally asked this Court to consider that in acquiring real properties, Benjamin listed her as his wife by declaring he was "married to" her; that Benjamin was the informant in their children's birth certificates where he stated that he was their father; and that Benjamin introduced her to his family and friends as his wife. In contrast, Sally claims that there was no real property registered in the names of Benjamin and Azucena. Sally further alleges that Benjamin was not the informant in the birth certificates of his children with Azucena.

First, Benjamin's marriage to Azucena on 10 September 1973 was duly established before the trial court, evidenced by a certified true copy of their marriage contract. At the time Benjamin and Sally entered into a purported marriage on 7 March 1982, the marriage between Benjamin and Azucena was valid and subsisting.

On the purported marriage of Benjamin and Sally, Teresita Oliveros (Oliveros), Registration Officer II of the Local Civil Registrar of Pasig City, testified that there was no valid marriage license issued to Benjamin and Sally. Oliveros confirmed that only Marriage Licence Nos. 6648100 to 6648150 were issued for the month of February 1982. Marriage License No. N-07568 did not match the series issued for the month. Oliveros further testified that the local civil registrar of Pasig City did not issue Marriage License No. N-07568 to Benjamin and Sally. The certification from the local civil registrar is adequate to prove the non-issuance of a marriage license and absent any suspicious circumstance, the certification enjoys probative value, being issued by the officer charged under the law to keep a record of all data relative to the issuance of a marriage license.[11] Clearly, if indeed Benjamin and Sally entered into a marriage contract,

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[11] *Nicdao Cariño v. Yee Cariño*, 403 Phil. 861 (2001).

the marriage was void from the beginning for lack of a marriage license.[12]

It was also established before the trial court that the purported marriage between Benjamin and Sally was not recorded with the local civil registrar and the National Statistics Office. The lack of record was certified by Julieta B. Javier, Registration Officer IV of the Office of the Local Civil Registrar of the Municipality of Pasig;[13] Teresita R. Ignacio, Chief of the Archives Division of the Records Management and Archives Office, National Commission for Culture and the Arts;[14] and Lourdes J. Hufana, Director III, Civil Registration Department of the National Statistics Office.[15] The documentary and testimonial evidence proved that there was no marriage between Benjamin and Sally. As pointed out by the trial court, the marriage between Benjamin and Sally "was made only in jest"[16] and "a simulated marriage, at the instance of [Sally], intended to cover her up from expected social humiliation coming from relatives, friends

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[12] Article 35 of the Family Code states:

Art. 35. The following marriages shall be void from the beginning:

(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

(3) Those solemnized without a license, except those covered by the preceding Chapter;

(4) Those bigamous or polygamous marriages not falling under Article 41;

(5)Those contracted through mistake of one contracting party as to the identity of the other; and

(6)Those subsequent marriages that are void under Article 53.

[13] Records, Vol. 2, p. 458.

[14] *Id.* at 459.

[15] *Id.* at 460.

[16] *Rollo*, p. 112.

and the society especially from her parents seen as Chinese conservatives."[17] In short, it was a fictitious marriage.

The fact that Benjamin was the informant in the birth certificates of Bernice and Bentley was not a proof of the marriage between Benjamin and Sally. This Court notes that Benjamin was the informant in Bernice's birth certificate which stated that Benjamin and Sally were married on 8 March 1982[18] while Sally was the informant in Bentley's birth certificate which also stated that Benjamin and Sally were married on 8 March 1982.[19] Benjamin and Sally were supposedly married on 7 March 1982 which did not match the dates reflected on the birth certificates.

We see no inconsistency in finding the marriage between Benjamin and Sally null and void *ab initio* and, at the same time, non-existent. Under Article 35 of the Family Code, a marriage solemnized without a license, except those covered by Article 34 where no license is necessary, "shall be void from the beginning." In this case, the marriage between Benjamin and Sally was solemnized without a license. It was duly established that no marriage license was issued to them and that Marriage License No. N-07568 did not match the marriage license numbers issued by the local civil registrar of Pasig City for the month of February 1982. The case clearly falls under Section 3 of Article 35[20] which made their marriage void *ab initio*. The marriage between Benjamin and Sally was also non-existent. Applying the general rules on void or inexistent contracts under Article 1409 of the Civil Code, contracts which are absolutely simulated or fictitious are "inexistent and void from the beginning."[21] Thus, the Court of Appeals did not err in sustaining

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[17] *Id.*

[18] Records, Vol. 1, p. 65.

[19] *Id.* at 66.

[20] *Supra* note 12.

[21] Article 1409. The following contracts are inexistent and void from the beginning:

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the trial court's ruling that the marriage between Benjamin and Sally was null and void *ab initio* and non-existent.

Except for the modification in the distribution of properties, the Court of Appeals affirmed in all aspects the trial court's decision and ruled that "[t]he rest of the decision stands."[22] While the Court of Appeals did not discuss bigamous marriages, it can be gleaned from the dispositive portion of the decision declaring that "[t]he rest of the decision stands" that the Court of Appeals adopted the trial court's discussion that the marriage between Benjamin and Sally is not bigamous. The trial court stated:

> On whether or not the parties' marriage is bigamous under the concept of Article 349 of the Revised Penal Code, the marriage is not bigamous. It is required that the first or former marriage shall not be null and void. The marriage of the petitioner to Azucena shall be assumed as the one that is valid, there being no evidence to the contrary and there is no trace of invalidity or irregularity on the face of their marriage contract. However, if the second marriage was void not because of the existence of the first marriage but for other causes such as lack of license, the crime of bigamy was not committed. In *People v. De Lara* [CA, 51 O.G., 4079], it was held that what was committed was contracting marriage against the provisions of laws not under Article 349 but Article 350 of the Revised Penal Code. Concluding, the marriage of the parties is therefore not bigamous because there was no marriage license. The daring and repeated stand of respondent that she is legally married to petitioner cannot, in any instance, be sustained. Assuming that her marriage to petitioner has the marriage license, yet the same would be bigamous, civilly or criminally as it would be invalidated by a prior existing valid marriage of petitioner and Azucena.[23]

For bigamy to exist, the second or subsequent marriage must have all the essential requisites for validity except for the existence

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(2) Those which are absolutely simulated or fictitious;

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[22] *Rollo*, p. 40.

[23] *Id.* at 112-113.

of a prior marriage.[24] In this case, there was really no subsequent marriage. Benjamin and Sally just signed a purported marriage contract without a marriage license. The supposed marriage was not recorded with the local civil registrar and the National Statistics Office. In short, the marriage between Benjamin and Sally did not exist. They lived together and represented themselves as husband and wife without the benefit of marriage.

Property Relations Between Benjamin and Sally

The Court of Appeals correctly ruled that the property relations of Benjamin and Sally is governed by Article 148 of the Family Code which states:

> Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.
>
> If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community of conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.
>
> The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

Benjamin and Sally cohabitated without the benefit of marriage. Thus, only the properties acquired by them through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. Thus, both the trial court and the Court of Appeals correctly excluded the 37 properties being claimed by Sally which were

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[24] See *Nollora, Jr. v. People*, G.R. No. 191425, 7 September 2011, 657 SCRA 330.

given by Benjamin's father to his children as advance inheritance. Sally's Answer to the petition before the trial court even admitted that "Benjamin's late father himself conveyed a number of properties to his children and their respective spouses which included Sally x x x."[25]

As regards the seven remaining properties, we rule that the decision of the Court of Appeals is more in accord with the evidence on record. Only the property covered by TCT No. 61722 was registered in the names of Benjamin and Sally as spouses.[26] The properties under TCT Nos. 61720 and 190860 were in the name of Benjamin[27] with the descriptive title "married to Sally." The property covered by CCT Nos. 8782 and 8783 were registered in the name of Sally[28] with the descriptive title "married to Benjamin" while the properties under TCT Nos. N-193656 and 253681 were registered in the name of Sally as a single individual. We have ruled that the words "married to" preceding the name of a spouse are merely descriptive of the civil status of the registered owner.[29] Such words do not prove co-ownership. Without proof of actual contribution from either or both spouses, there can be no co-ownership under Article 148 of the Family Code.[30]

Inhibition of the Trial Judge

Sally questions the refusal of Judge Roy G. Gironella (Judge Gironella) to inhibit himself from hearing the case. She cited the failure of Judge Gironella to accommodate her in presenting her evidence. She further alleged that Judge Gironella practically labeled her as an opportunist in his decision, showing his partiality against her and in favor of Benjamin.

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[25] Records, Vol. 1, p. 50.

[26] *Id.* at 23.

[27] *Id.* at 24-26.

[28] *Id.* at 27-28.

[29] *Acre v. Yuttikki*, 560 Phil. 495 (2007).

[30] *Id.*

We have ruled that the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.[31] To justify the call for inhibition, there must be extrinsic evidence to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself.[32] In this case, we have sufficiently explained that Judge Gironella did not err in submitting the case for decision because of Sally's continued refusal to present her evidence.

We reviewed the decision of the trial court and while Judge Gironella may have used uncomplimentary words in writing the decision, they are not enough to prove his prejudice against Sally or show that he acted in bad faith in deciding the case that would justify the call for his voluntary inhibition.

WHEREFORE, we **AFFIRM** the 17 August 2011 Decision and the 14 March 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 94226.

SO ORDERED.

Brion, Bersamin,[*] *del Castillo,* and *Perez, JJ.*, concur.

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[31] *Kilosbayan Foundation v. Janolo, Jr.*, G.R. No. 180543, 27 July 2010, 625 SCRA 684.

[32] *Ramiscal, Jr. v. Hernandez,* G.R. Nos. 173057-74, 27 September 2010, 631 SCRA 312.

[*] Designated additional member per Raffle dated 8 October 2012.

THIRD DIVISION

[G.R. No. 202709. July 3, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMEO ONIZA *Y* ONG and MERCY ONIZA *Y* CABARLE,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); LINKS IN THE CHAIN OF CUSTODY OF THE CONFISCATED DRUGS MUST BE ESTABLISHED BY THE PROSECUTION; EXCEPTIONS.— [T]he prosecution carried the burden of establishing the chain of custody of the dangerous drugs that the police allegedly seized from the accused on the night of June 16, 2004. It should establish the following **links** in that chain of custody of the confiscated item: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Still, jurisprudence has established a rare exception with respect to the first required link—immediate seizure and marking of the seized items in the presence of the accused and others—namely, that (a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved.

2. ID.; ID.; ID.; ID.; THE PROSECUTION FAILED TO ESTABLISH A JUSTIFIABLE GROUND FOR NON-COMPLIANCE WITH SECTION 21 OF R.A. 9165.— Here, the prosecution's own evidence as recited by the CA and the RTC is that the police officers did not make a physical inventory of the seized drugs nor did they take a picture of the same in the presence of the accused, someone in the media, a Department of Justice (DOJ) representative, and any elected public official.

All that Officer Albarico could say is that his companion, Officer Jiro, marked the plastic sachets with the initials of the accused already at the police station and then turned over the same to the desk officer who prepared the Request for Laboratory Examination. x x x Yet, the police officers did not bother to offer any sort of reason or justification for their failure to make an inventory and take pictures of the drugs immediately after their seizure in the presence of the accused and the other persons designated by the law. Both the RTC and the CA misapprehended the significance of such omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law. The procedures outlined in Section 21 of R.A. 9165 are not merely empty formalities—these are safeguards against abuse, the most notorious of which is its use as a tool for extortion. And what is the prosecution's evidence that the substances, which the police chemist examined and found to be *shabu*, were the same substances that the police officers allegedly seized from Romeo and Mercy? No such evidence exists. As pointed out above, the prosecution stipulated with the accused that the police chemist "could not testify on the source and origin of the subject specimens that she had examined." No police officer testified out of personal knowledge that the substances given to the police chemist and examined by her were the very same substances seized from the accused. In regard to the required presence of representatives from the DOJ and the media and an elective official, the prosecution also did not bother to offer any justification, even a hollow one, for failing to comply with such requirement.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the need to absolve the accused of the charges against them because of the police officers' outright

failure without any justification to abide by the law governing the conduct of seizure operations involving dangerous drugs.

The Facts and the Case

On June 21, 2004 the Public Prosecutors Office of Rizal filed separate charges of possession of dangerous drugs[1] before the Regional Trial Court (RTC) of Rizal, Branch 2, against the accused spouses Romeo in Criminal Case 7598 and Mercy Oniza in Criminal Case 7599. The prosecution further charged the spouses with selling dangerous drugs in Criminal Case 7600, all allegedly in violation of the Dangerous Drugs Act.

The prosecution's version is that at about 9:30 p.m. on June 16, 2004, PO1 Reynaldo M. Albarico, PO1 Fortunato P. Jiro III, and PO1 Jose Gordon Antonio of the Rodriguez Police Station in Rizal received information from a police asset that accused Mercy Oniza was selling dangerous drugs at Phase 1-D Kasiglahan Village, Barangay San Jose.[2] They immediately formed a team to conduct a buy-bust operation. After coordinating its action with the Philippine Drug Enforcement Agency, the police team proceeded to Kasiglahan Village on board an owner-type jeep. They brought with them two pieces of pre-marked ₱100 bills.[3]

On arrival at the place, the team members positioned themselves at about 15 to 20 meters from where they spotted Mercy Oniza and a male companion, later identified as her accused husband Romeo Oniza. The police informant approached Mercy and initiated the purchase.[4] He handed the two marked ₱100 bills to her which she in turn gave to Romeo.[5] After pocketing the money, the latter took out a plastic sachet of white crystalline substance from his pocket and gave it to the informant. The

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[1] The Comprehensive Dangerous Drugs Act of 2002.

[2] Records, p. 9.

[3] TSN, August 3, 2006, pp. 3-5.

[4] *Supra* note 2.

[5] *Id.*; TSN, August 3, 2006, p. 8.

latter then scratched his head as a signal for the police officers to make an arrest.[6]

The police officers came out of concealment to arrest Mercy and Romeo.[7] On seeing the police officers, however, the two quickly ran into their house, joined by Valentino Cabarle (separately charged) who had earlier stood nearby, and locked the door behind them. The officers rammed the door open to get in. They apprehended Mercy, Romeo, and Valentino.[8] Officer Jiro recovered four heat-sealed plastic sachets believed to contain *shabu* from Mercy. Officer Albarico retrieved two marked ₱100 bills and a similar plastic sachet from Romeo. Officer Antonio seized an identical sachet from Valentino.[9]

The police officers brought their three captives to the police station for investigation and booking. Officer Jiro marked all the items the police seized and had these brought to the Philippine National Police (PNP) Crime Laboratory for examination.[10] After forensic chemical analysis, the contents of the sachets proved to be *shabu*.[11]

The prosecution and the defense stipulated that the specimens that PO1 Annalee R. Forro, a PNP forensic chemical officer, examined were methamphetamine hydrochloride (*shabu*). They further stipulated, however, that Officer Forro "could not testify on the source and origin of the subject specimens that she had examined."[12] As a result, PO1 Forro did not testify and only her report was adduced by the prosecution as evidence.

The evidence for the accused shows, on the other hand, that at around 9:30 p.m. on June 16, 2004, the spouses Mercy and

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[6] *Supra* note 2.

[7] *Id.*

[8] TSN, April 11, 2005, p. 7.

[9] *Supra* note 2.

[10] *Supra* note 8, at 8, 11.

[11] Records, p. 15.

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

Romeo were asleep at their home when Mercy was suddenly awakened by the voice of Belen Morales calling on her from outside the house. As Mercy peeped through the window, Belen told her that the police had arrested and mauled Mercy's brother, Valentino. Mercy hurriedly ran out of the house to find out what had happened to her brother.[13]

When Mercy got to where Valentino was, she saw some police officers forcibly getting him into an owner-type jeep while Zenaida Cabarle, Mercy and Valentino's mother, kept pulling him out of the owner-type jeep. When Mercy approached Valentino, the police officers told her to accompany him to the police station. This prompted her to shout for her husband's help.[14]

Meanwhile, when Romeo had awakened, he came out of the house, and saw two police officers in black jackets, Albarico and Antonio, who approached him. They seized and shoved him into the owner-type jeep to join Mercy and Valentino. Romeo noticed that Valentino was grimacing in pain, having been beaten up by the police.[15]

At the police station, the police officers asked their three captives to produce ₱30,000.00 in exchange for their release.[16] Officer Antonio took out something from his pocket, showed it to them, and told them that he would use it to press charges against them. Afterwards, PO1 Antonio took Mercy to the kitchen room and hit her head with two pieces of pot covers ("*pinompyang*").[17]

Nearly after five years of trial or on April 2, 2009 the RTC rendered a decision[18] that found Romeo and Mercy guilty of possession of dangerous drugs in Criminal Cases 7598 and 7599,

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[13] TSN, January 21, 2008, pp. 4-5.

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

[15] TSN, March 24, 2008, pp. 4-6.

[16] TSN, January 21, 2008, p. 8.

[17] *Supra* note 15, at 7-8.

[18] CA *rollo*, p. 268.

respectively, and imposed on them both the penalty of imprisonment of 12 years and 1 day to 20 years and a fine of ₱300,000.00. Further, the trial court found them guilty of selling dangerous drugs in Criminal Case 7600 and imposed on them both the penalty of life imprisonment and a fine of ₱500,000.00. The trial court, however, acquitted Valentino of the separate charge of possession of dangerous drugs filed against him in Criminal Case 7597.

On appeal in CA-G.R. CR-HC 04301, the Court of Appeals (CA) affirmed the judgments of conviction against Romeo and Mercy, hence, the present appeal to this Court.

Issue Presented

The issue presented in this case is whether or not the prosecution proved beyond reasonable doubt that Romeo and Mercy were in possession of and were selling dangerous drugs when the team of police officers arrested them on June 16, 2004.

Ruling of the Court

The law prescribes certain procedures in keeping custody and disposition of seized dangerous drugs like the *shabu* that the police supposedly confiscated from Romeo and Mercy on June 16, 2004. Section 21 of Republic Act (R.A.) 9165 reads:

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

(1) The apprehending team having initial custody and control of the drugs shall, **immediately *after seizure and confiscation*, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice**

(DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x. (Emphasis supplied)

Compliance with the above, especially the required physical inventory and photograph of the seized drugs in the presence of the accused, the media, and responsible government functionaries, would be clear evidence that the police had carried out a legitimate buy-bust operation. Here, the prosecution was unable to adduce such evidence, indicating that the police officers did not at all comply with prescribed procedures. Worse, they offered no excuse or explanation at the hearing of the case for their blatant omission of what the law required of them.

Apart from the above, the prosecution carried the burden of establishing the chain of custody of the dangerous drugs that the police allegedly seized from the accused on the night of June 16, 2004. It should establish the following **links** in that chain of custody of the confiscated item: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[19]

Still, jurisprudence has established a rare exception with respect to the first required link—immediate seizure and marking of the seized items in the presence of the accused and others[20]—namely, that (a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved.

Here, the prosecution's own evidence as recited by the CA and the RTC is that the police officers did not make a physical

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[19] *People v. Fermin*, G.R. No. 179344, August 3, 2011, 655 SCRA 92, 106-107.

[20] *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 236.

inventory of the seized drugs nor did they take a picture of the same in the presence of the accused, someone in the media, a Department of Justice (DOJ) representative, and any elected public official.

All that Officer Albarico could say is that his companion, Officer Jiro, marked the plastic sachets with the initials of the accused already at the police station and then turned over the same to the desk officer who prepared the Request for Laboratory Examination.[21] Thus:

Pros. Gonzales : And after that, what, if any, did you do next?

PO1 Albarico: After arresting them, we brought them to our police station, sir.

Pros. Gonzales : And at the station, Mr. Witness, what happened to the items that you said was [*sic*] recovered from the possession of accused Romeo?

PO1 Albarico: We have the pieces of evidence blottered, sir.

Pros. Gonzales : And thereafter, what happened to the evidence gathered, Mr. Witness?

PO1 Albarico: PO1 Jiro marked the evidence, sir.

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Pros. Gonzales : Mr. Witness, those substance[s] that were marked by PO1 Jiro, what happened to them after the markings?

PO1 Albarico: After marking the pieces of evidence, he turned them over to the Desk Officer and prepared a request for examination and those were brought to Camp Crame for examination, sir.

x x x x x x x x x

Pros. Gonzales : If you know, what was the result of the request for examination?

PO1 Albarico: As far as we know, it is positive for methamphetamine hydrochloride, sir.

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[21] TSN, April 11, 2005, pp. 8, 11-12.

Yet, the police officers did not bother to offer any sort of reason or justification for their failure to make an inventory and take pictures of the drugs immediately after their seizure in the presence of the accused and the other persons designated by the law. Both the RTC and the CA misapprehended the significance of such omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law.[22] The procedures outlined in Section 21 of R.A. 9165 are not merely empty formalities—these are safeguards against abuse,[23] the most notorious of which is its use as a tool for extortion.[24]

And what is the prosecution's evidence that the substances, which the police chemist examined and found to be *shabu*, were the same substances that the police officers allegedly seized from Romeo and Mercy? No such evidence exists. As pointed out above, the prosecution stipulated with the accused that the police chemist "could not testify on the source and origin of the subject specimens that she had examined." No police officer testified out of personal knowledge that the substances given to the police chemist and examined by her were the very same substances seized from the accused.

In regard to the required presence of representatives from the DOJ and the media and an elective official, the prosecution also did not bother to offer any justification, even a hollow one, for failing to comply with such requirement. What is more, the police officers could have easily coordinated with any elected *barangay* official in the conduct of the police operation in the locality.

WHEREFORE, the Court **REVERSES and SETS ASIDE** the February 23, 2012 Decision of the Court of Appeals in CA-

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[22] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 211.

[23] *People v. Secreto*, G.R. No. 198115, February 22, 2013.

[24] *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 332.

G.R. CR-HC 04301, which affirmed the April 2, 2009 Decision of the Regional Trial Court in Criminal Cases 7598, 7599, and 7600 and, accordingly, **ACQUITS** the accused-appellants Romeo Oniza *y* Ong and Mercy Oniza *y* Cabarle of the charges against them in those cases on the ground of reasonable doubt.

The National Police Commission is **DIRECTED** to **INVESTIGATE** PO1 Reynaldo M. Albarico, PO1 Fortunato P. Jiro III and PO1 Jose Gordon Antonio for the possible filing of appropriate charges, if warranted.

The Director of the Bureau of Corrections is **ORDERED** to immediately **RELEASE** both the above accused-appellants from custody unless they are detained for some other lawful cause.

No costs.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 7749. July 8, 2013]

JOSEFINA CARANZA *VDA. DE* SALDIVAR, *complainant, vs.* **ATTY. RAMON SG CABANES, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DUTY TO CLIENTS, EXPLAINED.— The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer

is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. x x x Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.

2. ID.; ID.; GROSS NEGLIGENCE IN HANDLING THE CLIENT'S CAUSE, COMMITTED.— [T]he Court finds that respondent failed to exercise the required diligence in handling complainant's cause. Records show that he failed to justify his absence during the scheduled preliminary conference hearing in Civil Case No. 1972 which led the same to be immediately submitted for decision. As correctly observed by the Investigating Commissioner, respondent could have exercised ordinary diligence by inquiring from the court as to whether the said hearing would push through, especially so since it was only tentatively set and considering further that he was yet to confer with the opposing counsel. The fact that respondent had an important commitment during that day hardly exculpates him from his omission since the prudent course of action would have been for him to send a substitute counsel to appear on his behalf. In fact, he should have been more circumspect to ensure that the aforesaid hearing would not have been left unattended in view of its adverse consequences, *i.e.*, that the defendant's failure to appear at the preliminary conference already entitles the plaintiff to a judgment. Indeed, second-guessing the conduct of the proceedings, much less without any contingent measure, exhibits respondent's inexcusable lack of care and diligence in managing his client's cause. Equally compelling is the fact that respondent purposely failed to assail the heirs' appeal before the CA. Records disclose that he even failed to rebut complainant's allegation that he neglected to inform her about the CA ruling which he had duly received, thereby precluding her from availing of any further remedies. As regards respondent's suggested legal strategy to pursue the case at the administrative level, suffice

it to state that the same does not excuse him from failing to file a comment or an opposition to an appeal, or even, inform his client of any adverse resolution, as in this case. Irrefragably, these are basic courses of action which every diligent lawyer is expected to make. All told, it cannot be gainsaid that respondent was guilty of gross negligence, in violation of the above-cited provisions of the Code.

3. ID.; ID.; ID.; SUSPENSION FOR SIX (6) MONTHS, IMPOSED.— As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of the respondent were suspended for a period of six (6) months. x x x Thus, consistent with existing jurisprudence, the Court finds it proper to impose the same penalty against respondent and accordingly suspends him for a period of six (6) months.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by Josefina Caranza *vda. de* Saldivar (complainant) against Atty. Ramon SG Cabanes, Jr. (respondent), charging him for gross negligence in violation of Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code of Professional Responsibility (Code).

The Facts

Complainant was the defendant in an unlawful detainer case, docketed as Civil Case No. 1972,[2] filed by the heirs of one Benjamin Don (heirs) before the Municipal Trial Court of Pili, Camarines Sur (MTC), wherein she was represented by respondent. While respondent duly filed an answer to the unlawful detainer complaint, he, however, failed to submit a pre-trial brief as well as to attend the scheduled preliminary conference. Consequently, the opposing counsel moved that the case be

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

[2] *Id.* at 2.

submitted for decision which motion was granted in an Order[3] dated November 27, 2003. When complainant confronted respondent about the foregoing, the latter just apologized and told her not to worry, assuring her that she will not lose the case since she had the title to the subject property.

On December 30, 2003, the MTC issued a Decision[4] (MTC Decision) against complainant, ordering her to vacate and turn-over the possession of the subject property to the heirs as well as to pay them damages. On appeal, the Regional Trial Court of Pili, Camarines Sur, Branch 32 (RTC), reversed the MTC Decision and dismissed the unlawful detainer complaint.[5] Later however, the Court of Appeals (CA) reversed the RTC's ruling and reinstated the MTC Decision.[6] Respondent received a copy of the CA's ruling on January 27, 2006. Yet, he failed to inform complainant about the said ruling, notwithstanding the fact that the latter frequented his work place. Neither did respondent pursue any further action.[7] As such, complainant decided to engage the services of another counsel for the purpose of seeking other available remedies. Due to respondent's failure to timely turn-over to her the papers and documents in the case, such other remedies were, however, barred. Thus, based on these incidents, complainant filed the instant administrative complaint, alleging that respondent's acts amounted to gross negligence which resulted in her loss.[8]

In a Resolution[9] dated March 10, 2008, the Court directed respondent to comment on the administrative complaint within ten (10) days from notice.

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[3] *Id*. at 11. Penned by Presiding Judge Maximino A. Badilla.

[4] *Id*. at 12-19.

[5] *Id*. at 20.

[6] *Id*. at 21-29. See CA Decision dated January 12, 2006. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring.

[7] *Id*. at 203.

[8] *Id*.

[9] *Id*. at 52.

Accordingly, respondent filed a Manifestation with Compliance[10] dated May 19, 2008, admitting to have agreed to represent complainant who claimed to be the tenant and rightful occupant of the subject property owned by the late Pelagia Lascano (Pelagia). He alleged that upon careful examination of the heirs' unlawful detainer complaint, he noticed a discrepancy between the descriptions of the subject property as indicated in the said pleading as opposed to that which complainant supplied to him. On the belief that the parties may be contesting two (2) sets of properties which are distinct and separate from one another, respondent, at the preliminary conference conducted on October 28, 2003, moved for the suspension of further proceedings and proposed that a commissioner be appointed to conduct a re-survey in order to determine the true identity of the property in dispute. The MTC allowed the counsels for both parties to decide on the manner of the proposed re-survey, leading to the assignment of a Department of Agrarian Reform Survey Engineer (DAR Engineer) for this purpose. In relation, the heirs' counsel agreed to turn-over to respondent in his office[11] certain documents which indicated the subject property's description. Thus, pending the conduct and results of the re-survey, the preliminary conference was tentatively reset to November 27, 2003.[12]

As it turned out, the heirs' counsel was unable to furnish respondent copies of the above-stated documents, notwithstanding their agreement. This led the latter to believe that the preliminary conference scheduled on November 27, 2003 would not push through. Respondent averred that the aforesaid setting also happened to coincide with an important provincial conference which he was required to attend. As such, he inadvertently missed the hearing.[13] Nonetheless, he proffered that he duly appealed

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[10] *Id*. at 58-68.

[11] *Id*. at 60. Respondent was a lawyer working for the DAR Legal Division of Camarines Sur.

[12] *Id*. at 60-61 and 203-204.

[13] *Id*. at 61.

the adverse MTC Decision to the RTC,[14] resulting to the dismissal of the unlawful detainer complaint, albeit later reversed by the CA.

Thereafter, pending the heirs' appeal to the CA, respondent came upon the information that the disputed property was subject of a petition for exemption from the coverage of Presidential Decree No. (PD) 27[15] filed by Pelagia against complainant's mother, Placida Caranza (Placida). Based on several documents furnished to him by certain DAR personnel, respondent was satisfied that Placida indeed held the subject property for a long time and actually tilled the same in the name of Pelagia, thereby placing it under PD 27 coverage. Due to such information, respondent was convinced that Placida – and consequently, complainant (who took over the tilling) – was indeed entitled to the subject property. Hence, he advised complainant that it would be best to pursue remedies at the administrative level, instead of contesting the appeal filed by the heirs before the CA. It was respondent's calculated legal strategy that in the event the CA reverses the decision of the RTC, an opposition to the issuance of a writ of execution or a motion to quash such writ may be filed based on the afore-stated reasons, especially if an approved plan and later, an emancipation patent covering the subject property is issued.[16]

Meanwhile, the survey conducted by the DAR Engineer revealed that complainant's tillage extended to about 5,000 square meters of the subject property which was determined to belong to the heirs, the rest being covered by the title of Pelagia. Dissatisfied, complainant manifested her intention to secure the services of a private surveyor of her own choice, and promised to furnish respondent a copy of the survey results, which she, however, failed to do. Later, complainant accused respondent

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[14] *Id*.

[15] "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

[16] *Rollo*, pp. 62-63.

of manipulating the DAR Survey Results which caused their lawyer-client relationship to turn sour and eventually be severed. She has since retrieved the entire case folders and retained the services of another lawyer.[17]

In a Resolution[18] dated July 7, 2008, the Court resolved to refer the instant administrative case to the Integrated Bar of the Philippines (IBP) for its evaluation, report and recommendation.

The IBP Commission on Bar Discipline set the case for mandatory conference on April 15, 2009[19] and required the parties to submit their respective position papers.[20]

The IBP's Report and Recommendation

On June 18, 2009, the Investigating IBP Commissioner, Rebecca Villanueva-Maala (Investigating Commissioner), issued a Report and Recommendation (Commissioner's Report),[21] finding respondent to have been negligent in failing to attend the preliminary conference in Civil Case No. 1972 set on November 27, 2003 which resulted in the immediate submission of the said case for decision and eventual loss of complainant's cause.

The Investigating Commissioner observed that respondent could have exercised ordinary diligence by inquiring from the court as to whether the said preliminary conference would push through, considering that the November 27, 2003 setting was only tentative and the heirs' counsel was not able to confer with him. Further, the fact that respondent had to attend an important provincial conference which coincided with the said setting hardly serves as an excuse since he should have sent a substitute counsel on his behalf. Also, respondent never mentioned

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

[18] *Id*. at 88.

[19] *Id*. at 114. See Order dated February 18, 2009.

[20] *Id*. at 121. See Order dated April 14, 2009.

[21] *Id*. at 162-169.

any legal remedy that he undertook when the heirs elevated the decision of the RTC to the CA. In fact, he did not file any comment or opposition to the heirs' appeal. Finally, respondent's enumerations of his legal options to allegedly protect the complainant's interests were found to be thought only after the fact.[22]

Thus, based on the foregoing, the Investigating Commissioner ruled that respondent failed to exercise ordinary diligence in handling his client's cause, warranting his suspension from the practice of law for a period of six (6) months.[23]

The IBP Board of Governors adopted and approved the Commissioner's Report in Resolution No. XIX-2011-266[24] dated May 14, 2011, finding the same to be fully supported by the evidence on record and in accord with applicable laws and rules.

Respondent filed a motion for reconsideration[25] which was, however, denied, in Resolution No. XX-2012-517[26] dated December 14, 2012.

The Court's Ruling

The Court resolves to adopt the IBP's findings and recommendation.

The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for

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[22] *Id*. at 168-169.

[23] *Id*.

[24] *Id*. at 161.

[25] *Id*. at 153-158.

[26] *Id*. at 199.

free.[27] Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code embody these quintessential directives and thus, respectively state:

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

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

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

Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.[28]

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action.[29] While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.[30]

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[27] *Villaflores v. Atty. Limos*, 563 Phil. 453, 461 (2007).

[28] *Conlu v. Atty. Aredonia, Jr.*, A.C. No. 4955, September 12, 2011, 657 SCRA 367, 374.

[29] *Anderson, Jr. v. Atty. Cardeño*, A.C. No. 3523, January 17, 2005, 448 SCRA 261, 271.

[30] *Ylaya v. Atty. Gacott*, A. C. No. 6475, January 30, 2013, citing *Solidon v. Atty. Macalalad*, A.C. No. 8158, February 24, 2010, 613 SCRA 472.

Applying these principles to the present case, the Court finds that respondent failed to exercise the required diligence in handling complainant's cause.

Records show that he failed to justify his absence during the scheduled preliminary conference hearing in Civil Case No. 1972 which led the same to be immediately submitted for decision. As correctly observed by the Investigating Commissioner, respondent could have exercised ordinary diligence by inquiring from the court as to whether the said hearing would push through, especially so since it was only tentatively set and considering further that he was yet to confer with the opposing counsel. The fact that respondent had an important commitment during that day hardly exculpates him from his omission since the prudent course of action would have been for him to send a substitute counsel to appear on his behalf. In fact, he should have been more circumspect to ensure that the aforesaid hearing would not have been left unattended in view of its adverse consequences, *i.e.*, that the defendant's failure to appear at the preliminary conference already entitles the plaintiff to a judgment.[31] Indeed, second-guessing the conduct of the proceedings, much less without any contingent measure, exhibits respondent's inexcusable lack of care and diligence in managing his client's cause.

Equally compelling is the fact that respondent purposely failed to assail the heirs' appeal before the CA. Records disclose that he even failed to rebut complainant's allegation that he

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[31] Section 8, Rule 70 of the Rules of Court provides in part:

SEC. 8. *Preliminary conference*; *appearance of parties*. — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The provisions of Rule 18 on pre-trial shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

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If a sole defendant shall fail to appear, the plaintiff shall likewise be entitled to judgment in accordance with the next preceding section. This procedure shall not apply where one of two or more defendants sued under a common cause of action defense shall appear at the preliminary conference. (Emphasis supplied)

neglected to inform her about the CA ruling which he had duly received, thereby precluding her from availing of any further remedies. As regards respondent's suggested legal strategy to pursue the case at the administrative level, suffice it to state that the same does not excuse him from failing to file a comment or an opposition to an appeal, or even, inform his client of any adverse resolution, as in this case. Irrefragably, these are basic courses of action which every diligent lawyer is expected to make.

All told, it cannot be gainsaid that respondent was guilty of gross negligence, in violation of the above-cited provisions of the Code.

As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of the respondent were suspended for a period of six (6) months. In *Aranda v. Elayda*,[32] a lawyer who failed to appear at the scheduled hearing despite due notice which resulted in the submission of the case for decision was found guilty of gross negligence and hence, suspended for six (6) months. In *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*,[33] a lawyer who did not file a pre-trial brief and was absent during the pre-trial conference was likewise suspended for six (6) months. In *Abiero v. Juanino*,[34] a lawyer who neglected a legal matter entrusted to him by his client in breach of Canons 17 and 18 of the Code was also suspended for six (6) months. Thus, consistent with existing jurisprudence, the Court finds it proper to impose the same penalty against respondent and accordingly suspends him for a period of six (6) months.

WHEREFORE, respondent Atty. Ramon SG Cabanes, Jr. is found guilty of gross negligence in violation of Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from

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[32] A.C. No. 7907, December 15, 2010, 638 SCRA 336.

[33] A.C. No. 5760, September 30, 2005, 471 SCRA 111.

[34] 492 Phil. 149 (2005).

the practice of law for a period of six (6) months, effective upon his receipt of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179638. July 8, 2013]

HEIRS OF NUMERIANO MIRANDA, SR., namely: CIRILA (deceased), CORNELIO, NUMERIANO, JR., ERLINDA, LOLITA, RUFINA, DANILO, ALEJANDRO, FELIMON, TERESITA, ELIZABETH and ANALIZA, all surnamed MIRANDA, *petitioners, vs.* **PABLO R. MIRANDA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; LATE FILING OF THE NOTICE OF APPEAL; WHERE THE FILING OF THE NOTICE OF APPEAL WAS MADE VIA A PRIVATE COURIER, THE DATE OF THE ACTUAL RECEIPT BY THE COURT IS DEEMED THE DATE OF FILING.— Under Section 3, Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the

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[*] Designated Acting Member per Special Order No. 1484 dated July 9, 2013.

second case, the date of mailing is the date of receipt. In this case, however, the counsel for petitioners filed the Notice of Appeal via a private courier, a mode of filing not provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court;" instead, "the date of actual receipt by the court x x x is deemed the date of filing of that pleading." Records show that the Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time.

2. ID.; ACTION FOR REVIVAL OF JUDGMENT, EXPLAINED; IT CANNOT MODIFY, ALTER OR REVERSE THE ORIGINAL JUDGMENT WHICH IS ALREADY FINAL AND EXECUTORY.— An action for revival of judgment is a new and independent action. It is different and distinct from the original judgment sought to be revived or enforced. As such, a party aggrieved by a decision of a court in an action for revival of judgment may appeal the decision, but only insofar as the merits of the action for revival is concerned. The original judgment, which is already final and executory, may no longer be reversed, altered, or modified. In this case, petitioners assail the Decision dated August 30, 1999, which is the original judgment sought to be revived or enforced by respondent. Considering that the said Decision had already attained finality, petitioners may no longer question its correctness. As we have said, only the merits of the action for revival may be appealed, not the merits of the original judgment sought to be revived or enforced.

3. ID.; CIVIL PROCEDURE; VENUE; ACTION FOR REVIVAL OF JUDGMENT MAY BE FILED IN THE SAME COURT WHICH RENDERED THE ORIGINAL DECISION.— An action for revival of judgment may be filed either "in the same court where said judgment was rendered or in the place where the plaintiff or defendant resides, or in any other place designated by the statutes which treat of the venue of actions in general." In this case, respondent filed the Petition for Revival of Judgment in the same court which rendered the Decision dated August 30, 1999.

APPEARANCES OF COUNSEL

David H. Enano Law Offices for petitioners.
Epino Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An action for revival of a judgment cannot modify, alter, or reverse the original judgment, which is already final and executory.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated June 14, 2007 and the Resolution[4] dated September 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 97350.

Factual Antecedents

In 1994, petitioners Cirila, Cornelio, Numeriano, Jr., Erlinda, Lolita, Rufina, Danilo, Alejandro, Felimon, Teresita, Elizabeth, and Analiza, all surnamed Miranda, representing themselves as the heirs of Numeriano Miranda, Sr., filed before the Regional Trial Court (RTC) of Muntinlupa City, a Complaint[5] for Annulment of Titles and Specific Performance, docketed as Civil Case No. 94-612, against the heirs of Pedro Miranda, namely: Pacita and Oscar Miranda; the heir of Tranquilino Miranda, Rogelio Miranda; and the spouses respondent Pablo Miranda and Aida Lorenzo.

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[1] *Arcenas v. Court of Appeals*, 360 Phil. 122, 132 (1998).

[2] *Rollo*, pp. 3-32.

[3] CA *rollo*, pp. 134-139; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison.

[4] *Id*. at 180-181.

[5] Records, Volume I, Civil Case No. 94-612, pp. 1-7.

After trial, the RTC, Branch 256, rendered a Decision[6] dated August 30, 1999, the dispositive portion of which reads:

WHEREFORE, premises considered, this court resolves:

1. To [u]phold and [s]ustain the validity of TCT Nos. 186011, 186012, and 186013;

2. Ordering Pablo Miranda to indemnify all other heirs of NUMERIANO MIRANDA the amount equivalent to 12/13 fair market value of the co-owned residential house, erected on the lot 826-A-3 covered by TCT No. 186013 corresponding to their shares, and for the said heirs to divide among themselves the aforesaid amount as follows:

1/13 to CIRILA MIRANDA
1/13 to CORNELIO MIRANDA
1/13 to NUMERIANO MIRANDA, JR.
1/13 to ERLINDA MIRANDA
1/13 to LOLITA MIRANDA
1/13 to RUFINA MIRANDA
1/13 to DANILO MIRANDA
1/13 to ALEJANDRO MIRANDA
1/13 to FELIMON MIRANDA
1/13 to TERESITA MIRANDA
1/13 to ELIZABETH MIRANDA
1/13 to ANALIZA MIRANDA

3. Ordering Plaintiffs Lolita Miranda, Alejandro Miranda, Teresita Miranda, Rufina Miranda and all persons claiming rights under them to immediately vacate the abovementioned residential house and to jointly and severally pay to the spouses Pablo and Aida Miranda a monthly rental of ₱2,000.00 from the date of notice of the promulgation of this judgment up to the time that they have actually vacated the property;

4. Proclaiming that ROGELIO MIRANDA is not the biological son or child by nature of TRANQUILINO MIRANDA, and therefore is not entitled to inherit from the latter;

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[6] Records, Civil Case No. 05-131, pp. 8-20; penned by Presiding Judge Alberto L. Lerma.

5. Declaring CORNELIO MIRANDA, NUMERIANO MIRANDA, JR., ERLINDA MIRANDA, LOLITA MIRANDA, RUFINA MIRANDA, DANIL[O] MIRANDA, ALEJANDRO MIRANDA, FELIMON MIRANDA, TERESITA MIRANDA, ELIZABETH MIRANDA, ANALIZA MIRANDA, PABLO MIRANDA and PACITA MIRANDA as the lawful legal heirs of the deceased TRANQUILINO MIRANDA and ordering them to partition among themselves Lot 826-A-1 covered by TCT No. 186011 registered in the name of TRANQUILINO MIRANDA, containing an area of 213 square meters, as follows:

1/13 aliquot share to Cornelio Miranda
1/13 aliquot share to Numeriano Miranda, Jr.
1/13 aliquot share to Erlinda Miranda
1/13 aliquot share to Lolita Miranda
1/13 aliquot share to Rufina Miranda
1/13 aliquot share to Danilo Miranda
1/13 aliquot share to Alejandro Miranda
1/13 aliquot share to Felimon Miranda
1/13 aliquot share to Teresita Miranda
1/13 aliquot share to Elizabeth Miranda
1/13 aliquot share to Analiza Miranda
1/13 aliquot share to Pablo Miranda
1/13 aliquot share to Pacita Miranda

6. Ordering all the abovenamed heirs to commission the survey of Lot 826-A-1 or to authorize in writing, one of them to commission such survey, in order to avoid a chaotic situation similar to the case at bar. Should they not agree as to what particular portion shall belong to one another, they may agree that it be allotted to one or two or several of them, who shall indemnify the others at a price agreed upon by all of them. Should they not agree as to whom shall the property be allotted, to sell the property to a third person at [a] price agreed upon by a majority of all [of] them, and to partition the proceeds of the sale in accordance with No. 5 above.

SO ORDERED.[7]

Petitioners did not file any appeal hence the Decision became final and executory.[8]

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[7] *Id*. at 18-20.

[8] *Id*. at 31.

On December 11, 2001, the RTC issued a Writ of Execution,[9] which was not implemented.[10]

On July 8, 2005, respondent filed an *Ex-parte* Motion[11] praying that the RTC issue a "Break-Open and Demolition Order" in order to compel the petitioners to vacate his property.[12] But since more than five years have elapsed from the time the Writ of Execution should have been enforced, the RTC denied the Motion in its Order[13] dated August 16, 2005.

This prompted respondent to file with the RTC a Petition[14] for Revival of Judgment, which was docketed as Civil Case No. 05-131. Petitioners opposed the revival of judgment assailing, among others, the jurisdiction of the RTC to take cognizance of the Petition for Revival of Judgment.[15]

On June 20, 2006, the RTC rendered a Decision[16] granting the Petition. Thus:

WHEREFORE, finding the instant petition to be meritorious, the petition is hereby **GRANTED.** Pursuant to **Rule 39, Section 6** of the Rules of Court, the Decision dated August 30, 1999 in Civil Case No. 94-612 is hereby **REVIVED.**

SO ORDERED.[17]

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[9] *Id*. at 21-23.

[10] *Id*. at 24.

[11] *Id*. at 25-29.

[12] *Id*. at 28.

[13] *Id*. at 31.

[14] *Id*. at 1-7.

[15] *Id*. at 199-205.

[16] *Id*. at 268-270; penned by Presiding Judge Alberto L. Lerma.

[17] *Id*. at 270. Emphases in the original.

On July 13, 2006, petitioners filed a Notice of Appeal[18] via LBC,[19] which was opposed by respondent on the ground that the Decision dated August 30, 1999 has long become final and executory.[20] Petitioners, in turn, moved for the transmittal of the original records of the case to the CA, insisting that respondent's opposition is without merit.[21]

Ruling of the Regional Trial Court

Finding the appeal barred by prescription, the RTC denied the Notice of Appeal in its Order[22] dated October 10, 2006, to wit:

WHEREFORE, in view of the foregoing, the notice of appeal herein filed is hereby **DENIED** for lack of merit.

SO ORDERED.[23]

Feeling aggrieved, petitioners filed a Petition for *Mandamus*[24] with the CA praying that their Notice of Appeal be given due course.[25]

Ruling of the Court of Appeals

On June 14, 2007, the CA denied the Petition for *Mandamus* on the ground that the Notice of Appeal was filed out of time.[26] The dispositive portion of the Decision reads:

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[18] *Id*. at 282-283.

[19] *Id*. at 284.

[20] *Id*. at 286-288.

[21] *Id*. at 292-297.

[22] *Id*. at 305; penned by Presiding Judge Alberto L. Lerma.

[23] *Id*.

[24] CA *rollo*, pp. 2-16; Amended Petition, pp. 39-63.

[25] *Id*. at 12 and 60.

[26] *Id*. at 134-139.

WHEREFORE, premises considered, the petition is **DENIED.** The appeal is hereby **DISMISSED** for having been filed out of time.

SO ORDERED.[27]

Petitioners moved for reconsideration but the same was denied by the CA in its Resolution[28] dated September 11, 2007.

Issues

Hence, this recourse, with petitioners raising the following issues:

1. WHETHER X X X THE APPEAL WAS PERFECTED ON TIME?
2. WHETHER X X X THE LATE (ONE DAY) FILING WAS JUSTIFIED?
3. WHETHER X X X AN ACTION FOR REVIVAL OF JUDGMENT IS APPEALABLE?
4. WHETHER THE APPEAL IS MERITORIOUS?
    a. Whether the [RTC] below has exclusive original jurisdiction over an action for revival of judgment?
    b. Whether xxx respondent herein, plaintiff therein, as one of the judgment creditors can file the said action for revival ALONE?
    c. Whether subsequent events or laws have rendered the judgment sought to be revived modified [or] altered[,] or prevent its enforcement?
    d. Whether *res judicata* or laches has seeped in, other judgment creditors not suing for any such implementation of the 1999 judgment, ONLY PLAINTIFF ALONE?
    e. Whether x x x the Petitioners are entitled to damages?[29]

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[27] *Id.* at 139.

[28] *Id.* at 180-181.

[29] *Rollo*, pp. 12-13.

Petitioners' Arguments

Petitioners assert that an action to revive judgment is appealable,[30] and that their appeal was perfected on time.[31] They insist that the Notice of Appeal, which they filed on the 15th day via LBC, was seasonably filed since the law does not require a specific mode of service for filing a notice of appeal.[32]

Besides, even if their appeal was belatedly filed, it should still be given due course in the interest of justice,[33] considering that their counsel had to brave the storm and the floods caused by typhoon "Florita" just to file their Notice of Appeal on time.[34]

Petitioners further contend that their appeal is meritorious.[35] They insist that it is the Metropolitan Trial Court (MeTC), not the RTC, which has jurisdiction over the Petition for Revival of Judgment since the amount in the tax declarations of the properties involved is less than Fifty Thousand Pesos (₱50,000.00).[36] They likewise assail the Decision dated August 30, 1999, claiming that the deeds and certificates of title subject of Civil Case No. 94-612 were falsified.[37]

Respondent's Arguments

Respondent, on the other hand, maintains that the Notice of Appeal was belatedly filed,[38] and that the revival of judgment is unappealable as it is barred by prescription.[39]

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[30] *Id*. at 412.

[31] *Id*. at 404.

[32] *Id*.

[33] *Id*. at 411-412.

[34] *Id*. at 408-410.

[35] *Id*. at 417.

[36] *Id*. at 418-419.

[37] *Id*. at 413-415.

[38] *Id*. at 464.

[39] *Id*. at 466.

Our Ruling

The Petition lacks merit.

The Notice of Appeal was belatedly filed.

It is basic and elementary that a Notice of Appeal should be filed "within fifteen (15) days from notice of the judgment or final order appealed from."[40]

Under Section 3,[41] Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt.

In this case, however, the counsel for petitioners filed the Notice of Appeal via a private courier, a mode of filing not provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court;" instead, "the date of actual receipt by the court x x x is deemed the date of filing of that pleading."[42] Records show that the

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[40] RULES OF COURT, Rule 41, Section 3.

[41] Sec. 3. *Manner of filing*. – The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

[42] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011, 662 SCRA 424, 433-434, citing *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission*, G.R. No. 89070, May 18, 1992, 209 SCRA 55, 60-61.

Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time.

Neither can petitioners use typhoon "Florita" as an excuse for the belated filing of the Notice of Appeal because work in government offices in Metro Manila was not suspended on July 13, 2006, the day petitioners' Notice of Appeal was mailed via LBC.[43]

And even if we, in the interest of justice, give due course to the appeal despite its late filing, the result would still be the same. The appeal would still be denied for lack of merit.

The Decision dated August 30, 1999 is already final and executory.

An action for revival of judgment is a new and independent action.[44] It is different and distinct from the original judgment sought to be revived or enforced.[45] As such, a party aggrieved by a decision of a court in an action for revival of judgment may appeal the decision, but only insofar as the merits of the action for revival is concerned. The original judgment, which is already final and executory, may no longer be reversed, altered, or modified.[46]

In this case, petitioners assail the Decision dated August 30, 1999, which is the original judgment sought to be revived or enforced by respondent. Considering that the said Decision had already attained finality, petitioners may no longer question its correctness. As we have said, only the merits of the action for revival may be appealed, not the merits of the original judgment sought to be revived or enforced.

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[43] *Rollo*, p. 46.

[44] *Juco v. Heirs of Tomas Siy Chung Fu*, 491 Phil. 641, 650 (2005).

[45] *Id*.

[46] *Arcenas v. Court of Appeals*, *supra* note 1 at 132.

RTC has jurisdiction over the Petition for Revival of Judgment.

As to whether the RTC has jurisdiction, we rule in the affirmative. An action for revival of judgment may be filed either "in the same court where said judgment was rendered or in the place where the plaintiff or defendant resides, or in any other place designated by the statutes which treat of the venue of actions in general."[47] In this case, respondent filed the Petition for Revival of Judgment in the same court which rendered the Decision dated August 30, 1999.

All told, we find no error on the part of the CA in denying the Petition and dismissing the appeal for having been filed out of time.

WHEREFORE, the Petition is hereby **DENIED.** The Decision dated June 14, 2007 and the Resolution dated September 11, 2007 of the Court of Appeals in CA-G.R. SP No. 97350 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[*] and *Perlas-Bernabe, JJ.*, concur.

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[47] *Infante v. Aran Builders, Inc.*, G.R. No. 156596, August 24, 2007, 531 SCRA 123, 129, citing *Aldeguer v. Gemelo*, 68 Phil. 421, 424-425 (1939).

[*] Per Special Order No. 1484 dated July 9, 2013.

SECOND DIVISION

[G.R. No. 186264. July 8, 2013]

DR. LORNA C. FORMARAN, *petitioner, vs.* **DR. GLENDA B. ONG and SOLOMON S. ONG,** *respondents.*

SYLLABUS

CIVIL LAW; CONTRACTS; CIRCUMSTANCES SHOWING THAT THE SALE OF THE SUBJECT LAND IS PURELY SIMULATED.— The Court believes and so holds that the subject Deed of Sale is indeed simulated, as it is: (1) totally devoid of consideration; (2) it was executed on August 12, 1967, less than two months from the time the subject land was donated to petitioner on June 25, 1967 by no less than the parents of respondent Glenda Ong; (3) on May 18, 1978, petitioner mortgaged the land to the Aklan Development Bank for a ₱23,000.00 loan; (4) from the time of the alleged sale, petitioner has been in actual possession of the subject land; (5) the alleged sale was registered on May 25, 1991 or about twenty four (24) years after execution; (6) respondent Glenda Ong never introduced any improvement on the subject land; and (7) petitioner's house stood on a part of the subject land. These are facts and circumstances which may be considered badges of bad faith that tip the balance in favor of petitioner.

APPEARANCES OF COUNSEL

Gepty Dela Cruz Morales & Associates for petitioner.
Diomedes T. Resurreccion for respondents.

D E C I S I O N

PEREZ, *J.*:

This is an Appeal by *certiorari* under Rule 45 of the Revised Rules of Court of the Decision[1] of the Court of Appeals (CA) rendered on August 30, 2007, the dispositive portion of which reads as follows:

[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring. *Rollo*, pp. 25-37.

"WHEREFORE, in the (sic) light of the foregoing, the assailed Decision is ***REVERSED AND SET ASIDE.*** The Complaint of appellee Lorna C. Formaran is ***DISMISSED.*** The appellee, her agents or representatives are ***ORDERED*** to vacate the land in question and to restore the same to appellants."

The facts adopted by both the trial court and the Court of Appeals are summarized thus:

> "According to plaintiff (Petitioner)'s complaint, she owns the afore-described parcel of land which was donated to her *intervivos* by [her] uncle and aunt, spouses Melquiades Barraca and Praxedes Casidsid on June 25, 1967; that on August 12, 1967 upon the proddings and representation of defendant (Respondent) Glenda, that she badly needed a collateral for a loan which she was applying from a bank to equip her dental clinic, plaintiff made it appear that she sold one-half of the afore-described parcel of land to the defendant Glenda; that the sale was totally without any consideration and fictitious; that contrary to plaintiff's agreement with defendant Glenda for the latter to return the land, defendant Glenda filed a case for unlawful detainer against the plaintiff who consequently suffered anxiety, sleepless nights and besmirched reputation; and that to protect plaintiff's rights and interest over the land in question, she was constrained to file the instant case, binding herself to pay ₱50,000.00 as and for attorney's fees.
>
> In an answer filed on December 22, 1997, defendant Glenda insisted on her ownership over the land in question on account of a Deed of Absolute Sale executed by the plaintiff in her favor; and that plaintiff's claim of ownership therefore was virtually rejected by the Municipal Circuit Trial Court of Ibaja-Nabas, Ibajay, Aklan, when it decided in her favor the unlawful detainer case she filed against the plaintiff, docketed therein as Civil Case No. 183. Defendants are also claiming moral damages and attorney's fees in view of the filing of the present case against them.
>
> Plaintiff's testimony tends to show that the land in question is part of the land donated to her on June 25, 1967 by spouses Melquiades Barraca and Praxedes Casidsid, plaintiff's uncle and aunt, respectively. As owner thereof, she declared the land for taxation purposes (Exhibits A-1 to A-5, inclusive). She religiously paid its realty taxes (Exhibit A-6). She mortgaged

the land to Aklan Development Bank to secure payment of a loan.

In 1967, defendant Glenda and her father, Melquiades Barraca came to her residence asking for help. They were borrowing one-half of land donated to her so that defendant Glenda could obtain a loan from the bank to buy a dental chair. They proposed that she signs an alleged sale over the said portion of land.

Acceding to their request, she signed on August 12, 1967 a prepared Deed of Absolute Sale (Exhibit C) which they brought along with them (TSN, p. 22, *Ibid.*), covering the land in question without any money involved. There was no monetary consideration in exchange for executing Exhibit C. She did not also appear before the Notary Public Edilberto Miralles when Exhibit C was allegedly acknowledged by her on November 9, 1967.

A month thereafter, plaintiff inquired from her uncle, Melquiades Barracca if they have obtained the loan. The latter informed her that they did not push through with the loan because the bank's interest therefore was high. With her uncle's answer, plaintiff inquired about Exhibit C. Her uncle replied that they crampled (*kinumos*) the Deed of Absolute Sale (Exhibit C) and threw it away. Knowing that Exhibit C was already thrown away, plaintiff did not bother anymore about the document (TSN, p. 7, *Ibid.*) she thought that there was no more transaction. Besides, she is also in actual possession of the land and have even mortgaged the same.

In 1974, plaintiff transferred her residence from Nabas, Aklan, to Antipolo City where she has been residing up to the present time. From the time she signed the Deed of Absolute Sale (Exhibit C) in August, 1967 up to the present time of her change of residence to Antipolo City, defendant Glenda never demanded actual possession of the land in question, except when the latter filed on May 30, 1996 a case for unlawful detainer against her. Following the filing of the ejectment case, she learned for the first time that the Deed of Absolute Sale was registered on May 25, 1991 and was not thrown away contrary to what Melquiades Barraca told her. Moreover, she and Melquiades Barraca did not talk anymore about Exhibit C. That was also the first time she learned that the land in question is now declared for taxation purposes in the name of defendant Glenda.

In closing her direct testimony, plaintiff declared that the filing of the unlawful detainer case against her, caused her some sleepless nights and humiliation. She also suffered hypertension.

Upon the other hand, relevant matters that surfaced from the testimonies of the defendants shows that on June 25, 1967, Melquiades Barraca, father of the defendant Glenda, donated a parcel of land to her niece, plaintiff Lorna C. Formaran (Exhibit 3). At the time of the donation, plaintiff was still single. She married Atty. Formaran only in September, 1967.

Subsequently, on August 12, 1967, Dr. Lorna B. Casidsid, herein plaintiff, executed a Deed of Absolute Sale (Exhibit 1) over one-half portion of the land donated to her, in favor of defendant Glenda. On account of the Sale (Exhibit 1) defendant Glenda was able to declare in her name the land in question for taxation purposes (Exhibit 4) and paid the realty taxes (Exhibits 6, 6-A, 6-B and 6-C). She also was able to possess the land in question.

Defendant Glenda maintained that there was money involved affecting the sale of the land in her favor. The sale was not to enable her to buy a dental chair for she had already one at the time. Besides, the cost of a dental chair in 1967 was only ₱2,000.00 which she can readily afford.

The document of sale (Exhibit 1) affecting the land in question was not immediately registered after its execution in 1967 but only on May 25, 1991 in order to accommodate the plaintiff who mortgaged the land to Aklan Development Bank on May 18, 1978.

Based on the admissions of the parties in their pleadings, during the pre-trial and evidence on record, there is no contention that on June 25, 1967, the afore-described parcel of land was donated *intervivos* (Exhibit 3) by spouses Melquiades Barraca and Praxedes Casidsid to therein plaintiff, Dr. Lorna Casidsid Formaran who was yet single. She was married to Atty. Formaran in September 1967. Praxedes was the aunt of Lorna as the latter's father was the brother of Praxedes.

Following the donation, plaintiff immediately took possession of the land wherein one-half (½) thereof is the land in question. Since then up to the present time, is still in actual possession of the land, including the land in question.

Indeed, on May 30, 1996, herein defendant Glenda filed a complaint for unlawful detainer against the plaintiff before the 7th Municipal Circuit Trial Court of Ibajay-Nabas, Ibajay, Aklan, docketed there in as Civil Case No. 183. The case was decided on September 2, 1997, (Exhibit 2) in favor of herein defendant Glenda; ordering the herein plaintiff to vacate the land in question.

After the plaintiff acquired ownership by way of donation over the afore-described parcel of land which includes the land in question, she declared the same for taxation purposes under Tax Declaration No. 12533, effective 1969 (Exhibit A-1). Revision caused the subsequent and successive cancellation of Exhibit A-1 by Tax Declaration No. 177, effective 1974 (Exhibit A-2); Tax Declaration No. 183 effective 1980 (Exhibit A-3); Tax Declaration No. 187, effective 1985 (Exhibit A-4); PIN-038-14-001-06-049, effective 1990 (Exhibit A-5); and APP/TD No. 93-001-330, effective 1994 (Exhibit A-6).

The last two Tax Declarations (Exhibits A-5 and A-6) no longer covered the land in question which was segregated therefrom when the Deed of Sale executed on August 12, 1967 (Exhibit C) was registered for the first time on May 25, 1991.

Realty taxes of the afore-described parcel of land, including the land in question, have been paid by the plaintiff since 1967 up to the present time (Exhibit B). However, defendant Glenda paid for the first time the realty taxes of the land in question on January 9, 1995 (Exhibit 6) and up to the present time (Exhibits 6-A and 6-B).

On account of the Deed of Absolute Sale (Exhibit C or 1) signed by the plaintiff, during the cadastral survey, the land in question was surveyed in the name of defendant and designated as Lot No. 188 (Exhibit 5) and the other half on the western side was designated as Lot No. 189. The land in question is particularly described as follows:

A parcel of residential land (Lot No. 188, Cad. No. 758-D Nabas Cadastre) located at Poblacion Nabas, Aklan, Bounded on North by Lot No. 196; on the East by Lot No. 187; on the West by Lot No. 189 all of Cad. No. 758-D; and on the South by Mabini St., containing an area of THREE HUNDRED FIFTY SEVEN (357) SQUARE METERS, more or less."

Petitioner filed an action for annulment of the Deed of Sale (Civil Case No. 5398) against respondents before the Regional Trial Court (RTC), of Kalibo, Aklan, Branch 5.

On December 3, 1999, the trial court rendered a Decision in favor of petitioner and against the respondent by declaring the Deed of Absolute Sale null and void for being an absolutely simulated contract and for want of consideration; declaring the petitioner as the lawful owner entitled to the possession of the land in question; as well as ordering (a) the cancellation of respondent Glenda's Tax Declaration No. 1031, and (b) respondents to pay petitioner ₱25,000.00 for attorney's fees and litigation expenses.

Respondents coursed an appeal to the CA. The CA, on August 30, 2007, reversed and set aside the Decision of the trial court and ordered petitioner to vacate the land in question and restore the same to respondents.

Hence, the present petition.

The petition sufficiently shows with convincing arguments that the decision of the CA is based on a misappreciation of facts.

The Court believes and so holds that the subject Deed of Sale is indeed simulated,[2] as it is: (1) totally devoid of consideration; (2) it was executed on August 12, 1967, less than two months from the time the subject land was donated to petitioner on June 25, 1967 by no less than the parents of respondent Glenda Ong; (3) on May 18, 1978, petitioner mortgaged the land to the Aklan Development Bank for a ₱23,000.00 loan; (4) from the time of the alleged sale, petitioner has been in actual possession of the subject land; (5) the alleged sale was registered on May 25, 1991 or about twenty four (24)

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[2] ART. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

ART. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

years after execution; (6) respondent Glenda Ong never introduced any improvement on the subject land; and (7) petitioner's house stood on a part of the subject land. These are facts and circumstances which may be considered badges of bad faith that tip the balance in favor of petitioner.

The Court is in accord with the observation and findings of the RTC,[3] (Kalibo, Aklan) thus:

"The amplitude of foregoing undisputed facts and circumstances clearly shows that the sale of the land in question was purely simulated. It is void from the very beginning (Article 1346, New Civil Code). If the sale was legitimate, defendant Glenda should have immediately taken possession of the land, declared in her name for taxation purposes, registered the sale, paid realty taxes, introduced improvements therein and should not have allowed plaintiff to mortgage the land. These omissions properly militated against defendant Glenda's submission that the sale was legitimate and the consideration was paid.

While the Deed of Absolute Sale was notarized, it cannot justify the conclusion that the sale is a true conveyance to which the parties are irrevocably and undeniably bound. Although the notarization of Deed of Absolute Sale, vests in its favor the presumption of regularity, it does not validate nor make binding an instrument never intended, in the first place, to have any binding legal effect upon the parties thereto (*Suntay vs. Court of Appeals, G.R. No. 114950, December 19, 1995; cited in Ruperto Viloria vs. Court of Appeals, et al., G.R. No. 119974, June 30, 1999*)."

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals rendered on August 30, 2007 in CA G.R. CV No. 66187 is hereby **REVERSED** and **SET ASIDE.** The Decision of the Regional Trial Court, Branch 5, Kalibo, Aklan in Civil Case No. 5398 dated December 3, 1999 is **REINSTATED.**

S**O ORDERED.**

Carpio (Chairperson), del Castillo, Mendoza,[*] and *Perlas-Bernabe, JJ.,* concur.

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[3] *Id*. at 46-47.

[*] Per Special Order No. 1484 dated 9 July 2013.

SECOND DIVISION

[G.R. No. 197789. July 8, 2013]

PNOC-ENERGY DEVELOPMENT CORPORATION AND/OR PAUL A. AQUINO, FRANCIS A. PALAFOX, *petitioners, vs.* **JOSELITO L. ESTRELLA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ONLY SERIOUS MISCONDUCT CONNECTED WITH EMPLOYEE'S WORK CAN BE A JUST CAUSE FOR TERMINATION.— [N]ot every form of misconduct can be considered as a just cause for termination. The law explicitly qualifies that the misconduct must be both *serious* and made in connection with the employee's work. As clarified in *Cosmos Bottling Corp. v. Fermin*: x x x **For misconduct to be serious and therefore a valid ground for dismissal, it must be (1) of grave and aggravated character and not merely trivial or unimportant and (2) connected with the work of the employee**.

2. ID.; ID.; ID.; EMPLOYEE'S ALTERATION IN THE BID DOCUMENT HARDLY QUALIFIES AS SERIOUS MISCONDUCT.— While Estrella himself admitted that he did alter JR Car Services' bid from three (3) vehicles to one (1) in the Bid Summary which he himself initialed, he provided a reasonable excuse therefor – that is, he only did so to reflect the results of his second inspection where he found that only one vehicle was available for lease. It is well to stress that the alteration was only made in a field copy which, as Estrella explains, was acquired by his supervisor and sent to the accounting department without his knowledge. Although PNOC-EDC remarked that the fact that Estrella initialed the said field copy proved his intent to make the alteration official, this supposition, bereft of any substantial evidence to corroborate such a conclusion, remains highly-speculative and thus, cannot be given credence. Besides, as it turned out, the alleged alterations did not appear in the final copy of the Bid Summary, negating any complications on the company's bidding process. In fact, PNOC-EDC eventually engaged two (2) more

of JR Car Services' vehicles in August 2004. Thus, for these reasons, it cannot be gainsaid that Estrella's mistake, if any, hardly qualifies as serious misconduct as contemplated by law, denying his employer's right to dismiss him based on the same.

3. ID.; ID.; ID.; THE CHARGE OF EXTORTION MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE TO BE A VALID CAUSE FOR DISMISSAL.— [N]either do the text messages sent to Jacobe predicate any corrupt motive on Estrella's part since the causal connection between these messages and the conduct of Estrella's bid inspection and/or approval was not adequately shown. Moreover, the credibility of Estrella's version of the incident grows even stronger when taken in light of Jacobe's inconsistent statements before the Committee. Therefore, absent substantial evidence to prove that the subject text messages were actually tied up to any form of extortion, Estrella's termination for such actuations cannot be sustained.

APPEARANCES OF COUNSEL

Tantoco Villanueva De Guzman & Llamas Law Offices for petitioners.

Mark C. Arcilla for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the March 21, 2011 Decision[2] and July 20, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98841, finding no grave abuse of discretion on the part of the National Labor

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[1] *Rollo*, pp. 3-30.

[2] *Id*. at 37-52. Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Andres B. Reyes, Jr., and Associate Justice Jane Aurora C. Lantion, concurring.

[3] *Id*. at 53-54.

Relations Commission (NLRC) which, in its November 30, 2006[4] and March 30, 2007[5] Resolutions, held that respondent Joselito L. Estrella (Estrella) was illegally dismissed from his employment.

The Facts

At the time of his dismissal, Estrella was the Senior Logistics Assistant[6] at the Materials Control Department of petitioner PNOC-Energy Development Corporation (PNOC-EDC), then a government-owned and controlled corporation[7] engaged in the exploration and utilization of renewable energy resources. As Senior Logistics Assistant, Estrella's duties included initiating and handling the terms and conditions for the bidding of heavy and support equipment rentals for PNOC-EDC's project locations, and evaluating and recommending bid contracts for management approval.[8]

Records show that PNOC-EDC opened the technical and financial bids for its 2004 Annual Contract on Heavy/Support Equipment Rental for SNGPF (EDC 03-191) (2004 Contract) on December 4, 2003 and February 14, 2004, respectively. The evaluation and post-qualification of bids were conducted from February to May 2004.[9]

As part of the bidding process, Estrella carried out an inspection on May 13, 2004[10] wherein JR Car Services, owned by

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[4] *Id*. at 100-110. Docketed as NLRC NCR 00-08-06762-05. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (on leave), concurring.

[5] *Id.* at 97-99. Penned by Presiding Commissioner Raul T. Aquino, with Commissioner Angelita A. Gacutan, concurring.

[6] *Id*. at 261.

[7] *Id*. at 5. On November 29, 2007, PNOC-EDC became Energy Development Corporation (EDC), a private corporation.

[8] *Id*. at 203.

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

[10] *Id*. at 64.

Dumaguete-based contractor Remigio[11] S. P. Jacobe (Jacobe), qualified as the first priority contractor for the Asian Utility Vehicle (AUV) Category, having offered three (3) units for lease at the rental rate of ₱1,250.00 per day.[12] Accordingly, the vehicles of JR Car Services were included in the bid summary for the 2004 Contract (Bid Summary).

On January 20, 2005, Jacobe, who also claimed to be a distributor of Dream Satellite Cable units (cable unit), executed an Affidavit[13] charging Estrella with irregularities in dealing with JR Car Services' bid. He narrated how Estrella manipulated the bid tabulation by altering the field copy of the Bid Summary to reflect one (1) unit instead of the qualified bid for three (3) units, and, in a series of text messages,[14] asked for a free cable unit, among other favors, in exchange for a positive treatment of JR Car Services' future bids.[15] Realizing Estrella's power and influence, Jacobe eventually acceded and gave him a free cable unit.

Prompted by Jacobe's Affidavit, PNOC-EDC's Senior Manager, petitioner Francis A. Palafox, formed an audit committee to investigate the charges. In its Detailed Audit Report[16]

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[11] Also "Remegio" in the records.

[12] *Id*. at 211.

[13] *Id*. at 211-215.

[14] *Id*. at 212-214. The text messages read as follows: (*a*) July 4, 2004, 20:02:13: *"Di ko pa gagawin report ko na 3 units auv mo hanggat wala dream cable ko."* (*b*) July 30, 2004, 16:44:09: *"Malabo na ba cable ko?"* (*c*) August 10, 2004, 14:39:56: *"Pre, palihug wala pamasahe Mimi pa Ormoc kasi pinapunta ko sya Saturday may trabaho ako doon, baka pwede hati tayo don?"*

x x x x x x x x x

[15] *Id*. at 211. In the 2004 bid, JR Car Services' entries were considered "FIRST PRIORITY" for the "AUV" Category, having submitted three (3) units of AUV, 12-14 seater, at a rental rate of ₱1,250.00 per day. JR Car Services was also considered the third-priority contractor for the "PICK-UP DOUBLE CAB DIESEL 4WD" Category for his four (4) units of Pick-up Double Cab Diesel-powered, 4-wheel drive, at a rental rate of ₱2,400.00 per day.

[16] *Id*. at 56-61.

dated April 11, 2005, the audit committee discovered that the bid of JR Car Services in the AUV Category was altered from three (3) units to one (1) unit in the field copy of the Bid Summary, to which Estrella affixed his initials. However, in the final copy of the Bid Summary, no alterations were reflected.[17] Estrella was also found to have accepted bids from a certain EGS Enterprises despite non-compliance with the required bid specifications and non-submission of competent proofs of ownership.[18]

Thus, Estrella was charged to have committed willful acts of dishonesty, consisting of his alteration and/or tampering of lessors' bids, acceptance of disqualified bids, manipulation of bid summary, and extortion.[19] On April 28, 2005, he was required[20] to show cause why no disciplinary action should be taken against him.

In his written explanation dated April 29, 2005,[21] Estrella admitted the alteration but explained that he did so in order to reflect the results of a second inspection he conducted on June 30, 2004, which he found necessary considering that JR Car Services had no actual service vehicles available during the first inspection. During the second inspection, Jacobe presented only one (1) vehicle and informed Estrella that the two (2) other vehicles included in the original bid had already been disposed. Thus, Estrella altered the number of JR Car Services' vehicles from three (3) units to one (1) unit in the Bid Summary,[22] which he claimed to be only his "working paper."[23] He also denied having demanded a free cable unit from Jacobe, averring instead

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[17] *Id*. at 56.

[18] *Id*. at 57.

[19] *Id*. at 60.

[20] *Id*. at 134.

[21] *Id*. at 135-138.

[22] *Id*. at 66.

[23] *Id*.

that he purchased one.[24] With respect to the text messages which he purportedly sent to Jacobe, he contended that they were merely fabricated and intended to harass him. As for the disqualified bids of EGS Enterprises, he explained that EGS Enterprises' bid rate was lower than that of JR Car Services and that the engagement of its vehicles did not cause undue injury or damage to PNOC-EDC, but rather, was more advantageous to it.[25]

Subsequently, an Investigation/Disciplinary Action Committee (Committee) was formed to further probe into the matter, before whom Estrella personally testified.[26] After the investigation, the Committee recommended[27] Estrella's dismissal for willful dishonesty, extortion, grave misconduct and misbehavior, and abuse of authority, on account of his alteration, tampering or manipulation of the Bid Summary as well as his attempt to extort from Jacobe.[28] However, one of the Committee members, a certain D. D. Guevara (Guevara), opined that dismissal may be too harsh a penalty and instead recommended that Estrella be suspended, considering that PNOC-EDC eventually engaged two (2) more of JR Car Services' vehicles.[29]

On July 5, 2005, Estrella was dismissed,[30] prompting him to file a complaint for illegal dismissal, with prayer for reinstatement and payment of full backwages and exemplary damages, against petitioners.

The LA Ruling

After due proceedings, the Labor Arbiter found[31] Estrella to have been illegally dismissed, observing that he did not act with

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[24] *Id*. at 71.

[25] *Id*. at 64.

[26] *Id*. at 62.

[27] *Id*. at 62-74.

[28] *Id*. at 74.

[29] *Id.* at 73.

[30] *Id*. at 156.

[31] *Id*. at 261-276. Decision dated January 18, 2006. Penned by Labor Arbiter Felipe P. Pati.

bad faith and malice in the performance of his duties. Citing the opinion of Guevara, the LA held that Jacobe could not validly claim that the engagement of his vehicles was hinged upon Estrella's demand for a free cable unit since he was fully aware that he was not limited to only one (1) vehicle in the 2004 Contract.[32] Jacobe even failed to state in his affidavit that Estrella was the source of the altered Bid Summary and that the latter used the same to extort a free cable unit.

Finally, the LA noted Jacobe's inconsistent statements when inquired as to his motive for executing the affidavit against Estrella. Initially, Jacobe claimed that he was infuriated ("*Bumagsak talaga pisi ko*") when he learned that his vehicles would not be engaged, but later, he stated that he gave the cable unit to Estrella as a token of gratitude ("*pasasalamat*").[33] Thus, the LA ruled that there were doubts as to the truth of the charges of extortion, willful dishonesty and misbehavior against Estrella.

In sum, the LA held that Estrella's infractions were not major violations but only minor ones which did not merit the penalty of dismissal. Hence, the LA ordered PNOC-EDC to reinstate Estrella to his former or equivalent position without loss of seniority rights and privileges and to pay him his full backwages and other benefits from the date of his dismissal up to his reinstatement.

The NLRC Ruling

On appeal, the NLRC affirmed[34] *in toto* the LA's decision, upholding its finding that the inconsistencies in Jacobe's statements rendered doubtful the charges against Estrella. It echoed the LA's opinion that Estrella's infractions were minor ones which did not merit the penalty of dismissal. Petitioners' motion for reconsideration was denied on March 30, 2007.[35]

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[32] *Id*. at 272.

[33] *Id*. at 273.

[34] *Id*. at 100-110.

[35] *Id*. at 97-99.

The CA Ruling

In its assailed Decision,[36] the CA found no grave abuse of discretion on the part of the NLRC in sustaining the LA's decision. Nonetheless, the CA conceded that Estrella did indeed commit infractions but ruled that dismissal was an inappropriate penalty, considering his 21 long years of unblemished service with PNOC-EDC. Petitioners' motion for reconsideration therefrom was denied.[37]

The Issue Before The Court

The sole issue in this case is whether the CA erred in affirming the labor tribunals' pronouncement that Estrella had been illegally dismissed.

The Court's Ruling

The petition lacks merit.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. Serious misconduct is one of the just causes for termination under Article 282 of the Labor Code, which reads in part:

ART. 282. *Termination By Employer*. – An employer may terminate an employment for any of the following causes:

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

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Thus, not every form of misconduct can be considered as a just cause for termination. The law explicitly qualifies that the misconduct must be both *serious* and made in connection with the employee's work. As clarified in *Cosmos Bottling Corp. v. Fermin*:[38]

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[36] *Id*. at 37-52.

[37] *Id*. at 53-54.

[38] G.R. Nos. 193676 & 194303, June 20, 2012, 674 SCRA 310.

Misconduct involves "the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." **For misconduct to be serious and therefore a valid ground for dismissal, it must be (1) of grave and aggravated character and not merely trivial or unimportant and (2) connected with the work of the employee**.[39] (Emphasis and underscoring supplied)

In this relation, it is well to stress that the employer bears the burden of proving, through substantial evidence, that the aforesaid just cause – or any other valid cause for that matter – forms the basis of the employee's dismissal from work.[40] Substantial evidence is the amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[41] As long as this evidentiary threshold is met, the dismissal of the employee should, as a general rule, be upheld.

Applying these principles to the case at bar, the Court finds that the CA committed no reversible error when it found no grave abuse of discretion on the part of both the LA and NLRC in ruling that Estrella was illegally dismissed from his employment.

Records disclose that PNOC-EDC dismissed Estrella on the ground of serious misconduct[42] which was mainly hinged on Estrella's alteration and/or tampering of lessors' bids and extortion.

Petitioners impute that Estrella used his position and authority to exert undue pressure on Jacobe to give in to his personal demands, and in the process, tainted the integrity of PNOC-EDC's bidding process. This conclusion was largely based on

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[39] *Id*. at 318.

[40] See *Caltex* (*Philippines*), *Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207.

[41] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 652.

[42] *Rollo*, p. 156.

the Committee's finding that Estrella altered JR Car Services' bid from three (3) units to one (1) unit for the AUV Category, coupled with the fact that Estrella sent several text messages to Jacobe asking for personal favors, such as a free cable unit. Ruling on the matter, the LA, the NLRC, and the CA all observed that such infraction was only minor in nature which did not warrant his dismissal.

The Court agrees.

While Estrella himself admitted that he did alter JR Car Services' bid from three (3) vehicles to one (1) in the Bid Summary which he himself initialed, he provided a reasonable excuse therefor – that is, he only did so to reflect the results of his second inspection where he found that only one vehicle was available for lease. It is well to stress that the alteration was only made in a field copy which, as Estrella explains, was acquired by his supervisor and sent to the accounting department without his knowledge. Although PNOC-EDC remarked that the fact that Estrella initialed the said field copy proved his intent to make the alteration official, this supposition, bereft of any substantial evidence to corroborate such a conclusion, remains highly-speculative and thus, cannot be given credence. Besides, as it turned out, the alleged alterations did not appear in the final copy of the Bid Summary, negating any complications on the company's bidding process. In fact, PNOC-EDC eventually engaged two (2) more of JR Car Services' vehicles in August 2004. Thus, for these reasons, it cannot be gainsaid that Estrella's mistake, if any, hardly qualifies as serious misconduct as contemplated by law, denying his employer's right to dismiss him based on the same.

To note, neither do the text messages sent to Jacobe predicate any corrupt motive on Estrella's part since the causal connection between these messages and the conduct of Estrella's bid inspection and/or approval was not adequately shown. Moreover, the credibility of Estrella's version of the incident grows even stronger when taken in light of Jacobe's inconsistent statements before the Committee. Therefore, absent substantial evidence to prove that the subject text messages were actually tied up to

any form of extortion, Estrella's termination for such actuations cannot be sustained.

WHEREFORE, the petition is **DENIED.** The March 21, 2011 Decision and July 20, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 98841 are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 198680. July 8, 2013]

HEIRS OF MAGDALENO YPON, namely, ALVARO YPON, ERUDITA Y. BARON, CICERO YPON, WILSON YPON, VICTOR YPON, and HINIDINO Y. PEÑALOSA, *petitioners, vs.* **GAUDIOSO PONTERAS RICAFORTE *A.K.A.* "GAUDIOSO E. YPON," and THE REGISTER OF DEEDS of TOLEDO CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION, DEFINED AND EXPLAINED.— Cause of action is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by the allegations in the complaint. In this relation, a complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Accordingly, if the allegations furnish sufficient basis by which

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[*] Designated Acting Member per Special Order No. 1484 dated July 9, 2013.

the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants.

2. ID.; ACTIONS; IN AN ORDINARY ACTION FOR CANCELLATION OF TITLE AND RECONVEYANCE, THE TRIAL COURT IS PRECLUDED FROM DETERMINING THE DECEDENT'S LAWFUL HEIRS; IT MUST BE MADE IN THE PROPER SPECIAL PROCEEDING FOR SUCH PURPOSE.— As stated in the subject complaint, petitioners, who were among the plaintiffs therein, alleged that they are the lawful heirs of Magdaleno and based on the same, prayed that the Affidavit of Self-Adjudication executed by Gaudioso be declared null and void and that the transfer certificates of title issued in the latter's favor be cancelled. While the foregoing allegations, if admitted to be true, would consequently warrant the reliefs sought for in the said complaint, the rule that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding precludes the RTC, in an ordinary action for cancellation of title and reconveyance, from granting the same. In the case of *Heirs of Teofilo Gabatan v. CA*, the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case[.]

3. ID.; ID.; ID.; EXCEPTIONS FROM THE REQUIREMENT TO INSTITUTE A SEPARATE SPECIAL PROCEEDING FOR THE DETERMINATION OF HEIRSHIP, NOT PRESENT.— By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened. In this case, none of the foregoing exceptions, or those of similar nature, appear to exist. Hence, there lies the need to institute the proper special proceeding in order to determine the heirship of the parties involved, ultimately resulting to the dismissal of Civil Case No. T-2246.

APPEARANCES OF COUNSEL

TLCM Law Firm for petitioners.
Dinopol Malaya Orcullo & Sandoval Law Office for private respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court of Toledo City, Branch 59 (RTC), through a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, raising a pure question of law. In particular, petitioners assail the July 27, 2011[2] and August 31, 2011[3] Orders of the RTC, dismissing Civil Case No. T-2246 for lack of cause of action.

The Facts

On July 29, 2010, petitioners, together with some of their cousins,[4] filed a complaint for Cancellation of Title and

[1] *Rollo*, pp. 3-25.

[2] *Id*. at 28-30. Penned by Judge Hermes B. Montero.

[3] *Id*. at 31.

[4] *Id*. at 32. The plaintiffs in Civil Case No. T-2246 are as follows: Francisca Y. Trilla, Elena Yntig, Cerelo Ypon, Esterlita Y. Sereño, **Alvaro Ypon**, Rogelio Ypon, Simplico Ypon, Jr., Monaliza B. Judilla, Lilia B. Quinada, Teodora A. Baron, Teofilo Ypon, Mauricio Ypon, Vicente Ypon, Pabling Ypon and Diega Ypon, **Erudita Baron**, Cristobal Ypon, Elizabeth Ypon, Francisco Ypon, Lolita Y. Gamao, Egnacia Y. Cavada, Serafin Ypon, Victor Ypon, Prudencio Ypon, Jr., Allan Ypon, Raul Ypon, Rey Rufo Ypon, Galicursi Ypon, Minda Y. Libre, Moises Ypon, Jr., Bethoven Ypon, Divina A. Sanchez, **Cicero Ypon**, Minerva Ypon, Lucinita Ypon, Crisolina Y. Tingal, Jessica Ypon, Nonoy Ypon, Wilson Ypon, Arthur Ypon, Yolanda Ypon, Lilia Y. Cordero, Ester Y. Hinlo, Lydia Ypon, Percival Ypon, Esmeralda Y. Baron, Emelita Y. Chiong, **Victor Ypon**, Primitivo Ypon, Jr., Pura Ypon, Ma. Nila Ypon, Roy Ipon, Eric Ypon, Henry Ypon, Felipa, Ypon, Felipa Ypon, Vivian Ypon, Hilarion Peñalosa, Angeles D. Libre, Clarita P. Lopez, Vicente Y. Peñalosa, Jr., Columbus Y. Peñalosa, Jose Y. Peñalosa, Alberto Y. Peñalosa, Teodoro Y. Peñalosa, Louella P. Madraga, Pomelo Y. Peñalosa, and Agnes P. Villora. (In boldface are the names of the plaintiffs who are also petitioners in this case.)

Reconveyance with Damages (subject complaint) against respondent Gaudioso Ponteras Ricaforte *a.k.a.* "Gaudioso E. Ypon" (Gaudioso), docketed as Civil Case No. T-2246.[5] In their complaint, they alleged that Magdaleno Ypon (Magdaleno) died intestate and childless on June 28, 1968, leaving behind Lot Nos. 2-AA, 2-C, 2-F, and 2-J which were then covered by Transfer Certificates of Title (TCT) Nos. T-44 and T-77-A.[6] Claiming to be the sole heir of Magdaleno, Gaudioso executed an Affidavit of Self-Adjudication and caused the cancellation of the aforementioned certificates of title, leading to their subsequent transfer in his name under TCT Nos. T-2637 and T-2638,[7] to the prejudice of petitioners who are Magdaleno's collateral relatives and successors-in-interest.[8]

In his Answer, Gaudioso alleged that he is the lawful son of Magdaleno as evidenced by: (*a*) his certificate of Live Birth; (*b*) two (2) letters from Polytechnic School; and (*c*) a certified true copy of his passport.[9] Further, by way of affirmative defense, he claimed that: (*a*) petitioners have no cause of action against him; (*b*) the complaint fails to state a cause of action; and (*c*) the case is not prosecuted by the real parties-in-interest, as there is no showing that the petitioners have been judicially declared as Magdaleno's lawful heirs.[10]

The RTC Ruling

On July 27, 2011, the RTC issued the assailed July 27, 2011 Order,[11] finding that the subject complaint failed to state a cause of action against Gaudioso. It observed that while the plaintiffs therein had established their relationship with Magdaleno in a

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[5] *Id*. at 32-39.

[6] *Id*. at 33.

[7] *Id*. at 34.

[8] *Id*.

[9] *Id*. at 53-54.

[10] *Id*. at 54.

[11] *Id*. at 28-30.

previous special proceeding for the issuance of letters of administration,[12] this did not mean that they could already be considered as the decedent's compulsory heirs. Quite the contrary, Gaudioso satisfactorily established the fact that he is Magdaleno's son – and hence, his compulsory heir – through the documentary evidence he submitted which consisted of: (*a*) a marriage contract between Magdaleno and Epegenia Evangelista; (*b*) a Certificate of Live Birth; (*c*) a Letter dated February 19, 1960; and (*d*) a passport.[13]

The plaintiffs therein filed a motion for reconsideration which was, however, denied on August 31, 2011 due to the counsel's failure to state the date on which his Mandatory Continuing Legal Education Certificate of Compliance was issued.[14]

Aggrieved, petitioners, who were among the plaintiffs in Civil Case No. T-2246,[15] sought direct recourse to the Court through the instant petition.

The Issue Before the Court

The core of the present controversy revolves around the issue of whether or not the RTC's dismissal of the case on the ground that the subject complaint failed to state a cause of action was proper.

The Court's Ruling

The petition has no merit.

Cause of action is defined as the act or omission by which a party violates a right of another.[16] It is well-settled that the

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[12] *Id*. at 69. Docketed as Sp. Pro. No. 608-T. Entitled "*In Re: Petition for Issuance of Letter of Administration, Minda Ypon Libre, Cristobal E. Ypon, and Agnes P. Veloria, petitioners v. City Registrar of Deeds and City Assessor of the City of Toledo, respondents.*"

[13] *Id*. at 30.

[14] *Id*. at 31.

[15] Based on the records, it appears that only petitioner Hinidino Y. Peñalosa was not a complainant in Civil Case No. T-2246.

[16] See Section 2, Rule 2 of the Rules of Court.

existence of a cause of action is determined by the allegations in the complaint.[17] In this relation, a complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.[18] Accordingly, if the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants.[19]

As stated in the subject complaint, petitioners, who were among the plaintiffs therein, alleged that they are the lawful heirs of Magdaleno and based on the same, prayed that the Affidavit of Self-Adjudication executed by Gaudioso be declared null and void and that the transfer certificates of title issued in the latter's favor be cancelled. While the foregoing allegations, if admitted to be true, would consequently warrant the reliefs sought for in the said complaint, the rule that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding[20] precludes the RTC, in an ordinary action for cancellation of title and reconveyance, from granting the same. In the case of *Heirs of Teofilo Gabatan v. CA*,[21] the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper

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[17] *Peltan Development, Inc. v. Court of Appeals* (CA), 336 Phil. 824, 833 (1997).

[18] *Davao Light & Power Co., Inc. v. Judge, Regional Trial Court Davao City, Branch 8*, G.R. No. 147058, March 10, 2006, 484 SCRA 272, 281.

[19] *The Consolidated Bank and Trust Corp. v. CA,* 274 Phil. 947, 955 (1991).

[20] Section 1, Rule 90 of the Rules of Court partly provides:

SEC. 1. When order for distribution of reside made. —

x x x x x x x x x

If there is a controversy before the court as to who are the lawful heirs of the deceased person or as the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

[21] G.R. No. 150206, March 13, 2009, 581 SCRA 70.

special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case:

> **Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property**. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that **such a declaration can only be made in a special proceeding**. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined *as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact*. It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.
>
> In the early case of *Litam, et al. v. Rivera*, this Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals* x x x:
>
> In the more recent case of *Milagros Joaquino v. Lourdes Reyes*, the Court reiterated its ruling that **matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights**. Citing the case of Agapay v. Palang, this Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.[22] (Emphasis and underscoring supplied; citations omitted)

By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship,

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[22] *Id*. at 78-80.

and the RTC had consequently rendered judgment thereon,[23] or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.[24]

In this case, none of the foregoing exceptions, or those of similar nature, appear to exist. Hence, there lies the need to institute the proper special proceeding in order to determine the heirship of the parties involved, ultimately resulting to the dismissal of Civil Case No. T-2246.

Verily, while a court usually focuses on the complaint in determining whether the same fails to state a cause of action, a court cannot disregard decisions material to the proper appreciation of the questions before it.[25] Thus, concordant with applicable jurisprudence, since a determination of heirship cannot be made in an ordinary action for recovery of ownership and/or possession, the dismissal of Civil Case No. T-2246 was altogether proper. In this light, it must be pointed out that the RTC erred in ruling on Gaudioso's heirship which should, as herein discussed, be threshed out and determined in the proper special proceeding. As such, the foregoing pronouncement should therefore be devoid of any legal effect.

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[23] *Id.* at 80-81. "[When] there appears to be only one parcel of land being claimed by the contending parties as their inheritance x x x [i]t would be more practical to dispense with a separate special proceeding for the determination of the status of respondent as the sole heir x x x specially [when the parties to the civil case had] voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in these proceedings [and] the RTC [had] assumed jurisdiction over the same and consequently rendered judgment thereon."

[24] "Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heir has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased." (*Republic v. Mangotara*, G.R. No. 170375, July 07, 2010, 624 SCRA 360, 443, citing *Portugal v. Portugal-Beltran*, G.R. No. 155555, August 16, 2005, 467 SCRA 184-189).

[25] *Peltan Development, Inc. v. CA, supra* note 17, at 834.

WHEREFORE, the petition is **DENIED.** The dismissal of Civil Case No. T-2246 is hereby **AFFIRMED,** without prejudice to any subsequent proceeding to determine the lawful heirs of the late Magdaleno Ypon and the rights concomitant therewith.

SO ORDERED.

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

EN BANC

[A.C. No. 6490. July 9, 2013]
(Formerly CBD Case No. 03-1054)

LILIA TABANG and CONCEPCION TABANG, *complainants, vs.* **ATTY. GLENN C. GACOTT,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; EMPLOYING MEANS AND MACHINATIONS TO ARROGATE UNTO HIMSELF THE OWNERSHIP OF CLIENT'S PROPERTIES AMOUNTS TO GROSS MISCONDUCT, DISHONESTY AND DECEIT; SUPREME PENALTY OF DISBARMENT, IMPOSED.— After a careful examination of the records, the Court concurs with and adopts the findings and recommendation of Commissioner Limpingco and the IBP Board of Governors. It is clear that respondent committed gross misconduct, dishonesty, and deceit in violation of Rule 1.01 of the CPR when he executed the revocations of SPAs and affidavits of recovery and in arrogating for himself the ownership of the

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[*] Designated Acting Member per Special Order No. 1484 dated July 9, 2013.

seven (7) subject parcels. While it may be true that complainant Lilia Tabang herself engaged in illicit activities, the complainant's own complicity does not negate, or even mitigate, the repugnancy of respondent's offense. Quite the contrary, his offense is made even graver. He is a lawyer who is held to the highest standards of morality, honesty, integrity, and fair dealing. Perverting what is expected of him, he deliberately and cunningly took advantage of his knowledge and skill of the law to prejudice and torment other individuals. Not only did he countenance illicit action, he instigated it. Not only did he acquiesce to injustice, he orchestrated it. Thus, We impose upon respondent the supreme penalty of disbarment.

2. ID.; ID.; ID.; ATTORNEY'S GROSS MISCONDUCT, DISHONESTY AND DECEIT ESTABLISHED CLEARLY BY PREPONDERANT EVIDENCE.— [C]omplainants have shown by a preponderance of evidence that respondent committed gross misconduct, dishonesty, and deceit in violation of Rule 1.01 of the CPR. Specifically, complainants have shown not only through Lilia Tabang's testimony but more so through the testimonies of Dieter Heinze, Atty. Agerico Paras, and Teodoro Gallinero that: a. respondent misrepresented himself as the owner of or having the right to dispose of the subject parcels; b. respondent actively sought to sell or otherwise dispose of the subject parcels; c. respondent perfected the sales and received the proceeds of the sales – whether in cash or in kind – of the subject parcels; d. such sales were without the consent or authorization of complainants; and e. respondent never remitted the proceeds of the sales to complainants. x x x In contrast, respondent failed to present evidence to rebut complainant's allegations. x x x Given the glaring disparity between the evidence adduced by complainants and the sheer lack of evidence adduced by respondent, this Court is led to no other reasonable conclusion than that respondent committed the acts of which he is accused and that he acted in a manner that is unlawful, dishonest, immoral, and deceitful in violation of Rule 1.01 of the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

Conrado B. Lagman for complainants.

RESOLUTION

PER CURIAM:

This case involves a complaint for disbarment directly filed with the Integrated Bar of the Philippines (IBP) charging respondent Atty. Glenn Gacott of engaging in unlawful, dishonest, immoral or deceitful conduct in violation of Rule 1.01 of the Code of Professional Responsibility (CPR).[1]

Complainants alleged that sometime in 1984 and 1985, complainant Lilia Tabang sought the advice of Judge Eustaquio Gacott, respondent Atty. Glenn Gacott's father. Lilia Tabang intended to purchase a total of thirty (30) hectares of agricultural land located in Barangay Bacungan, Puerto Princesa, Palawan, which consisted of several parcels belonging to different owners. Judge Gacott noted that under the government's agrarian reform program, Tabang was prohibited from acquiring vast tracts of agricultural land as she already owned other parcels. Thus, Judge Gacott advised her to put the titles of the parcels under the names of fictitious persons.[2]

Eventually, Lilia Tabang was able to purchase seven parcels and obtained the corresponding Transfer Certificates of Title (TCT) under the names of fictitious persons, as follows:

1. TCT No. 12475 – Amelia Andes;
2. TCT No. 12476 – Wilfredo Ondoy;
3. TCT No. 12790 – Agnes Camilla;
4. TCT No. 12791 – Leonor Petronio;
5. TCT No. 12792 – Wilfredo Gomez;
6. TCT No. 12793 – Elizabeth Dungan; and
7. TCT No. 12794 – Andes Estoy.[3]

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[1] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[2] *Rollo*, p. 2.

[3] *Id*. at 3.

Later, complainants Lilia and Concepcion Tabang decided to sell the seven parcels as they were in need of funds for their medication and other expenses. Claiming that he would help complainants by offering the parcels to prospective buyers, respondent Glenn Gacott borrowed from Lilia Tabang the TCTs covering the parcels.[4]

About a year after respondent borrowed the titles and after he failed to negotiate any sale, complainants confronted respondent. Respondent then told the complainants that he had lost all seven titles.[5]

On the pretext of offering a remedy to complainants, respondent advised them to file petitions in court for re-issuance of titles. Pretending to be the "authorized agent-representative" of the fictitious owners of the seven parcels, Lilia Tabang filed petitions for re-issuance of titles.[6]

In the course of the proceedings, the public prosecutor noticed similarities in the signatures of the supposed owners that were affixed on the Special Powers of Attorney (SPA) purportedly executed in favor of Lilia Tabang. The public prosecutor, acting on his observation, asked the court to have the supposed owners summoned.[7]

Seeking to avoid embarrassment, Lilia Tabang had the petitions voluntarily dismissed without prejudice to their being re-filed.[8]

Subsequently, Lilia Tabang filed a new set of petitions. This time, she changed the fictitious owners' signatures in the hope of making them look more varied.[9]

Upon learning that Lilia Tabang had filed a new set of petitions, respondent executed several documents that included revocations

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[4] *Id*. at 4.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 5.

[8] *Id*.

[9] *Id*.

of SPAs and various affidavits of recovery purportedly signed by the parcels' (fictitious) owners. Respondent then caused the annotation of these documents on the TCTs of the seven parcels.[10]

Also, respondent caused the publication of notices where he represented himself as the owner of the parcels and announced that these were for sale.[11] Later, respondent succeeded in selling the seven parcels. He received a total of 3,773,675.00 from the proceeds of the sales.[12]

Alleging that respondent committed gross misconduct, dishonesty, and deceit, complainants filed their complaint directly with the Integrated Bar of the Philippines on February 3, 2003. The case was docketed as Commission on Bar Discipline (CBD) Case No. 03-1054.

In his defense, respondent alleged that the owners of the seven parcels were not fictitious and that they had voluntarily sold the seven parcels. He added that Lilia Tabang had been merely the broker for the seven parcels and that she had unsuccessfully demanded a "*balato*" of twenty percent (20%) from the proceeds of the sale of the seven parcels. He alleged that after she had been refused to be given a "*balato*," Lilia Tabang had threatened to defame him and seek his disbarment.[13]

In her Report and Recommendation dated March 4, 2004,[14] IBP Investigating Commissioner Lydia A. Navarro found respondent guilty of gross misconduct for violating Rule 1.01 of the Code of Professional Responsibility. She recommended that respondent be suspended from the practice of law for six (6) months.

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[10] *Id.* at 6.

[11] *Id.* at 7.

[12] *Id.* at 8.

[13] *Id.* at 58-59.

[14] *Id.* at 198-211.

In a Resolution dated April 16, 2004,[15] the IBP Board of Governors adopted the report of Commissioner Navarro. However, the IBP Board of Governors increased the penalty to disbarment. Thereafter, the case was referred to the Supreme Court pursuant to Rule 139-B of the Rules of Court.

In a Resolution dated September 29, 2004,[16] the Supreme Court remanded the case to the IBP. The Court noted that majority of the pieces of evidence presented by complainants were mere photocopies and affidavits and that the persons who supposedly executed such documents were neither presented nor subpoenaed. Thus, there could not have been adequate basis for sustaining the imposition of a penalty as grave as disbarment.

The case was then assigned to Investigating Commissioner Dennis B. Funa. Hearings were conducted on March 22, 2005; October 7, 2005; July 18, 2006; August 29, 2006; November 7, 2006; February 23, 2007; and July 25, 2007.[17]

The complainants presented several witnesses. One was Dieter Heinze, President of the Swiss American Lending Corporation.[18] Heinze testified that in April 2001, a friend introduced him to respondent who, in turn, introduced himself as the owner of seven (7) parcels in Puerto Princesa City, Palawan. They agreed on the purchase of a lot priced at ₱900,000.00. His company, however, paid only ₱668,000.00. Heinze noted that his company withheld payment upon his realization that Lilia Tabang had caused the annotation of an adverse claim and upon respondent's failure to produce Leonor Petronio, the alleged lot owner.

Another of complainants' witnesses was Atty. Agerico Paras.[19] He testified that Heinze introduced him to respondent who, in turn, introduced himself as the owner of seven (7) parcels in

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[15] *Id*. at 197.

[16] *Id*. at 230- 241.

[17] *Id*. at 1512.

[18] *Id*. at 1515.

[19] *Id*. at 1515-1516.

Puerto Princesa City, Palawan. They agreed on the purchase of a lot priced at ₱2,300,000.00. He paid for the said parcel in two (2) installments. Upon learning that Lilia Tabang had caused the annotation of an adverse claim, he wrote to respondent asking him to either work on the cancellation of the claim or to reimburse him. He added that respondent was unable to produce Amelia Andes, the ostensible owner of the parcel he had purchased.

Teodoro Gallinero, another buyer of one of the seven parcels, also testified for complainants.[20] He testified that in February 2001, he was introduced to respondent who claimed that several parcels with a total area of thirty (30) hectares were owned by his mother. Gallinero agreed to purchase a parcel for the price of ₱2,000,000.00 which he paid in cash and in kind (L-300 van).

Complainant Lilia Tabang also testified on the matters stated in the Complaint.[21]

On July 25, 2007, Commissioner Funa required the complainants to submit their Position Paper. Respondent filed his Motion for Reconsideration and the Inhibition of Commissioner Funa who, respondent claimed, deprived him of the chance to cross-examine complainants' witnesses, and was "bent on prejudicing"[22] him.

Commissioner Funa then inhibited himself. Following this, the case was reassigned to Investigating Commissioner Rico A. Limpingco.

In the meantime, with the Supreme Court *En Banc*'s approval of the IBP-CBD's Rules of Procedure, it was deemed proper for an Investigating Commissioner to submit his/her Report and Recommendation based on matters discussed during the mandatory conferences, on the parties' Position Papers (and supporting documents), and on the results of clarificatory questioning (if such questioning was found to be necessary).

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[20] *Id.* at 1516.

[21] *Id.*

[22] *Id.* at 1512.

As such, respondent's Motion for Reconsideration was denied, and he was required to file his Position Paper.[23]

On July 30, 2009, respondent filed his Position Paper.[24] Subsequently, the case was deemed submitted for Commissioner Limpingco's Report and Recommendation.

In his Position Paper, respondent noted that he filed criminal complaints against Lilia Tabang on account of Tabang's statement that she had fabricated the identities of the owners of the seven (7) parcels. He claimed that since 1996, he had relied on the Torrens Titles of the seven (7) owners who were introduced to him by Lilia Tabang. He asserted that Lilia Tabang could not have been the owner of the seven (7) parcels since the SPAs executed by the parcels' owners clearly made her a mere agent and him a sub-agent. He also assailed the authenticity of the public announcements (where he supposedly offered the seven [7] parcels for sale) and Memorandum of Agreement. He surmised that the signatures on such documents appearing above the name "Glenn C. Gacott" had been mere forgeries and crude duplications of his own signature.

In his Report and Recommendation dated August 23, 2010,[25] Commissioner Limpingco found respondent liable for gross violation of Rule 1.01 of the CPR. He likewise noted that respondent was absent in most of the hearings without justifiable reason, in violation of Rule 12.04 of the CPR.[26] He recommended that respondent be disbarred and his name, stricken from the Roll of Attorneys.

On October 8, 2010, the IBP Board of Governors issued a Resolution[27] adopting the Report of Investigating Commissioner Limpingco.

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[23] *Id.* at 897-898.

[24] *Id.* at 914-960.

[25] *Id.* at 1340-1358.

[26] Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

[27] *Rollo*, p. 1511.

On June 26, 2011, the IBP Board of Governors denied respondent's Motion for Reconsideration.[28]

Respondent then filed his Notice of Appeal with the IBP on August 8, 2011.

On August 17, 2011, respondent filed before the Supreme Court his Urgent Motion for Extension of Time (to file Petition for Review/Appeal). On September 20, 2011, the Court granted respondent's Motion and gave him an extension of thirty (30) days to file his Appeal. The Supreme Court warned respondent that no further extension will be given. Despite this, respondent filed two (2) more Motions for Extension – the first on September 29, 2011 and the second on November 3, 2011 – both of which were denied by the Court.

Despite the Court's denials of his Motions for Extension, respondent filed on December 14, 2011 a Motion to Admit Petition for Review/Appeal (with attached Petition/Appeal). This Motion was denied by the Court on April 17, 2012.

For resolution is the issue of whether or not respondent engaged in unlawful, dishonest, immoral or deceitful conduct violating Rule 1.01 of the Code of Professional Responsibility, thus warranting his disbarment.

After a careful examination of the records, the Court concurs with and adopts the findings and recommendation of Commissioner Limpingco and the IBP Board of Governors. It is clear that respondent committed gross misconduct, dishonesty, and deceit in violation of Rule 1.01 of the CPR when he executed the revocations of SPAs and affidavits of recovery and in arrogating for himself the ownership of the seven (7) subject parcels.

While it may be true that complainant Lilia Tabang herself engaged in illicit activities, the complainant's own complicity does not negate, or even mitigate, the repugnancy of respondent's offense. Quite the contrary, his offense is made even graver.

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[28] *Id.* at 1510.

He is a lawyer who is held to the highest standards of morality, honesty, integrity, and fair dealing. Perverting what is expected of him, he deliberately and cunningly took advantage of his knowledge and skill of the law to prejudice and torment other individuals. Not only did he countenance illicit action, he instigated it. Not only did he acquiesce to injustice, he orchestrated it. Thus, We impose upon respondent the supreme penalty of disbarment.

Under Rule 138, Section 27 of the Rules of Court (Rules), a lawyer may be disbarred for any of the following grounds:

a. deceit;
b. malpractice;
c. gross misconduct in office;
d. grossly immoral conduct;
e. conviction of a crime involving moral turpitude;
f. violation of the lawyer's oath;
g. willful disobedience of any lawful order of a superior court; and
h. willfully appearing as an attorney for a party without authority to do so.

It is established in Jurisprudence that disbarment is proper when lawyers commit gross misconduct, dishonesty, and deceit in usurping the property rights of other persons. By way of examples:

a. In *Brennisen v. Contawi*:[29] Respondent Atty. Ramon U. Contawi was disbarred for having used a spurious SPA to mortgage and sell property entrusted to him for administration.

b. In *Sabayle v. Tandayag*:[30] One of the respondents, Atty. Carmelito B. Gabor, was disbarred for having acknowledged a Deed of Sale in the absence of the purported vendors and for taking advantage of his position

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[29] A.C. No. 7481, April 24, 2012, 670 SCRA 358.

[30] A.C. No. 140-J, March 8, 1988, 158 SCRA 497.

as Assistant Clerk of Court by purchasing one-half (½) of the land covered by said Deed of Sale knowing that the deed was fictitious.

c. In *Daroy v. Legaspi*:[31] The Court disbarred respondent Atty. Ramon Legaspi for having converted to his personal use the funds that he received for his clients.

Nevertheless, recourse to disbarment must be done with utmost caution. As this Court noted in *Moran v. Moron*:[32]

> Disbarment should never be imposed unless it is evidently clear that the lawyer, by his serious misconduct, should no longer remain a member of the bar. Disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe – such as a reprimand, suspension, or fine – would accomplish the end desired.[33]

Moreover, considering the gravity of disbarment, it has been established that clearly preponderant evidence is necessary to justify its imposition.[34]

As explained in *Aba v. De Guzman,*[35] "[p]reponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.

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[31] 160 Phil. 306 (1975).

[32] A.C. No. 7390, February 27, 2012 citing *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143, 146.

[33] *Id*.

[34] *Aba v. De Guzman*, A.C. No. 7649, December 14, 2011, 662 SCRA 361 citing *Santos v. Dichoso*, A.C. No. 1825, August 22, 1978, 84 SCRA 622; 174 Phil. 115 (1978), and *Noriega v. Sison*, A.C. No. 2266, October 27, 1983, 125 SCRA 293; 210 Phil. 236 (1983).

[35] *Id*.

It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[36]

Per Rule 133, Section 1 of the Rules, a court may consider the following in determining preponderance of evidence:

a. All the facts and circumstances of the case;

b. The witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony;

c. The witnesses' interest or want of interest and also their personal credibility so far as the same may ultimately appear in the trial; and

d. The number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

In this case, complainants have shown by a preponderance of evidence that respondent committed gross misconduct, dishonesty, and deceit in violation of Rule 1.01 of the CPR.

Specifically, complainants have shown not only through Lilia Tabang's testimony but more so through the testimonies of Dieter Heinze, Atty. Agerico Paras, and Teodoro Gallinero that:

a. respondent misrepresented himself as the owner of or having the right to dispose of the subject parcels;

b. respondent actively sought to sell or otherwise dispose of the subject parcels;

c. respondent perfected the sales and received the proceeds of the sales – whether in cash or in kind – of the subject parcels;

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[36] *Id*. at 372 citing *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 613 (2005); *Bank of the Philippine Islands v. Reyes*, G.R. No. 157177, February 11, 2008, 544 SCRA 206, 216; *Republic v. Bautista*, G.R. No. 169801, September 11, 2007, 532 SCRA 598, 612.

d. such sales were without the consent or authorization of complainants; and

e. respondent never remitted the proceeds of the sales to complainants.

More importantly, complainants' witnesses showed that when respondent had been confronted with Lilia Tabang's adverse claims and asked to substantiate the identities of the supposed owners of the subject parcels, he had failed to produce such persons or even show an iota of proof of their existence. In this regard, the testimonies of Dieter Heinze, Atty. Agerico Paras, and Teodoro Gallinero are particularly significant in so far as they have been made despite the fact that their interest as buyers is contrary to that of complainants' interest as adverse claimants.

In contrast, respondent failed to present evidence to rebut complainants' allegations.

Respondent's defense centered on his insistence that the owners of the seven parcels were not fictitious and that they had voluntarily sold the seven parcels. Respondent also evaded the allegations against him by flinging counter-allegations. For instance, he alleged that Lilia Tabang had unsuccessfully demanded a "*balato*" from the proceeds of the sale of the subject parcels and that after she had been refused, she threatened to defame respondent and seek his disbarment. In support of this allegation, he pointed out that he had filed criminal complaints against Lilia Tabang. He also surmised that the signatures on the subject documents appearing above the name "Glenn C. Gacott" were mere forgeries and crude duplications of his signature.

Per Rule 131, Section 1 of the Rules of Court,[37] the burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue. Thus, in *Leave Division, Office of Administrative Services, Office of the Court*

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[37] Rule 131, Sec. 1. *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Administrator v. Gutierrez[38] where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained.

It was incumbent upon respondent to prove his allegation that the supposed owners of the seven parcels are real persons. Quite the contrary, he failed to produce the slightest proof of their identities and existence, much less produce their actual persons. As to his allegations regarding Lilia Tabang's supposed extortion and threat and the forgery or crude duplication of his signature, they remain just that – allegations. Respondent failed to aver facts and circumstances which support these claims.

At best, respondent merely draws conclusions from the documents which form the very basis of complainants' own allegations and which are actually being assailed by complainants as inaccurate, unreliable, and fraudulent. Respondent makes much of how Lilia Tabang could not have been the owner of the seven (7) parcels since her name does not appear on the parcels' TCTs[39] and how he merely respected the title and ownership of the ostensible owners.[40] Similarly, he makes much of how Lilia Tabang was named as a mere agent in the SPAs.[41] However, respondent loses sight of the fact that it is precisely the accuracy of what the TCTs and SPAs indicate and the deception they engender that are the crux of the present controversy. In urging this Court to sustain him, respondent would have us rely on the very documents assailed as fraudulent.

Apart from these, all that respondent can come up with are generic, sweeping, and self-serving allegations of (1) how he could not have obtained the TCTs from Tabang as "it is a standing policy of his law office not to accept Torrens title [sic] unless

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[38] A.M. No. P-11-2951, February 15, 2012, 666 SCRA 29, 34.

[39] *Rollo*, p. 941.

[40] *Id*. at 944.

[41] *Id*. at 940, 945.

it is related to a court case"[42] and because "[he] does not borrow any Torrens title from anybody and for whatever purpose;"[43] (2) how complainants could not have confronted him to demand the return of the TCTs and how he could not have told them that he lost the TCTs because "[a]s a lawyer, [he] always respects and recognizes the right of an owner to keep in his custody or possession any of his properties of value;"[44] and (3) how he could not have met and talked with Lilia Tabang for the engagement of his services only to refuse Lilia Tabang because legal practice constituted his livelihood, and there was no reason for him to refuse an occasion to earn income.[45]

Rather than responding squarely to complainants' allegations, respondent merely embarks on conjectures and ascribes motives to complainants. He accuses Lilia Tabang of demanding a "*balato*" of twenty percent (20%) from the proceeds of the sale of the seven parcels, and of threatening to defame him and to seek his disbarment after she had been refused. This evasive posturing notwithstanding, what is clear is that respondent failed to adduce even the slightest proof to substantiate these claims. From all indications, Lilia Tabang had sufficient basis to file the present Complaint and seek sanctions against respondent.

Given the glaring disparity between the evidence adduced by complainants and the sheer lack of evidence adduced by respondent, this Court is led to no other reasonable conclusion than that respondent committed the acts of which he is accused and that he acted in a manner that is unlawful, dishonest, immoral, and deceitful in violation of Rule 1.01 of the Code of Professional Responsibility.

This Court has repeatedly emphasized that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren

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[42] *Id*. at 948.

[43] *Id*.

[44] *Id*. at 949-950.

[45] *Id*. at 950.

in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State – the administration of justice – as an officer of the court."[46] Accordingly, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."[47]

Respondent has fallen dismally and disturbingly short of the high standard of morality, honesty, integrity, and fair dealing required of him. Quite the contrary, he employed his knowledge and skill of the law as well as took advantage of the credulity of petitioners to secure undue gains for himself and to inflict serious damage on others. He did so over the course of several years in a sustained and unrelenting fashion and outdid his previous wrongdoing with even greater, more detestable offenses. He has hardly shown any remorse. From how he has conducted himself in these proceedings, he is all but averse to rectifying his ways and assuaging complainants' plight. Respondent even foisted upon the IBP and this Court his duplicity by repeatedly absenting himself from the IBP's hearings without justifiable reasons. He also vexed this Court to admit his Appeal despite his own failure to comply with the much extended period given to him, thus inviting the Court to be a party in delaying complainants' cause. For all his perversity, respondent deserves none of this Court's clemency.

WHEREFORE, respondent ATTY. GLENN C. GACOTT, having clearly violated the Canons of Professional Responsibility through his unlawful, dishonest, and deceitful conduct, is **DISBARRED** and his name ordered **STRICKEN** from the Roll of Attorneys.

Let copies of this Decision be served on the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all

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[46] *In the Matter of the IBP Membership Dues Delinquency of Atty. MARCIAL A. EDILLON (IBP Administrative Case No. MDD-1)*, 174 Phil. 55, 62 (1978).

[47] *Ventura v. Samson*, A.C. No. 9608, November 27, 2012.

courts in the country for their information and guidance. Let a copy of this Decision be attached to respondent's personal record as attorney.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[A.M. No. 08-5-305-RTC. July 9, 2013]

RE: FAILURE OF FORMER JUDGE ANTONIO A. CARBONELL TO DECIDE CASES SUBMITTED FOR DECISION AND TO RESOLVE PENDING MOTIONS IN THE REGIONAL TRIAL COURT, BRANCH 27, SAN FERNANDO, LA UNION.

SYLLABUS

JUDICIAL ETHICS; JUDGES; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD WITHOUT JUSTIFIABLE REASON CONSTITUTES GROSS INEFFICIENCY; POOR HEALTH CONDITION CONSIDERED TO MITIGATE LIABILITY; FINE, REDUCED.— Without a doubt, Judge Carbonell's failure to decide several cases within the reglementary period, without justifiable and credible reasons, constituted gross inefficiency, warranting the imposition of administrative sanctions, like fines. The fines imposed have varied in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, including the presence

of aggravating or mitigating circumstances like the damage suffered by the parties from the delay, the health condition and age of the judge, *etc*. Thus, in one case, the Court mitigated the liability of a Judge who had been suffering from illnesses and who had later retired due to disability, and imposed upon him a fine of ₱20,000.00 for failure to decide 31 cases. Considering that Judge Carbonell similarly retired due to disability, the Court believes that his poor health condition greatly contributed to his inability to efficiently perform his duties as a trial judge. That mitigated his administrative liability, for which reason the Court reduces the recommended penalty of fine from ₱50,000.00 to ₱20,000.00.

R E S O L U T I O N

BERSAMIN, *J.*:

This administrative case originates from the judicial audit conducted by the Office of the Court Administrator (OCA) on March 3 and 4, 2008 in the Regional Trial Court of San Fernando, La Union, Branch 27, in view of the disability retirement of Presiding Judge Antonio A. Carbonell on December 31, 2007.

According to the Audit Team's Report, Branch 27 had a total caseload of 231 cases, consisting of 147 criminal cases and 84 civil cases, and Judge Carbonell failed to decide 41 criminal cases (one inherited) and 22 civil cases (four inherited), namely: Criminal Case Nos. 1183, 4559, 5117, 3532, 3672, 5165, 5007, 5946, 6934, 5763, 7014, 5991, 4724, 6311, 6076, 4789, 6297, 5424, 4928, 6403, 6816, 5635, 5666, 5134, 5865, 6284, 6454, 5394, 6770, 5375, 5356, 7557, 5940, 6311, 6333, 7729, 7111, 6325, 6068, 6517, and 7766; and Civil Case Nos. 3009, 4564, 4563, 4714, 3647, 4362, 6041, 4798, 4561, 6989, 2882, 6185, 7153, 7163, LRC 2332, SCA 7198, 7310, 3487, 7327, 7331, 7298, and 7323.[1]

Judge Carbonell was also reported to have failed to resolve pending motions or incidents in four criminal cases and 12 civil

[1] *Rollo*, pp. 2-14.

cases, to wit: Criminal Case Nos. 7559, 6409, 7787, and 7788; and Civil Case Nos. 4793, LRC 1308, 7064, 4973, SP 2901, SP 2952, AC 1797, 7100, 7152, 7060, SP 2986, and SP 2987.[2]

In a Memorandum dated May 15, 2008, the OCA recommended to the Court that a fine of ₱50,000.00 be imposed upon Judge Carbonell for gross inefficiency for failing to promptly decide the cases and to resolve pending motions and incidents.[3]

On June 17, 2008, the Court directed the Clerk of Court to furnish Judge Carbonell with a copy of the Audit Team's Report, and ordered him to submit his comment on the report within ten days from notice.[4]

Not having received the comment from Judge Carbonell despite the lapse of the time given, the Court resolved on September 21, 2010 to require him to show cause why he should not be disciplinarily dealt with or held in contempt.[5]

Judge Carbonell replied,[6] stating that he had incorporated his comment/compliance to the June 17, 2008 resolution in the letter dated July 17, 2008 (*Re: Very Urgent Request for Release of Disability Retirement Benefits and Money Value of Accrued Leave Credits*) he had sent to Chief Justice Reynato S. Puno.[7] He remarked that the Court had actually granted his request for the payment of his disability retirement benefits subject to the retention of ₱200,000.00 pending resolution of the pending administrative cases against him.[8]

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[2] *Id*.

[3] *Id*. at 15.

[4] *Id*. at 76.

[5] *Id*. at 82.

[6] *Id*. at 84-85.

[7] *Id*. at 86-87.

[8] *Claim for Disability Retirement Benefits of Hon. Antonio A. Carbonell, former Judge, Regional Trial Court, Branch 27, San Fernando, La Union,* A.M. No. 12815-Ret., September 24, 2008.

In his July 17, 2008 letter to Chief Justice Puno, Judge Carbonell surmised that the Audit Team might have overlooked the fact that he had inherited some of the undecided cases from the predecessor judge; that said cases had no transcripts of stenographic notes, because of which he was impelled to require the parties to submit their respective memoranda; that the cases would only be considered submitted for decision after the parties would have filed their respective memoranda; and that he had undergone a quadruple heart bypass operation in 2005 that had adversely affected his pace in deciding the cases.

On November 23, 2010, the Court referred Judge Carbonell's letter to the OCA for evaluation, report, and recommendation.[9]

In its Memorandum dated February 2, 2011,[10] the OCA reiterated its recommendation to impose a fine of ₱50,000.00 on Judge Carbonell, noting that he had failed to render any valid reason for his delay in deciding the cases submitted for decision and in resolving the pending motions or incidents in other cases. The OCA noted that only five cases submitted for decision had been inherited; and that the case records did not bear any requests for extension of time or any directive for the transcription of stenographic notes. It stressed that heavy caseload would not justify the failure to promptly decide and resolve cases because he could have simply asked the Court for an extension of time.

The recommendation of the OCA is well-taken, subject to the modification of the penalty to be imposed.

As a frontline official of the Judiciary, a trial judge should at all times act with efficiency and probity. He is duty-bound not only to be faithful to the law, but also to maintain professional competence. The pursuit of excellence ought always to be his guiding principle. Such dedication is the least that he can do to

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[9] *Rollo*, p. 98.

[10] *Id.* at 102-103.

sustain the trust and confidence that the public have reposed in him and the institution he represents.[11]

The Court cannot overstress its policy on prompt disposition or resolution of cases.[12] Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay.[13] Thus, judges have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three months from the filing of the last pleading, brief or memorandum for lower courts.[14] To further impress upon judges such mandate, the Court has issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would insure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution.

Nonetheless, the Court has been mindful of the plight of our judges and understanding of circumstances that may hinder them from promptly disposing of their businesses. Hence, the Court has allowed extensions of time to decide cases beyond the 90-day period. All that a judge needs to do is to request and justify an extension of time to decide the cases, and the Court has almost invariably granted such request.

Judge Carbonell failed to decide a total of 63 cases and to resolve 16 pending motions or incidents within the 90-day reglementary period. He intimated that his poor health affected his pace in deciding the cases. Had such been the case, then he should have explained his predicament to the Court and asked

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[11] *Juson v. Mondragon,* A.M. No. MTJ-07-1685, September 3, 2007, 532 SCRA 1, 13.

[12] *Id*. at 12.

[13] *Office of the Court Administrator v. Castañeda,* A.M. No. RTJ-12-2316, October 9, 2012, 682 SCRA 321, 343.

[14] Section 15(1), Article VIII of the Constitution.

for an extension of time to decide the cases. Unfortunately, he failed to do so.

Judge Carbonell claims that some of the inherited cases had no transcripts of stenographic notes, thereby preventing him from resolving the cases on time. He posits that a case would not be considered submitted for decision if the parties did not yet file their respective memoranda.

The Audit Team's Report shows that, in an apparent attempt to suspend the running of the 90-day period to decide the cases, Judge Carbonell liberally gave the parties in most of the overdue cases several extensions of time to file their respective memoranda. Some extensions were even for indefinite periods, with the parties being simply given "ample time to file their memo," as the relevant court orders stated.

In view of the foregoing, Judge Carbonell's excuses are futile in the light of the following provisions of Administrative Circular No. 28, dated July 3, 1989, *viz*:

> (3) A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. The ninety (90) days period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the Court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or the expiration of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days from the completion of the transcripts within which to decide the same.
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> (4) The court may grant extension of time to file memoranda, but the ninety (90) day period for deciding shall not be interrupted thereby.

Without a doubt, Judge Carbonell's failure to decide several cases within the reglementary period, without justifiable and credible reasons, constituted gross inefficiency, warranting the

imposition of administrative sanctions,[15] like fines. The fines imposed have varied in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, including the presence of aggravating or mitigating circumstances like the damage suffered by the parties from the delay, the health condition and age of the judge, *etc*.[16] Thus, in one case, the Court mitigated the liability of a Judge who had been suffering from illnesses and who had later retired due to disability, and imposed upon him a fine of ₱20,000.00 for failure to decide 31 cases.[17]

Considering that Judge Carbonell similarly retired due to disability, the Court believes that his poor health condition greatly contributed to his inability to efficiently perform his duties as a trial judge. That mitigated his administrative liability, for which reason the Court reduces the recommended penalty of fine from ₱50,000.00 to ₱20,000.00.

WHEREFORE, Retired Judge Antonio A. Carbonell is **ORDERED** to pay a fine of ₱20,000.00 to be deducted from the ₱200,000.00 that was withheld from his retirement benefits, and the balance to be immediately released to him.

SO ORDERED.

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

Brion, J., on leave.

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[15] *Re: Report on the Judicial Audit and Physical Inventory of Pending Cases in the MTCC, Branch 1 and the RTC, Branch 57, both in Lucena City,* A.M. No. 96-7-257-RTC, December 2, 1999, 319 SCRA 507, 512.

[16] *Re: Report on the Judicial Audit Conducted in RTC, Branches 29 and 59, Toledo City,* A.M. No. 97-9-278-RTC, July 8, 1998, 292 SCRA 8, 23.

[17] *Supra* note 15.

EN BANC

[A.M. No. P-09-2690. July 9, 2013]
(Formerly A.M. OCA IPI No. 08-2889-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **NOEL R. ONG, Deputy Sheriff, Branch 49, and ALVIN A. BUENCAMINO, Deputy Sheriff, Branch 53 of the Metropolitan Trial Court, Caloocan City,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ACTS OF SHERIFFS IN USING THE LEVIED VEHICLE FOR THEIR PERSONAL USE AND LOSS OF THE SAID VEHICLE WHILE IN THEIR CUSTODY AMOUNT TO GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY; PENALTY OF DISMISSAL FROM THE SERVICE, IMPOSED.—** Respondent Ong's and Buencamino's acts constitute grave misconduct and gross neglect of duty. These are flagrant and shameful acts and should not be countenanced. Records show that both respondents used the levied Isuzu Fuego several times for their personal errands. Worse, the levied vehicle disappeared while under the respondents' safekeeping. They grossly neglected their duty to safely keep the levied property under their custody. Respondents' acts warrant the penalty of dismissal as provided in Rule 10, Section 46 of the Revised Rules on Administrative Cases in the Civil Service.

2. **ID.; ID.; ADMINISTRATIVE COMPLAINT; DEATH OF THE RESPONDENT IS NOT A GROUND FOR DISMISSAL.—** As for respondent Buencamino, his death is not a ground for the dismissal of the Complaint against him. Respondent Buencamino's acts take away the public's faith in the judiciary, and these acts should be sanctioned despite his death.

RESOLUTION

PER CURIAM:

Judge Glenda K. Cabello-Marin (referred here as Judge Marin) of Branch 49, Metropolitan Trial Court, Caloocan City (referred here as MeTC) referred[1] to the Office of the Court Administrator (referred here as OCA) the investigation of Deputy Sheriffs Noel R. Ong of Branch 49 (referred here as respondent Ong) and Alvin A. Buencamino of Branch 53 (referred here as respondent Buencamino), both of the Metropolitan Trial Court, Caloocan City, on their possible liability for the loss of a levied Isuzu Fuego.

On October 20, 2008, Judge Belen B. Ortiz (referred here as Judge Ortiz), then presiding judge of MeTC Branch 49, issued the Decision in Civil Case No. 27211 for unlawful detainer entitled *Virginia C. Bustamante v. Jinky C. Bustamante and Regina C. Bustamante*.[2] The court ordered the defendants to vacate the case's subject property and to pay the plaintiff arrears in rentals.[3]

During the case's execution stage, the court ordered respondent Ong as branch sheriff to levy upon defendants' personal property for public sale whose proceeds would be applied to the rental arrears.[4] Sheriff Ong levied upon a 1999 Isuzu Fuego (referred here as the Isuzu Fuego) with plate number WGN-949 registered under defendant Regina Bustamante.[5]

On October 15, 2004, respondent Ong filed a Request for Inhibition praying that he be allowed to inhibit himself from further implementing the writ of execution.[6] The trial court

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[1] *Rollo*, pp. 6-13.

[2] *Id.* at 1.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 2.

granted[7] respondent Ong's request and appointed respondent Buencamino as implementing sheriff, subject to the conformity of Judge Edwin Ramizo (referred here as Judge Ramizo), presiding judge of MeTC Branch 53 where respondent Buencamino is branch sheriff.

Meanwhile, the parties to the unlawful detainer case agreed to compromise and settle the case amicably.[8] Plaintiff Virginia Bustamante agreed to waive her claim on the levied Isuzu Fuego.[9] Consequently, the defendants filed a Motion[10] for the immediate release of the Isuzu Fuego to defendants.

On June 1, 2005, Judge Ortiz ordered[11] respondent Buencamino to submit his Report on the implementation of the writ of execution. In his Letter[12] dated June 3, 2005, respondent Buencamino explained that he did not implement the writ of execution considering that Judge Ramizo's conformity with his appointment as special sheriff had not been secured pursuant to Administrative Circular No. 12, series of 1985. He emphasized that respondent Ong, as branch sheriff, had custody over the levied Isuzu Fuego.

Respondent Ong also disclaimed custody over the Isuzu Fuego. In his Letter[13] dated June 22, 2005, he alleged that he had immediately turned over to respondent Buencamino the keys to the Isuzu Fuego pursuant to the Order dated October 15, 2004. Since then, respondent Buencamino had access to the Isuzu Fuego and utilized the levied vehicle for personal use as evidenced by several entries in the log book of security guards guarding the court parking lot.[14] He also disclosed that as early as January

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[7] *Id*. at 14.

[8] *Id*. at 53-54.

[9] *Id*. at 54.

[10] *Id*. at 50-52.

[11] *Id*. at 17.

[12] *Id*. at 22-24.

[13] *Id*. at 25-26.

[14] *Id*. at 28-37.

29, 2005, the Isuzu Fuego had been reported carnapped.[15] Respondent Ong pointed out that it was respondent Buencamino who reported the alleged carnapping of the Isuzu Fuego to the Caloocan City Police Station Anti-Carnapping Unit.[16]

The OCA referred[17] the matter to Executive Judge Mariam G. Bien (referred here as Judge Bien) of the MeTC Caloocan City. Before Judge Bien was able to conduct her investigation, however, respondent Buencamino died on August 31, 2008.[18]

Judge Bien conducted a clarificatory hearing on November 14, 2008. In her Report[19] dated January 13, 2009, Judge Bien found no effective designation or appointment of respondent Buencamino as special sheriff for the unlawful detainer case considering that Judge Ramizo's conformity had not been secured. Also, there was no proper turnover of the levied Isuzu Fuego to respondent Buencamino. However, what she found "revealing and disturbing" was the following: Respondent Ong had allowed respondent Buencamino to use the Isuzu Fuego for personal errands. The log book of security guards assigned at the court parking lot will reveal that respondent Buencamino had used the levied vehicle around six (6) times before the vehicle was reported lost in January 2005. Judge Bien likewise noted the belated manifestation of respondent Buencamino as to the alleged defect in his designation as special sheriff.

Judge Bien found that respondent Ong had used the subject vehicle for personal errands and that both sheriffs had custody over the subject vehicle they had both utilized the levied vehicle for their personal use. Thus, it cannot be ultimately determined who had actual or constructive custody over the vehicle when its disappearance was reported.

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[15] *Id*. at 27.

[16] *Id*.

[17] *Id*. at 57.

[18] *Id*. at 153.

[19] *Id*. at 58-65.

Judge Bien recommended that the two sheriffs be reprimanded and ordered them to restore the value of the allegedly carnapped Isuzu Fuego.

In its Report[20] dated July 31, 2009, the OCA recommended the re-docketing of the case as a regular administrative matter. The OCA agreed with the findings of fact of Judge Bien but noted that her recommended sanctions were too lenient. Thus, the OCA recommended that the sheriffs be found guilty of dishonesty, grave misconduct, and gross neglect of duty. As for respondent Ong, the OCA recommended his dismissal from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned or controlled corporations. As for deceased respondent Buencamino, the OCA recommended the forfeiture of all his retirement benefits, except accrued leave credits.

The OCA explained that respondents were remiss in their obligation to safekeep the vehicle. Judge Bien found that respondents utilized the levied vehicle for their personal use. The Deputy Sheriffs' conduct "should not be countenanced."[21] The OCA emphasized that respondents' misappropriation of the vehicle does not only deserve administrative sanctions but also criminal accountability.

The OCA maintained that the death of respondent Buencamino does not warrant the case dismissal against him as this Court has ruled in *Cabañero v. Judge Cañon* that "[d]eath of the respondent in an administrative case is not in itself a ground for the dismissal of the complaint."[22]

The Court agrees.

Misconduct is "a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful

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[20] *Id.* at 138-146.

[21] *Id.* at 144.

[22] 417 Phil. 754 (2001).

behavior, wilful in character, improper or wrong behavior."[23] A misconduct is "grave" or "gross" if it is "out of all measure; beyond allowance; flagrant; shameful" or "such conduct as is not to be excused."[24]

Respondent Ong's and Buencamino's acts constitute grave misconduct and gross neglect of duty. These are flagrant and shameful acts and should not be countenanced.

Records show that both respondents used the levied Isuzu Fuego several times for their personal errands. Worse, the levied vehicle disappeared while under the respondents' safekeeping. They grossly neglected their duty to safely keep the levied property under their custody.[25]

Respondents' acts warrant the penalty of dismissal as provided in Rule 10, Section 46 of the Revised Rules on Administrative Cases in the Civil Service.[26]

As for respondent Buencamino, his death is not a ground for the dismissal of the Complaint against him. Respondent Buencamino's acts take away the public's faith in the judiciary, and these acts should be sanctioned despite his death.[27]

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[23] *Bascos v. Ramirez*, A.M. No. P-08-2418, December 4, 2012.

[24] *Id.* at 7.

[25] Civil Service Commission Rules of Civil Procedure, Rule 57, Sec. 7 (b) (1997).

[26] Civil Service Commission Revised Rules on Administrative Cases, Rule 10, Sec. 46 which provides the following:

Sec. 46. *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 grave offenses shall be punishable by dismissal from the service:

x x x

2. Gross Neglect of Duty;
3. Grave Misconduct

x x x

[27] *Cabañero v. Judge Cañon, supra* note 22, at 758.

Sheriffs are reminded that they are "repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully, and to the best of their abilities."[28] Being "frontline officials of the justice system," sheriffs and deputy sheriffs "must always strive to maintain public trust in the performance of their duties."[29]

WHEREFORE, respondent Noel R. Ong, Deputy Sheriff, Branch 49, and Alvin A. Buencamino, Deputy Sheriff, Branch 53, Metropolitan Trial Court of Caloocan City, are hereby found **GUILTY** of grave misconduct and gross neglect of duty. Respondent Noel R. Ong is ordered **DISMISSED** from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and -controlled corporations. On the other hand, respondent Alvin A. Buencamino is ordered to have **FORFEITED** all his retirement benefits, except his accrued leave credits.

SO ORDERED.

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

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

Brion, J., on leave.

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[28] *Tomboc v. Sheriffs Velasco, Jr., Padao, and Bengua*, A.M. No. P-07-2322, April 23, 2010, 619 SCRA 42.

[29] *Grutas v. Madolaria*, A.M. No. P-06-2142, April 16, 2008, 551 SCRA 379.

THIRD DIVISION

[G.R. No. 179256. July 10, 2013]

FIRST PHILIPPINE INDUSTRIAL CORPORATION, *petitioner, vs.* **RAQUEL M. CALIMBAS and LUISA P. MAHILOM,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR-ONLY CONTRACTING; CIRCUMSTANCES SHOWING THAT EMPLOYER IS ENGAGED IN LABOR-ONLY CONTRACTING.— [W]e sustain the findings of the CA x x x that DGMS is engaged in labor-only contracting. x x x *First*, x x x DGMS's actual paid-in capital in the amount of ₱75,000.00 does not constitute substantial capital essential to carry out its business as an independent job contractor. x x x Records likewise reveal that DGMS has no substantial equipment in the form of tools, equipment and machinery. As a matter of fact, respondents were using office equipment and materials owned by petitioner while they were rendering their services at its offices. *Second*, petitioner exercised the power of control and supervision over the respondents. As aptly observed by the CA, "the daily time records of respondents even had to be countersigned by the officials of petitioner to check whether they had worked during the hours declared therein. Furthermore, the fact that DGMS did not assign representatives to supervise over respondents' work in petitioner's company tends to disprove the independence of DGMS. It is axiomatic that the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subjected to the control of the employer, except only to the results of the work. Obviously, on this score alone, petitioner cannot rightly claim that DGMS was an independent job contractor inasmuch as respondents were subjected to the control and supervision of petitioner while they were performing their jobs." *Third*, also worth stressing are the points highlighted by respondents: (1) Respondents worked only at petitioner's

offices for an uninterrupted period of five years, occupying the same position at the same department under the supervision of company officials; (2) Three weeks ahead of the termination letters issued by DGMS, petitioner's HR Manager Lorna Young notified respondents, in a closed-door meeting, that their services to the company would be terminated by July 31, 2001; (3) In the termination letters prepared by DGMS, it was even stressed that the said termination letters will formalize the verbal notice given by petitioner's HR Administration personnel; (4) The direct superiors of respondents were managerial employees of petitioner, and had direct control over all the work-related activities of the latter. This control included the supervision of respondents' performance of their work and their compliance with petitioner's company policies and procedures. DGMS, on the other hand, never maintained any representative at the petitioner's office to oversee the work of respondents.

2. **ID.; ID.; ID.; EFFECTS OF A FINDING THAT LABOR-ONLY CONTRACTING EXISTS.—** [A]n employer-employee relationship exists between petitioner and respondents. And having served for almost five years at petitioner's company, respondents had already attained the status of regular employees.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT; FAILURE TO SHOW VALID CAUSE AND TO COMPLY WITH THE NOTICE REQUIREMENT MAKE EMPLOYEES' DISMISSAL ILLEGAL.—** [P]etitioners failed to show any valid or just cause under the Labor Code on which it may justify the termination of services of respondents. Also, apart from notifying that their services had already been terminated, petitioner failed to comply with the rudimentary requirement of notifying respondents regarding the acts or omissions which led to the termination of their services as well as giving them an ample opportunity to contest the legality of their dismissal. Having failed to establish compliance with the requirements of termination of employment under the Labor Code, respondents' dismissal is tainted with illegality.

4. **ID.; ID.; ID.; ID.; RELIEFS GRANTED TO ILLEGALLY DISMISSED EMPLOYEES.—** [T]he CA correctly held that respondents are entitled to reinstatement without loss of seniority rights, and other privileges and to their full backwages, inclusive

of allowances and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement. Considering that reinstatement is no longer feasible, respondents are entitled instead to separation pay equivalent to one month salary for every year of service.

APPEARANCES OF COUNSEL

Ermitaño Manzano Reodica & Associates for petitioner.
Samson S. Alcantara for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 6, 2007 and Resolution[2] dated August 16, 2007 of the Court of Appeals (*CA*) in CA-G.R. SP No. 90527.

The factual and procedural antecedents, as found by the CA, are as follows:

Private respondent First Philippine Industrial Corporation (*FPIC*) is a domestic corporation primarily engaged in the transportation of petroleum products by pipeline. Upon the other hand, petitioners Raquel Calimbas and Luisa Mahilom were engaged by De Guzman Manpower Services ("DGMS") to perform secretarial and clerical jobs for FPIC. [DGMS] is engaged in the business of supplying manpower to render general clerical, building and grounds maintenance, and janitorial and utility services.

On March 29, 1993, FPIC, represented by its Senior Vice-President and Head of Administration Department, Eustaquio Generoso, Jr. entered into a Contract of Special Services with DGMS, represented by its Operations Manager, Manuel De Guzman, wherein the latter

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 13-31.

[2] *Id*. at 33.

agreed to undertake some aspects of building and grounds maintenance at FPIC's premises, offices and facilities, as well as to provide clerical and other utility services as may be required from time to time by FPIC. The pertinent portions of the said Contract, which took effect on April 1, 1993, reads:

> B. Terms of Payment
>
> 1. FIRST PARTY [FPIC] shall pay the SECOND PARTY [DGMS] a contract price for services rendered based on individual timesheets prepared and submitted by the SECOND PARTY and duly authenticated by the FIRST PARTY's representative. The SECOND PARTY shall bill the FIRST PARTY on a semi-monthly basis.
>
> x x x
>
> C. Other Terms and Conditions
>
> 1. SECOND PARTY shall undertake FIRST PARTY's projects only if covered by an approved Project Contract (Appendix-B) which the FIRST PARTY will issue to the SECOND PARTY when the need arises. The Project Contract shall indicate the scope of work to be done, duration and the manpower required to undertake the work. The composition of the workers to be assigned to a specific undertaking shall be agreed upon between the FIRST PARTY and the SECOND PARTY;
>
> 2. SECOND PARTY shall assign to FIRST PARTY competent personnel to do what is required in accordance with the Project Contract. FIRST PARTY shall have the right to request for replacement of an assigned personnel who is observed to be non-productive or unsafe, and if confirmed by its own investigation and findings, SECOND PARTY shall replace such personnel;
>
> 3. SECOND PARTY shall provide the maintenance equipment and tools necessary to complete assigned works. Parties hereto shall agree on the equipment, tools and supplies to be provided by SECOND PARTY prior to the start of assigned work;
>
> 4. SECOND PARTY shall be liable for loss and/or damage to SECOND PARTY's property, found caused by willful act or negligence of SECOND PARTY's personnel; and

> 5. There shall be no employer-employee relationship between the FIRST PARTY, on the one hand, and the SECOND PARTY, and the person who the SECOND PARTY may assign to perform the services called for, on the other. The SECOND PARTY hereby acknowledges that no authority has been conferred upon it by the FIRST PARTY to hire any person in behalf of the FIRST PARTY. The persons who (sic) the SECOND PARTY which hereby warrants full and faithful compliance with the provisions of the Labor Code of the Philippines, as well as with all Presidential Decrees, Executive Orders, General Orders, Letter of Instructions, Law Rules and Regulations pertaining to the employment of labor now existing. SECOND PARTY shall assist and defend the FIRST PARTY in any suit or proceedings and shall hold the FIRST PARTY free and harmless from any claims which the SECOND PARTY's employees may lodge against the FIRST PARTY.
>
> x x x x x x x x x

Pursuant to the said Contract, petitioner Raquel Calimbas and Luisa Mahilom were engaged by the DGMS to render services to FPIC. Thereat, petitioner Calimbas was assigned as a department secretary at the Technical Services Department beginning June 3, 1996, while petitioner Mahilom served as a clerk at the Money Movement Section of the Finance Division starting February 13, 1996.

On June 21, 2001, FPIC, through its Human Resources Manager, Lorna Young, informed the petitioners that their services to the company would no longer be needed by July 31, 2001 as a result of the "Pace-Setting" Study conducted by an outside consultant. Accordingly, on July 9, 2001, Priscilla de Leon, Treasurer of DGMS, formally notified both the petitioners that their respective work assignments in FPIC were no longer available to them effective July 31, 2001, citing the termination of the Project Contract with FPIC as the main reason thereof. On August 3, 2001, petitioners Calimbas and Mahilom signed quitclaims, releasing and discharging DGMS from whatever claims that they might have against it by virtue of their past employment, upon receipt of the sums of ₱17,343.10 and ₱23,459.14, respectively.

Despite having executed the said quitclaims, the petitioners still filed on August 16, 2001 a Complaint against FPIC for illegal dismissal and for the collection of monetary benefits, damages and attorney's fees, alleging that they were regular employees of FPIC after serving almost five (5) years, and that they were dismissed without cause. The Complaint was docketed as NLRC NCR Case No. 00-08-04331-01 and was raffled to Labor Arbiter Joel Lustria. After conducting three (3) mandatory conferences, the parties failed to reach any amicable settlement; thus, they were required to submit their respective position papers, together with their documentary evidence.

In their Position Paper, the petitioners posited that they were regular employees of FPIC for having served the same for almost five (5) years, rendering services which were usually necessary or desirable in the usual business or trade of FPIC. They claimed that they were illegally dismissed when they were relieved from their work assignments on July 31, 2001 without valid and serious reasons therefor. The petitioners maintained and (sic) that their real employer was FPIC, and that DGMS was merely its agent for having been engaged in prohibited labor-only contracting. The petitioners averred that DGMS did not have substantial capital or investment by way of tools, equipment, machines, work places and other materials. They claimed that they only used office equipment and materials owned by FPIC at its offices in Ortigas Center, Pasig City. DGMS never exercised control over them in all matters related to the performance of their work. In fact, DGMS never maintained any representative at the FPIC's office to supervise or oversee their work. They insisted that their direct superiors, who were managerial employees of FPIC, had control over them since the latter made sure that they always complied with the policies of FPIC.

Upon the other hand, FPIC insisted in its Position Paper/ Motion to Dismiss that the Complaint should be dismissed considering that the Labor Arbiter had no jurisdiction over the case because there was absolutely no employer-employee relationship between it and the petitioners. FPIC claimed that the petitioners had never been its employees. FPIC insisted that their true employer was DGMS considering that the petitioners were hired by DGMS and assigned them to the Company to render services based on their Contract; that they received their wages and other benefits from DGMS; and that they executed quitclaims in favor of DGMS. Also, FPIC submitted that the termination of the petitioners' employment with their

employer, DGMS, was valid and lawful since they executed quitclaims with their employer.[3]

On December 11, 2002, the Labor Arbiter rendered a Decision[4] holding that respondents were regular employees of petitioner, and that they were illegally dismissed when their employment was terminated without just or authorized cause. The *fallo* reads:

> WHEREFORE, premises considered, let the judgment be, as it is hereby rendered, declaring complainants' dismissal illegal, and ordering the respondent, as follows:
>
> 1) To reinstate complainants to their former positions without loss of seniority rights and other privileges;
>
> 2) To pay complainants, Raquel M. Calimbas the amount of **₱131,555.19**; and Luisa P. Mahilom, the amount of **₱115,403.14** representing their full backwages, from the time their salaries were withheld from them up to the date of their actual reinstatement;
>
> 3) To pay the complainants the amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.
>
> The amount received by complainants, Raquel M. Calimbas in the amount of ₱17,343.10, and Luisa P. Mahilom, the amount of ₱23,459.14 under the quitclaims that they signed must be deducted from the awards herein made.
>
> Other claims are hereby dismissed for lack of merit.
>
> **SO ORDERED**.[5]

Aggrieved, petitioner elevated the case to the National Labor Relations Commission (*NLRC*).

On December 22, 2003, the NLRC dismissed petitioner's appeal and upheld the Labor Arbiter's decision.

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[3] *Rollo*, pp. 86-90.

[4] *Id*. at 221-229.

[5] *Id*. at 228. (Emphasis in the original)

Unsatisfied, petitioner filed a Motion for Reconsideration reiterating the arguments brought up in its Position Paper/ Motion to Dismiss.

In a Resolution[6] dated April 30, 2004, the NLRC reversed its decision dated December 22, 2003 and disposed of as follows:

> After a second look, We observe that from the above-quoted issues, the Labor Arbiter assumed that complainants were regular employees of PDIC (sic) which we find erroneous.
>
> First, the Contract of Special Services was signed by FPIC and DGMS on March 29, 1993 which shows that complainants' employment in February and June 1996 was pursuant to said contract which belies their submission that their working paper were forwarded by FPIC after directly employing them in February and June 1996.
>
> Second, undisputed in FPIC's statement that, capitalized at ₱75,000.00, DGMS serviced the manpower requirements of other clients like the Makati Commercial Estate Association and the Philippine Transmarine Carrier which reinforces its being an independent contractor.
>
> Third, complainants' realization that DGMS and not respondent FPIC, was their employer is shown by the fact that after they were disengaged, they went to DGMS, which paid them the amount of ₱17,343. (sic) for Calimbas and ₱23,454.14 for Mahilom.
>
> We therefore find, again after a second look, at the records, that respondent First Philippine Industrial Corporation was not the employer of complainants Calimbas and Mahilom and that it was the De Guzman Manpower Services which was later on incorporated as De Guzman Manpower Corporation which was their employer. This finding, necessarily calls for the setting aside of the decision of Labor Arbiter Lustria dated December 11, 2992 (sic) and Our decision promulgated on December 22, 2003.
>
> **WHEREFORE**, as we reconsider our Decision promulgated December 22, 2003, we set aside the decision of Labor Arbiter Joel A. Lustria dated December 11, 2002 and declare respondent First Pacific (sic) Industrial Corporation free from any liability whatsoever.

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[6] *Id*. at 332-339.

SO ORDERED.[7]

Respondents sought reconsideration of the above resolution, but the same was denied in a Resolution[8] dated April 20, 2005, maintaining that:

> We deny. We find no legal basis to deem DGMS a "labor-only contracting" entity as maintained by complainants. The fact that DGMS had only a capitalization of ₱75,000.00, without an investment in tools, equipment, *etc*., does not necessarily constitute the latter as labor-only contractor since it has shown its adequacy of resources, directly or indirectly, in the performance of completion of the job, work or service contracted out, including operating costs, administrative costs such as training, overhead and other costs as are necessary to enably (sic) DGMS to exercise control, supervision, or direction over its employees in all aspects in performing or completing the job, work or services contracted out. In the case of New Golden City Builders and Development Corp., *et al. vs*. CA, *et al*. (G.R. No. 154715), December 11, 2003), the Supreme Court reiterated its ruling in Neri that not having investment in the form of tools or machineries does not automatically reduce the independent contractor to be a labor-only contractor. Moreover, the court has taken judicial notice of the general practice adopted in several government and private institution and industries of hiring independent contractors to perform special services.
>
> Furthermore, the copy of payroll adduced on record persuade us that complainants received their wages from DGMS contrary to their allegations that the contract consideration is by reimbursement of wages. The execution likewise by complainants Calimbas and Mahilom of their respective quitclaim and release fortifies the fact of their belief that their actual employer is DGMS and not respondent FPIC.
>
> **WHEREFORE,** we deny the motion. We accordingly **AFFIRM** the Resolution dated April 30, 2004 in its entirety. No further motion of the same nature shall be entertained.
>
> **SO ORDERED.**[9]

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[7] *Id.* at 336-338. (Citations omitted)

[8] *Id*. at 350-353.

[9] *Id.* at 351-352. (Emphasis in the original; citation omitted)

Unfazed, respondents elevated the case before the CA.

On March 6, 2007, the CA reversed and set aside the NLRC's resolutions and held as follows:

WHEREFORE, the instant Petition is hereby **GRANTED.** The assailed Resolutions dated April 30, 2004 and April 20, 2005 of the NLRC are **REVERSED** and **SET ASIDE.** The Decision dated December 22, 2003 of the NLRC, affirming the Decision dated December 11, 2002 of the Labor Arbiter is hereby **REINSTATED.**

SO ORDERED.[10]

Petitioner filed a Motion for Reconsideration, but the same was denied in a Resolution dated August 16, 2007.

Hence, the present petition, wherein petitioner posits that:

I

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN NOT CONSIDERING AND APPLYING HERETO PERTINENT LAW AND JURISPRUDENCE WHICH PROVIDE THAT THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES MUST BE SUBSTANTIALLY ESTABLISHED AND NOT MERELY PRESUMED TO EXIST.

II

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN REVERSING THE UPRIGHT AND JUDICIOUS RULING OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH FOUND THAT RESPONDENTS ARE NOT EMPLOYEES OF PETITIONER AND THEREFORE WERE NOT ILLEGALLY DISMISSED AND AS SUCH ARE NOT ENTITLED TO THEIR CLAIMS FOR REINSTATEMENT, BACKWAGES AND ATTORNEY'S FEES.[11]

Simply, the issues are: (1) whether respondents are employees of petitioner; and (2) whether respondents were lawfully dismissed from their employment.

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[10] *Id.* at 102. (Emphasis in the original)

[11] *Id*. at 53.

Anent the first issue, Article 106 of the Labor Code pertinently provides:

Article 106. ***Contractor or subcontractor.*** – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job-contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In the same manner, Sections 8 and 9 of DOLE Department Order No. 10, Series of 1997, state:

Sec. 8. ***Job contracting***. – There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under

his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. ***Labor-only contracting.*** –

(a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

Given the foregoing standards, we sustain the findings of the CA that respondents are petitioner's employees and that DGMS is engaged in labor-only contracting.

First, in *Vinoya v. National Labor Relations Commission*,[12] this Court categorically stated that the actual paid-in capital of ₱75,000.00 could not be considered as substantial capital. Thus, DGMS's actual paid-in capital in the amount of ₱75,000.00 does not constitute substantial capital essential to carry out its business as an independent job contractor. In spite of its bare assertion that the *Vinoya* case does not apply in the present case, DGMS has not shown any serious and cogent reason to disregard the ruling in the aforementioned case. Records likewise reveal that DGMS has no substantial equipment in the form of tools, equipment and machinery. As a matter of fact, respondents were using office equipment and materials owned by petitioner while they were rendering their services at its offices.

Second, petitioner exercised the power of control and supervision over the respondents. As aptly observed by the CA, "the daily time records of respondents even had to be countersigned by the officials of petitioner to check whether they had worked during the hours declared therein. Furthermore, the fact that DGMS did not assign representatives to supervise over respondents' work in petitioner's company tends to disprove the independence of DGMS. It is axiomatic that the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subjected to the control of the employer, except only to the results of the work. Obviously, on this score alone, petitioner cannot rightly claim that DGMS was an independent job contractor inasmuch as respondents were subjected to the control and supervision of petitioner while they were performing their jobs."[13]

Third, also worth stressing are the points highlighted by respondents: (1) Respondents worked only at petitioner's offices for an uninterrupted period of five years, occupying the same position at the same department under the supervision of company officials; (2) Three weeks ahead of the termination letters issued

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[12] 381 Phil. 460, 475-476 (2000).

[13] *Rollo*, p. 98. (Citations omitted)

by DGMS, petitioner's HR Manager Lorna Young notified respondents, in a closed-door meeting, that their services to the company would be terminated by July 31, 2001; (3) In the termination letters prepared by DGMS, it was even stressed that the said termination letters will formalize the verbal notice given by petitioner's HR Administration personnel; (4) The direct superiors of respondents were managerial employees of petitioner, and had direct control over all the work-related activities of the latter. This control included the supervision of respondents' performance of their work and their compliance with petitioner's company policies and procedures. DGMS, on the other hand, never maintained any representative at the petitioner's office to oversee the work of respondents.[14]

All told, an employer-employee relationship exists between petitioner and respondents. And having served for almost five years at petitioner's company, respondents had already attained the status of regular employees.

As to the second issue, *i.e.*, whether respondents were lawfully dismissed from their employment, this Court rules in the negative.

Recently, in *Skippers United Pacific, Inc. v. Daza*,[15] this Court held that for a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process, *viz.*:

> For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.
>
> **Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the**

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[14] *Id.* at 733-734.

[15] G.R. No. 175558, February 8, 2012, 665 SCRA 412.

second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.

Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.[16]

In the present case, petitioners failed to show any valid or just cause under the Labor Code on which it may justify the termination of services of respondents. Also, apart from notifying that their services had already been terminated, petitioner failed to comply with the rudimentary requirement of notifying respondents regarding the acts or omissions which led to the termination of their services as well as giving them an ample opportunity to contest the legality of their dismissal. Having failed to establish compliance with the requirements of termination of employment under the Labor Code, respondents' dismissal is tainted with illegality.

Resultantly, the CA correctly held that respondents are entitled to reinstatement without loss of seniority rights, and other privileges and to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement. Considering that reinstatement is no longer feasible, respondents are entitled instead to separation pay equivalent to one month salary for every year of service.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED.** The Decision dated March 6, 2007 and Resolution dated August 16, 2007 of the Court of Appeals in CA-G.R. SP No. 90527 are hereby **AFFIRMED** with **MODIFICATION** that respondents shall be entitled to separation pay equivalent to one month salary for every year of service.

SO ORDERED.

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

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[16] *Id*. at 426. (Emphasis supplied)

FIRST DIVISION

[G.R. No. 189293. July 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE CANDELLADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— For a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. The fourth and fifth elements, minority and relationship, were admitted by accused-appellant during the pre-trial conference. The existence of the first three elements was established by AAA's testimony.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S CONCLUSIONS ON THE CREDIBILITY OF WITNESSES AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— The Court will not disturb the finding of the RTC, affirmed by the Court of Appeals, that AAA's testimony deserves full faith and credence. In resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times, even finality. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. No such facts or circumstances exist in the present case. The uniform way by which AAA described the eight rape incidents does not

necessarily mean that her testimony was coached, rehearsed, and contrived. Also, AAA's failure to mention that accused-appellant removed their undergarments prior to the rape does not destroy the credibility of AAA's entire testimony. Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape. In addition, bearing in mind that AAA had been repeatedly raped by accused-appellant for a period of time (beginning in Davao, which resulted in AAA's pregnancy), it is not surprising for AAA to recall each incident in much the same way. What is important is that AAA had categorically testified that on eight specific dates, her father, accused-appellant, armed with a knife, successfully had sexual intercourse with her by inserting his penis into her vagina. It is noteworthy to mention that even if accused-appellant did not use a knife or made threats to AAA, accused-appellant would still be guilty of raping AAA, for in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

3. ID.; ID.; DEFENSE OF DENIAL AND ALIBI; CANNOT PREVAIL OVER THE DIRECT, POSITIVE AND CATEGORICAL STATEMENT OF THE WITNESSES ESPECIALLY WHEN IT WAS ENTIRELY UNCORROBORATED.— Accused-appellant's denial and alibi deserve scant consideration. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail. Accused-appellant proffered a general denial of all eight rapes. Accused-appellant's alibi that he was arrested and imprisoned on December 23, 2004 is not supported by positive, clear, and satisfactory evidence. In fact, it was entirely

uncorroborated. Moreover, he was charged of seven other counts of rape that happened on earlier dates. In contrast, prosecution witnesses AAA, Gemina, and SPO4 Bastigue consistently testified that accused-appellant was arrested only on December 28, 2004.

4. CRIMINAL LAW; QUALIFIED RAPE; PENALTY FOR EIGHT (8) COUNTS OF RAPE.— With the guilt of accused-appellant for the eight rapes already established beyond reasonable doubt, the Court of Appeals was correct in imposing the penalty of *reclusion perpetua*, without eligibility of parole, instead of death, for each count of rape, pursuant to Republic Act No. 9346. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

5. ID.; ID.; CIVIL LIABILITY.— As for the damages, the Court affirms the award to AAA of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages for each count of rape. However, in line with jurisprudence, the Court increases the amount of exemplary damages awarded to AAA from ₱25,000.00 to ₱30,000.00 for each count of rape; and imposes an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment thereof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is the appeal of the Decision dated April 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C.

No. 00361-MIN,[1] which affirmed the Consolidated Decision[2] dated December 23, 2005 of the Regional Trial Court (RTC), Branch 7, Tubod, Lanao del Norte in Criminal Case Nos. 118-07-2005 and 159-07-2005 to 166-07-2005, acquitting accused-appellant Vicente Candellada of the charge of attempted rape but finding him guilty of eight counts of rape.

Accused-appellant was charged with attempted rape before the RTC under the following Information, docketed as Criminal Case No. 118-07-2005:

> That on or about December 28, 2004, at about 7:00 o'clock in the evening at x x x, Lanao del Norte, Philippines an[d] within the jurisdiction of this Honorable Court, the above-named accused, who is father of [AAA[3]], a 14-year-old minor, did then and there willfully, unlawfully and feloniously with lewd design, and who was under the influence of liquor, wanted to have sexual intercourse with said [AAA], but the latter strongly refused, so that accused got mad and boxed, and battered [AAA], by the use of a piece of wood, but did not perform all the acts of execution which should have produced the crime of Rape as a consequence by reason of the fact that [AAA], shouted for help and the people of x x x, Lanao del Norte, were able to apprehend the aforesaid accused.[4]

Accused-appellant was likewise charged with eight counts of consummated rape committed on May 30, 2004,[5] June 2, 2004,[6] June 12, 2004,[7] July 10, 2004,[8] August 13,

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[1] *Rollo*, pp. 3-16; penned by Associate Justice Edgardo T. Lloren with Associate Justices Romulo V. Borja and Jane Aurora C. Lantion, concurring.

[2] CA *rollo*, pp. 23-43; penned by Presiding Judge Alan L. Flores.

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

[4] CA *rollo*, p. 26.

[5] Records, Criminal Case No. 159-07-2005, pp. 1-2.

[6] *Id.*, Criminal Case No. 160-07-2005, pp. 1-2.

[7] *Id.*, Criminal Case No. 161-07-2005, pp. 1-2.

[8] *Id.*, Criminal Case No. 162-07-2005, pp. 1-2.

2004,[9] November 5, 2004,[10] December 15, 2004,[11] and December 25, 2004[12] under eight Informations, docketed as Criminal Case Nos. 159-07-2005 to 166-07-2005. The Informations were similarly worded except for the different dates of commission of the crime and read as follows:

> That on or about [date] at x x x, Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have (sic) carnal knowledge upon [AAA], the accused's own daughter, a minor 14 years of age, against her will and consent, which sexual abuse by the accused debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.
>
> CONTRARY to and in VIOLATION of R.A. 8353, otherwise known as the Anti-Rape Law in relation to R.A. 7610 otherwise known as the Anti-Child Abuse Law.

Accused-appellant was arraigned on May 17, 2005 with the assistance of counsel. He pleaded not guilty to the charges against him.[13]

During pre-trial, the defense admitted that accused-appellant is the father of private complainant AAA and that AAA was 15 years of age at the time of the commission of the crimes charged and/or filing of the cases.[14]

Thereafter, the nine criminal cases were tried jointly.

The prosecution presented as witnesses Dr. Jovenal Magtagad (Magtagad),[15] the Municipal Health Officer who physically

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[9] *Id*., Criminal Case No. 163-07-2005, pp. 1-2.

[10] *Id*., Criminal Case No. 164-07-2005, pp. 1-2.

[11] *Id*., Criminal Case No. 165-07-2005, pp. 1-2.

[12] *Id*., Criminal Case No. 166-07-2005, pp. 1-2.

[13] *Id*., Criminal Case No. 159-07-2005, p. 24.

[14] *Id*., p. 4 (Preliminary Conference dated May 23, 2005) and p. 42 (Pre-trial Order dated July 22, 2005).

[15] TSN, August 24, 2005, pp. 1-5.

examined AAA on December 29, 2004; AAA,[16] the victim herself; Elsie Gemina (Gemina),[17] the owner of the house in Lanao del Norte where accused-appellant and AAA lived; and Senior Police Officer (SPO) 4 Rosa Bastigue (Bastigue),[18] Women's Desk Police Non-Commissioned Officer (PNCO), Magsaysay Police Station. It also presented the following documentary evidence: Gemina's Affidavit[19] dated January 3, 2005; AAA's Sworn Statement[20] dated January 3, 2005; Joint Affidavit[21] dated January 3, 2005 of SPO4 Bastigue, Police Investigator SPO3 Orlando Caroro, and Department of Social Welfare and Development (DSWD) Officer Virgilio Yaral (Yaral); and Dr. Magtagad's Medical Certificate[22] dated December 29, 2004.

The evidence for the prosecution presented the following version of events:

AAA was born in Davao on January 10, 1990. She was 15 years old when she testified before the RTC on August 24, 2005.[23]

AAA was the second of three daughters of accused-appellant and his deceased first wife. AAA lived with accused-appellant and the latter's second wife, while AAA's two sisters lived with accused-appellant's mother. While they were still living in Davao, accused-appellant impregnated AAA. When AAA was already five months pregnant, accused-appellant brought her with him to Lanao del Norte. Accused-appellant and AAA arrived in Lanao del Norte on May 30, 2004.[24]

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

[17] TSN, August 31, 2005, pp. 1-20.

[18] *Id*. at 20-30.

[19] Records, Criminal Case No. 159-07-2005, p. 8.

[20] *Id*. at 6.

[21] *Id*. at 7.

[22] *Id*. at 10.

[23] TSN, August 24, 2005, pp. 6-7.

[24] *Id*. at 7-8.

Accused-appellant approached Gemina, who he came to know during a previous visit to Lanao del Norte in 1993. Accused-appellant asked permission if he could stay at Gemina's old house with his wife, introducing AAA to Gemina as his wife. Gemina immediately noticed that AAA was pregnant. She also commented that AAA was so young she could already be accused-appellant's daughter, but accused-appellant only laughed. Gemina and her husband allowed accused-appellant and AAA to stay at their old house on the condition that accused-appellant would pay for the electricity.[25]

While they were staying at Gemina's old house, accused-appellant had intercourse with AAA many times, but AAA could only remember eight specific dates, *i.e.*, on May 30, 2004; June 2, 2004; June 12, 2004; July 10, 2004; August 13, 2004; November 5, 2004; December 15, 2004; and December 25, 2004. When asked to explain what "intercourse" meant, AAA stated that accused-appellant inserted his penis into her vagina. AAA further testified that she consistently resisted accused-appellant's bestial acts but he threatened to stab her with a knife. Lastly, AAA narrated that she delivered a baby boy with Gemina's help on September 24, 2004, but the baby died four days later, on September 28, 2004.[26]

On December 28, 2004, accused-appellant again made amorous advances on AAA. AAA refused so accused-appellant became violently angry. He mauled AAA and hit her head with a piece of wood, which rendered her unconscious.[27] Gemina, who saw what happened, asked help from the *Barangay* Captain. The *Barangay* Captain and civilian volunteers arrested the accused-appellant.[28]

According to Gemina, since accused-appellant and AAA arrived in Lanao del Norte, the two lived as husband and wife.

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[25] TSN, August 31, 2005, pp. 26-29.

[26] TSN, August 24, 2005, pp. 9-14.

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

[28] TSN, August 31, 2005, p. 12.

However, sometime in December 2004, a drunk accused-appellant already admitted to Gemina's husband that AAA was his (accused-appellant's) daughter. Gemina further testified that the mauling incident that took place on December 28, 2004 was already the fourth time she saw accused-appellant maltreating AAA.[29]

After conducting a physical examination of AAA on December 29, 2004, Dr. Magtagad observed hematoma, contusions, and abrasions on different parts of AAA's body, which were caused by a blunt object, possibly a piece of wood.[30] Dr. Magtagad estimated that AAA's injuries would heal in five to seven days. AAA did not mention being raped by accused-appellant to Dr. Magtagad.

SPO4 Bastigue, SPO3 Caroro, and DSWD Officer Yaral were assigned to AAA's case. They were initially investigating only the mauling of AAA, but during the course of their investigation, AAA claimed that she had been raped by accused-appellant at least eight times.[31] In their Joint Affidavit though, SPO4 Bastigue, SPO3 Caroro, and DSWD Officer Yaral reported only the mauling of AAA and did not mention her being raped by accused-appellant. SPO4 Bastigue reasoned on the witness stand that maybe the investigator merely forgot to include the rapes in the Joint Affidavit.

The sole evidence for the defense is accused-appellant's testimony, summarized as follows:

Accused-appellant acknowledged that AAA is his daughter with his deceased first wife.[32] Accused-appellant stated that AAA was born on January 10 but since he was unschooled, he could not remember the exact year of AAA's birth.

Accused-appellant recalled that AAA went to school in Davao. Accused-appellant and AAA had misunderstandings because

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[29] *Id.* at 8-9.

[30] TSN, August 24, 2005, pp. 3-4.

[31] TSN, August 31, 2005, pp. 22-23.

[32] TSN, September 14, 2005, pp. 5-6.

he would admonish AAA for roaming around late in the evening. In 2004, AAA got pregnant and had to stop her studies. Accused-appellant did not inquire from AAA's sisters, friends, classmates, or teachers who impregnated AAA. Accused-appellant, upon the insistence of his second wife, brought AAA to Lanao del Norte to conceal AAA's pregnancy. Accused-appellant and AAA stayed at Gemina's old house while in Lanao del Norte. Accused-appellant denied introducing AAA to Gemina as his wife. He introduced AAA to Gemina as his daughter and said that AAA was impregnated by a classmate. By accused-appellant's account, AAA gave birth on October 10, 2004 but the baby died. Accused-appellant and AAA were planning to go back to Davao in January 2005 after accused-appellant had saved enough money from making charcoal and cutting grass.[33]

Accused-appellant outright called AAA a liar. He denied raping AAA eight times between May 30, 2004 to December 25, 2004. He also asserted that he could not have made an attempt to rape AAA on December 28, 2004 as he was already in jail by that time. Accused-appellant claimed that he was already arrested on December 23, 2004, a Tuesday, after he struck AAA.[34]

The RTC rendered its Consolidated Decision on December 23, 2005. The RTC found that there was not enough evidence to prove accused-appellant's culpability for the charge of attempted rape on December 28, 2004. Citing Article 6 of the Revised Penal Code,[35] the RTC pointed out that the overt acts committed by accused-appellant resulted only in AAA's physical injuries that took five to seven days to heal and slight physical injuries were not necessarily included in the charge of attempted rape. As for the charge of eight counts of consummated rape, the

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[33] *Id*. at 3-9.

[34] *Id*. at 4.

[35] ART. 6. *Consummated, frustrated, and attempted felonies.* – x x x.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

RTC pronounced that "[AAA's] down-to-earth testimony was convincing and straightforward that she was abused [by] her father in x x x Lanao del Norte."[36] In the end, the RTC adjudged:

> WHEREFORE, in the light of the foregoing consideration, and by the weight or quantum of evidence, the Court renders judgment as follows:
>
> 1. For failure of the prosecution to establish the [g]uilt of accused beyond reasonable doubt in Crim. Case No. 118-07-2005, for attempted rape in relation with Republic Act No. 9262, acquits him thereof;
>
> 2. In Criminal Case Nos. 159-07-2005, 160-07-2005, 161-07-2005, 162-07-2005, 163-07-2005, 164-07-2005, 165-07-2005, and 166-07-2005, pursuant to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, in relation with Republic Act No. 7[6]10, otherwise known as Anti-Child Abuse Law, finding accused guilty beyond reasonable doubt of the crime of rape as charged and committed against his minor daughter, [AAA], and sentences him to suffer the supreme penalty of DEATH in each of the 8 counts thereof;
>
> 3. Accused is order[ed] to pay moral damages to complainant of ₱75,000.00 and exemplary damages of ₱25,000.00 in each of the 8 cases of rape;
>
> 4. The [Bureau of Jail Management and Penology] warden of Tubod, Lanao de Norte is ordered to deliver the living body of accused to the National Penitentiary, Muntinlupa City, Metro Manila within 15 days from the promulgation of the decision.[37]

The records of the eight rape cases were then forwarded to the Court of Appeals for appellate review.

In his Brief, accused-appellant contended that the RTC erred in finding him guilty beyond reasonable doubt of eight counts of rape. AAA's short and simple answers during her testimony

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

[37] *Id*. at 42.

"were short of a mere allegation." Despite remembering the dates of the alleged crimes, AAA could not vividly describe how she was molested. AAA merely repeated that on all eight occasions, accused-appellant had intercourse with her by inserting his penis into her vagina. AAA's uniform manner of describing the alleged rapes created a strong suspicion that her testimony had been coached, rehearsed, or contrived. Accused-appellant also labeled AAA's testimony incredible because according to AAA, accused-appellant immediately inserted his penis into her vagina without even taking off their undergarments. Thus, accused-appellant argued that the presumption of innocence accorded to accused-appellant must prevail, for it could not be overcome by mere suspicion, conjecture, or probability. The standard has always been proof beyond reasonable doubt.[38]

Plaintiff-appellee, for its part, maintained that the RTC judgment of conviction against accused-appellant was consistent with prevailing jurisprudence. However, it prayed that the sentence imposed upon accused-appellant be modified in accordance with Republic Act No. 9346, An Act Prohibiting the Imposition of the Death Penalty in the Philippines.[39]

In its Decision dated April 29, 2009, the Court of Appeals affirmed the judgment of conviction against accused-appellant but modified the sentence and award of damages:

IN LIGHT OF ALL THE FOREGOING, the decision of the court *a quo* is modified, and after taking into account the qualified aggravating circumstances of minority of the victim and her relationship with accused-appellant Vicente Candellada, he (Vicente Candellada) is DIRECTED and ORDERED to serve the penalty of *Reclusion Perpetua* without the eligibility for parole for each rape committed under Criminal Cases Nos. 159-07-2005, 160-07-2005, 161-07-200[5], 162-07-2005, 163-07-200[5], 164-0[7]-200[5], 165-07-2005, and 166-07-2005. Accused-appellant Vicente Candellada is further DIRECTED and ORDERED to pay AAA the following for each rape committed:

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[38] *Id*. at 19-21.

[39] *Id*. at 69.

₱75,000.00 as Civil Indemnity;
₱75,000.00 as Moral Damages;
₱25,000.00 as Exemplary Damages.

Hence, the instant appeal.

Accused-appellant insists that the RTC erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

There is no merit in the appeal.

Qualified rape is defined and punished under the following provisions of the Revised Penal Code, as amended:

ART. 266-A. *Rape; When and How Committed.* – Rape is committed –

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

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

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.

x x x x x x x x x

ART. 266-B. *Penalties.* – x x x.

x x x x x x x x x

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

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

For a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[40]

The fourth and fifth elements, minority and relationship, were admitted by accused-appellant during the pre-trial conference.

The existence of the first three elements was established by AAA's testimony. Relevant are the pronouncements of the Court in *People v. Manjares*[41] that:

> In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in this case. There is a plethora of cases which tend to disfavor the accused in a rape case by holding that when a woman declares that she has been raped, she says in effect all that is necessary to show that rape has been committed and, where her testimony passes the test of credibility, the accused can be convicted on the basis thereof. Furthermore, the Court has repeatedly declared that it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. For this reason, courts are inclined to give credit to the straightforward and consistent testimony of a minor victim in criminal prosecutions for rape. (Citations omitted.)

The Court will not disturb the finding of the RTC, affirmed by the Court of Appeals, that AAA's testimony deserves full faith and credence. In resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded

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[40] *People v. Iroy*, G.R. No. 187743, March 3, 2010, 614 SCRA 245, 252.

[41] G.R. No. 185844, November 23, 2011, 661 SCRA 227, 243.

great weight and respect, and at times, even finality. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[42] No such facts or circumstances exist in the present case.

The uniform way by which AAA described the eight rape incidents does not necessarily mean that her testimony was coached, rehearsed, and contrived. Also, AAA's failure to mention that accused-appellant removed their undergarments prior to the rape does not destroy the credibility of AAA's entire testimony. Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape.[43] In addition, bearing in mind that AAA had been repeatedly raped by accused-appellant for a period of time (beginning in Davao, which resulted in AAA's pregnancy), it is not surprising for AAA to recall each incident in much the same way. What is important is that AAA had categorically testified that on eight specific dates, her father, accused-appellant, armed with a knife, successfully had sexual intercourse with her by inserting his penis into her vagina.

It is noteworthy to mention that even if accused-appellant did not use a knife or made threats to AAA, accused-appellant would still be guilty of raping AAA, for in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that

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[42] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 399.

[43] *People v. Bejic*, 552 Phil. 555, 577 (2007).

actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[44]

Although Gemina did not personally witness the rapes of AAA by accused-appellant, she did confirm that accused-appellant had introduced AAA as his wife; and when Gemina stayed a week with accused-appellant and AAA at the old house, Gemina observed that the two apparently lived as husband and wife. Accused-appellant's imprudence in representing himself as AAA's husband to the public lends credence to AAA's assertions that accused-appellant took perverted liberties with her in private.

Accused-appellant's denial and alibi deserve scant consideration. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[45]

Accused-appellant proffered a general denial of all eight rapes. Accused-appellant's alibi that he was arrested and imprisoned on December 23, 2004 is not supported by positive, clear, and satisfactory evidence. In fact, it was entirely uncorroborated. Moreover, he was charged of seven other counts of rape that happened on earlier dates. In contrast, prosecution witnesses AAA, Gemina, and SPO4 Bastigue consistently testified that accused-appellant was arrested only on December 28, 2004.

With the guilt of accused-appellant for the eight rapes already established beyond reasonable doubt, the Court of Appeals was correct in imposing the penalty of *reclusion perpetua*, without

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[44] *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 256.

[45] *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 636.

eligibility of parole, instead of death, for each count of rape, pursuant to Republic Act No. 9346. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.[46]

As for the damages, the Court affirms the award to AAA of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages for each count of rape. However, in line with jurisprudence,[47] the Court increases the amount of exemplary damages awarded to AAA from ₱25,000.00 to ₱30,000.00 for each count of rape; and imposes an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment thereof.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00361-MIN is **AFFIRMED with MODIFICATION** that the amount of exemplary damages awarded to AAA shall be increased to ₱30,000.00 for each count of rape, and all damages awarded shall be subject to interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid. No costs.

SO ORDERED.

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

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[46] *People v. Padilla,* G.R. No. 182917, June 8, 2011, 651 SCRA 571, 595-596.

[47] *Id.*; *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 415.

FIRST DIVISION

[G.R. No. 189343. July 10, 2013]

BENILDA N. BACASMAS, *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 189369. July 10, 2013]

ALAN C. GAVIOLA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 189553. July 10, 2013]

EUSTAQUIO B. CESA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SUFFICIENCY OF INFORMATION; WHERE THE DATE IS NOT A MATERIAL INGREDIENT OF THE CRIME, STATING A PERIOD OF TIME WITHIN WHICH THE CRIME WAS COMMITTED WAS SUFFICIENT.— [I]t is not necessary to state the precise date when the offense was committed, except when it is a material ingredient thereof. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. Here, the date is not a material ingredient of the crime, not having been committed on one day alone, but rather within a period of time ranging from 20 September 1995 to 5 March 1998. Hence, stating the exact dates of the commission of the crime is not only unnecessary, but impossible as well. That the Information alleged a date and a period during which the crime was committed was sufficient, because it duly informed petitioners that before and until 5 March 1998, over nine million pesos had been taken by Gonzales as a result of petitioners' acts. These acts caused undue injury to the government and unwarranted benefits to the said paymaster.

2. ID.; ID.; ID.; WHERE THE INFORMATION SUFFICIENTLY DESCRIBES THE NATURE AND CAUSE OF THE OFFENSE COMMITTED.— The Information is sufficient, because it adequately describes the nature and cause of the accusation against petitioners, namely the violation of the aforementioned law. The use of the three phrases – "manifest partiality," "evident bad faith" and "inexcusable negligence" – in the same Information does not mean that three distinct offenses were thereby charged but only implied that the offense charged may have been committed through any of the modes provided by the law. In addition, there was no inconsistency in alleging both the presence of conspiracy and gross inexcusable negligence, because the latter was not simple negligence. Rather, the negligence involved a willful, intentional, and conscious indifference to the consequences of one's actions or omissions.

3. CRIMINAL LAW; THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); APPROVAL AND DISBURSEMENT OF CASH ADVANCES IN VIOLATION OF LAW, RULES AND REGULATIONS CONSTITUTE GROSS NEGLIGENCE AMOUNTING TO BAD FAITH.— Petitioners – being the Cash Division Chief, City Treasurer and City Administrator – have to comply with R.A. 7160, P.D. 1445, and COA Circulars 90-331, 92-382, and 97-002 on the proper procedure for the approval and grant of cash advances. These laws and rules and regulations state that cash advances can only be disbursed for a legally authorized specific purpose and cannot be given to officials whose previous cash advances have not been settled or properly accounted for. Cash advances should also be equal to the net amount of the payroll for a certain pay period, and they should be supported by the payroll or list of payees and their net payments. However, petitioners failed to observe the foregoing. x x x All these acts demonstrate that petitioners, as correctly found by the Sandiganbayan, were guilty of gross negligence amounting to bad faith. Gross and inexcusable negligence is characterized by a want of even the slightest care, acting or omitting to act in a situation in which there is a duty to act - not inadvertently, but wilfully and intentionally, with conscious indifference to consequences insofar as other persons are affected. Bad faith does not simply connote bad judgment or simple negligence. It imports a dishonest purpose or some moral obloquy and

conscious doing of a wrong, a breach of a known duty due to some motive or interest or ill will that partakes of the nature of fraud. Petitioners were well aware of their responsibilities before they affixed their signatures on the cash advance vouchers. Yet, they still chose to disregard the requirements laid down by law and rules and regulations by approving the vouchers despite the incomplete information therein, the previous unliquidated cash advances, the absence of payroll to support the cash requested, and the disparity between the requested cash advances and the total net pay. What is worse is that they continue to plead their innocence, allegedly for the reason that it was "common practice" in their office not to follow the law and rules and regulations to the letter. For them to resort to that defense is preposterous, considering that as public employees they are required to perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. The law and the rules are clear and do not provide for exceptions.

4. ID.; ID.; ID.; PETITIONERS WERE UNIFIED IN ILLEGALLY APPROVING IRREGULAR CASH ADVANCE VOUCHERS IN ORDER TO DEFRAUD THE GOVERNMENT.— As found by the Sandiganbayan, petitioners' acts not only show gross negligence amounting to bad faith, but, when taken together, also show that there was conspiracy in their willful noncompliance with their duties in order to defraud the government. In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven. Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them. A cash advance request cannot be approved and disbursed without passing through several offices, including those of petitioners. It is outrageous that they would have us believe that they were not in conspiracy when over hundreds of vouchers were signed and approved by them in a course of 30 months, without their noticing irregularities therein that should have prompted them to refuse to sign the vouchers. Clearly, they were in cahoots in granting the cash advances to Gonzales. By these acts, petitioners defrauded the government of such a

large sum of money that should not have been disbursed in the first place, had they been circumspect in performing their functions. Not only were petitioners unified in defrauding the government, but they were also unified in not reporting the negligence of their cohorts because of their own negligence. Cesa himself admitted knowing that Gonzales had unliquidated cash advances, yet he signed the vouchers. He also failed to inform the other officials that they should not sign the vouchers and tolerated their negligence when they affixed their signatures thereto. Petitioners, through their admissions before the Sandiganbayan, all knew that there were irregularities in the vouchers; still they failed to correct one another, because they themselves signed the vouchers despite the glaring irregularities therein.

5. ID.; ID.; ID.; ILLEGAL APPROVAL OF CASH ADVANCE VOUCHERS CAUSED UNDUE INJURY TO THE GOVERNMENT.— The third element of the offense is that the action of the offender caused undue injury to any party, including the government; or gave any party any unwarranted benefit, advantage or preference in the discharge of his or her functions. Here, the Sandiganbayan found that petitioners both brought about undue injury to the government and gave unwarranted benefit to Gonzales. It is not mistaken. Undue injury means actual damage. It must be established by evidence and must have been caused by the questioned conduct of the offenders. On the other hand, unwarranted benefit, advantage, or preference means giving a gain of any kind without justification or adequate reasons. When a cash examination is conducted, the paymaster should present her cashbook, cash, and cash items for examination. Upon assessment thereof in the instant case, it was discovered that ₱9,810,752.60 was missing[.] x x x It is beside the point that no one complained about not receiving any salary from the city government. The fact remains that more than nine million pesos was missing – public funds lost, to the detriment of the government. This undue injury was brought about by petitioners' act of approving the cash advance vouchers of Gonzales even if they lacked the requirements prescribed by law and rules and regulations, and even if Gonzales had failed to liquidate her previous cash advances, thereby clearly giving her an unwarranted benefit.

6. ID.; ID.; ID.; THE PENALTY IMPOSED FOR VIOLATION OF SECTION 3 (e) OF R.A. 3019 IS FULLY JUSTIFIED.— [W]e find the imposition of the highest range of imposable penalty in this case to be fully justified. In *Jaca v. People of the Philippines*, promulgated on 28 January 2013, the Court convicted the very same petitioners herein of exactly the same kinds of violation of Section 3(e) of R.A. 3019 as those in the present case and imposed therein the indeterminate penalty of 12 years and 1 month as minimum to 15 years as maximum. The violations in that case arose from acts of gross inexcusable negligence similar in all respects to those committed in this case, except for the amount of cash shortages involved and the identity of the paymaster who benefitted from the acts of petitioners. Even the period covered by the COA audit in *Jaca* – 20 September 1995 to 5 March 1998 – is exactly the same as that in the present case. It is therefore clear that the Court has previously determined these identical acts to be so perverse as to justify the penalty of imprisonment of 12 years and 1 month as minimum to 15 years as maximum. Hence, we adopt the same penalty in this case. Indeed, the penalty imposed is justified, considering the extent of the negligent acts involved in this case in terms of the number of statutory laws and regulations violated by petitioners and the number of positive duties neglected. The Court emphasizes that petitioners violated not just one but several provisions of various regulations and laws namely: Sections 89 and 122 of P.D. 1445, Section 339 of R.A. 7160, paragraphs 4.1.2, 4.1.7, 4.2.1, 4.2.2, and 5.1.1 of COA Circular No. 97-002, paragraphs 4.2.1, 4.1.5, and 5.1.1 of COA Circular No. 90-331, and Section 48 (g), (e), and (k) of COA Circular No. 92-382. Worse, they admitted being aware of these regulations. These circumstances, coupled with the number of times such instances of violations and negligence were wantonly and systematically repeated, show that their acts bordered on malice. Hence, we are convinced that the penalty imposed by the Sandiganbayan is warranted.

APPEARANCES OF COUNSEL

Mario D. Ortiz for Benilda N. Bacasmas.
Bohol Bohol II Jimenez Law Offices for Alan C. Gaviola.
Vicente A. Espina, Jr. for Eustaquio B. Cesa.
The Solicitor General for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before us are three consolidated cases: (1) Petition for Review on *Certiorari*[1] dated 16 September 2009 (G.R. No. 189343), (2) Petition for Review on *Certiorari*[2] dated 15 September 2009 (G.R. No. 189369), and (3) Petition for Review on *Certiorari*[3] dated 12 October 2009 (G.R. No. 189553). All assail the Decision[4] in Crim. Case No. 26914 dated 7 May 2009 of the Sandiganbayan, the dispositive portion of which reads:

> ACCORDINGLY, **accused Alan C. Gaviola ("Gaviola"), Eustaquio B. Cesa ("Cesa"), Benilda N. Bacasmas ("Bacasmas") and Edna J. Jaca ("Jaca")** are found **guilty beyond reasonable doubt** for violation of Section 3 (e) of Republic Act No. 3019 and are sentenced to suffer in prison the penalty of **12 years and 1 month to 15 years**. They also have to suffer perpetual disqualification from holding any public office and to indemnify jointly and severally the City Government of Cebu the amount of Nine Million Eight Hundred Ten Thousand, Seven Hundred Fifty-two and 60/100 Pesos (Php 9,810,752.60).[5] (Emphases in the original)

The Petitions also question the Resolution[6] dated 27 August 2009 denying the Motions for Reconsideration[7] of the Decision dated 7 May 2009.

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[1] *Rollo* (G.R. No. 189343), pp. 4-24.

[2] *Rollo* (G.R. No. 189369), pp. 3-52.

[3] *Rollo* (G.R. No. 189553), pp. 12-79.

[4] *Rollo* (G.R. No. 189343), pp. 26-63.

[5] *Id*. at 62.

[6] *Id*. at 65-83.

[7] *Id*. at 65.

ANTECEDENT FACTS

All the petitioners work for the City Government of Cebu.[8] Benilda B. Bacasmas (Bacasmas), the Cash Division Chief, is the petitioner in G.R. No. 189343.[9] Alan C. Gaviola (Gaviola), the City Administrator, is the petitioner in G.R. No. 189369.[10] Eustaquio B. Cesa (Cesa), the City Treasurer, is the petitioner in G.R. No. 189553.[11]

By virtue of their positions, they are involved in the process of approving and releasing cash advances for the City. The procedure is as follows:

A written request for a cash advance is made by paymaster Luz Gonzales (Gonzales), who then submits it to Cash Division Chief Bacasmas for approval. Once the latter approves the request, she affixes her initials to the voucher, which she forwards to City Treasurer Cesa for his signature in the same box. By signing, Bacasmas and Cesa certify that the expense or cash advance is necessary, lawful, and incurred under their direct supervision.[12]

Thereafter, the voucher is forwarded to City Accountant Edna C. Jaca (Jaca) for processing and pre-audit. She also signs the voucher to certify that there is adequate available funding/ budgetary allotment; that the expenditures are properly certified and supported by documents; and that previous cash advances have been liquidated and accounted for. She then prepares an Accountant's Advice (Advice).[13]

This Advice is returned with the voucher to the Chief Cashier for the preparation of the check. After it has been prepared,

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[8] *Rollo* (G.R. No. 189343), p. 4; (G.R. No. 189369), p. 6; (G.R. No. 189553), p. 16.

[9] *Rollo* (G.R. No. 189343), p. 4.

[10] *Rollo* (G.R. No. 189369), p. 6.

[11] *Rollo* (G.R. No. 189553), p. 16.

[12] *Rollo* (G.R. No. 189343), p. 38.

[13] *Id*.

she affixes her initials to the check, which Cesa then signs. Afterwards, City Administrator Gaviola approves the voucher and countersigns the check.[14]

The voucher, the Advice, and the check are then returned to the Cash Division, where Gonzales signs the receipt portion of the voucher, as well as the Check Register to acknowledge receipt of the check for encashment.[15]

Upon receipt of the check, Gonzales encashes it at the bank, signs the voucher, and records the cash advance in her Individual Paymaster Cashbook. She then liquidates it within five days after payment.[16]

A report of those cash advances liquidated by Gonzales is called a Report of Disbursement (RD). An RD must contain the audit voucher number, the names of the local government employees who were paid using the money from the cash advance, the amount for each employee, as well as the receipts. The RDs are examined and verified by the City Auditor and are thereafter submitted to the Cash Division for recording in the official cash book.[17]

On 4 March 1998, COA issued Office Order No. 98-001 creating a team to conduct an examination of the cash and accounts of the accountable officers of the Cash Division, City Treasurer's Office of Cebu City.[18]

This team conducted a surprise cash count on 5 March 1998.[19] The examination revealed an accumulated shortage of ₱9,810,752.60 from 20 September 1995 to 5 March 1998 from the cash and accounts of Gonzales.[20] The team found that

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[14] *Id*.

[15] *Id*. at 38-39.

[16] *Id*. at 39.

[17] *Id*.

[18] *Id*. at 37.

[19] *Id*.

[20] *Id*. at 39.

Bacasmas, Gaviola, Cesa, and Jaca failed to follow the above-mentioned procedure, thus facilitating the loss of more than nine million pesos on the part of the city government. Specifically, the team said in its report that there were irregularities in the grant, utilization, and liquidation of cash advances; shortages were concealed; and inaccurate and misleading pieces of information were included in the financial statements.[21] These irregularities were manifested in the following: additional cash advances were granted even if previous cash advances had not yet been liquidated, cash advance vouchers for salaries were not supported by payrolls or lists of payees, and cash advances for salaries and wages were not liquidated within five days after each 15th day or end-of-the-month pay period.[22]

The report stated that Bacasmas, Gaviola, Cesa, and Jaca not only signed, certified, and approved the cash advance vouchers, but also signed and countersigned the checks despite the deficiencies, which amounted to a violation of Republic Act No. (R.A.) 7160; Presidential Decree No. (P.D.) 1445; and the circulars issued by the Commission on Audit (COA), specifically COA Circular Nos. 90-331, 92-382 and 97-002.[23] According to the COA, the violation of the foregoing laws, rules, and regulations facilitated the loss of a huge amount of public funds at the hands of Gonzales.[24]

Hence, an Information[25] was filed with the Sandiganbayan on 30 July 2001 against Bacasmas, Gaviola, Cesa, and Jaca, to wit:

That on or about the 5th day of March 1998, and for sometime prior and subsequent thereto, at Cebu City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ALAN C. GAVIOLA, EUSTAQUIO B. CESA,

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[21] *Id*. at 40-43.

[22] *Id*.

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

[24] *Id*.

[25] *Rollo* (G.R. No. 189553), pp. 144-146.

BENILDA N. BACASMAS and EDNA J. JACA, public officers, being then the City Administrator, City Treasurer, Cash Division Chief and City Accountant, respectively, of the Cebu City Government, in such capacity and committing the offense in relation to Office, conniving and confederating together and mutually helping with each other [sic], with deliberate intent, with manifest partiality, evident bad faith and with gross inexcusable negligence, did then and there allow LUZ M. GONZALES, Accountant I, Disbursing Officer-Designate of the Cebu City Government, to obtain cash advances despite the fact that she has previous unliquidated cash advances, thus allowing LUZ M. GONZALES to accumulate Cash Advances amounting to NINE MILLION EIGHT HUNDRED TEN THOUSAND SEVEN HUNDRED FIFTY-TWO PESOS AND 60/100 (₱9,810,752.60), PHILIPPINE CURRENCY, which remains unliquidated, thus accused in the performance of their official functions, had given unwarranted benefits to LUZ M. GONZALES and themselves, to the damage and prejudice of the government, particularly the Cebu City Government.[26]

The prosecution presented the testimonies of the COA Auditors who had conducted the examination on the cash and accounts of Gonzales: Cecilia Chan, Jovita Gabison, Sulpicio Quijada, Jr., Villanilo Ando, Jr., and Rosemarie Picson.[27] The COA Narrative Report[28] on the results of the examination of the cash and accounts of Gonzales covering the period 20 September 1995 to 05 March 1998 was also introduced as evidence.[29]

Bacasmas testified in her own defense. She said that she could not be held liable, because it was not her responsibility to examine the cash book. She pointed to Jaca and the City Auditor as the ones responsible for determining whether the paymaster had existing unliquidated cash advances. Bacasmas further testified that she allowed the figures to be rounded off to the nearest million without totalling the net payroll, because

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[26] *Id.* at 144-145.

[27] *Rollo* (G.R. No. 189343), pp. 27-30.

[28] *Rollo,* (G.R. No 189553) pp. 198-228.

[29] *Rollo* (G.R. No. 189343), p. 29.

it was customary to round off the cash advance to the nearest amount.[30]

Cesa averred that Jaca was the approving authority in granting cash advances. Hence, when he signed the vouchers, he merely relied on Jaca's certification that Gonzales had already liquidated her cash advances. Besides, he said, he had already delegated the function of determining whether the amount stated in the disbursement voucher was equal to the net pay, because it was humanly impossible for him to supervise all the personnel of his department.[31]

Jaca admitted that cash advances were granted even if there were no liquidations, so that salaries could be paid on time, because cash advances usually overlapped with the previous one. Additionally, she acknowledged that when she affixed her signatures to the vouchers despite the non-attachment of the payrolls, she was aware that Gonzales still had unliquidated cash advances.[32]

Lastly, Gaviola claimed that when he affixed his signatures, he was not aware of any anomaly. Allegedly, he only signed on the basis of the signatures of Cesa and Jaca.[33]

The Sandiganbayan, in its Decision dated 7 May 2009, did not give credence to the defense of the accused, but instead afforded significant weight to the COA Narrative Report submitted in evidence. It found that the accused, as public officers, had acted with gross inexcusable negligence by religiously disregarding the instructions for preparing a disbursement voucher and by being totally remiss in their respective duties and functions under the Local Government Code of 1991.[34] Their gross inexcusable negligence amounted to bad faith, because they still continued with the illegal practice

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

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

[32] *Id*. at 34-36.

[33] *Id*. at 36-37.

[34] *Id*. at 45-50.

even if they admittedly had knowledge of the relevant law and COA rules and regulations.[35] The Sandiganbayan held that the acts of the accused had caused not only undue injury to the government because of the ₱9,810,752.60 shortage, but also gave unwarranted benefit to Gonzales by allowing her to obtain cash advances to which she was not entitled.[36] Lastly, it found conspiracy to be present in the acts and omissions of the accused showing that they had confederated, connived with, and mutually helped one another in causing undue injury to the government through the loss of public money.[37]

Gaviola, Cesa, Bacasmas, and Jaca individually filed their Motions for Reconsideration of the 7 May 2009 Decision.[38] Their motions impugned the sufficiency of the Information and the finding of gross inexcusable negligence, undue injury, and unwarranted benefit.[39] To support their innocence, they invoked the cases of *Arias v. Sandiganbayan*,[40] *Magsuci v. Sandiganbayan*,[41] *Sistoza v. Desierto*,[42] *Alejandro v. People*,[43] and *Albert v. Gangan*,[44] in which we held that the heads of office may rely to a reasonable extent on their subordinates.[45] The Motion for Reconsideration of Jaca also averred that her criminal and civil liabilities had been extinguished by her death on 24 May 2009.[46]

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[35] *Id*. at 53-54.

[36] *Id*. at 55-58.

[37] *Id*. at 59-61.

[38] *Id*. at 65.

[39] *Id*. at 66-70.

[40] 259 Phil. 794 (1989).

[41] 310 Phil. 14 (1995).

[42] 437 Phil. 117 (2002).

[43] 252 Phil. 412 (1989).

[44] 406 Phil. 231 (2001).

[45] *Rollo* (G.R. No. 189343), p. 76.

[46] *Id*. at 69.

The Sandiganbayan, in a Resolution[47] promulgated 27 August 2009 denied the Motions for Reconsideration of the accused. It ruled that the Information was sufficient, because the three modes of violating Section 3(e) of R.A. 3019 commonly involved willful, intentional, and conscious acts or omissions when there is a duty to act on the part of the public official or employee.[48] Furthermore, the three modes may all be alleged in one Information.[49] The Sandiganbayan held that the accused were all guilty of gross inexcusable negligence. Claiming that it was the practice in their office, they admittedly disregarded the observance of the law and COA rules and regulations on the approval and grant of cash advances.[50] The anti-graft court also stated that the undue injury to the government was unquestionable because of the shortage amounting to ₱9,810,752.60.[51] It further declared that the aforementioned cases cited by the accused were inapplicable, because there was paucity of evidence of conspiracy in these cases.[52] Here, conspiracy was duly proven in that the silence and inaction of the accused - albeit ostensibly separate and distinct - indicate, if taken collectively, that they are vital pieces of a common design.[53] Finally, the Sandiganbayan decided that although the criminal liability of Jaca was extinguished upon her death, her civil liability remained.[54] Hence, the Motions for Reconsideration were denied.[55]

Thus, Bacasmas, Gaviola, and Cesa filed their respective Petitions for Review on *Certiorari*, in which they rehashed the arguments they had put forward in their Motions for

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[47] *Id*. at 65-83.

[48] *Id*. at 70-73.

[49] *Id*. at 73.

[50] *Id*. at 73-75.

[51] *Id*. at 75.

[52] *Id*. at 76-77.

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

[54] *Id*. at 81-82.

[55] *Id*. at 83.

Reconsideration previously filed with the Sandiganbayan.

We resolved to consolidate the three Petitions on 23 November 2009.[56] The Office of the Special Prosecutor was required to comment on the three Petitions,[57] after which petitioners were instructed to file a Reply,[58] which they did.[59]

Petitioners, through their respective Petitions for Review on *Certiorari* and Comments, bring these two main issues before us:

I. Whether the Information was sufficient; and

II. Whether petitioners are guilty beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019

We deny the Petitions.

I.

The Information specified when the crime was committed, and it named all of the accused and their alleged acts or omissions constituting the offense charged.

An information is deemed sufficient if it contains the following: (a) the name of all the accused; (b) the designation of the offense as given in the statute; (c) the acts or omissions complained of as constituting the offense; (d) the name of the offended party; (e) the approximate date of the commission of the offense; and (f) the place where the offense was committed.

Cesa and Gaviola question the sufficiency of the Information on three grounds: first, it did not specify a reasonable time frame within which the offense was committed, in violation of their right to be informed of the charge against them; second, not all of the accused were named, as Gonzales was not charged in the

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[56] *Rollo* (G.R. No. 189343), p. 88; (G.R. No. 189369), p. 189; (G.R. No. 189553), p. 504.

[57] *Id*. at 90; 191; 511.

[58] *Id*. at 136; 229; 549.

[59] *Id*. at 137, unpaginated; unpaginated; unpaginated.

Information; and third, the Information did not specify an offense, because negligence and conspiracy cannot co-exist in a crime.

The Sandiganbayan earlier held that the Information was sufficient in that it contained no inherent contradiction and properly charged an offense. We uphold its ruling for the following reasons:

First, it is not necessary to state the precise date when the offense was committed, except when it is a material ingredient thereof.[60] The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[61] Here, the date is not a material ingredient of the crime, not having been committed on one day alone, but rather within a period of time ranging from 20 September 1995 to 5 March 1998. Hence, stating the exact dates of the commission of the crime is not only unnecessary, but impossible as well. That the Information alleged a date and a period during which the crime was committed was sufficient, because it duly informed petitioners that before and until 5 March 1998, over nine million pesos had been taken by Gonzales as a result of petitioners' acts. These acts caused undue injury to the government and unwarranted benefits to the said paymaster.

Second, the Information charges petitioners with violating Section 3(e) of R.A. 3019, to wit:

> Sec. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

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[60] RULES OF COURT, Rule 110, Sec. 11.

[61] *Id*.

Cesa contends that Gonzales should have been included in the Information, because the latter incurred cash shortages and allegedly had unliquidated cash advances.[62] Cesa is wrong. The Information seeks to hold petitioners accountable for their actions, which allowed Gonzales to obtain cash advances, and paved the way for her to incur cash shortages, leading to a loss of over nine million pesos. Thus, the Information correctly excluded her because her alleged acts did not fall under the crime charged in the Information.

Third and last, the Information sufficiently specified the offense that violated Section 3(e) of R.A. 3019, the essential elements of which are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. The action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.[63]

The Information is sufficient, because it adequately describes the nature and cause of the accusation against petitioners,[64] namely the violation of the aforementioned law. The use of the three phrases – "manifest partiality," "evident bad faith" and "inexcusable negligence" – in the same Information does not mean that three distinct offenses were thereby charged but only implied that the offense charged may have been committed through any of the modes provided by the law.[65] In addition, there was no inconsistency in alleging both the presence of conspiracy

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[62] *Rollo* (G.R. No. 189553), p. 33.

[63] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290.

[64] *People v. Anguac*, G.R. No. 176744, 05 June 2009, 588 SCRA 716.

[65] *Soriquez v. Sandiganbayan*, 510 Phil. 709 (2005).

and gross inexcusable negligence, because the latter was not simple negligence. Rather, the negligence involved a willful, intentional, and conscious indifference to the consequences of one's actions or omissions.[66]

II.

Petitioners' gross negligence amounting to bad faith, the undue injury to the government, and the unwarranted benefits given to Gonzales, were all proven beyond reasonable doubt.

Petitioners do not controvert the first element of the offense but assail the Sandiganbayan's finding of gross inexcusable negligence, undue injury and unwarranted benefit. Nevertheless, their contention must fail.

Petitioners committed gross negligence amounting to bad faith when they approved and disbursed the cash advances in violation of law and rules and regulations.

Petitioners – being the Cash Division Chief, City Treasurer and City Administrator – have to comply with R.A. 7160, P.D. 1445, and COA Circulars 90-331, 92-382, and 97-002 on the proper procedure for the approval and grant of cash advances. These laws and rules and regulations state that cash advances can only be disbursed for a legally authorized specific purpose and cannot be given to officials whose previous cash advances have not been settled or properly accounted for.[67] Cash advances should also be equal to the net amount of the payroll for a certain pay period, and they should be supported by the payroll or list of payees and their net payments.[68]

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[66] *Albert v. Sandiganbayan, supra.*

[67] P.D. 1445, Sec. 89 (1978).

[68] COA Circular No. 90-331, par. 4.2.1, 5.1.1; COA Circular No. 92-382, Sec. 48. g, k; COA Circular No. 97-002, par. 4.1.2, 4.2.1, 4.2.2, 5.1.1.

However, petitioners failed to observe the foregoing. We quote hereunder the findings of the COA team as contained in its Narrative Report:

A. Granting, Utilization and Liquidation of cash advances:

1. During the period, September 20, 1995 to March 5, 1998, records and verification documents show that **additional cash advances were granted (Annex 13), even if the previous cash advances were not yet liquidated.**

   It resulted in excessive granting of cash advances, which created the opportunity to misappropriate public funds since excess or idle funds were placed in the hands of the paymaster under her total control and disposal. This is **in violation of Section 89, PD 1445; Section 339, RA 7160 and paragraph 4.1.2 of COA Circular No. 97-002.**

2. The **amounts of cash advances for salary payments were not equal to the net amount of the payroll for a pay period in violation of par. 4.2.1. COA Circular No. 90-331. Section 48 (g), COA Circular No. 92-382 and par. 4.2.1, COA Circular No. 97-002.** In fact, **all cash advance vouchers for salaries were not supported by payrolls or list of payees to determine the amount of the cash advance to be granted, and that the face of the disbursement voucher (sample voucher marked as Annex 14) did not indicate the specific office/ department and period covered for which the cash advance was granted in violation of par. 4.1.5 COA Cir. No. 90-331, Section 48(e) COA Cir. 92-382 and par. 4.1.7 and 4.2.2 COA Cir No. 97-002.** The amount of the cash advance could therefore be in excess of the required amount of the payroll to be paid since it can not be determined which payroll, pay period and department employees are going to be paid by the amount drawn. Consequently, the liquidations which were made later, cannot identify which particular cash advances are liquidated, considering that there are other previous cash advances not yet liquidated, thus resulting in the failure to control cash on hand.

3. **Cash advances for salaries and wages were not liquidated within 5 days after each 15 day/end of the month pay period in violation of par. 5.1.1 COA Cir. 90-331 and**

97-002 and Section 48 (k) of COA Cir No. 92-382. In fact, the **balance of unliquidated cash advance as of December 31, 1997 per audit, amounted to ₱ 10,602,527.90 consisting of ₱6,388,147.94, ₱3,205,373.16 and ₱1,009,006.80 for General, SEF and Trust Fund (Annex 15) respectively, in violation of Par. 5.8 COA Cir Nos. 90-331 and 97-002 and Section 48 (o) COA Cir. No. 92-382.** However, the balance shown was understated as of December 31, 1997 by ₱2,395,517.08 as discussed in items D.2 pages 15 & 16.

Records showed that part of the total cash advances of ₱12,000,000.00 appears to have been used to liquidate partially the previous year's unliquidated cash advance/ balance of ₱10,602,527.90 since the accountable officer liquidated her cash advance by way of cash refunds/ returns from January 8-14, 1998 in the total amount of ₱8,076,382.36 (Annex 15 E) in violation of par. 4.1.5 COA Cir. 90-331, Section 48 of COA Cir 92-382 and par. 4.1.7 of COA Cir. 97-002.

The concerned City Officials (refer to Part III of this report) signed, certified and approved the disbursements/cash advance vouchers, and signed and countersigned the corresponding checks despite the deficiencies which are violations of laws, rules and regulations mentioned in the preceding paragraphs.

The accountable officer was able to accumulate excess or idle funds within her total control and disposal, resulting in the loss of public funds, due to the flagrant violations by the concerned city officials of the abovementioned laws, rules and regulations.

On the other hand, the verification and reconciliation of the paymaster's accountability cannot be determined immediately because the submission of financial reports and its supporting schedules and vouchers/payrolls by the Accounting Division was very much delayed (Annex 16), in violation of Section 122, PD 1445, despite several communications from the Auditor to submit said reports, latest of which is attached as Annex 16.a.

x x x x x x x x x

D. **The following practices of the Office of the City Accountant resulted in inaccurate and misleading information in the financial statements including the balance of unliquidated cash advances in violation of Sections 111 and 112 of PD 1445**:

1. Cash returns made on January 8 to 14, 1998 were recorded in the accounting records as credits to Mrs. Gonzales accountability in December 1997 amounting to ₱8,075,382.36 as shown in the subsidiary ledger (Annex 20. 1-4) and as evidenced by the official receipts (Annex 20a. 1-6) as follows:

x x x x x x x x x

2. Some liquidations/ disbursements in January 1998 were included as credits to accountability or a reduction of the paymaster's accountability as of December 1997 amounting to ₱2,395,517.08.

x x x x x x x x x

3. Verification of accounting records maintained in the Accounting Division revealed that the index cards (Annex 21) as a control device in the processing of cash advance voucher recorded only cash advances granted to Paymaster. It failed to show the liquidations/ disposition of public funds. Hence, unliquidated balance of cash advances can not be determined at a glance when a cash advance voucher is being processed by the accounting personnel.

E. Other Deficiencies:

1. There were two claimants who alleged that they did not receive the financial aid intended for them as fire victims. However, payroll showed that there were initials/ signatures indicated therein acknowledging receipt of said claim.

2. There were two (2) cash advance vouchers (Annex 22b. 1-2) which bear no approval of proper official in BOX marked as "C" hereof, yet checks were issued in violation of Section 4.5 of PD 1445 which provide that disbursement or disposition of government funds of property shall invariably bear the approval of the proper officials. x x x

3. Accounting records showed that JV #354 under Trust Fund in the amount of ₱147,200.00 was a liquidation on December

> 31, 1997. x x x one payroll supporting the JV was signed by only one (1) person x x x. The other two payrolls supporting the JV were not signed/ approved by the concerned officials, which means that the payrolls were not valid disbursements.[69] (Emphases supplied)

The above findings of the COA cannot be any clearer in thoroughly describing the illegal and anomalous practices of the accused which led to the loss of ₱9,810,752.60 in people's money.

When he testified before the anti-graft court, Bacasmas admitted that she did not consider the net pay, which was lower than the amount requested, when she affixed her signature to the vouchers, because it was supposedly common practice for the paymaster to round off the figures.[70] Furthermore, she signed the vouchers after relying on the representation of Jaca, Cesa, and Gaviola.[71]

During his direct and cross-examination, Gaviola admitted that he had affixed his signature to the vouchers, because they had already been signed by Bacasmas, Cesa, and Jaca despite the incompleteness thereof – the periods covered by the vouchers were not stated; the employees who were to be paid by the cash advance were not specified; no supporting documents were attached to the cash advances requested; and there was no determination of whether the amounts requested were equivalent to the net pay.[72]

Cesa said that because it was impossible for him to supervise all the personnel, he instructed Bacasmas to examine and check the documents before signing them.[73] Thus, once Cesa

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[69] *Rollo* (G.R. No. 189343), pp. 40-43.

[70] *Id*. at 52.

[71] *Id*.

[72] *Id*. at 50-51.

[73] *Id*. at 52.

saw the signature of Bacasmas, he immediately assumed that the documents were in order, and he then signed the vouchers.[74]

These facts show that petitioners failed to act in accordance with their respective duties in the grant of cash advances. Moreover they **repeatedly** failed to do so. Bacasmas signed 294 requests for cash advance, 11 disbursement vouchers, and 7 checks. Cesa signed cash advance requests and 299 disbursement vouchers. Gaviola approved 303 disbursement vouchers and signed 355 checks.

All these acts demonstrate that petitioners, as correctly found by the Sandiganbayan, were guilty of gross negligence amounting to bad faith. Gross and inexcusable negligence is characterized by a want of even the slightest care, acting or omitting to act in a situation in which there is a duty to act – not inadvertently, but wilfully and intentionally, with conscious indifference to consequences insofar as other persons are affected.[75] Bad faith does not simply connote bad judgment or simple negligence.[76] It imports a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of a known duty due to some motive or interest or ill will that partakes of the nature of fraud.[77]

Petitioners were well aware of their responsibilities before they affixed their signatures on the cash advance vouchers. Yet, they still chose to disregard the requirements laid down by law and rules and regulations by approving the vouchers despite the incomplete information therein, the previous unliquidated cash advances, the absence of payroll to support the cash requested, and the disparity between the requested cash advances and the total net pay. What is worse is that they continue to plead their innocence, allegedly for the reason that it was "common practice" in their office not to follow the law and rules and regulations to the letter. For them to resort to that defense is

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[74] *Id*.

[75] *Albert v. Sandiganbayan, supra* at 290.

[76] *Cojuangco Jr. v. CA*, 369 Phil. 41 (1999).

[77] *Id*.

preposterous, considering that as public employees they are required to perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.[78] The law and the rules are clear and do not provide for exceptions.

Petitioners' acts show that they were unified in illegally approving irregular cash advance vouchers in order to defraud the government.

As found by the Sandiganbayan, petitioners' acts not only show gross negligence amounting to bad faith, but, when taken together, also show that there was conspiracy in their willful noncompliance with their duties in order to defraud the government.

In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven.[79] Direct proof is not essential to show conspiracy.[80] It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.[81]

A cash advance request cannot be approved and disbursed without passing through several offices, including those of petitioners. It is outrageous that they would have us believe that they were not in conspiracy when over hundreds of vouchers were signed and approved by them in a course of 30 months, without their noticing irregularities therein that should have prompted them to refuse to sign the vouchers. Clearly, they were in cahoots in granting the cash advances to Gonzales. By these acts, petitioners defrauded the government of such a large sum of money that should not have been disbursed in the first place, had they been circumspect in performing their functions.

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[78] R.A. 6713, Sec. 4 (b) (1989).

[79] *People v. Jorge*, G.R. No. 99379, 22 April 1994, 231 SCRA 693.

[80] *Alvizo v. Sandiganbayan*, 454 Phil. 34, 106 (2003).

[81] *Id*.

Not only were petitioners unified in defrauding the government, but they were also unified in not reporting the negligence of their cohorts because of their own negligence. Cesa himself admitted knowing that Gonzales had unliquidated cash advances, yet he signed the vouchers. He also failed to inform the other officials that they should not sign the vouchers and tolerated their negligence when they affixed their signatures thereto. Petitioners, through their admissions before the Sandiganbayan, all knew that there were irregularities in the vouchers; still they failed to correct one another, because they themselves signed the vouchers despite the glaring irregularities therein.

Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan*[82] that heads of offices cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authorities, affixed their signatures to certain documents. The Court explained in that case that conspiracy was not adequately proven, contrary to the case at bar in which petitioners' unity of purpose and unity in the execution of an unlawful objective were sufficiently established. Also, unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, petitioners herein, by virtue of the duty given to them by law as well as by rules and regulations, had the responsibility to examine each voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

Petitioners wrongly approved Gonzales' cash advance vouchers, thereby causing a loss to the government in the amount of ₱9,810,752.60.

The third element of the offense is that the action of the offender caused undue injury to any party, including the government; or gave any party any unwarranted benefit, advantage or preference in the discharge of his or her functions. Here, the Sandiganbayan found that petitioners both brought about undue injury to the

[82] *Supra* note 40.

government and gave unwarranted benefit to Gonzales. It is not mistaken.

Undue injury means actual damage.[83] It must be established by evidence[84] and must have been caused by the questioned conduct of the offenders.[85] On the other hand, unwarranted benefit, advantage, or preference means giving a gain of any kind without justification or adequate reasons.[86]

When a cash examination is conducted, the paymaster should present her cashbook, cash, and cash items for examination.[87] Upon assessment thereof in the instant case, it was discovered that ₱9,810,752.60 was missing, as plainly evidenced by the COA Narrative Report, from which we quote:

Balance last cash examination, September 20, 1995		₱ 2,685,719.78
Add: Cash Advances received – September 20, 1995 to March 5, 1998		
Gen. Fund	193,320,350.00	
SEF	107,400,600.00	
Trust Fund	3,989,783.00	304,710,733.00
Total:		₱ 307,396,452.78
Less: Liquidations – September 20, 1995 to March 5, 1998		
Gen. Fund	187,290,452.66	
SEF	105,243,526.99	
Trust Fund	2,750,722.51	295,284,752.16
Balance of Accountability, March 5, 1998		₱ 12,111,700.62
Less: Inventory of Cash and Cash Items Allowed		2,300,948.02
Shortage		**₱ 9,810,752.60**[88]

(Emphasis supplied)

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[83] *Llorente v. Sandiganbayan,* 350 Phil. 820 (1998).

[84] *Pecho v. Sandiganbayan,* 331 Phil. 1 (1996).

[85] *Fonacier v. Sandiganbayan,* G.R. No. 50691, 05 December 1994, 238 SCRA 655.

[86] *Gallego v. Sandiganbayan,* 201 Phil. 379 (1982).

[87] COA Circular 97-002, par. 9.2.2.

[88] *Rollo* (G.R. No. 189343), p. 56.

It is beside the point that no one complained about not receiving any salary from the city government. The fact remains that more than nine million pesos was missing – public funds lost, to the detriment of the government.

This undue injury was brought about by petitioners' act of approving the cash advance vouchers of Gonzales even if they lacked the requirements prescribed by law and rules and regulations, and even if Gonzales had failed to liquidate her previous cash advances, thereby clearly giving her an unwarranted benefit.

No less than the Constitution declares that public office is a public trust.[89] Public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty, and efficiency.[90] Petitioners, by intentionally approving deficient cash advance vouchers, have manifestly failed to live up to this constitutional standard.

III.

The indeterminate penalty of 12 years and one month as minimum to 15 years as maximum is fully justified.

Under the Indeterminate Sentence Law, if the offense is punished by a special law such as R.A. 3019, the trial court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by this law, and the minimum term shall not be less than the minimum prescribed by the same law. The penalty for violation of Section 3(e) of R.A. 3019 is "imprisonment for *not less than six years and one month nor more than fifteen years*, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income." Hence, the indeterminate penalty of 12 years and 1 month as minimum to 15 years as maximum

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[89] CONSTITUTION, Art. XI, Sec. 1.

[90] *Id*.

imposed by the Sandiganbayan in the present case is within the range fixed by law.

However, we are aware that if the range of imposable penalty under the law were to be divided into three tiers based on the length of imprisonment, the penalty imposed in this case would be on the highest tier. Hence, the Sandiganbayan should have explained the reason behind its imposed penalty, for while Section 9 of R.A. 3019 seems to grant it discretion over the indeterminate penalty to be prescribed for violation of Section 3(e), this Court finds it only proper that the anti-graft court justify the latter's imposition of the highest possible penalty. Otherwise, the exercise of this discretion would appear to be whimsical – something that this Court will not tolerate. After all, it is our duty to be vigilant in ensuring the correctness and justness of the ultimate adjudication of cases before us.

Nevertheless, we find the imposition of the highest range of imposable penalty in this case to be fully justified. In *Jaca v. People of the Philippines*,[91] promulgated on 28 January 2013, the Court convicted the very same petitioners herein of exactly the same kinds of violation of Section 3(e) of R.A. 3019 as those in the present case and imposed therein the indeterminate penalty of 12 years and 1 month as minimum to 15 years as maximum. The violations in that case arose from acts of gross inexcusable negligence similar in all respects to those committed in this case, except for the amount of cash shortages involved and the identity of the paymaster who benefitted from the acts of petitioners. Even the period covered by the COA audit in *Jaca* – 20 September 1995 to 5 March 1998 – is exactly the same as that in the present case. It is therefore clear that the Court has previously determined these identical acts to be so perverse as to justify the penalty of imprisonment of 12 years and 1 month as minimum to 15 years as maximum. Hence, we adopt the same penalty in this case.

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[91] G.R. Nos. 166967, 166974, 167167; 28 January 2013.

Indeed, the penalty imposed is justified, considering the extent of the negligent acts involved in this case in terms of the number of statutory laws and regulations violated by petitioners and the number of positive duties neglected. The Court emphasizes that petitioners violated not just one but several provisions of various regulations and laws namely: Sections 89 and 122 of P.D. 1445, Section 339 of R.A. 7160, paragraphs 4.1.2, 4.1.7, 4.2.1, 4.2.2, and 5.1.1 of COA Circular No. 97-002, paragraphs 4.2.1, 4.1.5, and 5.1.1 of COA Circular No. 90-331, and Section 48 (g), (e), and (k) of COA Circular No. 92-382. Worse, they admitted being aware of these regulations. These circumstances, coupled with the number of times such instances of violations and negligence were wantonly and systematically repeated, show that their acts bordered on malice. Hence, we are convinced that the penalty imposed by the Sandiganbayan is warranted.

Furthermore, we take judicial notice of the need to stop these corrupt practices that drain local government coffers of millions of pesos in taxpayers' money, which could have been utilized for sorely needed services. In fact, as discussed in its Narrative Report, the COA team found instances where fire victims alleged that they did not receive the financial aid intended for them and yet the payroll showed that there were initials/signatures indicated therein acknowledging receipt of said claim. This diversion of people's money from their intended use has to end.

WHEREFORE, in view of the foregoing, the 07 May 2009 Decision and 27 August 2009 Resolution of the Sandiganbayan in Crim. Case No. 26914 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189686. July 10, 2013]

UNIVERSAL ROBINA CORPORATION and LANCE Y. GOKONGWEI, *petitioners, vs.* **WILFREDO Z. CASTILLO**, *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WHERE THE EMPLOYEE WAS JUSTLY DISMISSED FOR WILLFUL BREACH OF TRUST AND CONFIDENCE, HE IS NOT ENTITLED TO SEPARATION PAY.— [R]espondent has committed acts constituting willful breach of trust and confidence reposed on him by URC based on the x x x facts established by the Court of Appeals[.] x x x [R]espondent did not appeal the decision of the Court of Appeals. He is deemed to have accepted the findings and conclusion of the appellate court pertaining to the validity of his dismissal. In *Bank of the Philippine Islands v. NLRC and Arambulo,* we ruled that an employee who has been dismissed for a just cause under Article 282 of the Labor Code is not entitled to separation pay. The complainant therein was likewise dismissed on the ground of loss of trust and confidence. Applying that rule to the instant case, we here hold that respondent is not entitled to separation pay.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta and Gastardo Law Offices for petitioners.

D E C I S I O N

PEREZ, *J.*:

Whether a validly dismissed employee is entitled to separation pay is the meat of this controversy.

The instant petition for review assails the Decision[1] and Resolution[2] of the Court of Appeals dated 20 July 2009 and 17 September 2009, respectively, in CA-G.R. SP. No. 105604.

The facts, as culled from the records, follow.

Respondent Wilfredo Z. Castillo (Castillo) was hired by petitioner Universal Robina Corporation (URC) as a truck salesman on 23 March 1983 with a monthly salary of ₱4,000.00. He rose from the ranks and became a Regional Sales Manager, until his dismissal on 12 January 2006.

As Regional Sales Manager, respondent was responsible for planning, monitoring, leading and controlling all activities affecting smooth sales operation. He is particularly in charge of the operational and administrative functions encompassing the formulation of sales forecast, selling expense, budget preparation and control, sales analysis, formulation and review of policies and procedures affecting the sales force and service provided to customers, including representation in keeping and maintaining key accounts of the company. He is likewise tasked to transact, sign and represent the company in all its dealings with key accounts or customers subject however to his selling expense budget duly approved by URC Management. Consequently, he is obliged to give an account of all his dealings or transactions with all his customers to URC.[3] His area of responsibility covered some parts of Laguna, including Liana's Supermart (Liana) in San Pablo City, Laguna.

On 19 August 2005, URC's Credit and Collection Department (CCD) Analyst in Silangan, Laguna Branch noted an outright deduction in the amount of ₱72,000.00 tagged as Gift Certificate (GC) per Original Receipt No. 625462 dated 18 August 2005. The CCD Analyst found the issuance of GCs as unusual. This

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Magdangal M. De Leon and Ramon R. Garcia, concurring. *Rollo,* pp. 285-296.

[2] *Id.* at 307.

[3] *Id.* at 72.

finding prompted URC's Corporate Internal Audit (CIA) to conduct a routine audit of the unresolved accounts of Liana's account receivables.

Based on its investigation, CIA came up with the following findings:

1. Per Ms. Prezy Manansala, Liana's San Pablo Branch Manager, URC agreed to sponsor their "Back to School Promo."
2. She showed us their copy of the Account Development Agreement x x x signed by URC Salesman and Ms. Manansala as proof that there was indeed an agreed promotional activity.
3. Liana's issued GCs worth ₱72,000.00 to RSM Castillo. Issuance of Liana's GCs was covered by Charge Sales Invoice Nos. 2189 and 2190 dated June 25, 2005. As claimed by Ms. Manansala, this issuance of GC is part of the promo activity.

x x x x x x x x x

[4.] Ms. Manansala informed us that the "Back to School Raffle Promo" was cancelled. x x x.

[5.] We showed her photocopies of Charged Invoices [N]os. 2189 and 2190 x x x. Ms. Manansala confirmed that RSM Castillo is the one who signed on the received x x x portion of the documents we showed.

[6.] Copies of the Charged Invoice [N]os. 2189 and 2190 were marked/stamped paid as these charges were already deducted from their payment to URC.

x x x x x x x x x

[7.] Based on the report of Mr. Patrick Ong, Trade Marketing personnel, dated August 29, 2005, he mentioned the following exceptions with regard to the subject promo activity:

a. The "cut case" display was only implemented in June 2005.
b. No shelf space added.
c. According to Liana's San Pablo Branch Manager, URC through RSM Wilfredo Castillo received Gift Certificates worth ₱72,000.00 from Liana's.

x x x x x x x x x

[8.] On September 29, 2005, Liana's HO officer confirmed that ₱72,000.00 worth of Gift Certificates were issued per Charged Invoice Nos. 2189 and 2190 dated June 25, 2005.

[9.] As of audit date, the ₱72,000.00 worth of promo deductions represented by the Gift Certificates allegedly received by RSM Castillo still floats or remains unresolved in the URC Account Receivable records. x x x.[4]

The CIA suspected that respondent might have committed an act of fraud against the company and Liana's for his personal gain.

Liana's Vice President for Marketing Mr. Peter Sy confirmed the receipt of the GCs by respondent.[5]

On 14 November 2005, respondent was asked to explain in writing why the company should not institute the appropriate disciplinary action against him for possible violation of Offenses Subject to Disciplinary Action 2.04, to wit:

> Directly or indirectly obtraining or accepting money or anything of value by entering into unauthorized arrangement/s with supplier/s, client or other outsider/s.[6]

On 17 November 2005, respondent submitted his explanation. He recounted that Liana's launched a "Back to School Raffle Promo" sponsored by URC and covered by Account Development Agreement (ADA) No. WZC-05-046. The promotion cost URC sponsorship expenses amounting to ₱92,431.00. The trade-offs included in said promo are:

1. Raffle Draw
2. Additional shelf Space for New products
3. Cut case display
4. Increment of 15% (Value)[7]

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[4] Records, pp. 27-28.

[5] *Id.* at 110.

[6] *Id.* at 34.

[7] *Id.* at 35.

The raffle draw portion of the promotion, however, was cancelled by Liana's due to cost implications and difficulty in obtaining permits. In lieu of the raffle draw, additional cut case display for 3 categories (snacks, beverages and foods), together with 15% sales increment, was offered by Liana's. By virtue of said revisions, Liana's charged and deducted ₱72,000.00 from URC's collectibles which correspond to the monthly rentals of the cut case display.[8] Respondent denied accepting any gift certificate.

Another memo was sent to respondent on 8 December 2005 directing him to explain why no administrative sanctions should be meted against him for the following acts which are deemed inimical to the interest of the company:

1. You entered into an agreement with Liana's Supermarket for the use of cut-case displays for the period from June 1, 2005 to August 31, 2005, inclusive, coinciding with the inclusive period of the implementation of the Account Development Agreement (ADA No. WZC-05-046), and admitted that you did not have any authority to enter into such contract.
2. You signed two (2) blank Charge Invoices of Liana's Supermarket to warrant the payment of the rentals for three (3) cut-case displays during the said period with the use thereof as basis for deducting the amount of PHP 72,000.00 from the account of the Company, without the authority to do so.
3. Your act of signing the blank Charge Invoices included the payment of rental for the cut-case display that should have been part of the concessions without rental fees as per the supposed revised ADA prepared by Salesman Jose Moises C. Villareal, thereby resulting in undue payment to Liana's Supermarket amounting to PHP 24,000.00.[9]

Respondent repeatedly denied that he signed two (2) blank Charge invoices intended for GCs. He also admitted that only

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[8] *Id.*

[9] *Id.* at 40.

two (2) cut-cases should have been charged and he assumed liability for the undue payment of one (1) cut-case display.

Clarification inquiries were likewise held on 8 December 2005.

On 9 January 2006, respondent was served a written notice of termination in the following tenor:

> W[ith] deep regret, we hereby inform you that, after DUE PROCESS, you were found guilty of acts inimical to the interest of the Company and for breach of trust & confidence.
>
> In the series of administrative investigations, the following has been clearly established;
>
> 1. You signed two (2) blank Charge Invoices of Liana's Supermarket. You failed to satisfactorily explain your failure to exercise the slightest degree of prudence required of your position as SENIOR MANAGER, when you signed the "blank" Charge Invoices despite full knowledge that the same will be used to cause the deduction of the subject amount from the account of URC.
> 2. You authorized the changes in ADA despite of the fact that you have no authority to enter into any short term or long term contract for the rental of cut-case displays and shelf spaces.
>
> In view of the above, your services shall be terminated for cause effective immediately. In addition, you are required to restitute the amount of ₱72,000.00 that Liana's Supermarket charged against the account of URC for the gift certificate you unduly received.[10]

On 30 May 2006, respondent filed a complaint for illegal dismissal against petitioners URC and its President and Chief Operating Officer (COO) Lance Gokongwei. He alleged that the grounds for which he was dismissed were totally different from the charges leveled against him during the investigation.[11]

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[10] *Rollo*, p. 167.

[11] Records, pp. 2-3.

On the other hand, URC countered that respondent was dismissed for a just and valid cause.

On 12 June 2007, the labor arbiter rendered a decision declaring respondent to have been illegally dismissed and ordered the payment of backwages and separation pay. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered declaring complainant's dismissal as ILLEGAL. Respondents are hereby ordered jointly and severally liable:
>
> 1) To pay complainant the amount of ₱1,343,000.00, representing his backwages computed only up to the promulgation of this decision;
> 2) To pay complainant the amount of ₱1,728,000.00, representing his separation pay;
> 3) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.
>
> Other claims are dismissed for lack of merit.[12]

The Labor Arbiter ruled that respondent was asked to explain on charges which are different from the charges for which he was dismissed. The Labor Arbiter also held that URC failed to substantiate the charges against respondent.

On appeal, the National Labor Relations Commission (NLRC) found the appeal meritorious and reversed the decision of the labor arbiter. According to the NLRC, URC had more than sufficient proof that respondent violated its trust. Respondent sought reconsideration of the reversal, but his motion for reconsideration was denied.

This prompted respondent to file a petition for *certiorari* before the Court of Appeals, which upheld his dismissal but awarded him separation pay "as a form of equitable relief." In the final paragraphs, as well as in the dispositive, the Court of Appeals stated:

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[12] *Rollo*, p. 96.

In fine, this Court finds just cause for petitioner Castillo's dismissal.

Petitioner nonetheless pleads for compassion, citing the fact that he honorably served the company for about twenty-three (23) years and this is his only and first offense.

Mindful of the Court's duty to accord compassion to the working man in light of the social justice mandate in our Constitution, this Court deems proper an award of separation pay to petitioner Castillo as a form of equitable relief.

WHEREFORE, premises considered, the instant petition for *certiorari* is PARTLY GRANTED. Private respondent URC is hereby ordered to pay SEPARATION PAY to petitioner Castillo for his twenty-three (23) years of service in the company, equivalent to one-half (1/2) month salary for every year of service inclusive of allowances.[13]

URC moved for partial reconsideration but the Court of Appeals denied the motion.

Before this Court, URC raises the lone argument that respondent is not entitled to separation pay in accordance with prevailing law and jurisprudence.[14] Citing case law, URC contends that if an employee's act or violation of the company's code constitutes serious misconduct or is reflective of lack of moral character, then the employer is not required to give the dismissed employee financial assistance or separation. URC maintains that respondent's acts of signing blank Charge Invoices without any authority and receiving ₱72,000.00 worth of GCs for his personal benefit clearly constitute serious misconduct which preclude an award for separation pay.

In his Comment, respondent stresses that based on the tenor of the termination letter, he was never dismissed on the ground of gross misconduct. Respondent concedes that at most, he may have committed simple negligence. He reiterates that he did not commit any act constituting serious misconduct nor does it reflect any deterioration in his moral character.

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[13] *Id.* at 295.

[14] *Id.* at 34.

We resolve to grant the petition.

Why and when separation pay may be awarded or denied, has been the subject of many cases. We pick out the rulings pertinent to the case at hand.

The leading case of *Philippine Long Distance Telephone Co. v. NLRC*[15] enunciated the ruling that separation pay "as a measure of social justice" is allowed in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[16] The case of *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC*[17] expanded the doctrine laid down in *PLDT* by adding dismissals other than those under Art. 282 of the Labor Code, like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family which would preclude award of separation pay.

As the rule now stands, the award of separation pay is authorized in the situations dealt with in Article 283 and 284 of the Labor Code, but not in terminations of employment based on instances enumerated in Article 282.[18] Article 282 states that:

ART. 282. *Termination by employer*. – An employer may terminate an employment for any of the following causes:

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

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

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

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[15] G.R. No. 80609, 23 August 1988, 164 SCRA 671.

[16] *Id.* at 682.

[17] G.R. Nos. 158786 & 158789, 158798-99, 19 October 2007, 537 SCRA 171, 223.

[18] *Central Philippines Bandag Retreaders, Inc. v. Diasnes*, G.R. No. 163607, 14 July 2008, 558 SCRA 194, 204-205 citing *San Miguel Corporation v. Lao*, 433 Phil. 890, 899-890 (2002).

(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 representatives; and

(e) Other causes analogous to the foregoing.

Central Philippines Bandag Retreaders, Inc. cautioned labor tribunals in indiscriminately awarding separation pay as a measure of social justice, in this wise:

x x x [L]abor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family—grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[19]

Indeed, respondent has committed acts constituting willful breach of trust and confidence reposed on him by URC based on the following facts established by the Court of Appeals, thus:

x x x The principal charge against petitioner Castillo was hinged upon "unauthorized arrangements" which he allegedly entered into. Petitioner Castillo's unauthorized dealing with respect to the changes in the Account Development Agreement is exactly the offending cause of the host of infractions he committed, *i.e.*, his neglect in signing the blank charge invoices and his improper receipt of gift certificates for his personal gain. These acts taken together constitute a breach of the trust and confidence reposed on petitioner Castillo by private respondent URC. x x x.

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[19] *Id.* at 207.

Indeed, petitioner Castillo's acts of receiving the gift certificates and signing the blank invoices are closely intertwined and inextricably connected with each other. In other words, petitioner Castillo's acquisition of the gift certificates could not have been facilitated without him signing the blank invoices. Such signing was a ruse to cover up his receipt of the gift certificates. Oddly enough, petitioner Castillo readily admitted to signing receipt on Charge Invoices Nos. 2189 and 2190 covering the gift certificates in the amounts of ₱60,000.00 and ₱12,000.00, respectively, but made the qualification that the same were in blank when he signed on them. Such claim was obviously to create the impression that he was really not aware of any gift certificates and that whatever misstep he committed was merely brought about by his good faith.

Nonetheless, the evidence on record negates petitioner Castillo's claim of good faith and furnishes sufficient basis for the breach of trust and loss of confidence reposed on him by private respondent URC. Petitioner Castillo's receipt of the gift certificates is categorically confirmed by Peter Sy, the Vice President of Marketing of Liana's Supermarket. This piece of evidence, coming from a disinterested party, speaks eloquently of petitioner Castillo's perfidy. Such an affirmative statement coupled with petitioner Castillo's signatures on the charge invoices convincingly established the fact that he indeed received the ₱72,000.00 worth of gift certificates.

Assuming that he did not receive the gift certificates, petitioner Castillo's ready admission that he signed the charge invoices even if these were blank clearly shows his negligence and utter lack of care in the interests of private respondent URC. As a Regional Sales Manager, petitioner Castillo occupied a position of responsibility and as such, he should have known that he placed the interests of the company at a disadvantage by signing the blank charge invoices. Because of such act, private respondent URC was prejudiced by no less than ₱72,000.00. This alone is sufficient cause for breach of trust and loss of confidence.[20]

In this case before us, respondent did not appeal the decision of the Court of Appeals. He is deemed to have accepted the findings and conclusion of the appellate court pertaining to the validity of his dismissal.

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[20] *Rollo,* pp. 292-294.

In *Bank of the Philippine Islands v. NLRC and Arambulo,*[21] we ruled that an employee who has been dismissed for a just cause under Article 282 of the Labor Code is not entitled to separation pay. The complainant therein was likewise dismissed on the ground of loss of trust and confidence. Applying that rule to the instant case, we here hold that respondent is not entitled to separation pay.

WHEREFORE, the petition is **GRANTED.** The 20 July 2009 Decision and 17 September 2009 Resolution of the Court of Appeals in CA-G.R. SP. No. 105604 are **REVERSED and SET ASIDE.** The Resolution dated 31 March 2008 of the National Labor Relations Commission is **REINSTATED.**

SO ORDERED.

Carpio (Chairperson), del Castillo, Mendoza,[*] and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191247. July 10, 2013]

FRANCISCO L. ROSARIO, JR., *petitioner, vs.* **LELLANI DE GUZMAN, ARLEEN DE GUZMAN, PHILIP RYAN DE GUZMAN, and ROSELLA DE GUZMAN-BAUTISTA**, *respondents.*

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[21] G.R. No. 179801, 18 June 2010, 621 SCRA 283, 293.

[*] Per Special Order No. 1484 dated 9 July 2013.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; TWO CONCEPTS, EXPLAINED.—** In order to resolve the issues in this case, it is necessary to discuss the two concepts of attorney's fees – ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages. Although both concepts are similar in some respects, they differ from each other, as further explained below: The attorney's fee which a court may, in proper cases, award to a winning litigant is, strictly speaking, an item of damages. It **differs** from that which a client pays his counsel for the latter's professional services. However, the two concepts have many things in common that a treatment of the subject is necessary. **The award that the court may grant to a successful party by way of attorney's fee is an indemnity for damages sustained by him in prosecuting or defending, through counsel, his cause in court**. It may be decreed in favor of the party, not his lawyer, in any of the instances authorized by law. On the other hand, **the attorney's fee which a client pays his counsel refers to the compensation for the latter's services**. The losing party against whom damages by way of attorney's fees may be assessed is not bound by, nor is his liability dependent upon, the fee arrangement of the prevailing party with his lawyer. The amount stipulated in such fee arrangement may, however, be taken into account by the court in fixing the amount of counsel fees as an element of damages.

2. **ID.; ID.; ID.; ID.; ATTORNEY'S FEES AS COMPENSATION FOR SERVICES RENDERED CAN ALSO BE AWARDED NOTWITHSTANDING THE AWARD OF ATTORNEY'S FEES AS INDEMNITY FOR DAMAGES; IT WOULD NOT RESULT TO A DOUBLE AWARD OF ATTORNEY'S FEES.—** In the case at bench, the attorney's fees being claimed by the petitioner refers to the compensation for professional services rendered, and not as indemnity for damages. He is demanding payment from respondents for having successfully handled the civil case filed by Chong against Spouses de

Guzman. The award of attorney's fees by the RTC in the amount of ₱10,000.00 in favor of Spouses de Guzman, which was subsequently affirmed by the CA and this Court, is of no moment. The said award, made in its extraordinary concept as indemnity for damages, forms part of the judgment recoverable against the losing party and is to be paid directly to Spouses de Guzman (substituted by respondents) and not to petitioner. Thus, to grant petitioner's motion to determine attorney's fees would not result in a double award of attorney's fees.

3. ID.; ID.; ID.; CLAIM FOR ATTORNEY'S FEES MAY BE FILED AS AN INCIDENT IN THE MAIN ACTION WITHIN SIX (6) YEARS FROM THE TIME THE CONCERNED PARTY REFUSED TO PAY SUCH FEES.— In this case, petitioner opted to file his claim as an incident in the main action, which is permitted by the rules. As to the timeliness of the filing, this Court holds that the questioned motion to determine attorney's fees was seasonably filed. The records show that the August 8, 1994 RTC decision became final and executory on October 31, 2007. There is no dispute that petitioner filed his Motion to Determine Attorney's Fees on September 8, 2009, which was only about one (1) year and eleven (11) months from the finality of the RTC decision. Because petitioner claims to have had an oral contract of attorney's fees with the deceased spouses, Article 1145 of the Civil Code allows him a period of six (6) years within which to file an action to recover professional fees for services rendered. Respondents never asserted or provided any evidence that Spouses de Guzman refused petitioner's legal representation. For this reason, petitioner's cause of action began to run only from the time the respondents refused to pay him his attorney's fees[.]

4. ID.; ID.; ID.; WHERE A LAWYER HAS SUCCESSFULLY REPRESENTED A PARTY FOR 17 YEARS, HE IS ENTITLED TO AN ATTORNEY'S FEES BASED ON *QUANTUM MERUIT*.— Petitioner unquestionably rendered legal services for respondents' deceased parents in the civil case for annulment of contract and recovery of possession with damages. He successfully represented Spouses de Guzman from the trial court level in 1990 up to this Court in 2007, for a lengthy period of 17 years. After their tragic

death in 2003, petitioner filed a notice of death and a motion for substitution of parties with entry of appearance and motion to resolve the case before this Court. As a consequence of his efforts, the respondents were substituted in the place of their parents and were benefited by the favorable outcome of the case. As earlier mentioned, petitioner served as defense counsel for deceased Spouses de Guzman and respondents for almost seventeen (17) years. The Court is certain that it was not an easy task for petitioner to defend his clients' cause for such a long period of time, considering the heavy and demanding legal workload of petitioner which included the research and preparation of pleadings, the gathering of documentary proof, the court appearances, and the various legal work necessary to the defense of Spouses de Guzman. It cannot be denied that petitioner devoted much time and energy in handling the case for respondents. Given the considerable amount of time spent, the diligent effort exerted by petitioner, and the quality of work shown by him in ensuring the successful defense of his clients, petitioner clearly deserves to be awarded reasonable attorney's fees for services rendered. Justice and equity dictate that petitioner be paid his professional fee based on *quantum meruit*.

APPEARANCES OF COUNSEL

Corrales Guillermo Valerio & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the November 23, 2009[1] and the February 11, 2010[2] Orders of the Regional Trial Court, Branch 7, Manila *(RTC)*, in Civil Case No. 89-50138, entitled

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[1] *Rollo*, pp. 88-89. Penned by RTC Judge Ma. Theresa Dolores C. Gomez-Estoesta.

[2] *Id*. at 97-98.

"*Loreta A. Chong v. Sps. Pedro and Rosita de Guzman,*" denying the Motion to Determine Attorney's Fees filed by the petitioner.

The Facts

Sometime in August 1990, Spouses Pedro and Rosita de Guzman *(Spouses de Guzman)* engaged the legal services of Atty. Francisco L. Rosario, Jr. *(petitioner)* as defense counsel in the complaint filed against them by one Loreta A. Chong *(Chong)* for annulment of contract and recovery of possession with damages involving a parcel of land in Parañaque City, covered by Transfer Certificate of Title *(TCT)* No. 1292, with an area of 266 square meters, more or less. Petitioner's legal services commenced from the RTC and ended up in this Court.[3] Spouses de Guzman, represented by petitioner, won their case at all levels. While the case was pending before this Court, Spouses de Guzman died in a vehicular accident. Thereafter, they were substituted by their children, namely: Rosella de Guzman-Bautista, Lellani de Guzman, Arleen de Guzman, and Philip Ryan de Guzman *(respondents)*.[4]

On September 8, 2009, petitioner filed the Motion to Determine Attorney's Fees[5] before the RTC. He alleged, among others, that he had a verbal agreement with the deceased Spouses de Guzman that he would get 25% of the market value of the subject land if the complaint filed against them by Chong would be dismissed. Despite the fact that he had successfully represented them, respondents refused his written demand for payment of the contracted attorney's fees. Petitioner insisted that he was entitled to an amount equivalent to 25% percent of the value of the subject land on the basis of *quantum meruit*.

On November 23, 2009, the RTC rendered the assailed order denying petitioner's motion on the ground that it was filed out of time. The RTC stated that the said motion was filed after

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[3] *Chong v. Court of Appeals*, G.R. No. 148280, July 10, 2007, 554 Phil. 43.

[4] *Rollo*, p. 10.

[5] *Id*. at 83-87.

the judgment rendered in the subject case, as affirmed by this Court, had long become final and executory on October 31, 2007. The RTC wrote that considering that the motion was filed too late, it had already lost jurisdiction over the case because a final decision could not be amended or corrected except for clerical errors or mistakes. There would be a variance of the judgment rendered if his claim for attorney's fees would still be included.

Petitioner filed a motion for reconsideration, but it was denied by the RTC for lack of merit. Hence, this petition.

The Issues

This petition is anchored on the following grounds:

I

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DENYING THE MOTION TO DETERMINE ATTORNEY'S FEES ON THE GROUND THAT IT LOST JURISDICTION OVER THE CASE SINCE THE JUDGMENT IN THE CASE HAS BECOME FINAL AND EXECUTORY;

II

THE TRIAL COURT SERIOUSLY ERRED IN DECLARING THAT PETITIONER'S CLAIM FOR ATTORNEY'S FEES WOULD RESULT IN A VARIANCE OF THE JUDGMENT THAT HAS LONG BECOME FINAL AND EXECUTORY;

III

THE TRIAL COURT ERRED IN NOT DECLARING THAT THE FINALITY OF THE DECISION DID NOT BAR PETITIONER FROM FILING THE MOTION TO RECOVER HIS ATTORNEY'S FEES.[6]

Petitioner claims that Spouses de Guzman engaged his legal services and orally agreed to pay him 25% of the market value of the subject land. He argues that a motion to recover attorney's fees can be filed and entertained by the court before and after

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

the judgment becomes final. Moreover, his oral contract with the deceased spouses can be considered a quasi-contract upon which an action can be commenced within six (6) years, pursuant to Article 1145 of the Civil Code. Because his motion was filed on September 8, 2009, he insists that it was not yet barred by prescription.[7]

For their part, respondents counter that the motion was belatedly filed and, as such, it could no longer be granted. In addition, the RTC had already resolved the issue when it awarded the amount of ₱10,000.00 as attorney's fees. Respondents further assert that the law, specifically Article 2208 of the Civil Code, allows the recovery of attorney's fees under a written agreement. The alleged understanding between their deceased parents and petitioner, however, was never put in writing. They also aver that they did not have any knowledge or information about the existence of an oral contract, contrary to petitioner's claims. At any rate, the respondents believe that the amount of 25% of the market value of the lot is excessive and unconscionable.[8]

The Court's Ruling

Preliminarily, the Court notes that the petitioner filed this petition for review on *certiorari* under Rule 45 of the Rules of Court because of the denial of his motion to determine attorney's fees by the RTC. Apparently, the petitioner pursued the wrong remedy. Instead of a petition for review under Rule 45, he should have filed a petition for *certiorari* under Rule 65 because this case involves an error of jurisdiction or grave abuse of discretion on the part of the trial court.

Moreover, petitioner violated the doctrine of hierarchy of courts which prohibits direct resort to this Court unless the appropriate remedy cannot be obtained in the lower tribunals.[9] In this case, petitioner should have first elevated the case to the

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[7] *Id*. at 12-16.

[8] *Id*. at 131.

[9] *Suarez v. Villarama*, 526 Phil. 68, 75 (2006).

Court of Appeals *(CA)* which has concurrent jurisdiction, together with this Court, over special civil actions for *certiorari*.[10] Even so, this principle is not absolute and admits of certain exceptions, such as in this case, when it is demanded by the broader interest of justice.[11]

Indeed, on several occasions, this Court has allowed a petition to prosper despite the utilization of an improper remedy with the reasoning that the inflexibility or rigidity of the application of the rules of procedure must give way to serve the higher ends of justice. The strict application of procedural technicalities should not hinder the speedy disposition of the case on the merits.[12] Thus, this Court deems it expedient to consider this petition as having been filed under Rule 65.

With respect to the merits of the case, the Court finds in favor of petitioner.

In order to resolve the issues in this case, it is necessary to discuss the two concepts of attorney's fees – ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.[13] Although both concepts are similar in some respects, they differ from each other, as further explained below:

The attorney's fee which a court may, in proper cases, award to a winning litigant is, strictly speaking, an item of damages. It **differs** from that which a client pays his counsel for the latter's professional

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[10] Sec. 4, Rule 65, 1997 Rules of Civil Procedure; *Cebu Woman's Club v. Hon. De La Victoria*, 384 Phil. 264, 271 (2000).

[11] *Republic of the Philippines v. Caguioa*, G.R. No. 174385, February 20, 2013.

[12] *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 572.

[13] *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654, 668-669.

services. However, the two concepts have many things in common that a treatment of the subject is necessary. **The award that the court may grant to a successful party by way of attorney's fee is an indemnity for damages sustained by him in prosecuting or defending, through counsel, his cause in court**. It may be decreed in favor of the party, not his lawyer, in any of the instances authorized by law. On the other hand, **the attorney's fee which a client pays his counsel refers to the compensation for the latter's services**. The losing party against whom damages by way of attorney's fees may be assessed is not bound by, nor is his liability dependent upon, the fee arrangement of the prevailing party with his lawyer. The amount stipulated in such fee arrangement may, however, be taken into account by the court in fixing the amount of counsel fees as an element of damages.

The fee as an item of damages belongs to the party litigant and not to his lawyer. It forms part of his judgment recoveries against the losing party. The client and his lawyer may, however, agree that whatever attorney's fee as an element of damages the court may award shall pertain to the lawyer as his compensation or as part thereof. In such a case, the court upon proper motion may require the losing party to pay such fee directly to the lawyer of the prevailing party.

The two concepts of attorney's fees are similar in other respects. They both require, as a prerequisite to their grant, the intervention of or the rendition of professional services by a lawyer. As a client may not be held liable for counsel fees in favor of his lawyer who never rendered services, so too may a party be not held liable for attorney's fees as damages in favor of the winning party who enforced his rights without the assistance of counsel. Moreover, both fees are subject to judicial control and modification. And the rules governing the determination of their reasonable amount are applicable in one as in the other.[14] [Emphases and underscoring supplied]

In the case at bench, the attorney's fees being claimed by the petitioner refers to the compensation for professional services rendered, and not as indemnity for damages. He is demanding payment from respondents for having successfully handled the

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[14] R.E. Agpalo, *Comments on The Code of Professional Responsibility and The Code of Judicial Conduct* (2004 edition Rex Book Store, Inc., Manila 2004) 329-330.

civil case filed by Chong against Spouses de Guzman. The award of attorney's fees by the RTC in the amount of ₱10,000.00 in favor of Spouses de Guzman, which was subsequently affirmed by the CA and this Court, is of no moment. The said award, made in its extraordinary concept as indemnity for damages, forms part of the judgment recoverable against the losing party and is to be paid directly to Spouses de Guzman (substituted by respondents) and not to petitioner. Thus, to grant petitioner's motion to determine attorney's fees would not result in a double award of attorney's fees. And, contrary to the RTC ruling, there would be no amendment of a final and executory decision or variance in judgment.

The Court now addresses two (2) important questions: (1) How can attorney's fees for professional services be recovered? (2) When can an action for attorney's fees for professional services be filed? The case of *Traders Royal Bank Employees Union-Independent v. NLRC*[15] is instructive:

> As an adjunctive episode of the action for the recovery of bonus differentials in NLRC-NCR Certified Case No. 0466, private respondent's present claim for attorney's fees may be filed before the NLRC even though or, better stated, especially after its earlier decision had been reviewed and partially affirmed. **It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.**
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> With respect to the first situation, the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client. **Attorney's fees cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court.** The issue over attorney's fees only arises when something has been recovered from which the fee is to be paid.
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> **While a claim for attorney's fees may be filed before the judgment is rendered, the determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's**

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[15] 336 Phil. 705, 713-714 (1997).

fees may arise has become final. Otherwise, the determination to be made by the courts will be premature. Of course, a petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.

It is apparent from the foregoing discussion that a lawyer has two options as to when to file his claim for professional fees. **Hence, private respondent was well within his rights when he made his claim and waited for the finality of the judgment for holiday pay differential, instead of filing it ahead of the award's complete resolution. To declare that a lawyer may file a claim for fees in the same action only before the judgment is reviewed by a higher tribunal would deprive him of his aforestated options and render ineffective the foregoing pronouncements of this Court**. [Emphases and underscoring supplied]

In this case, petitioner opted to file his claim as an incident in the main action, which is permitted by the rules. As to the timeliness of the filing, this Court holds that the questioned motion to determine attorney's fees was seasonably filed.

The records show that the August 8, 1994 RTC decision became final and executory on October 31, 2007. There is no dispute that petitioner filed his Motion to Determine Attorney's Fees on September 8, 2009, which was only about one (1) year and eleven (11) months from the finality of the RTC decision. Because petitioner claims to have had an oral contract of attorney's fees with the deceased spouses, Article 1145 of the Civil Code[16] allows him a period of six (6) years within which to file an action to recover professional fees for services rendered. Respondents never asserted or provided any evidence that Spouses de Guzman refused petitioner's legal representation. For this reason, petitioner's cause of action began to run only from the

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[16] ART. 1145. The following actions must be commenced within six years:

(1) Upon an oral-contract

(2) Upon a quasi-contract.

time the respondents refused to pay him his attorney's fees, as similarly held in the case of *Anido v. Negado*:[17]

> In the case at bar, private respondent's allegation in the complaint that petitioners refused to sign the contract for legal services in October 1978, and his filing of the complaint only on November 23, 1987 or more than nine years after his cause of action arising from the breach of the oral contract between him and petitioners point to the conclusion that the six-year prescriptive period within which to file an action based on such oral contract under Article 1145 of the Civil Code had already lapsed.
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> **As a lawyer, private respondent should have known that he only had six years from the time petitioners refused to sign the contract for legal services and to acknowledge that they had engaged his services for the settlement of their parents' estate within which to file his complaint for collection of legal fees for the services which he rendered in their favor.** [Emphases supplied]

At this juncture, having established that petitioner is entitled to attorney's fees and that he filed his claim well within the prescribed period, the proper remedy is to remand the case to the RTC for the determination of the correct amount of attorney's fees. Such a procedural route, however, would only contribute to the delay of the final disposition of the controversy as any ruling by the trial court on the matter would still be open for questioning before the CA and this Court. In the interest of justice, this Court deems it prudent to suspend the rules and simply resolve the matter at this level. The Court has previously exercised its discretion in the same way in *National Power Corporation v. Heirs of Macabangkit Sangkay*:[18]

> In the event of a dispute as to the amount of fees between the attorney and his client, and the intervention of the courts is sought, the determination requires that there be evidence to prove the amount of fees and the extent and value of the services rendered, taking into account the facts determinative thereof. Ordinarily, therefore, the determination of the attorney's fees on *quantum meruit* is remanded

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[17] 419 Phil. 800, 807 (2001).

[18] G.R. No. 165828, August 24, 2011, 656 SCRA 60.

to the lower court for the purpose. **However, it will be just and equitable to now assess and fix the attorney's fees of both attorneys in order that the resolution of "a comparatively simple controversy," as Justice Regalado put it in *Traders Royal Bank Employees Union-Independent v. NLRC,* would not be needlessly prolonged**, by taking into due consideration the accepted guidelines and so much of the pertinent data as are extant in the records.[19] [Emphasis supplied]

With respect to petitioner's entitlement to the claimed attorney's fees, it is the Court's considered view that he is deserving of it and that the amount should be based on *quantum meruit*.

Quantum meruit – literally meaning *as much as he deserves* – is used as basis for determining an attorney's professional fees in the absence of an express agreement. The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees.[20]

Rule 20.01 of the *Code of Professional Responsibility* lists the guidelines for determining the proper amount of attorney fees, to wit:

Rule 20.1 – A lawyer shall be guided by the following factors in determining his fees:

a) The time spent and the extent of the services rendered or required;

b) The novelty and difficulty of the questions involved;

c) The importance of the subject matter;

d) The skill demanded;

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[19] *Id*. at 97-98.

[20] *Id*. at 96-97.

e) The probability of losing other employment as a result of acceptance of the proffered case;

f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;

g) The amount involved in the controversy and the benefits resulting to the client from the service;

h) The contingency or certainty of compensation;

i) The character of the employment, whether occasional or established; and

j) The professional standing of the lawyer.

Petitioner unquestionably rendered legal services for respondents' deceased parents in the civil case for annulment of contract and recovery of possession with damages. He successfully represented Spouses de Guzman from the trial court level in 1990 up to this Court in 2007, for a lengthy period of 17 years. After their tragic death in 2003, petitioner filed a notice of death and a motion for substitution of parties with entry of appearance and motion to resolve the case before this Court.[21] As a consequence of his efforts, the respondents were substituted in the place of their parents and were benefited by the favorable outcome of the case.

As earlier mentioned, petitioner served as defense counsel for deceased Spouses de Guzman and respondents for almost seventeen (17) years. The Court is certain that it was not an easy task for petitioner to defend his clients' cause for such a long period of time, considering the heavy and demanding legal workload of petitioner which included the research and preparation of pleadings, the gathering of documentary proof, the court appearances, and the various legal work necessary to the defense of Spouses de Guzman. It cannot be denied that petitioner devoted much time and energy in handling the case for respondents. Given the considerable amount of time spent, the diligent effort exerted by petitioner, and the quality of work shown by him in

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[21] *Rollo,* p. 84.

ensuring the successful defense of his clients, petitioner clearly deserves to be awarded reasonable attorney's fees for services rendered. Justice and equity dictate that petitioner be paid his professional fee based on *quantum meruit*.

> The fact that the practice of law is not a business and the attorney plays a vital role in the administration of justice underscores the need to secure him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice, imposition or fraud on the part of his client as the client against abuse on the part of his counsel. The duty of the court is not alone to see that a lawyer acts in a proper and lawful manner; it is also its duty to see that a lawyer is paid his just fees. With his capital consisting of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if after putting forth the best in him to secure justice for his client he himself would not get his due.[22]

The Court, however, is resistant in granting petitioner's prayer for an award of 25% attorney's fees based on the value of the property subject of litigation because petitioner failed to clearly substantiate the details of his oral agreement with Spouses de Guzman. A fair and reasonable amount of attorney's fees should be 15% of the market value of the property.

WHEREFORE, the petition is **GRANTED.** Accordingly, the Court grants the Motion to Determine Attorney's Fees filed by petitioner Atty. Francisco L. Rosario, Jr. Based on *quantum meruit,* the amount of attorney's fees is at the rate of 15% of the market value of the parcel of land, covered by Transfer Certificate of Title No. 1292, at the time of payment.

SO ORDERED.

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

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[22] Agpalo, *supra* note 14, at 283-284.

THIRD DIVISION

[G.R. No. 195481. July 10, 2013]

ORIENTAL PETROLEUM AND MINERALS CORPORATION, *petitioner, vs.* **TUSCAN REALTY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW, CONTRACTS; PRINCIPLE OF *"PROCURING CAUSE,"* EXPLAINED.— The CA invoked the principle of "procuring cause" in ordering the payment of broker's commission to Tuscan Realty. The term "procuring cause" refers to a cause which starts a series of events and results, without break in their continuity, in the accomplishment of a broker's prime objective of producing a purchaser who is ready, willing, and able to buy on the owner's terms. This is similar to the concept of proximate cause in Torts, without which the injury would not have occurred. To be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale.

2. ID.; ID.; ID.; WHERE A PARTY WAS GIVEN ITS BROKER'S COMMISSION FOR THE SALE OF THE PROPERTY PURSUANT TO THE PRINCIPLE OF *"PROCURING CAUSE."*— Here, it was Tuscan Realty that introduced Gateway to Oriental Petroleum as an interested buyer of its condominium units. Oriental Petroleum's own Executive Vice-President attested to this, saying that they learned of Gateway's interest in the properties from Mr. Capotosto of Tuscan Realty. x x x The evidence shows that on August 14, 1996 Tuscan Realty submitted an initial list of prospective buyers with contact details. It twice updated this list with Gateway always on top of the lists. Clearly then, it was on account of Tuscan Realty's effort that Oriental Petroleum got connected to Gateway, the prospective buyer, resulting in the latter two entering into a contract to sell involving the two condominium units. Although Gateway turned around and sold the condominium units to Ancheta, the fact is that such ultimate sale could not have happened without Gateway's

indispensable intervention as intermediate buyer. Applying the principle of procuring cause, therefore, Tuscan Realty should be given its broker's commission.

APPEARANCES OF COUNSEL

Bolos & Reyes-Beltran Law Offices for petitioner.
Jimenez Gonzales Bello Valdez Caluya & Fernandez for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a broker's claim for commission for having referred a possible buyer who later served as an intermediary to the eventual sale of the property to a third party.

The Facts and the Case

On June 9, 1999 respondent Tuscan Realty, Inc. (Tuscan Realty) filed a complaint for sum of money with application for preliminary attachment against petitioner Oriental Petroleum and Minerals Corporation (Oriental Petroleum) before the Makati Regional Trial Court (RTC).

Oriental Petroleum owned two condominium units at Corinthian Plaza in Makati City. On August 13, 1996 it gave Tuscan Realty a "non-exclusive authority to offer" these units for sale. On August 14, 1996 Tuscan Realty submitted an initial list of its prospective client-buyers that included Gateway Holdings Corporation (Gateway). Tuscan Realty updated this list on September 18, 1996. Subsequently, Oriental Petroleum advised Tuscan Realty that it would undertake direct negotiation with a certain Gene de los Reyes of Gateway for the sale of the units. This resulted in a contract to sell between Oriental Petroleum and Gateway on August 1, 1997.

Meantime, Gateway apparently turned around nearly two months later on September 29, 1997 and assigned its rights as buyer of the units to Alonzo Ancheta in whose favor Oriental

Petroleum executed a deed of absolute sale on December 10, 1997 for the price of ₱69,595,400.00. Prompted by this development, Tuscan Realty demanded payment of its broker's commission of ₱2,087,862.00 by Oriental Petroleum. The latter refused to pay, however, claiming that Tuscan Realty did nothing to close its deal with Gateway and Ancheta.

On July 28, 1999 the RTC granted Tuscan Realty's application for preliminary attachment but rendered a decision six years later or on November 2, 2005, dismissing the complaint on the ground of Tuscan Realty's failure to substantiate its allegation that it was responsible for closing the sale of the subject condominium units. Tuscan Realty appealed the RTC decision to the Court of Appeals (CA).

On August 11, 2010 the CA granted the appeal and set aside the RTC decision. The CA ordered Oriental Petroleum to pay Tuscan Realty its broker's commission of ₱2,087,862.00, which is 3% of the final purchase price, plus 6% interest from the finality of its decision until actual payment. Hence, the present petition.

The Issue Presented

The issue in this case is whether or not Tuscan Realty is entitled to a broker's commission for the sale of Oriental Petroleum's condominium units to Ancheta.

The Ruling of the Court

The CA invoked the principle of "procuring cause" in ordering the payment of broker's commission to Tuscan Realty. The term "procuring cause" refers to a cause which starts a series of events and results, without break in their continuity, in the accomplishment of a broker's prime objective of producing a purchaser who is ready, willing, and able to buy on the owner's terms.[1] This is similar to the concept of proximate cause in Torts, without which the injury would not have occurred. To

[1] *Philippine Health-Care Providers, Inc. (Maxicare) v. Estrada*, 566 Phil. 603, 613 (2008).

be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale.[2]

Here, it was Tuscan Realty that introduced Gateway to Oriental Petroleum as an interested buyer of its condominium units. Oriental Petroleum's own Executive Vice-President attested to this, saying that they learned of Gateway's interest in the properties from Mr. Capotosto of Tuscan Realty. Thus:

> Q: So you are saying that it was Mr. Capotosto of plaintiff who introduced or who manifested that Gateway Holdings is interested in buying the properties?
>
> A: Yes, Ma'am. I never denied that.[3]

The evidence shows that on August 14, 1996 Tuscan Realty submitted an initial list[4] of prospective buyers with contact details. It twice updated this list[5] with Gateway always on top of the lists. Clearly then, it was on account of Tuscan Realty's effort that Oriental Petroleum got connected to Gateway, the prospective buyer, resulting in the latter two entering into a contract to sell involving the two condominium units. Although Gateway turned around and sold the condominium units to Ancheta, the fact is that such ultimate sale could not have happened without Gateway's indispensable intervention as intermediate buyer. Applying the principle of procuring cause, therefore, Tuscan Realty should be given its broker's commission.

Oriental Petroleum of course claims that Gateway was not a ready, willing, and able purchaser and that it in fact assigned its right to Ancheta who became the ultimate buyer and that, moreover, it was not Tuscan Realty that introduced Ancheta to Oriental Petroleum. But there is no question that the contract to sell that Oriental Petroleum concluded with Gateway was a

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[2] *Id*.

[3] TSN, March 31, 2004, p. 11.

[4] Records, pp. 18-19.

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

valid and binding contract to sell, which precluded Oriental Petroleum from peddling the properties to others. Indeed, Oriental Petroleum executed a deed of absolute sale in Ancheta's favor by virtue of Gateway's assignment to him of its rights under the contract to sell. Consequently, it cannot be said that Oriental Petroleum found a direct buyer in Ancheta without the intermediate contract to sell in favor of Gateway, Tuscan Realty's proposed buyer.

Oriental Petroleum further points out that Tuscan Realty took no part in its negotiation with Gateway. That may be the case but the reason why Tuscan Realty refrained from doing so was because of Oriental Petroleum's advice that it would henceforth directly negotiate the sale with Gateway. Besides, assuming that the advice amounted to a revocation of Tuscan Realty's authority to sell, the Court has always recognized the broker's right to his commission, although the owner revoked his authority and directly negotiated with the buyer whom he met through the broker's efforts.[6] It would be unfair not to give the broker the reward he had earned for helping the owner find a buyer who would pay the price.

Lastly, Oriental Petroleum is convinced that this is just a simple case of non-fulfillment of a suspensive condition. It claims that the commission is only to be awarded if the properties were sold at a minimum of ₱120,000.00 per square meter and that the delivery must be made within the first week of January 1997. But these are just lame excuses to avoid liability. As the CA correctly noted, Oriental Petroleum did not raise the issue regarding the delivery deadline in its Answer. As for the fact that the properties were eventually sold for less than the original asking price, that action was within Oriental Petroleum's discretion. It decided the matter unilaterally without consulting its broker. Consequently, it should be deemed to have waived its own minimum price requirement.

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[6] *Infante v. Cunanan*, 93 Phil. 691, 695 (1953).

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Decision of the Court of Appeals in CA-G.R. CV 86417 dated August 11, 2010.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 198020. July 10, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH BARRA,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; ATTEMPTED ROBBERY WITH HOMICIDE; WHERE ROBBERY REMAINED UNCONSUMMATED AND NO PERSONAL PROPERTY WAS SHOWN TO HAVE BEEN TAKEN, THE CRIME COMMITTED IS ATTEMPTED ROBBERY WITH HOMICIDE.— In the case before us, appellant's intention was to extort money from the victim. By reason of the victim's refusal to give up his personal property - his money - to appellant, the victim was shot in the head, causing his death. We, however, agree with the Court of Appeals that the element of taking was not complete, making the crime one of attempted robbery with homicide as opposed to the crime appellant was convicted in the RTC. Appellant is, therefore, liable under Article 297 of the Revised Penal Code, not under Article 294 as originally held by the RTC. x x x The elements to be convicted under Article 297 were discussed in *People v. Macabales*, to wit: The elements of Robbery with Homicide as defined in Art. 297 of the Revised Penal Code are: (1) There is an attempted

or frustrated robbery. (2) A homicide is committed. In the present case, the crime of robbery remained unconsummated because the victim refused to give his money to appellant and no personal property was shown to have been taken. It was for this reason that the victim was shot. Appellant can only be found guilty of attempted robbery with homicide, thus punishable under Article 297 of the Revised Penal Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the February 11, 2011 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 04155[2] affirming with modification the August 24, 2009 **Decision**[3] of the Regional Trial Court (RTC), Branch 30, San Jose, Camarines Sur in Crim. Case No. T-2678 and finding appellant Joseph[4] Barra guilty beyond reasonable doubt of the crime of attempted robbery with homicide instead of special complex crime of robbery with homicide.

On March 21, 2004, an information[5] for the special complex crime of robbery with homicide was filed against appellant, to wit:

That on or about 11:00 P.M. of October 9, 2003, at Barangay Tinawagan, Tigaon, Camarines Sur, and within the jurisdiction of

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Elihu A. Ybañez, concurring.

[2] Entitled *People of the Philippines v. Joseph Barra y Doe.*

[3] CA *rollo*, pp. 46-50; penned by Presiding Judge Noel D. Paulite.

[4] Also referred to as JOSE in some parts of the *rollo*.

[5] Records, p. 23.

this honorable court, the above-named accused, while armed with a firearm, after gaining entrance into the residence of his victim, with intent to gain, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take and steal money from Elmer Lagdaan *y* Azur; that on the occasion of the said robbery and for the purpose of enabling him to take and steal the money, the herein accused, with intent to kill, did then and there feloniously shoot said Elmer Lagdaan, thereby inflicting upon him gunshot wound which caused his death, to the prejudice of his heirs. (Emphases deleted.)

On arraignment, appellant pleaded not guilty.[6] Trial ensued thereafter.

Dr. Peñafrancia N. Villanueva, Municipal Health Officer of Tigaon, Camarines Sur, examined the corpse of Elmer Lagdaan and stated in her *Postmortem* Report[7]:

Findings:

1. Gunshot wound, point of entry, 0.5 x 0.5 cms, circular, with inverted edges at the mid left frontal area. Hematoma formation is noted at the site of entry.

CAUSE OF DEATH:

MASSIVE HE[M]ORRHAGE SECONDARY [TO] GUNSHOT WOUND

Dr. Villanueva testified that the victim sustained a gunshot wound due to the circular and inverted edges of the point of entry. She concluded that since there was no point of exit, the victim was shot at close range.[8]

Ricardo de la Peña testified that he knew appellant for a long time. He stated that he was on his way home to the neighboring *barangay*, when, at around 9:00 p.m. on October 9, 2003, in the light of a bright moon, he saw appellant enter

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[6] *Id*. at 27.

[7] *Id*. at 43.

[8] TSN, January 17, 2005, p. 3.

the house of Lagdaan, which was lit with a lamp, and poked a gun to the victim's right forehead and demanded money. De la Peña hid behind a tree ten meters away. When the victim stated that the money was not in his possession, appellant shot him. He went home and reported the incident the following morning.[9]

Ely Asor testified that on the night of October 9, 2003, he was on his way to the victim's house to collect his daily wage when he saw appellant in the yard of the victim's house. He inquired from appellant if the victim was around. Appellant responded that the victim was not around. Asor went home. It was while Asor was in his house that he heard a gunshot. It was the following morning that he learned that the victim died. Asor then proceeded to report the incident.[10]

The victim's mother, Flora Lagdaan, testified that she spent for funeral and burial expenses in the amount of ₱33,300.00.

In his defense, appellant denied the charges against him. Appellant claimed that he was in Batangas City, with his brother Benjamin, visiting his sister when he was arrested and brought to Camarines Sur and charged with the crime of "robbery with murder."[11] Appellant's brother, Benjamin, tried to corroborate his testimony.[12]

The RTC, after taking into consideration all the evidence presented, found appellant guilty beyond reasonable doubt of the crime of robbery with homicide. It stated that the affirmative testimony of the prosecution's witnesses deserved more weight than the appellant's defense of denial and alibi. Thus, finding the prosecution's witnesses to be credible and that the killing of the victim to be by reason of the robbery, the RTC decision's decretal portion read:

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[9] TSN, May 16, 2005, pp. 3-8.

[10] TSN, August 1, 2005, pp. 2-4.

[11] TSN, June 22, 2007, pp. 4-5.

[12] TSN, August 19, 2008, pp. 9-10.

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused, Joseph Barra GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as defined and penalized under Article 291(1) of the Revised Penal Code, and sentences him to suffer the penalty of *RECLUSION PERPETUA*. To pay the surviving heirs of Elmer Lagdaan, the sum of Php50,000.00 as civil indemnity for his death, as actual damages in the amount of Php55,579.80, as moral damages in the sum of Php50,000.00 and to pay the costs.

The accused is entitled to the full credit of his preventive imprisonment if he abides by the disciplinary rules imposed upon convicted prisoners during his confinement, otherwise he shall only be entitled to four-fifths (4/5) thereof.[13]

However, on appeal, the Court of Appeals only found appellant guilty of attempted robbery with homicide. It stated that:

Regarding the trial court's finding that accused-appellant is responsible for the death of Lagdaan, WE will not disturb the same as it is well supported by the evidence on record and in accord with prevailing law and jurisprudence. However, WE disagree with its determination of the nature of the crime that accused-appellant committed. Instead of robbery with homicide at its consum[m]ated stage, accused-appellant should have been declared guilty only of attempted robbery with homicide.

As correctly observed by the OSG,[14] the only evidence introduced by the government to establish robbery is the statement of De la Peña that when accused-appellant reached the victim's place, the latter barged into the said residence, poked a gun at the victim's forehead, demanded money and when the victim refused to accede to his demand, fired a gun and shot the victim. Indeed, no iota of evidence was presented to establish that accused-appellant took away the victim's money or any property, for that matter.

The fact of asportation must be established beyond reasonable doubt. Since this fact was not duly established, accused-appellant should be held liable only for the crime of attempted robbery with

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[13] CA *rollo*, p. 50.

[14] Office of the Solicitor General.

homicide as defined and penalized under Article 297 of the Revised Penal Code which provides –

> "When by reason of or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code."

The appellant is guilty of attempted robbery with homicide only when he commenced the commission of robbery directly by overt acts and did not perform all the acts of execution which would produce robbery by reason of some causes or accident other than his own spontaneous desistance.

The claim of the defense that accused-appellant should be convicted only of the crime of homicide is bereft of merit. The killing of the victim herein was by reason of or on the occasion of robbery.

The attendant circumstances clearly show accused-appellant's intent to rob the victim. That motive was manifested by accused-appellant's overt act of poking a gun at the victim's forehead demanding money from the latter. When the victim refused to accede to the demand, accused-appellant shot the former. The killing was an offshoot of accused-appellant's intent to rob the victim. Accused-appellant was bent on resorting to violent means to attain his end. Due to the victim's failure to give his money, the crime of robbery was, however, not consummated.[15] (Citations omitted.)

Thus, the Court of Appeals stated:

WHEREFORE, the foregoing considered, the assailed Judgment is hereby **MODIFIED** as follows -

1) Accused-appellant is adjudged GUILTY of the crime of Attempted Robbery with Homicide and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*,

2) Accused-appellant is directed to pay the heirs of Elmer Lagdaan the following:

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[15] *Rollo*, pp. 9-10.

a) the amount of ₱50,000.00 as civil indemnity;

b) the amount of ₱50,000.00 as moral damages;

c) the amount of ₱25,000.00 as temperate damages;

d) the amount of ₱25,000.00 as exemplary damages; and

e) the cost of suit.[16]

Appellant filed his notice of appeal on February 18, 2011.[17]

After appellant's confinement was confirmed, both the OSG and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.[18]

Appellant argues that his identity as the perpetrator of the crime was not sufficiently established by the prosecution. Appellant stated that the testimonies of the prosecution's witnesses were rife with inconsistencies. Moreover, appellant argued that the elements for the special complex crime of robbery with homicide were not proven particularly the element of taking of personal property.

We affirm the February 11, 2011 decision of the Court of Appeals with modification on the award of damages.

In *People v. Bocalan and Gatdula*[19] we stated that:

> [F]indings of facts of the trial court, its calibration and assessment of the probative weight of the testimonial evidence of the parties and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court in observing at close range the demeanor, conduct and deportment of the said witnesses as they testify, unless the trial court ignored, misunderstood and misinterpreted cogent facts and circumstances which if considered will change the outcome of the case. x x x. (Citation omitted.)

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

[17] *Id*. at 13-15.

[18] *Id*. at 20-24 and 31-33.

[19] 457 Phil. 472, 481 (2003).

In the present case, while appellant questions the credibility of the prosecution's witnesses, he does not present any sufficient evidence to prove that the RTC indeed ignored, misunderstood and misinterpreted the facts and circumstances of the case. We also found, after reviewing the records, nothing that would indicate any misinterpretation or misapprehension of facts on the part of the appellate court that would substantially alter its conclusions.

Appellant in this case was charged with robbery with homicide under Article 294 of the Revised Penal Code, which provides:

> Art. 294. *Robbery with violence against or intimidation of persons – Penalties*. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

In *People v. Quemeggen*,[20] this Court gave the requisites to be proven by the prosecution for appellant to be convicted of robbery with homicide, to wit:

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is *animo lucrandi*; and
4. By reason of the robbery or on the occasion thereof, homicide is committed. (Citation omitted.)

In the case before us, appellant's intention was to extort money from the victim. By reason of the victim's refusal to give up his personal property - his money - to appellant, the victim was shot in the head, causing his death. We, however, agree with the Court of Appeals that the element of taking was not complete, making the crime one of attempted robbery with homicide as opposed to the crime appellant was convicted in the RTC. Appellant is, therefore, liable under Article 297 of the Revised

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[20] G.R. No. 178205, July 27, 2009, 594 SCRA 94, 103.

Penal Code, not under Article 294 as originally held by the RTC. Article 297 of the Revised Penal Code states:

> Article 297. *Attempted and frustrated robbery committed under certain circumstances*. — When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

The elements to be convicted under Article 297 were discussed in *People v. Macabales*,[21] to wit:

> The elements of Robbery with Homicide as defined in Art. 297 of the Revised Penal Code are: (1) There is an attempted or frustrated robbery. (2) A homicide is committed.

In the present case, the crime of robbery remained unconsummated because the victim refused to give his money to appellant and no personal property was shown to have been taken. It was for this reason that the victim was shot. Appellant can only be found guilty of attempted robbery with homicide, thus punishable under Article 297 of the Revised Penal Code. Since the RTC and the Court of Appeals found appellant's crime to be aggravated by disregard of dwelling, the Court of Appeals correctly imposed the maximum penalty of *reclusion perpetua*.

Anent the awards of damages by the Court of Appeals, after a careful review of existing rules and recent jurisprudence, we find the same to be in order and need not be disturbed.[22]

However, in conformity with current policy, we impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[23]

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[21] 400 Phil. 1221, 1235-1236 (2000).

[22] See *People v. Esoy*, G.R. No. 185849, April 7, 2010, 617 SCRA 552, 566.

[23] *People v. Deligero*, G.R. No. 189280, April 17, 2013.

WHEREFORE, the February 11, 2011 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04155 is **AFFIRMED with MODIFICATION** that the amount of exemplary damages shall be increased to ₱30,000.00 and all monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 201979. July 10, 2013]

GILDA C. FERNANDEZ and BERNADETTE A. BELTRAN, *petitioners*, *vs.* **NEWFIELD STAFF SOLUTIONS INC./ARNOLD "JAY" LOPEZ, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REQUISITES OF ABANDONMENT AS A JUST CAUSE FOR DISMISSAL OF EMPLOYEES, NOT PRESENT.— Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. Since both factors

are not present, petitioners are not guilty of abandonment. One, petitioners were absent because Lopez, Jr. had fired them. Thus, we cannot fault them for refusing to comply with the return-to-work letters and responding instead with their demand letters. Neither can they be accused of being AWOL or of breaching their employment agreements. Indeed, as stated above, respondents cannot claim that no evidence shows that petitioners were forced not to report for work. Two, petitioners' protest of their dismissal by sending demand letters and filing a complaint for illegal dismissal with prayer for reinstatement convinces us that petitioners have no intention to sever the employment relationship. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment. Hence, we disagree with the statement of the CA that petitioners no longer wish to continue working for Newfield since they sought payment of their unpaid salaries. Petitioners did not limit their demand letters as claims for payment of salaries. They also stated that they were told to resign despite their accomplishments. Thus, they referred the matter to a lawyer and they threatened to sue if they receive no favorable response from respondents. When they received none, they immediately sued for illegal dismissal. Under the circumstances, we cannot infer petitioners' intention to abandon their jobs.

2. ID.; ID.; ID.; RELIEFS GRANTED TO ILLEGALLY DISMISSED EMPLOYEES.— Under Article 279 of the Labor Code, as amended, an employee unjustly dismissed from work is entitled to reinstatement and full back wages from the time his compensation was withheld from him up to the time of his actual reinstatement. However, the NLRC's award of back wages for six months is binding on petitioners who no longer contested and are therefore presumed to have accepted the adjudication in the NLRC decision and resolution. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. Similarly, the award of separation pay which was affirmed by the NLRC is binding on petitioners who even admitted that reinstatement is no longer possible.

3. ID.; ID.; ID.; A CORPORATE OFFICER CANNOT BE HELD SOLIDARILY LIABLE WITH THE CORPORATION IN THE ABSENCE OF MALICE OR BAD FAITH; THE JUDGMENT AWARD IS THE DIRECT ACCOUNTABILITY OF THE EMPLOYER-CORPORATION.— The dispositive portion of the Labor Arbiter's decision, as affirmed and modified by the NLRC, stated that "respondents are ordered to pay" petitioners. This gives the impression that Lopez, Jr. is solidarily liable with Newfield. In *Grandteq Industrial Steel Products, Inc. v. Estrella*, we discussed how corporate agents incur solidary liability, as follows: x x x In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**." Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud. To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee. But here, the Labor Arbiter and NLRC have not found Lopez, Jr. guilty of malice or bad faith. Thus, there is no basis to hold Lopez, Jr. solidarily liable with Newfield. Payment of the judgment award is the direct accountability of Newfield.

APPEARANCES OF COUNSEL

Emilio P. Cansino III for petitioners.
Jaromay Laurente Pamaos Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

By this Rule 45 petition, petitioners Gilda C. Fernandez and Bernadette A. Beltran appeal the Decision[1] dated February 23,

[1] *Rollo*, pp. 21-37. Penned by Associate Justice Manuel M. Barrios with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr. concurring.

2012 and Resolution[2] dated May 18, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 118766. The CA reversed the decision[3] of the National Labor Relations Commission (NLRC) and dismissed petitioners' complaint for illegal dismissal.

The antecedent facts follow:

Respondent Newfield Staff Solutions, Inc. (Newfield) hired Fernandez as Recruitment Manager starting September 30, 2008[4] with a salary of ₱50,000 and an allowance of ₱6,000 per month. It was provided in the employment agreement that Fernandez will receive a loyalty bonus of ₱60,000 and life insurance worth ₱500,000 upon reaching six months of employment with Newfield.[5] Newfield also hired Beltran as probationary Recruitment Specialist starting October 7, 2008[6] with a salary of ₱15,000 and an allowance of ₱2,000 per month. Her employment contract provided that Beltran will receive a 10% salary and allowance increase upon reaching 12 months of employment with Newfield.[7]

Petitioners guaranteed to perform their tasks for six months and breach of this guarantee would make them liable for liquidated damages of ₱45,000. It was further provided in their employment agreements that if they want to terminate their employment agreements[8] after the "guaranteed period of engagement," they should send a written notice 45 days before the effective date of termination. They should also surrender any equipment issued to them and secure a clearance. If they fail to comply, Newfield can refuse to issue a clearance and to release any amount due them.[9]

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

[3] *Id*. at 78-86.

[4] *Id*. at 123.

[5] *Id*. at 138.

[6] *Id*. at 125.

[7] *Id*. at 90-91.

[8] *Id*. at 90-92, 137-139.

[9] *Id*. at 91-92, 139.

On October 17, 2008, respondent Arnold "Jay" Lopez, Jr., Newfield's General Manager, asked petitioners to come to his office and terminated their employment on the ground that they failed to perform satisfactorily. Lopez, Jr. ordered them to immediately turn over the records in their possession to their successors.[10]

A week later, petitioners received Lopez, Jr.'s return-to-work letters[11] dated October 22, 2008. The letters stated that they did not report since October 20, 2008 without resigning, in violation of their employment agreements. They were directed to report and explain their failure to file resignation letters.

Fernandez countered with a demand letter[12] dated November 11, 2008. She claimed that her salary of ₱36,400 from September 30 to October 17, 2008 and mobile phone expenses of ₱3,000 incurred in furtherance of Newfield's business were not paid. She also said that she was able to hire one team leader and 12 agents in three weeks, but Newfield still found her performance unsatisfactory and told her to file her resignation letter. Thus, she referred the matter to her lawyer. She threatened to sue unless Newfield responds favorably. Beltran for her part also sent a demand letter. Her demand letter[13] dated November 17, 2008 is similar to Fernandez's letter except for the amount of the claim for unpaid salary which is ₱7,206.80.

When they failed to receive favourable action from respondents, petitioners filed on December 9, 2008, a complaint[14] for illegal dismissal, nonpayment of salary and overtime pay, reimbursement of cell phone billing, moral and exemplary damages and attorney's fees against respondents.

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[10] *Id*. at 99.

[11] *Id*. at 157-158.

[12] *Id*. at 168-169.

[13] *Id*. at 167.

[14] *Id*. at 93-94.

In their verified position paper,[15] petitioners stated that on October 17, 2008, Lopez, Jr. asked them to come to his office and terminated their employment on the ground that they failed to perform satisfactorily. Lopez, Jr. told them: "YOU['RE] FIRED, x x x this is your last day and turn over the records to your successors."[16]

In their verified joint position paper,[17] respondents stated that petitioners signed fixed-term employment agreements where they agreed to perform their tasks for six months. They also agreed to give a written notice 45 days in advance if they want to terminate their employment agreements. But they never complied with their undertakings. Three weeks after working for Newfield, Fernandez did not report for work. She never bothered to communicate with respondents despite the return-to-work letter. Hence, Newfield declared her absent without official leave (AWOL) and terminated her employment on the ground of breach of contract. Similarly, Newfield declared Beltran AWOL and terminated her employment on the ground of breach of contract. Beltran stopped reporting two weeks after she was hired and never bothered to communicate with respondents despite the return-to-work letter. Respondents claimed that no evidence shows or even hints that petitioners were forced not to report for work. Petitioners simply no longer showed up for work.

In reply to respondents' position paper,[18] petitioners insisted that Lopez, Jr. terminated their employment. In their own reply to petitioners' position paper,[19] respondents claimed that petitioners abandoned their jobs.[20]

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[15] *Id*. at 97-110.

[16] *Id*. at 99.

[17] *Id*. at 122-136.

[18] *Id*. at 141-145.

[19] *Id*. at 146-156.

[20] *Id*. at 149.

In their rejoinder,[21] petitioners repeated that Lopez, Jr. terminated their employment and they attached Josette Pasman's affidavit[22] to prove that they were dismissed.

The Labor Arbiter ruled that petitioners' dismissal was illegal, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered finding complainants dismissal illegal. Concomitantly, respondents are ordered to pay them their salary from the time of their dismissal up to the promulgation of this decision plus their separation pay. Furthermore, respondents are ordered to pay complainants their unpaid salaries and allowances for the period October 1 to October 17, 2008 plus ten percent (10%) of the total judgment award by way of and as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[23]

The Labor Arbiter rejected respondents' claim of abandonment and held that petitioners cannot be said to have abandoned their work since they took steps to protest their layoff. Their complaint is proof of their desire to return to work and negates any suggestion of abandonment. The Labor Arbiter also believed petitioners that Lopez, Jr. dismissed them on October 17, 2008 and ordered them to immediately turn over the records to their successors.

The NLRC affirmed the Labor Arbiter's decision and said that it is supported by substantial evidence. But since petitioners signed fixed-term employment agreements, the NLRC limited the award of back wages to six months. The dispositive portion of the NLRC Decision dated July 20, 2010 in NLRC LAC No. 11-003163-09 (NLRC NCR-12-17096-08) reads:

> **WHEREFORE,** premises considered, the decision of the Labor Arbiter is **AFFIRMED** with **MODIFICATION**, that is, the backwages shall be limited to the periods provided in their respective

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[21] *Id.* at 159-166.

[22] *Id.* at 170.

[23] *Id.* at 177-178.

contracts; Gilda Fernandez (from September 30, 2008 to March 30, 2009) and Bernadette Beltran (from October 7, 2008 to April 7, 2009).

SO ORDERED.[24]

In its Resolution[25] dated January 25, 2011, the NLRC denied the motions for reconsideration filed by petitioners and respondents.

Thereafter, respondents filed a petition for *certiorari* under Rules 65 of the 1997 Rules of Civil Procedure, as amended, before the CA. Petitioners no longer assailed the NLRC decision and resolution.

As aforesaid, the CA reversed the NLRC and dismissed petitioners' complaint for illegal dismissal, to wit:

WHEREFORE, premises considered, the petition is granted. The Decision dated 20 July 2010 and the Resolution dated 25 January 2011 of the National Labor Relations Commission are reversed and set aside. The complaint for illegal dismissal is **DISMISSED.**

SO ORDERED.[26]

The CA ruled that petitioners abandoned their jobs and pre-terminated their six-month employment agreements. They walked out after their meeting with Lopez, Jr. on October 17, 2008 when they were advised of their unsatisfactory performance. The CA held that the meeting did not prove that they were dismissed. However, it seems that they cannot accept constructive criticism and opted to discontinue working. Instead of reporting for work and explaining their absence, they demanded payment of wages and mobile phone expenses for the two to three weeks that they worked in Newfield. Thus, it seems that they no longer wished to continue working for the remaining period of their six-month employment. For breach of their employment

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

[25] *Id*. at 71-77.

[26] *Id*. at 36-37.

agreements, they also opened themselves to liability for liquidated damages, said the CA.

On May 18, 2012, the CA denied petitioners' motion for reconsideration.

Hence, the instant petition for review on *certiorari* under Rule 45 anchored on the following grounds:

[I.] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DISMISSED PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL. THE DECISION DATED 23 FEBRUARY 2012 IS CONTRARY TO LAW AND SETTLED RULINGS OF THE SUPREME COURT.

[II.] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN REVERSING THE FINDINGS OF THE NLRC AND LABOR ARBITER THAT PETITIONERS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT.[27]

Petitioners argue that for dismissal to be valid there must be a just or authorized cause and due process must be observed. But respondents terminated their employment on October 17, 2008 when Lopez, Jr. asked them to come to his office, fired them and ordered them to turn over the records to their successors. They were dismissed without any written notice informing them of the cause for their termination.[28]

In their comment, respondents claim that "no such incident took place" on October 17, 2008. Lopez, Jr. "merely called [p]etitioners' attention and advised them of their unsatisfactory work performance." Respondents also point out that petitioners refused to comply with the return-to-work letters and demanded instead payment of their salaries and reimbursement of mobile phone expenses.[29]

As a rule, a petition for review on *certiorari* under Rule 45 must raise only questions of law. However, the rule has exceptions

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[27] *Id*. at 11.

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

[29] *Id*. at 332-333.

such as when the findings of the Labor Arbiter, NLRC and CA vary,[30] as in this case.

After our own review of the case, we are constrained to reverse the CA. We agree with the NLRC and Labor Arbiter that petitioners were illegally dismissed.

The CA erred in ruling that the meeting on October 17, 2008 did not prove that petitioners were dismissed. We find that Lopez, Jr. terminated their employment on said date.

Petitioners stated in their verified position paper that Lopez, Jr. fired them on October 17, 2008, told them that it was their last day and ordered them to turn over the records to their successors. We reviewed respondents' verified position paper and reply to petitioners' position paper filed before the Labor Arbiter and found nothing there denying what happened as stated under oath by petitioners. Respondents merely said that no evidence shows or even hints that petitioners were forced not to report for work and that petitioners abandoned their jobs. Even respondents' appeal memorandum[31] filed before the NLRC is silent on petitioners' claim that Lopez, Jr. fired them. Respondents' silence constitutes an admission that fortifies the truth of petitioners' narration. As we held in *Tegimenta Chemical Phils. v. Oco*:[32]

> Most notably, the [Labor Arbiter] observed that the employers "did not deny the claims of complainant [Oco] that she was simply told not to work." As in *Solas v. Power & Telephone Supply Phils. Inc.*, this silence constitutes an admission that fortifies the truth of the employee's narration. Section 32, Rule 130 of the Rules of Court, provides:
>
> > An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for

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[30] *Maribago Bluewater Beach Resort, Inc. v. Dual,* G.R. No. 180660, July 20, 2010, 625 SCRA 147, 155-156.

[31] *Rollo,* pp. 180-216.

[32] G.R. No. 175369, February 27, 2013, p. 6.

> action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

We also note respondents' confirmation that Lopez, Jr. met petitioners on October 17, 2008. But we seriously doubt respondents' claim in their comment filed before this Court that Lopez, Jr. did not fire petitioners, that "no such incident took place." This denial was not raised in respondents' position paper, reply to petitioners' position paper, and appeal memorandum. Respondents were not forthcoming in said pleadings that indeed Lopez, Jr. met petitioners on October 17, 2008.

We further note that during the proceedings before the Labor Arbiter, petitioners submitted Josette Pasman's affidavit as additional evidence. Pasman stated under oath that on October 21, 2008 she called Newfield's Timog Office to inquire about her salary, that she looked for Fernandez or Beltran, and that she was surprised to find out they were no longer employed at Newfield.

The CA also erred in ruling that petitioners abandoned their jobs.

We clarify first that petitioners' employment agreements are not fixed-term contracts for six months because Fernandez becomes entitled to a loyalty bonus of ₱60,000 and life insurance worth ₱500,000 upon reaching six months of employment with Newfield. Beltran will also receive a 10% salary and allowance increase upon reaching 12 months of employment with Newfield. Petitioners merely guaranteed to perform their tasks for six months and failure to comply with this guarantee makes them liable for liquidated damages. The employment agreements also provide that if petitioners would want to terminate the agreements after the "guaranteed period of engagement," they must notify respondents 45 days in advance. Thus, respondents, the NLRC and CA misread the guarantee as the fixed duration of petitioners' employment.

Petitioners are not fixed-term employees but probationary employees. Respondents even admitted that Beltran was hired as probationary Recruitment Specialist. A probationary employee

may be terminated for a just or authorized cause or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[33]

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee.[34] For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[35]

Since both factors are not present, petitioners are not guilty of abandonment. One, petitioners were absent because Lopez, Jr. had fired them. Thus, we cannot fault them for refusing to comply with the return-to-work letters and responding instead with their demand letters. Neither can they be accused of being AWOL or of breaching their employment agreements. Indeed, as stated above, respondents cannot claim that no evidence shows that petitioners were forced not to report for work. Two, petitioners' protest of their dismissal by sending demand letters and filing a complaint for illegal dismissal with prayer for reinstatement convinces us that petitioners have no intention to sever the employment relationship. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.[36]

Hence, we disagree with the statement of the CA that petitioners no longer wish to continue working for Newfield since they

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[33] *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

[34] *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 633.

[35] *Josan, JPS, Santiago Cargo Movers v. Aduna*, G.R. No. 190794, February 22, 2012, 666 SCRA 679, 686.

[36] *Id.* at 686-687.

sought payment of their unpaid salaries. Petitioners did not limit their demand letters as claims for payment of salaries. They also stated that they were told to resign despite their accomplishments. Thus, they referred the matter to a lawyer and they threatened to sue if they receive no favorable response from respondents. When they received none, they immediately sued for illegal dismissal. Under the circumstances, we cannot infer petitioners' intention to abandon their jobs. As aptly observed also by the NLRC, Fernandez earns ₱56,000 and Beltran earns ₱17,000 per month. "[I]t defies reason that [they] would leave their job[s] and then fight odds to win them back. Human experience dictates that a worker will not just walk away from a good paying job and risk [unemployment] and damages as a result thereof UNLESS illegally dismissed."[37]

We therefore agree that petitioners were illegally dismissed since there is no just cause for their dismissal.

Under Article 279 of the Labor Code, as amended, an employee unjustly dismissed from work is entitled to reinstatement and full back wages from the time his compensation was withheld from him up to the time of his actual reinstatement. However, the NLRC's award of back wages for six months is binding on petitioners who no longer contested and are therefore presumed to have accepted the adjudication in the NLRC decision and resolution. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[38]

Similarly, the award of separation pay which was affirmed by the NLRC is binding on petitioners who even admitted that reinstatement is no longer possible.[39]

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[37] *Rollo*, p. 76.

[38] *Filflex Industrial & Manufacturing Corp. v. NLRC*, G.R. No. 115395, February 12, 1998, 286 SCRA 245, 256.

[39] *Rollo*, p. 14.

One last note. The dispositive portion of the Labor Arbiter's decision, as affirmed and modified by the NLRC, stated that "respondents are ordered to pay" petitioners. This gives the impression that Lopez, Jr. is solidarily liable with Newfield. In *Grandteq Industrial Steel Products, Inc. v. Estrella*,[40] we discussed how corporate agents incur solidary liability, as follows:

> There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. In *MAM Realty Development Corporation v. NLRC*, the solidary liability of corporate officers in labor disputes was discussed in this wise:
>
> "A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liability may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
>
> 1. When directors and trustees or, in appropriate cases, the officers of a corporation –
>
> (a) vote for or assent to *patently* unlawful acts of the corporation;
>
> (b) act in *bad faith* or with *gross negligence* in directing the corporate affairs;
>
> x x x x x x x x x
>
> In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**." (Italics, emphasis and underscoring in the original; citations omitted.)

Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some

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[40] G.R. No. 192416, March 23, 2011, 646 SCRA 391, 404.

motive or interest or ill will; it partakes of the nature of fraud.[41] To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee.[42]

But here, the Labor Arbiter and NLRC have not found Lopez, Jr. guilty of malice or bad faith. Thus, there is no basis to hold Lopez, Jr. solidarily liable with Newfield. Payment of the judgment award is the direct accountability of Newfield.

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** We **REVERSE** and **SET ASIDE** the Decision dated February 23, 2012 and Resolution dated May 18, 2012 of the Court of Appeals in CA-G.R. SP No. 118766. The Decision dated July 20, 2010 and Resolution dated January 25, 2011 of the NLRC in NLRC LAC No. 11-003163-09 (NLRC NCR-12-17096-08) are **REINSTATED** and **UPHELD** with clarification that respondent Arnold "Jay" Lopez, Jr. is not solidarily liable with respondent Newfield Staff Solutions, Inc.

No costs.

SO ORDERED.

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

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[41] *Malayang Samahan Ng Mga Manggagawa v. Hon. Ramos*, 409 Phil. 61, 83 (2001).

[42] See *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 611.

SECOND DIVISION

[G.R. No. 203241. July 10, 2013]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **FEDERICO A. SERRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; A FINAL AND EXECUTORY JUDGMENT MAY BE EXECUTED BY MOTION WITHIN FIVE YEARS FROM DATE OF ITS ENTRY; EXCEPTIONS.— The Rules of Court provide that a final and executory judgment may be executed by motion within five years from the date of its entry or by an action after the lapse of five years and before prescription sets in. This Court, however, allows exceptions when execution may be made by motion even after the lapse of five years. These exceptions have one common denominator: the delay is caused or occasioned by actions of the judgment obligor and/or is incurred for his benefit or advantage.

2. ID.; ID.; ID.; ID.; EXCEPTION, APPLIED; AS THE DELAY IN THE EXECUTION OF THE DECISION WAS CAUSED BY THE JUDGMENT OBLIGOR FOR HIS OWN ADVANTAGE, THE FIVE YEAR-PERIOD IS SUSPENDED AND THE MOTION FOR EXECUTION IS DEEMED FILED WITHIN THE SAID PRESCRIPTIVE PERIOD.— In the present case, there is no dispute that RCBC seeks to enforce the decision which became final and executory on 15 April 1994. This decision orders Serra to execute and deliver the proper deed of sale in favor of RCBC. However, to evade his obligation to RCBC, Serra transferred the property to his mother Ablao, who then transferred it to Liok. Serra's action prompted RCBC to file the Annulment case. Clearly, the delay in the execution of the decision was caused by Serra for his own advantage. Thus, the pendency of the Annulment case effectively suspended the five-year period to enforce through a motion the decision in the Specific Performance case. Since the decision in the Annulment case attained finality on 3 March 2009 and RCBC's motion for execution was filed on 25 August 2011, RCBC's motion is deemed filed within the five-year period for enforcement of a decision through a motion.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro and Leaño for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This Petition for Review on *Certiorari*[1] with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order assails the 16 February 2012[2] and 26 July 2012[3] Orders of the Regional Trial Court of Makati City, Branch 134 (RTC Makati).

The Facts

Respondent Federico A. Serra (Serra) is the owner of a 374 square meter parcel of land located along Quezon Street, Masbate, Masbate. On 20 May 1975, Serra and petitioner Rizal Commercial Banking Corporation (RCBC) entered into a Contract of Lease with Option to Buy, wherein Serra agreed to lease his land to RCBC for 25 years. Serra further granted RCBC the option to buy the land and improvement (property) within 10 years from the signing of the Contract of Lease with Option to Buy.

On 4 September 1984, RCBC informed Serra of its decision to exercise its option to buy the property. However, Serra replied that he was no longer interested in selling the property. On 14 March 1985, RCBC filed a Complaint for Specific Performance and Damages against Serra (Specific Performance case) in the RTC Makati. The RTC Makati initially dismissed the complaint. However, in an Order dated 5 January 1989, the RTC Makati

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

[2] *Rollo*, pp. 39-42. Penned by Judge Perpetua Atal-Paño.

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

reversed itself and ordered Serra to execute and deliver the proper deed of sale in favor of RCBC.[4]

Serra appealed to the Court of Appeals (CA). On 18 May 1989, Serra donated the property to his mother, Leonida Ablao (Ablao). On 20 April 1992, Ablao sold the property to Hermanito Liok (Liok). A new land title was issued in favor of Liok. Thus, RCBC filed a Complaint for Nullification of Deed of Donation and Deed of Sale with Reconveyance and Damages against Liok, Ablao and Serra (Annulment case) before the RTC of Masbate City (RTC Masbate).

Meanwhile, the CA, and later the Supreme Court, affirmed the order of the RTC Makati in the Specific Performance case. In a Decision dated 4 January 1994, this Court declared that the Contract of Lease with Option to Buy was valid, effective, and enforceable. On 15 April 1994, the decision in the Specific Performance case became final and executory upon entry of judgment.[5]

On 22 October 2001, the RTC Masbate ruled in favor of RCBC, declaring the donation in favor of Ablao and the subsequent sale to Liok null and void.[6] In a Decision dated 28

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[4] *Serra v. Court of Appeals*, G.R. No. 103338, 4 January 1994, 229 SCRA 60, 66. The RTC Order states:

> WHEREFORE, the Court reconsiders its decision dated June 6, 1988, and hereby renders judgment as follows:
>
> 1. The defendant is hereby ordered to execute and deliver the proper deed of sale in favor of plaintiff selling, transferring and conveying the property covered by and described in the Original Certificate of Title 0-232 of the Registry of Deeds of Masbate for the sum of Seventy Eight Thousand Five Hundred Forty Pesos (₱78,540.00), Philippine currency;
>
> 2. Defendant is ordered to pay plaintiff the sum of Five Thousand (₱5,000.00) Pesos as attorney's fees;
>
> 3. The counter claim of defendant is hereby dismissed; and
>
> 4. Defendants shall pay the costs of suit.

[5] *Rollo*, p. 50.

[6] *Rollo* (G.R. No. 182664), p. 35. The Decision states:

September 2007, the CA affirmed the RTC Masbate decision. The CA held that the donation to Ablao was simulated and was done solely to evade Serra's obligation to RCBC. Since Ablao had no right to transfer the property and Liok was not a buyer in good faith, the subsequent sale to Liok was likewise null and void.

Thus, Liok filed a Petition for Review on *Certiorari*, docketed as G.R. No. 182478, while Serra and Ablao filed a Petition for *Certiorari*, docketed as G.R. No. 182664, before this Court. In separate Resolutions dated 30 June 2008 and 22 October 2008, which became final and executory on 27 August 2008[7] and 3 March 2009,[8] respectively, this Court found neither reversible error nor grave abuse of discretion on the CA's part.

On 25 August 2011, RCBC moved for the execution of the decision in the Specific Performance case. RCBC alleged that it was legally impossible to ask for the execution of the decision prior to the annulment of the fraudulent transfers made by Serra. Thus, the period to execute by motion was suspended during the pendency of the Annulment case. On 22 September 2011, Serra filed his comment and opposition to the motion. Serra insisted that the motion for execution was already barred by prescription and laches, and that RCBC was at fault for failing to register as lien in the original title the Contract of Lease with Option to Buy.

In an Order dated 16 February 2012, the RTC Makati denied RCBC's motion for execution. The RTC Makati opined that "[RCBC] should have asked for the execution of the deed of

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PREMISES CONSIDERED, the Deed of Donation executed by defendant Federico Serra on May 18, 1989, in favor of his mother Leonida Ablao as well as the Deed of Sale executed by Leonida Ablao on April 10, 1992, in favor of defendant Hermanito Liok are declared null and void. The Register of Deeds of the Province of Masbate is ordered to cancel TCT Nos. 7434 and T-8432.

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[7] *Rollo*, p. 51.

[8] *Id.* at 52.

sale and have the same registered with the Registry of Deeds, so that even if [Serra] sold or transferred the subject property to any person the principle of caveat emptor would set in."[9]

In an Order dated 26 July 2012, the RTC Makati denied RCBC's motion for reconsideration. Thus, RCBC filed this petition.

In a Resolution dated 3 December 2012, this Court granted RCBC's Temporary Restraining Order against the implementation of the questioned Orders upon RCBC's filing of a bond.

The Issue

RCBC raises this sole issue for resolution:

WHETHER OR NOT THE COURT *A QUO* ERRED IN HOLDING THAT PETITIONER RCBC IS BARRED FROM HAVING ITS 05 JANUARY 1989 DECISION EXECUTED THROUGH MOTION, CONSIDERING THAT UNDER THE CIRCUMSTANCES OBTAINING IN THIS CASE, RCBC WAS UNLAWFULLY PREVENTED BY THE RESPONDENT FROM ENFORCING THE SAID DECISION.[10]

The Ruling of the Court

The petition has merit.

The Rules of Court provide that a final and executory judgment may be executed by motion within five years from the date of its entry or by an action after the lapse of five years and before prescription sets in.[11] This Court, however, allows exceptions when execution may be made by motion even after the lapse of five years. These exceptions have one common denominator: the delay is caused or occasioned by actions of the judgment obligor and/or is incurred for his benefit or advantage.[12]

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[9] *Id.* at 41.

[10] *Id.* at 18.

[11] Rules of Court, Rule 39, Section 6.

[12] *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Plagata*, G.R. No. 148433, 30 September 2008, 567 SCRA 163; *Yau v. Silverio, Sr.*,

In *Camacho v. Court of Appeals*,[13] we held that where the delays were occasioned by the judgment debtor's own initiatives and for her advantage as well as beyond the judgment creditor's control, the five-year period allowed for enforcement of the judgment by motion is deemed to have been effectively interrupted or suspended.

In the present case, there is no dispute that RCBC seeks to enforce the decision which became final and executory on 15 April 1994. This decision orders Serra to execute and deliver the proper deed of sale in favor of RCBC. However, to evade his obligation to RCBC, Serra transferred the property to his mother Ablao, who then transferred it to Liok. Serra's action prompted RCBC to file the Annulment case. Clearly, the delay in the execution of the decision was caused by Serra for his own advantage. Thus, the pendency of the Annulment case effectively suspended the five-year period to enforce through a motion the decision in the Specific Performance case. Since the decision in the Annulment case attained finality on 3 March 2009 and RCBC's motion for execution was filed on 25 August 2011, RCBC's motion is deemed filed within the five-year period for enforcement of a decision through a motion.

This Court has reiterated that the purpose of prescribing time limitations for enforcing judgments is to prevent parties from sleeping on their rights.[14] Far from sleeping on its rights, RCBC has pursued persistently its action against Serra in accordance with law. On the other hand, Serra has continued to evade his obligation by raising issues of technicality. While strict compliance with the rules of procedure is desired, liberal

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G.R. No. 158848, 4 February 2008, 543 SCRA 520; *Central Surety and Insurance Company v. Planters Products Inc.,* 546 Phil. 479 (2007); *Francisco Motors Corp. v. Court of Appeals,* 535 Phil. 736 (2006); *Republic of the Phils. v. Court of Appeals,* 329 Phil. 115 (1996).

[13] 351 Phil. 108 (1998).

[14] *Republic of the Phils. v. Court of Appeals, supra* note 12.

interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice.[15]

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the assailed Orders of the Regional Trial Court of Makati City dated 16 February 2012 and 26 July 2012. The Temporary Restraining Order issued by this Court on 3 December 2012 is made permanent. The Regional Trial Court of Makati City is **DIRECTED** to issue the writ of execution in Civil Case No. 10054 for the enforcement of the decision therein. Costs against petitioner.

SO ORDERED.

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

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[15] *Philippine Veterans Bank v. Solid Homes, Inc.*, G.R. No. 170126, 9 June 2009, 589 SCRA 40 *citing Central Surety and Insurance Company v. Planters Products, Inc.*, 546 Phil. 479 (2007).

[*] Designated additional member per Special Order No. 1484 dated 9 July 2013.

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BILL OF RIGHTS

Due process — Since expropriation is essentially a forced taking of private property by the state or its agencies, the private owner being compelled to give up his property for the common weal, then the mandatory requirement of due process should be strictly followed. (Sec. of Dep't. of Public Works and Highways *vs.* Sps. Tecson, G.R. No. 179334, July 01, 2013; *Velasco, Jr., J., dissenting and concurring opinion*) p. 55

CITIZENSHIP RETENTION AND RE-ACQUISITION ACT (R.A.NO. 9225)

Application — After complying with the requirements of R.A. No. 9225, a person not only became a pure Filipino citizen but also became eligible to run for public office. (Macquiling *vs.* COMELEC, G.R. No. 195649, July 02, 2013; *Brion, J., dissenting opinion*) p. 178

— Cured and negated the presumption made under Commonwealth Act 63. *(Id.)*

— In case of doubt in the relatively uncharted area of application where R.A. No. 9225 overlaps with the election laws, doubts should be resolved in favor of full Filipino citizenship. *(Id.)*

— Natural-born citizens who were deemed to have lost their Philippine citizenship because of their naturalization as citizens of a foreign country and who subsequently complied with the requirement of R.A. No. 9225 are deemed not to have lost their Philippine citizenship. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Prosecution must prove the following links: (1) the seizure and marking, if practicable of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to

EXCISE TAX

Imposition of — Excise taxes are imposed on two kinds of goods, namely: (a) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (b) things imported. (PAL, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 198759, July 01, 2013) p. 134

— Persons obligated to file the return and pay excise tax. *(Id.)*

— The phrase "purchase of domestic petroleum products for use in its domestic operations" which characterizes the tax privilege Letter of Instruction 1483 withdrew refers to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods. *(Id.)*

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)

Notice requirement — Failure of mortgagee bank to send notice of extrajudicial foreclosure as stipulated in the contract is a breach sufficient to invalidate the foreclosure sale. (Lim *vs*. Dev't. Bank of the Phils., G.R. No. 177050, July 01, 2013) p. 24

FORECLOSURE OF MORTGAGE

Foreclosure proceedings — Shall cover not only the hypothecated property but also its accessions and accessories as well; rationale. (Phil. National Bank *vs*. Sps. Marañon, G.R. No. 189316, July 01, 2013) p. 108

Foreclosure sale — As a purchaser in a public sale, mortgagee bank was only substituted to and acquired the right, title, interest and claim of the mortgagor to the property at the time of the levy. (Phil. National Bank *vs*. Sps. Marañon, G.R. No. 189316, July 01, 2013) p. 108

did not have them in his possession when demand was made and he could not satisfactorily explain his failure to do so. *(Id.)*

— Elements of the crime are: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence permitted another person to take them. *(Id.)*

MARRIAGES

Void marriage — Marriage solemnized without a license is null and void *ab initio* and non-existent. (Bangayan *vs*. Bangayan, Jr., G.R. No. 201061, July 03, 2013) p. 502

— When subsequent marriage was contracted without a marriage license, such marriage is not bigamous. *(Id.)*

MURDER

Civil liabilities of accused — Accused shall be liable for: (1) civil indemnity for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People *vs*. Credo, G.R. No. 197360, July 03, 2013) p. 438

(People *vs*. Hatsero, G.R. No. 192179, July 03, 2013) p. 405

OBLIGATIONS

Constructive fulfillment of suspensive condition doctrine — Applies when the following requisites concur, *viz*: (1) the condition is suspensive; (2) the obligor actually prevents the fulfillment of the condition; and (3) he acts voluntarily. (Lim *vs*. Dev't. Bank of the Phils., G.R. No. 177050, July 01, 2013) p. 24

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