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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 172346. July 24, 2013]

SPOUSES NAMEAL and LOURDES BONROSTRO, *petitioners, vs.* **SPOUSES JUAN and CONSTANCIA LUNA,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL REAL PROPERTY ON INSTALLMENT BASIS; NON-PAYMENT OF INSTALLMENT DOES NOT WARRANT RESCISSION OF CONTRACT.— [T]he CA, in its assailed Decision, found the contract between the parties as a contract to sell, specifically of a real property on installment basis, and as such categorically declared rescission to be not the proper remedy. This is considering that in a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission under Article 1191 of the Civil Code but rather just an event that prevents the supposed seller from being bound to convey title to the supposed buyer. Also, and as correctly ruled by the CA, Article 1191 cannot be applied to sales of real property on installment since they are governed by the Maceda Law.

2. ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; TENDER OF PAYMENT AND CONSIGNATION; FAILURE TO MAKE CONSIGNATION WILL NOT SUSPEND THE INTEREST.— Tender of payment "is the manifestation by the debtor of a desire to comply with

or pay an obligation. If refused without just cause, the tender of payment will discharge the debtor of the obligation to pay but only after a valid consignation of the sum due shall have been made with the proper court." "Consignation is the deposit of the [proper amount with a judicial authority] in accordance with rules prescribed by law, after the tender of payment has been refused or because of circumstances which render direct payment to the creditor impossible or inadvisable." "Tender of payment, without more, produces no effect." "[T]o have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation." As to the effect of tender of payment on interest, noted civilist Arturo M. Tolentino explained as follows: x x x **when the tender of payment is not accompanied by the means of payment, and the debtor did not take any immediate step to make a consignation, then interest is not suspended from the time of such tender**. x x x

3. ID.; ID.; KINDS OF OBLIGATIONS; CONDITIONAL OBLIGATIONS; RULE THAT CONDITION DEEMED FULFILLED WHEN THE OBLIGOR VOLUNTARILY PREVENTS ITS OBLIGATION; REQUIRES ACTUAL PREVENTION OF COMPLIANCE.— [T]he Court finds Art. 1186 inapplicable to this case. The said provision explicitly speaks of a situation where it is the obligor who voluntarily prevents fulfillment of the condition. Moreover, the mere intention to prevent the happening of the condition or the mere placing of ineffective obstacles to its compliance, without actually preventing fulfillment is not sufficient for the application of Art. 1186. Two requisites must concur for its application, to wit: (1) intent to prevent fulfillment of the condition; and, (2) actual prevention of compliance.

4. ID.; DAMAGES; DELAY IN THE PAYMENT OF SUM OF MONEY; PAYMENT OF INTEREST.— "Delay in the performance of an obligation is looked upon with disfavor because, when a party to a contract incurs delay, the other party who performs his part of the contract suffers damages thereby." x x x Under Article 2209 of the Civil Code, "[i]f the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal

interest x x x." There being no stipulation on interest in case of delay in the payment of amortization, the CA thus correctly imposed interest at the legal rate which is now 12% *per annum.*

APPEARANCES OF COUNSEL

Macapagal & Dalucapas Law Firm for petitioners.
Carbon Carbon and Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Questioned in this case is the Court of Appeals' (CA) disquisition on the matter of interest.

Petitioners spouses Nameal and Lourdes Bonrostro (spouses Bonrostro) assail through this Petition for Review on *Certiorari*[1] the April 15, 2005 Decision[2] of the CA in CA-G.R. CV No. 56414 which affirmed with modifications the April 4, 1997 Decision[3] of the Regional Trial Court (RTC) of Quezon City, Branch 104 in Civil Case No. Q-94-18895. They likewise question the CA's April 17, 2006 Resolution[4] denying their motion for partial reconsideration.

Factual Antecedents

In 1992, respondent Constancia Luna (Constancia), as buyer, entered into a Contract to Sell[5] with Bliss Development Corporation (Bliss) involving a house and lot identified as Lot 19, Block 26

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[1] *Rollo*, pp. 8-23.

[2] CA *rollo*, pp. 69-78; penned by Associate Justice Edgardo P. Cruz and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza (now a member of this Court).

[3] Records, pp. 300-302; penned by Judge Angel V. Colet.

[4] CA *rollo*, pp. 101-103; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Noel G. Tijam and Vicente S.E. Veloso.

[5] Records, pp. 8-13.

of New Capitol Estates in Diliman, Quezon City. Barely a year after, Constancia, this time as the seller, entered into another Contract to Sell[6] with petitioner Lourdes Bonrostro (Lourdes) concerning the same property under the following terms and conditions:

> 1. The stipulated price of ₱1,250,000.00 shall be paid by the VENDEE to the VENDOR in the following manner:
>
> (a) ₱200,000.00 upon signing x x x [the] Contract To Sell,
> (b) ₱300,000.00 payable on or before April 30, 1993,
> (c) ₱330,000.00 payable on or before July 31, 1993,
> (d) ₱417,000.00 payable to the New Capitol Estate, for 15 years at [₱6,867.12] a month,
>
> 2. x x x [I]n the event the VENDEE fails to pay the second installment on time, [t]he VENDEE will pay starting May 1, 1993 a 2% interest on the ₱300,000.00 monthly. Likewise, in the event the VENDEE fails to pay the amount of ₱630,000.00 on the stipulated time, this CONTRACT TO SELL shall likewise be deemed cancelled and rescinded and x x x 5% of the total contract price [of] ₱1,250,000.00 shall be deemed forfeited in favor of the VENDOR. Unpaid monthly amortization shall likewise be deducted from the initial down payment in favor of the VENDOR.[7]

Immediately after the execution of the said second contract, the spouses Bonrostro took possession of the property. However, except for the ₱200,000.00 down payment, Lourdes failed to pay any of the stipulated subsequent amortization payments.

Ruling of the Regional Trial Court

On January 11, 1994, Constancia and her husband, respondent Juan Luna (spouses Luna), filed before the RTC a Complaint[8] for Rescission of Contract and Damages against the spouses

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[6] *Id.* at 14.

[7] *Id.*

[8] *Id.* at 1-7.

Bonrostro praying for the rescission of the contract, delivery of possession of the subject property, payment by the latter of their unpaid obligation, and awards of actual, moral and exemplary damages, litigation expenses and attorney's fees.

In their Answer with Compulsory Counterclaim,[9] the spouses Bonrostro averred that they were willing to pay their total balance of ₱630,000.00 to the spouses Luna after they sought from them a 60-day extension to pay the same.[10] However, during the time that they were ready to pay the said amount in the last week of October 1993, Constancia and her lawyer, Atty. Arlene Carbon (Atty. Carbon), did not show up at their rendezvous. On November 24, 1993, Lourdes sent Atty. Carbon a letter[11] expressing her desire to pay the balance, but received no response from the latter. Claiming that they are still willing to settle their obligation, the spouses Bonrostro prayed that the court fix the period within which they can pay the spouses Luna.

The spouses Bonrostro likewise belied that they were not paying the monthly amortization to New Capitol Estates and asserted that on November 18, 1993, they paid Bliss, the developer of New Capitol Estates, the amount of ₱46,303.44. Later during trial, Lourdes testified that Constancia instructed Bliss not to accept amortization payments from anyone as evidenced by her March 4, 1993 letter[12] to Bliss.

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

[10] See Letter of Lourdes dated August 18, 1993, *id.* at 63.

[11] *Id.* at 64.

[12] *Id.* at 224. It states as follows:

x x x x x x x x x

This is to formally inform you of my previous verbal notice that I have not authorized anyone to negotiate and pay in my behalf my unit at Block 26 Lot 19 New Capitol Estates Project.

Any alleged authority is a forgery or a result of a misrepresentation.

Please communicate with the undersigned in the event anyone pretend[s] to negotiate on the said unit.

Very truly yours,

Sgd.
CONSTANCIA LUNA

On April 4, 1997, the RTC rendered its Decision[13] focusing on the sole issue of whether the spouses Bonrostro's delay in their payment of the installments constitutes a substantial breach of their obligation under the contract warranting rescission. The RTC ruled that the delay could not be considered a substantial breach considering that Lourdes (1) requested for an extension within which to pay; (2) was willing and ready to pay as early as the last week of October 1993 and even wrote Atty. Carbon about this on November 24, 1993; (3) gave Constancia a down payment of ₱200,000.00; and, (4) made payment to Bliss.

The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1.) Declaring [t]he Contract to Sell executed by the plaintiff [Constancia] and defendant [Lourdes] with respect to the house and lot located at Blk. 26, [L]ot 19, New Capitol Estate[s], Diliman[,] Quezon City to be in force and effect. And that Lourdes Bonrostro must remain in the possession of the premises.

2.) Ordering the defendant[s] to pay plaintiff[s] within 60 days from receipt of this decision the sum of ₱300,000.00 plus an interest of 2% per month from April 1993 to November 1993.

3.) Ordering the defendant[s] to pay plaintiff[s] within sixty (60) days from receipt of this decision the sum of ₱330,000.00 plus an interest of 2% [per month] from July 1993 to November 1993.

4.) Ordering the defendant[s] to reimburse plaintiff[s] the sum of ₱214,492.62 which plaintiff[s] paid to Bliss Development Corporation.

No pronouncement as to Cost.

SO ORDERED.[14]

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[13] *Id.* at 300-302.

[14] *Id.* at 302.

As their Motion for Reconsideration[15] was likewise denied in an Order[16] dated July 15, 1997, the spouses Luna appealed to the CA.[17]

Ruling of the Court of Appeals

In its Decision[18] of April 15, 2005, the CA concluded that since the contract entered into by and between the parties is a Contract to Sell, rescission is not the proper remedy. Moreover, the subject contract being specifically a contract to sell a real property on installment basis, it is governed by Republic Act No. 6552[19] or the Maceda Law, Section 4 of which states:

> Sec. 4. In case where less than two years of installment were paid, **the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due**.
>
> If the buyer fails to pay the installments due at the expiration of the grace period, **the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation** or the demand for rescission of the contract **by a notarial act**. (Emphases supplied)

The CA held that while the spouses Luna sent the spouses Bonrostro letters[20] rescinding the contract for non-payment of the sum of ₱630,000.00, the same could not be considered as valid and effective cancellation under the Maceda Law since they were made within the 60-day grace period and were not notarized. The CA concluded that there being no cancellation effected in accordance with the procedure prescribed by law, the contract therefore remains valid and subsisting.

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[15] *Id.* at 303-310.

[16] *Id.* at 327-328.

[17] See Notice of Appeal, *id.* at 329-330.

[18] CA *rollo*, pp. 69-78.

[19] Also known as the Realty Installment Buyer Protection Act.

[20] Dated August 2, 1993, records, p.147; dated September 16, 1993, *id.* at 149-151; dated November 15, 1993, *id.* 152-153.

The CA also affirmed the RTC's finding that Lourdes was ready to pay her obligation on November 24, 1993.

However, the CA modified the RTC Decision with respect to interest, *viz*:

> Nevertheless, there is a need to modify the appealed decision insofar as (i) the interest imposed on the sum of ₱300,000.00 is only for the period April 1993 to November 1993; (ii) the interest imposed on the sum of ₱330,000.00 is 2% per month and is only for the period July 1993 to November 1993; (iii) it does not impose interest on the amount of ₱214,492.62 which was paid by Constancia to BLISS in behalf of Lourdes x x x
>
> The rule is that 'no interest shall be due unless it has been expressly stipulated in writing' (Art. 1956, Civil Code). However, the contract does not provide for interest in case of default in payment of the sum of ₱330,000.00 to Constancia and the monthly amortizations to BLISS.
>
> Considering that Lourdes had incurred x x x delay in the performance of her obligations, she should pay (i) interest at the rate of 2% per month on the sum of ₱300,000.00 from May 1, 1993 until fully paid and (ii) interest at the legal rate on the amounts of ₱330,000.00 and ₱214,492.62 from the date of default (August 1, 1993 and April 4, 1997 [date of the appealed decision], respectively) until the same are fully paid x x x[21]

Hence, the dispositive portion of the said Decision:

> WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATIONS that paragraphs 2, 3, and 4 of its dispositive portion shall now read:
>
> 2.) Ordering the *defendants* to pay *plaintiffs* the sum of ₱300,000.00 plus interest *thereon at the rate* of 2% per month from *May 1, 1993 until fully paid;*
>
> 3.) Ordering the *defendants* to pay *plaintiffs* the sum of ₱330,000.00 plus interest *thereon at the legal rate from August 1, 1993 until fully paid; and*

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[21] CA *rollo*, p. 77.

4.) Ordering the *defendants* to reimburse *plaintiffs* the sum of ₱214,492.62, which *plaintiffs* paid to Bliss Development Corporation, *plus interest thereon at the legal rate from filing of the complaint until fully reimbursed*.

SO ORDERED.[22]

The spouses Luna no longer assailed the ruling. On the other hand, the spouses Bonrostro filed a Partial Motion for Reconsideration[23] questioning the above-mentioned modifications. The CA, however, denied for lack of merit the said motion in a Resolution[24] dated April 17, 2006.

Hence, this Petition for Review on *Certiorari*.

Issue

The basic issue in this case is whether the CA correctly modified the RTC Decision with respect to interests.

The Parties' Arguments

As may be recalled, the RTC under paragraphs 2 and 3 of the dispositive portion of its Decision ordered the spouses Bonrostro to pay the spouses Luna the sums of ₱300,000.00 plus interest of 2% per month *from April 1993 to November 1993* and ₱330,000.00 plus interest of *2%* per month *from July 1993 to November 1993*, respectively. The CA modified these by reckoning the payment of the 2% interest on the ₱300,000.00 from *May 1, 1993 until fully* paid and *by imposing interest at the legal rate* on the ₱330,000.00 reckoned from *August 1, 1993 until fully paid*.

The spouses Bonrostro harp on the factual finding of the RTC, as affirmed by the CA, that Lourdes was willing and ready to pay her obligation as evidenced by her November 24,

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

[23] *Id.* at 79-88.

[24] *Id.* at 101-103.

1993 letter to Atty. Carbon. They also assert that the sending of the said letter constitutes a valid tender of payment on their part. Hence, they argue that they should not be assessed any interest subsequent to the date of the said letter. Neither should they be ordered to pay interest on the amount of ₱214,492.62 which covers the amortizations paid by the spouses Luna to Bliss. They point out that it was Constancia who prevented them from fulfilling their obligation to pay the amortizations when she instructed Bliss not to accept payment from them.[25]

The spouses Luna, on the other hand, aver that the November 24, 1993 letter of Lourdes is not equivalent to tender of payment since the mere sending of a letter expressing the intention to pay, without the accompanying payment, cannot be considered a valid tender of payment. Also, if the spouses Bonrostro were really willing and ready to pay at that time and assuming that the spouses Luna indeed refused to accept payment, the former should have resorted to consignation. Anent the payment of amortization, the spouses Luna explain that under the parties' Contract to Sell, Lourdes was to assume Constancia's balance to Bliss by paying the monthly amortization in order to avoid the cancellation of the earlier Contract to Sell entered into by Constancia with Bliss.[26] However, since Lourdes was remiss in paying the same, the spouses Luna were constrained to pay the amortization. They thus assert that reimbursement to them of the said amount with interest is proper considering that by reason of such payment, the spouses Bonrostro were spared from the interests and penalties which would have been imposed by Bliss if the amortizations remained unpaid.

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[25] Records, p. 224.

[26] Article 8.01 of the Contract to Sell entered into by Constancia with Bliss provides:

In the event the BUYER fails to pay any installment [when] due or fails to pay all installments and interests in arrears at the expiration of the grace period when such grace period is available to the BUYER, or otherwise fails to comply with any of the terms and conditions of this contract, the SELLER may, at its sole option, cause the cancellation of this contract by giving the buyer a notice of cancellation or demand for rescission of the contract without need of judicial action. x x x (*Id.* at 10.)

Our Ruling

The Petition lacks merit.

The spouses Bonrostro's reliance on the RTC's factual finding that Lourdes was willing and ready to pay on November 24, 1993 is misplaced.

As mentioned, the RTC in resolving the Complaint focused on the sole issue of whether the failure of spouses Bonrostro to pay the installments of ₱300,000.00 on April 30, 1993 and ₱330,000.00 on July 31, 1993 is a substantial breach of their obligation under the contract as to warrant the rescission of the same.[27] The said court ratiocinated, *viz*:

> After careful evaluation of the evidence testimonial and documentary, the Court believes that the defendants['] delay in the payment of the two installment[s] is not so substantial [as to] warrant [rescission] of contract. Although, the defendant failed to pay the two installments [i]n due time, she was able to communicate with the plaintiffs through letters requesting for an extension of two months within which to pay the installment[s]. In fact, on November 24, 1993 defendant informed Atty. Arlene Carbon that she was ready to pay the installments and the money is ready for pick-up. However, plaintiff did not bother to get or pick-up the money without any valid reason. It would be very prejudicial on the part of the defendant if the contract to sell be rescinded considering that she made a downpayment of ₱200,000.00 and made partial amortization to the Bliss Development Corporation. In fact, the defendant testified that she is willing and ready to pay the balance including the interest on November 24, 1993.
>
> The Court is of the opinion that the delay in the payment of the balance of the purchase price of the house and lot is not [so] substantial [as to] warrant the rescission of the contract to sell. The question of whether a breach of contract is substantial depends upon the attendant circumstance. x x x[28]

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[27] See relevant portion of the RTC Decision, *id.* at 301.

[28] *Id.*

Clearly, the RTC arrived at the above-quoted conclusion based on its mistaken premise that rescission is applicable to the case. Hence, its determination of whether there was substantial breach. As may be recalled, however, the CA, in its assailed Decision, found the contract between the parties as a contract to sell, specifically of a real property on installment basis, and as such categorically declared rescission to be not the proper remedy. This is considering that in a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission under Article 1191[29] of the Civil Code but rather just an event that prevents the supposed seller from being bound to convey title to the supposed buyer.[30] Also, and as correctly ruled by the CA, Article 1191 cannot be applied to sales of real property on installment since they are governed by the Maceda Law.[31]

There being no breach to speak of in case of non-payment of the purchase price in a contract to sell, as in this case, the RTC's factual finding that Lourdes was willing and able to pay her obligation — a conclusion arrived at in connection with the said court's determination of whether the non-payment of the purchase price in accordance with the terms of the contract was a substantial breach warranting rescission — therefore loses significance. The spouses Bonrostro's reliance on the said factual

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[29] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

x x x x x x x x x

[30] *Reyes v. Tuparan*, G.R. No. 188064, June 1, 2011, 650 SCRA 283, 296.

[31] DESIDERIO, JURADO P., *Comments and Jurisprudence on Obligations and Contracts*, Twelfth Revised Edition, 2010, pp. 138-139.

finding is thus misplaced. They cannot invoke their readiness and willingness to pay their obligation on November 24, 1993 as an excuse from being made liable for interest beyond the said date.

The spouses Bonrostro are liable for interest on the installments due from the date of default until fully paid.

The spouses Bonrostro assert that Lourdes' letter of November 24, 1993 amounts to tender of payment of the remaining balance amounting to ₱630,000.00. Accordingly, thenceforth, accrual of interest should be suspended.

Tender of payment "is the manifestation by the debtor of a desire to comply with or pay an obligation. If refused without just cause, the tender of payment will discharge the debtor of the obligation to pay but only after a valid consignation of the sum due shall have been made with the proper court."[32] "Consignation is the deposit of the [proper amount with a judicial authority] in accordance with rules prescribed by law, after the tender of payment has been refused or because of circumstances which render direct payment to the creditor impossible or inadvisable."[33]

"Tender of payment, without more, produces no effect."[34] "[T]o have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation."[35]

As to the effect of tender of payment on interest, noted civilist Arturo M. Tolentino explained as follows:

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[32] *Allandale Sportsline Inc. v. The Good Development Corporation*, G.R. No. 164521, December 18, 2008, 574 SCRA 625, 634.

[33] TOLENTINO, ARTURO, M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume IV, 1973, p. 305.

[34] *Allandale Sportsline Inc. v. The Good Development Corporation*, *supra*.

[35] *Cinco v. Court of Appeals*, G.R. No. 151903, October 9, 2009, 603 SCRA 108, 119.

When a tender of payment is made in such a form that the creditor could have immediately realized payment if he had accepted the tender, followed by a prompt attempt of the debtor to deposit the means of payment in court by way of consignation, the accrual of interest on the obligation will be suspended from the date of such tender. **But when the tender of payment is not accompanied by the means of payment, and the debtor did not take any immediate step to make a consignation, then interest is not suspended from the time of such tender**. x x x[36] (Emphasis supplied)

Here, the subject letter merely states Lourdes' willingness and readiness to pay but it was not accompanied by payment. She claimed that she made numerous telephone calls to Atty. Carbon reminding the latter to collect her payment, but, neither said lawyer nor Constancia came to collect the payment. After that, the spouses Bonrostro took no further steps to effect payment. They did not resort to consignation of the payment with the proper court despite knowledge that under the contract, non-payment of the installments on the agreed date would make them liable for interest thereon. The spouses Bonrostro erroneously assumed that their notice to pay would excuse them from paying interest. Their claimed tender of payment did not produce any effect whatsoever because it was not accompanied by actual payment or followed by consignation. Hence, it did not suspend the running of interest. The spouses Bonrostro are therefore liable for interest on the subject installments from the date of default until full payment of the sums of ₱300,000.00 and ₱330,000.00.

The spouses Bonrostro are likewise liable for interest on the amount paid by the spouses Luna to Bliss as amortization.

The spouses Bonrostro want to be relieved from paying interest on the amount of ₱214,492.62 which the spouses Luna paid to Bliss as amortizations by asserting that they were prevented by the latter from fulfilling such obligation. They invoke Art. 1186

[36] *Supra* note 32 at 306.

of the Civil Code which provides that "the condition shall be deemed fulfilled when the *obligor* voluntarily prevents its fulfillment."

However, the Court finds Art. 1186 inapplicable to this case. The said provision explicitly speaks of a situation where it is the obligor who voluntarily prevents fulfillment of the condition. Here, Constancia is not the obligor but the obligee. Moreover, even if this significant detail is to be ignored, the mere intention to prevent the happening of the condition or the mere placing of ineffective obstacles to its compliance, without actually preventing fulfillment is not sufficient for the application of Art. 1186.[37] Two requisites must concur for its application, to wit: (1) intent to prevent fulfillment of the condition; and, (2) actual prevention of compliance.[38]

In this case, while it is undisputed that Constancia indeed instructed Bliss on March 4, 1994 not to accept payment from anyone but her, there is nothing on record to show that Bliss heeded the instruction of Constancia as to actually prevent the spouses Bonrostro from making payments to Bliss. There is no showing that subsequent to the said letter, the spouses Bonrostro attempted to make payment to and was refused by Bliss. Neither was there a witness presented to prove that Bliss indeed gave effect to the instruction contained in Constancia's letter. While Bliss' Project Development Officer, Mr. Ariel Cordero, testified during trial, nothing could be gathered from his testimony regarding this except for the fact that Bliss received the said letter.[39] In view of these, the spouses Luna could not be said to have placed an effective obstacle as to actually prevent the spouses Bonrostro from making amortization payments to Bliss.

On the other hand, there are telling circumstances which militate against the spouses Bonrostro's claimed keenness to comply with their obligation to pay the monthly amortization.

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[37] *Id.* at 155.

[38] *Id*.

[39] See TSN dated June 8, 1995, pp. 1-26.

After the execution of the contract in January 1993, they immediately took possession of the property but failed to make amortization payments. It was only after seven months or on November 18, 1993 that they made payments to Bliss in the amount of ₱46,303.44.[40] Whether the same covers previous unpaid amortizations is also not clear as the receipt does not indicate the same[41] and per Statement of Account[42] as of March 8, 1994 issued by Bliss, the unpaid monthly amortizations for February to November 1993 in the total amount of ₱78,271.69 remained outstanding. There was also no payment made of the amortizations due on December 4, 1993 and January 4, 1994[43] before the filing of the Complaint on January 11, 1994.

On the part of the spouses Luna, it is understandable that they paid the amortizations due. The assumption of payment of the monthly amortization to Bliss was made part of the obligations of the spouses Bonrostro under their contract with the spouses Luna precisely to avoid the cancellation of the earlier contract entered into by Constancia with Bliss. But as the spouses Bonrostro failed in this obligation, the spouses Luna were constrained to pay Bliss to avoid the adverse effect of such failure. This act of the spouses Luna proved to be even more beneficial to the spouses Bonrostro as the cancellation of the Contract to Sell between Constancia and Bliss would result in the cancellation of the subsequent Contract to Sell between Constancia and Lourdes. Also, the spouses Bonrostro were relieved from paying the penalties that would have been imposed by Bliss if the monthly amortizations covered by the said payment remained unpaid. The Statements of Account[44] issued by Bliss clearly state that each monthly amortization is due on or before

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[40] Records, p. 65.

[41] The said receipt indicates "PAYMENT ACCEPTED w/o PREJUDICE W/ THE TERMS & CONDITIONS OF COMPROMISE AGREEMENT DATED NOV. 27 '91 in CIVIL CASE # 52992 BDC VS. LUNA"

[42] Records, p. 80.

[43] *Id*.

[44] Dated March 3, 1994, *id.* at 80 and January 30, 1995, *id.* at 159.

the fourth day of every month and a penalty equivalent to 1/10th of 1% per day of delay shall be imposed for all payments made after due date. That translates to 3% monthly or 36% *per annum* rate of interest, three times higher than the 12% *per annum* rate of interest correctly imposed by the CA.

Hence, the resulting situation is that the spouses Luna are constrained to part with their money while the spouses Bonrostro, despite being remiss in their obligation to pay the monthly amortization, are relieved from paying higher penalties at the expense of the former. This is aside from the fact that the spouses Bonrostro are in continued possession of the subject property and are enjoying the beneficial use thereof. Under the circumstances and considering that the spouses Bonrostro are obviously in delay in complying with their obligation to pay the amortizations due from February 1993 to January 1995 for which the spouses Luna paid ₱214,492.62,[45] the CA correctly ordered the reimbursement to the latter of the said amount with interest. "Delay in the performance of an obligation is looked upon with disfavor because, when a party to a contract incurs delay, the other party who performs his part of the contract suffers damages thereby."[46] As discussed, the spouses Luna obviously suffered damages brought about by the failure of the spouses Bonrostro to comply with their obligation on time. "And, *sans* elaboration of the matter at hand, damages take the form of interest x x x."[47] Under Article 2209 of the Civil Code, "[i]f the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest x x x." There being no stipulation on interest in case of delay in the payment of amortization, the CA thus correctly imposed interest at the legal rate which is now 12% *per annum*.

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[45] *Id*.

[46] *Arwood Industries, Inc. v. D.M. Consunji, Inc.*, 442 Phil. 203, 212 (2002).

[47] *Id*.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** and the assailed Decision dated April 15, 2005 and the Resolution dated April 17, 2006 of the Court of Appeals in CA-G.R. CV No. 56414 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172846. July 24, 2013]

MANILA POLO CLUB EMPLOYEES' UNION (MPCEU) FUR-TUCP, *petitioner, vs.* **MANILA POLO CLUB, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; EMPLOYMENT; TERMINATION BY THE EMPLOYER; GROUNDS; CLOSURE OF BUSINESS UNDERTAKING; DISTINGUISHED FROM RETRENCHMENT.— It is apparent from the records that this case involves a closure of business undertaking, not retrenchment. The legal requirements and consequences of these two authorized causes in the termination of employment are discernible. We distinguished, in *Alabang Country Club Inc. v. NLRC*: x x x While retrenchment and closure of a business establishment or undertaking are often used interchangeably and are interrelated, they are actually two separate and independent authorized causes for termination of employment. *Retrenchment* is the *reduction of personnel* for the purpose of cutting down on costs of operations in terms of salaries and wages resorted to by an employer because of losses in

operation of a business occasioned by lack of work and considerable reduction in the volume of business. *Closure of a business or undertaking* due to business losses is the reversal of fortune of the employer whereby there is a *complete cessation of business operations* to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. One of the prerogatives of management is the decision to close the entire establishment or to close or abolish a department or section thereof for economic reasons, such as to minimize expenses and reduce capitalization. While the Labor Code provides for the payment of separation package in case of retrenchment to prevent losses, it does not obligate the employer for the payment thereof if there is closure of business due to serious losses.

2. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ELUCIDATED.— To be precise, closure or cessation of an employer's business operations, whether in whole or in part, is governed by Article 283 of the Labor Code, as amended. x x x Based on the [cited] cases, We summarize: 1. Closure or cessation of operations of establishment or undertaking may either be partial or total. 2. Closure or cessation of operations of establishment or undertaking may or may not be due to serious business losses or financial reverses. However, in both instances, proof must be shown that: (1) it was done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement; and (2) a written notice on the affected employees and the DOLE is served at least one month before the intended date of termination of employment. 3. The employer can lawfully close shop even if not due to serious business losses or financial reverses but separation pay, which is equivalent to at least one month pay as provided for by Article 283 of the Labor Code, as amended, must be given to all the affected employees. 4. If the closure or cessation of operations of establishment or undertaking is due to serious business losses or financial reverses, the employer must prove such allegation in order to avoid the payment of separation pay. Otherwise, the affected employees are entitled to separation pay. 5. The burden of proving compliance with all the above-stated falls upon the employer.

3. ID.; ID.; ID.; ID.; MANAGEMENT PREROGATIVE; INCLUDES DETERMINATION OF THE CONTINUING NECESSITY OF EMPLOYEE'S SERVICES.— We have already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer; the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or arbitrary or malicious action on the part of the employer is shown.

APPEARANCES OF COUNSEL

P.R. Cruz Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the February 2, 2006 Decision[1] and May 29, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 73127 affirming *in toto* the August 28, 2002 Decision[3] and September 13, 2002 Resolution[4] of Voluntary Arbitrator Jesus B. Diamonon (VA Diamonon), which dismissed the complaint for illegal retrenchment filed by petitioner.

The facts are uncomplicated.

Petitioner Manila Polo Club Employees Union (MPCEU), which is affiliated with the Federation of Unions of Rizal (FUR)-

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Elvi John S. Asuncion and Noel G. Tijam concurring; *rollo*, pp. 48-75.

[2] *Id.* at 85-100.

[3] *Id.* at 121-130.

[4] *Id.* at 131-134.

TUCP, is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE), while respondent Manila Polo Club, Inc. is a non-profit and proprietary membership organization which provides recreation and sports facilities to its proprietary members, their dependents, and guests.

On December 13, 2001, the Board of Directors of respondent unanimously resolved to completely terminate the entire operations of its Food and Beverage (F & B) outlets, except the Last Chukker, and award its operations to a qualified restaurant operator or caterer.[5] Cited as reasons were as follows:

> WHEREAS, the Food and Beverage (F & B) operations has resulted in yearly losses to the Club in six (6) out of the last eight (8) years with FY 2001 suffering the largest loss at ₱10,647,981 and that this loss is due mainly to the exceedingly high manpower cost and other management inefficiencies;
>
> WHEREAS, due to the substantial losses incurred by the Club in both F&B operations and in its recurring operations, the Board and management had instituted cost and loss-cutting measures;
>
> WHEREAS, the Board recognized the non-viability of the operations of the Food and Beverage Department and that its continued operations by the Club will result in substantial losses that will seriously impair the Club's financial health and membership satisfaction;
>
> WHEREAS, the Board recognized the urgent need to act and act decisively and eliminate factors contributing to substantial losses in the operations of the Club, more particularly the food and beverage operations. Thus, F & B operations are to cease wholly and totally, subject to observance and requirements of the law and other rules. x x x[6]

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[5] Per Board Resolution No. 83-01/02 entitled *Approving the Cessation of Operations of All F & B Restaurants of the Club and refer it to Concessionaire*.

[6] CA *Rollo*, p. 289.

Subsequently, on March 22, 2002, respondent's Board[7] approved the implementation of the retrenchment program of employees who are directly and indirectly involved with the operations of the F & B outlets and authorized then General Manager Philippe D. Bartholomi to pay the employees' separation pay in accordance with the following scheme:

Length of Service (# Years)	Separation Pay (Php)
2 years of service and below	1 month pay
More than 2 years to 9 years of service	½ month pay for every year of service
At least 10 years of service	1 month pay for every year of service
At least 15 years of service	1.25 month(s) pay for every year of service
At least 20 years of service	1.5 month(s) pay for every year of service[8]

On even date, respondent sent notices to the petitioner and the affected employees (via registered mail) as well as submitted an Establishment Termination Report to the DOLE.[9] Respondent informed, among others, of the retrenchment of 123 employees[10] in the F & B Division and those whose functions are related to its operations; the discontinuance of the F & B operations effective March 25, 2002; the termination of the employment relationship on April 30, 2002; and, the continued payment of the employees' salaries despite the directive not to report to work effective immediately.

Unaware yet of the termination notice sent to them by respondent, the affected employees of petitioner were surprised when they were prevented from entering the Club premises as

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[7] Per Board Resolution No. 138-01/02 entitled *Approving the Program Retrenching Employees Necessarily Arising Out of the Cessation of Operations of All F & B Restaurants of the Club and Authorizing General Manager Philippe D. Bartholomi to Implement the Foregoing Program.*

[8] CA *rollo*, p. 309.

[9] *Id.* at 311-337.

[10] Five (5) of the affected employees are non-union members and are not included in the case submitted for voluntary arbitration.

they reported for work on March 25, 2002. They later learned that the F & B operations of respondent had been awarded to Makati Skyline, Inc. effective that day. Treating the incident as respondent's way of terminating union members under the pretense of retrenchment to prevent losses, petitioner filed a Step II grievance and requested for an immediate meeting with the Management.[11] When the Management refused, petitioner filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) for illegal dismissal, violation/non-implementation of the Collective Bargaining Agreement (CBA), union busting, and other unfair labor practices (ULP).[12] In view of the position of respondent not to refer the issues to a voluntary arbitrator or to the Secretary of DOLE, petitioner withdrew the notice on April 9, 2002 and resolved to exhaust all remedies at the enterprise level.[13]

Later, on May 10, 2002, petitioner again filed a Notice of Strike, based on the same grounds, when it sensed the brewing tension brought about by the CBA negotiation that was in the meantime taking place.[14] A month after, however, the parties agreed, among others, to maintain the existing provisions of the CBA (except those pertaining to wage increases and signing bonus) and to refer to the Voluntary Arbitrator the issue of retrenchment of 117 union members, with the qualification that *"[t]he retrenched employees subject of the VA will receive separation package without executing quitclaim and release, and without prejudice to the decision of the voluntary arbitrator."*[15]

On June 17, 2002, the parties agreed to submit before VA Diamonon the lone issue of whether the retrenchment of the 117 union members is legal.[16] Finding the pleadings submitted

[11] CA *rollo*, p. 81.

[12] *Id.* at 82-83.

[13] *Id.* at 6.

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

[15] CA *rollo*, pp. 92-93.

[16] CA *rollo*, p. 94.

and the evidence adduced by the parties sufficient to arrive at a judicious determination of the issue raised, VA Diamonon resolved the case without the need of further hearings.

On August 28, 2002, VA Diamonon dismissed petitioner's complaint for lack of merit, but without prejudice to the payment of separation pay to the affected employees. In supporting his factual findings, the cases of *Catatista v. NLRC,*[17] *Dangan v. NLRC (2nd Div.), et al.,*[18] *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC,*[19] *Special Events & Central Shipping Office Workers Union v. San Miguel Corp,*[20] and *San Miguel Corporation v. Ubaldo*[21] were relied upon. Petitioner's motion for reconsideration was likewise denied.

Upon an exhaustive examination of the evidence presented by the parties, the CA affirmed *in toto* the VA's Decision and denied the substantive aspects of petitioner's motion for reconsideration; hence, this petition.

We deny.

It is apparent from the records that this case involves a closure of business undertaking, not retrenchment. The legal requirements and consequences of these two authorized causes in the termination of employment are discernible. We distinguished, in *Alabang Country Club Inc. v. NLRC*:[22]

> x x x While retrenchment and closure of a business establishment or undertaking are often used interchangeably and are interrelated, they are actually two separate and independent authorized causes for termination of employment.

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[17] 317 Phil. 54 (1995).

[18] 212 Phil. 653 (1984).

[19] 360 Phil. 218 (1998).

[20] G.R. Nos. 51002-06, May 30, 1983, 122 SCRA 557.

[21] G.R. No. 92859, February 1, 1993, 218 SCRA 293.

[22] 503 Phil. 937 (2005).

Retrenchment is the *reduction of personnel* for the purpose of cutting down on costs of operations in terms of salaries and wages resorted to by an employer because of losses in operation of a business occasioned by lack of work and considerable reduction in the volume of business.

Closure of a business or undertaking due to business losses is the reversal of fortune of the employer whereby there is a *complete cessation of business operations* to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped.

One of the prerogatives of management is the decision to close the entire establishment or to close or abolish a department or section thereof for economic reasons, such as to minimize expenses and reduce capitalization.

While the Labor Code provides for the payment of separation package in case of retrenchment to prevent losses, it does not obligate the employer for the payment thereof if there is closure of business due to serious losses.[23]

Likewise, the case of *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super*[24] stressed the differences:

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements, namely:

1. That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor, that such losses

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[23] *Alabang Country Club Inc. v. NLRC*, *supra*, at 950. (Italics in the original; citations omitted.)

[24] G.R. No. 166760, August 22, 2008, 563 SCRA 93.

are substantial and not merely flimsy and actual or reasonably imminent; and that retrenchment is the only effective measure to prevent such imminent losses;

2. That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment; and

3. That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.

The employer must prove compliance with all the foregoing requirements. Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages. However, were the retrenchment undertaken by the employer is *bona fide*, the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages, the reasonable rate of which the Court *En Banc* has set at ₱50,000.00 for each employee.

Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer.

Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune. Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not.[25]

To be precise, closure or cessation of an employer's business operations, whether in whole or in part, is governed by Article 283 of the Labor Code, as amended. It states:

Article 283.Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee

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[25] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super, supra,* at 103-105. (Emphasis in the original; citations omitted.)

due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.[26]

In *Industrial Timber Corporation v. Ababon*,[27] the Court explained the above-quoted provision in this wise:

A reading of the foregoing law shows that a partial or total closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.

In sum, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service

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[26] Underscoring supplied.

[27] 515 Phil. 805 (2006).

of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.[28]

Our pronouncements in *Alabang Country Club Inc.* and *Eastridge Golf Club, Inc.* are significant in the resolution of the instant case; thus, their discussion is apposite.

Alabang Country Club Inc. (ACCI) is a stock and non-profit corporation that operates and maintains a country club and various sports and recreational facilities for the exclusive use of its members. Realizing that it was no longer profitable for ACCI to maintain its own F & B Department, the Management decided to cease the operation of said department and to open the same to a contractor such as a concessionaire. On December 1, 1994, ACCI entered into an agreement with La Tasca Restaurant Inc. for the operation of the F & B Department. Also, on even date, ACCI sent to its employees in the F & B Department individual letters informing them that their services would be terminated effective January 1, 1995; that they would be paid separation pay equivalent to 125% percent of their monthly salary for every year of service; that La Tasca agreed to absorb all affected employees immediately with the status of regular employees without need of undergoing a probationary period; and, that all affected employees would receive the same salary they were receiving from ACCI at the time of their termination. On December 11, 1994, the Union filed before the NLRC a complaint for illegal dismissal, ULP, regularization, and damages with prayer for the issuance of a writ of preliminary injunction. While the Labor Arbiter (LA) dismissed the complaint and the National Labor Relations Commission (NLRC) dismissed the appeal, the CA found in favor of the complainants. It ruled that ACCI failed to prove by sufficient and competent evidence that its alleged losses were substantial, continuing and without any

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[28] *Industrial Timber Corporation v. Ababon, supra,* at 819. (Citations omitted)

immediate prospect of abating. This Court, however, granted ACCI's petition on the view that the case did not involve retrenchment but closure of a business undertaking. Despite ACCI's failure to prove that the closure of its F & B Department was due to substantial losses, We still opined that the complainants were legally dismissed on the ground of closure or cessation of an undertaking not due to serious business losses or financial reverses, which is allowed under Article 283 of the Labor Code, as amended. It was held:

> The closure of operation of an establishment or undertaking not due to serious business losses or financial reverses includes both the complete cessation of operations and the cessation of only part of a company's activities.
>
> For any *bona fide* reason, an employer can lawfully close shop anytime. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.
>
> While petitioner did not sufficiently establish substantial losses to justify closure of its F & B Department on this ground, there is basis for its claim that the continued maintenance of said department had become more expensive through the years. An evaluation of the financial figures appearing in the audited financial statements prepared by the SGV & Co. shows that ninety-one to ninety-six (91%-96%) percent of the actual revenues earned by the F & B Department comprised the costs and expenses in maintaining the department. Petitioner's decision to place its F & B operations under a concessionaire must then be respected, absent a showing of bad faith on its part.
>
> In fine, management's exercise of its prerogative to close a section, branch, department, plant or shop will be upheld as long as it is done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement.[29]

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[29] *Alabang Country Club, Inc. v. NLRC*, *supra* note 22, at 952-953. (Citations omitted)

On the other hand, in *Eastridge Golf Club, Inc.*, complainants were kitchen staff of the Golf Club's F & B Department. They were terminated from employment on the ground that the operations of the F & B Department had been turned over to a concessionaire as a result of alleged company reorganization/ downsizing. Claiming that their dismissal was not based on any of the causes allowed by law and that it was made without due process, the employees filed with the NLRC a complaint for illegal dismissal, ULP, and payment of 13th month pay. To controvert the Golf Club's claim that the partial cessation of operations was *bona fide*, complainants presented documentary evidence that there was no real transfer of operations and that the Golf Club remained to be the real employer of all the F & B staff. Their documentary evidence consisted of payslips, monthly payroll register, Philippine Health Insurance Corporation Contribution Payment Return, Employer Quarterly Remittance Report, and the Social Security System Contribution Payment Return. Both the CA and the LA found that the cessation of the Golf Club's F & B operations was a mere subterfuge, because the latter continued to act as the real employer by paying for the salaries and insurance contributions of the employees of the F & B Department even after the concessionaire took over its operations. The NLRC saw otherwise, opining that the evidence did not establish that the cessation of petitioner's F & B operations was in bad faith. When the matter was elevated to this Court, We agreed with the Golf Club that the CA erred when it declared that, for lack of evidence of financial losses, the cessation of its F & B operations was not a valid cause to terminate the employment of complainants. The Court held that the Golf Club need not present evidence of financial losses to justify such business decision, since the cause invoked in the termination of complainants' employment was the cessation of its F & B operations. Nonetheless, it was ruled that the CA correctly held that the cessation of petitioner's F & B operations and the transfer to the concessionaire were merely simulated, and that the employees' dismissal by reason thereof was illegal. We cited similar cases, thus:

In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*, the corporation shut down its operations allegedly due to financial losses and paid its workers separation benefits. Yet, barely one month after the shutdown, the corporation resumed operations. In light of such evidence of resumption of operations, the Court held that the earlier shutdown of the corporation was in bad faith.

With a similar outcome was the closure of the brokerage department of the corporation in *Danzas Intercontinental, Inc. v. Daguman.* In view of evidence consisting of a mere letter written by the corporation to its clientele that its brokerage department was still operating but with a new staff, the Court declared the earlier closure of the corporation's brokerage department not *bona fide* and ordered the reinstatement of its former staff, despite the latter having signed quitclaims and release forms acknowledging payment of separation benefits.

The closure of a high school department in *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union* was likewise annulled upon evidence that barely one year after the announced closure, the school reopened its high school department. The Court found the closure of the high school in bad faith notwithstanding payment to the affected teachers of separation benefits.

In *Capitol Medical Center, Inc. v. Meris,* the hospital justified the closure of a unit and the dismissal of its head doctor by claiming that there was a dwindling demand for the unit's services. However, upon examination of the records, the Court found that service demand had in fact been rising, thus negating the very reason proffered by the hospital in closing down the unit. On that score, the Court declared the action of the hospital in bad faith.[30]

Based on the above and cases[31] of similar import, We summarize:

1. Closure or cessation of operations of establishment or undertaking may either be partial or total.

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[30] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super, supra* note 24, at 108-109. (Citations omitted)

[31] See also *Marc II Marketing, Inc. v. Joson,* G.R. No. 171993, December 12, 2011, 662 SCRA 35; *Espina v. Court of Appeals,* 548 Phil. 255 (2007); and *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. Court of Appeals,* 521 Phil. 606 (2006).

2. Closure or cessation of operations of establishment or undertaking may or may not be due to serious business losses or financial reverses. However, in both instances, proof must be shown that: (1) it was done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement; and (2) a written notice on the affected employees and the DOLE is served at least one month before the intended date of termination of employment.

3. The employer can lawfully close shop even if not due to serious business losses or financial reverses but separation pay, which is equivalent to at least one month pay as provided for by Article 283 of the Labor Code, as amended, must be given to all the affected employees.

4. If the closure or cessation of operations of establishment or undertaking is due to serious business losses or financial reverses, the employer must prove such allegation in order to avoid the payment of separation pay. Otherwise, the affected employees are entitled to separation pay.

5. The burden of proving compliance with all the above-stated falls upon the employer.

Guided by the foregoing, the Court shall refuse to dwell on the issue of whether respondent was in sound financial condition when it resolved to stop the operations of its F & B Department. As stated, an employer can lawfully close shop anytime even if not due to serious business losses or financial reverses. Furthermore, the issue would entail an inquiry into the factual veracity of the evidence presented by the parties, the determination of which is not Our statutory function. Indeed, petitioner is asking Us to sift through the evidence on record and pass upon whether respondent had, in truth and in fact, suffered from serious business losses or financial reverses. That task, however, would be contrary to the well-settled principle that this Court is not a trier of facts, and cannot re-examine and re-evaluate the

probative value of the evidence presented to the VA and the CA, which formed the basis of the questioned decision.

Respondent correctly asserted in its Memorandum that the instant case is similar to *Alabang Country Club Inc*. When it decided to cease operating its F & B Department and open the same to a concessionaire, respondent did not reduce the number of personnel assigned thereat; instead, it terminated the employment of all personnel assigned at the department and those who are directly and indirectly involved in its operations. The closure of the F & B Department was due to legitimate business considerations, a resolution which the Court has no business interfering with. We have already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer; the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or arbitrary or malicious action on the part of the employer is shown.[32] As recognized by both the VA and the CA, evident proofs of respondent's good faith to arrest the losses which the F & B Department had been incurring since 1994 are: engagement of an independent consulting firm to conduct manpower audit/organizational development; institution of cost-saving programs, termination of the services of probationary employees, substantial reduction of a number of agency staff and personnel, and the retrenchment of eight (8) managers. After the effective date of the termination of employment relation, respondent even went on to aid the displaced employees in finding gainful employment by soliciting the assistance of respondent's members, Makati Skyline, Human Resource Managers of some companies, and the Association of Human Resource Managers.[33] These were not refuted by petitioner.

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[32] *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. Court of Appeals*, *supra,* at 625.

[33] CA *rollo,* pp. 383-403.

Only that, it perceives them as inadequate and insists that the operational losses are very well covered by the other income of respondent and that less drastic measures could have been resorted to, like increasing the membership dues and the prices of food and beverage. Yet the wisdom or soundness of the Management decision is not subject to discretionary review of the Court for, even the VA admitted, it enjoys a pre-eminent role and is presumed to possess all relevant and necessary information to guide its business decisions and actions.

Further, unlike in the case of *Eastridge Golf Club, Inc.*, there is nothing on record to indicate that the closure of respondent's F & B Department was made in bad faith. It was not motivated by any specific and clearly determinable union activity of the employees; rather, it was truly dictated by economic necessity. Despite petitioner's allegations, no convincing and credible proofs were presented to establish the claim that such closure qualifies as an act of union-busting and ULP. No evidence was shown that the closure is stirred not by a desire to avoid further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with the management.[34] Allegations are not proofs and it is incumbent upon petitioner to substantiate the same. On the contrary, respondent continued to negotiate with petitioner even after April 30, 2002. In fact, a Memorandum of Agreement was executed before the NCMB between petitioner and respondent on June 10, 2002 whereby the parties agreed, among others, to maintain the existing provisions of the CBA, except those pertaining to wage increases and signing bonus.[35]

Finally, even if the members of petitioner are not considered as illegally dismissed, they are entitled to separation pay pursuant to Article 283 of the Labor Code, as amended. Per respondent's information, however, the separation packages of all 117 union members were already paid during the pendency of the case.[36]

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[34] See *Carmelcraft Corporation v. NLRC*, 264 Phil. 763, 768 (1990).

[35] CA *rollo*, pp. 92-93.

[36] *Id.* at 646-647, 661-663.

Petitioner did not oppose this representation; hence, We shall treat the fact of receipt of separation pay as having been voluntarily entered into, with a full understanding of its import, and the amount received as credible and reasonable settlement that should be respected by the Court as the law between the parties are valid and binding between them.

WHEREFORE, the foregoing considered, the instant Petition is **DENIED**. The February 2, 2006 Decision and May 29, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 73127 sustaining *in toto* the August 28, 2002 Decision and September 13, 2002 Resolution of Voluntary Arbitrator Jesus B. Diamonon, which dismissed petitioner's complaint for illegal retrenchment, are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174912. July 24, 2013]

BPI EMPLOYEES UNION-DAVAO CITY-FUBU (BPIEU-DAVAO CITY-FUBU), *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS (BPI), and BPI OFFICERS CLARO M. REYES, CECIL CONANAN and GEMMA VELEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; UNFAIR LABOR PRACTICE (ULP); ONLY GROSS VIOLATIONS OF THE ECONOMIC PROVISIONS OF THE CBA ARE TREATED

AS ULP; OTHERWISE, THEY ARE MERE GRIEVANCES.— Article 261 of the Labor Code, which took effect on November 1, 1974. Provides: ART. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* — x x x Accordingly, **violations of a Collective Bargaining Agreement**, except those which are **gross** in character, **shall no longer be treated as unfair labor practice** and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, **gross violations** of Collective Bargaining Agreement shall mean **flagrant and/or malicious refusal to comply with the *economic provisions* of such agreement.** Clearly, only gross violations of the economic provisions of the CBA are treated as ULP. Otherwise, they are mere grievances.

2. ID.; RIGHT TO SELF-ORGANIZATION; NOT VIOLATED WITH THE OUTSOURCING OF JOBS INCLUDED IN THE EXISTING BARGAINING UNIT AS EMPLOYEES THEMSELVES WERE NEITHER TRANSFERRED NOR DISMISSED FROM THE SERVICE.— The Union, insists that jobs being outsourced to BPI Operators Management Corporation (BOMC) were included in the existing bargaining unit, thus, resulting in a reduction of a number of positions in such unit. The reduction interfered with the employees' right to self-organization because the power of a union primarily depends on its strength in number. It is incomprehensible how the "reduction of positions in the collective bargaining unit" interferes with the employees' right to self-organization because the employees themselves were neither transferred nor dismissed from the service. x x x BPI stresses that not a single employee or union member was or would be dislocated or terminated from their employment as a result of the Service Agreement. Neither had it resulted in any diminution of salaries and benefits nor led to any reduction of union membership. As far as the twelve (12) former FEBTC employees are concerned, the Union failed to substantially prove that their transfer, made to complete BOMC's service complement, was motivated by ill will, anti-unionism or bad faith so as to affect or interfere with the employees' right to self-organization. It is to be emphasized that contracting out of services is not illegal *per se*. It is an

exercise of business judgment or management prerogative. Absent proof that the management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer. In this case, bad faith cannot be attributed to BPI because its actions were authorized by CBP Circular No. 1388, Series of 1993 issued by the Monetary Board of the then Central Bank of the Philippines *(now Bangko Sentral ng Pilipinas)*.

3. ID.; CONTRACTING AND SUBCONTRACTING ACTIVITIES; DEPARTMENT ORDER (DO) NO. 10 AND CBP CIRCULAR NO. 1388; HARMONIZED.— The Court is of the view that there is no conflict between D.O. No. 10 and CBP Circular No. 1388. x x x While D.O. No. 10, Series of 1997, enumerates the permissible contracting or subcontracting activities, it is to be observed that, particularly in Sec. 6(d) invoked by the Union, the provision is general in character – "x x x *Works or services not directly related or not integral to the main business or operation of the principal… x x x*." This does not limit or prohibit the appropriate government agency, such as the BSP, to issue rules, regulations or circulars to further and specifically determine the permissible services to be contracted out. CBP Circular No. 1388 enumerated functions which are ancillary to the business of banks, hence, allowed to be outsourced. Thus, sanctioned by said circular, BPI outsourced the cashiering (*i.e.*, cash-delivery and deposit pick-up) and accounting requirements of its Davao City branches. x x x [T]he subject functions appear to be not in any way directly related to the core activities of banks. They are functions in a processing center of BPI which do not handle or manage deposit transactions. Clearly, the functions outsourced are not inherent banking functions, and, thus, are well within the permissible services under the circular. The Court agrees with BPI that D.O. No. 10 is but a guide to determine what functions may be contracted out, subject to the rules and established jurisprudence on legitimate job contracting and prohibited labor-only contracting. Even if the Court considers D.O. No. 10 only, BPI would still be within the bounds of D.O. No. 10 when it contracted out the subject functions. This is because the subject functions were not related or not integral to the

main business or operation of the principal which is the lending of funds obtained in the form of deposits. From the very definition of "banks" as provided under the General Banking Law, it can easily be discerned that banks perform only two (2) main or basic functions — deposit and loan functions. Thus, cashiering, distribution and bookkeeping are but ancillary functions whose outsourcing is sanctioned under CBP Circular No. 1388 as well as D.O. No. 10. Even BPI itself recognizes that deposit and loan functions cannot be legally contracted out as they are directly related or integral to the main business or operation of banks. The CBP's Manual of Regulations has even categorically stated and emphasized on the prohibition against *outsourcing inherent banking functions*, which refer to any contract between the bank and a service provider for the latter to supply, or any act whereby the latter supplies, the manpower to service the deposit transactions of the former. In one case, the Court held that it is management prerogative to farm out any of its activities, *regardless of whether such activity is peripheral or core in nature.* What is of primordial importance is that the service agreement does not violate the employee's right to security of tenure and payment of benefits to which he is entitled under the law. Furthermore, the outsourcing must not squarely fall under labor-only contracting where the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal or if any of the following elements are present: i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the April 5, 2006 Decision[1] and August 17, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 74595 affirming the December 21, 2001[3] and August 23, 2002[4] Resolutions of the National Labor Relations Commission *(NLRC)* in declaring as valid and legal the action of respondent Bank of the Philippine Islands-Davao City *(BPI-Davao)* in contracting out certain functions to BPI Operations Management Corporation *(BOMC).*

The Factual Antecedents

BOMC, which was created pursuant to Central Bank[5] Circular No. 1388, Series of 1993 *(CBP Circular No. 1388, 1993)*, and primarily engaged in providing and/or handling support services for banks and other financial institutions, is a subsidiary of the Bank of Philippine Islands *(BPI)* operating and functioning as an entirely separate and distinct entity.

A service agreement between BPI and BOMC was initially implemented in BPI's Metro Manila branches. In this agreement, BOMC undertook to provide services such as check clearing, delivery of bank statements, fund transfers, card production, operations accounting and control, and cash servicing, conformably with BSP Circular No. 1388. Not a single BPI employee was displaced and those performing the functions, which were transferred to BOMC, were given other assignments.

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, concurring; *rollo*, pp. 84-103.

[2] *Id.* at 105-107.

[3] *Id.* at 53-79.

[4] *Id.* at 81-82.

[5] Now Bangko Sentral ng Pilipinas *(BSP)*.

The Manila chapter of BPI Employees Union *(BPIEU-Metro Manila-FUBU)* then filed a complaint for unfair labor practice *(ULP)*. The Labor Arbiter *(LA)* decided the case in favor of the union. The decision was, however, reversed on appeal by the NLRC. BPIEU-Metro Manila-FUBU filed a petition for c*ertiorari* before the CA which denied it, holding that BPI transferred the employees in the affected departments in the pursuit of its legitimate business. The employees were neither demoted nor were their salaries, benefits and other privileges diminished.[6]

On January 1, 1996, the service agreement was likewise implemented in Davao City. Later, a merger between BPI and Far East Bank and Trust Company *(FEBTC)* took effect on April 10, 2000 with BPI as the surviving corporation. Thereafter, BPI's cashiering function and FEBTC's cashiering, distribution and bookkeeping functions were handled by BOMC. Consequently, twelve (12) former FEBTC employees were transferred to BOMC to complete the latter's service complement.

BPI Davao's rank and file collective bargaining agent, BPI Employees Union-Davao City-FUBU *(Union)*, objected to the transfer of the functions and the twelve (12) personnel to BOMC contending that the functions rightfully belonged to the BPI employees and that the Union was deprived of membership of former FEBTC personnel who, by virtue of the merger, would have formed part of the bargaining unit represented by the Union pursuant to its union shop provision in the CBA.[7]

The Union then filed a formal protest on June 14, 2000 addressed to BPI Vice Presidents Claro M. Reyes and Cecil Conanan reiterating its objection. It requested the BPI management to submit the BOMC issue to the grievance procedure under the CBA, but BPI did not consider it as "grievable." Instead, BPI proposed a Labor Management Conference *(LMC)* between the parties.[8]

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[6] *Rollo*, p. 181.

[7] *Id.* at 87-88.

[8] *Id.* at 88.

During the LMC, BPI invoked management prerogative stating that the creation of the BOMC was to preserve more jobs and to designate it as an agency to place employees where they were most needed. On the other hand, the Union charged that BOMC undermined the existence of the union since it reduced or divided the bargaining unit. While BOMC employees perform BPI functions, they were beyond the bargaining unit's coverage. In contracting out FEBTC functions to BOMC, BPI effectively deprived the union of the membership of employees handling said functions as well as curtailed the right of those employees to join the union.

Thereafter, the Union demanded that the matter be submitted to the grievance machinery as the resort to the LMC was unsuccessful. As BPI allegedly ignored the demand, the Union filed a notice of strike before the National Conciliation and Mediation Board *(NCMB)* on the following grounds:

a) Contracting out services/functions performed by union members that interfered with, restrained and/or coerced the employees in the exercise of their right to self-organization;

b) Violation of duty to bargain; and

c) Union busting.[9]

BPI then filed a petition for assumption of jurisdiction/ certification with the Secretary of the Department of Labor and Employment *(DOLE)*, who subsequently issued an order certifying the labor dispute to the NLRC for compulsory arbitration. The DOLE Secretary directed the parties to cease and desist from committing any act that might exacerbate the situation.

On October 27, 2000, a hearing was conducted. Thereafter, the parties were required to submit their respective position papers. On November 29, 2000, the Union filed its Urgent Omnibus Motion to Cease and Desist with a prayer that BPI-Davao and/ or Mr. Claro M. Reyes and Mr. Cecil Conanan be held in contempt for the following alleged acts of BPI:

[9] *Id.* at 90.

1. The Bank created a Task Force Committee on November 20, 2000 composed of six (6) former FEBTC employees to handle the Cashiering, Distributing, Clearing, Tellering and Accounting functions of the former FEBTC branches but the "task force" conducts its business at the office of the BOMC using the latter's equipment and facilities.

2. On November 27, 2000, the bank integrated the clearing operations of the BPI and the FEBTC. The clearing function of BPI, then solely handled by the BPI Processing Center prior to the labor dispute, is now encroached upon by the BOMC because with the merger, differences between BPI and FEBTC operations were diminished or deleted. What the bank did was simply to get the total of all clearing transactions under BPI but the BOMC employees process the clearing of checks at the Clearing House as to checks coming from former FEBTC branches. Prior to the labor dispute, the run-up and distribution of the checks of BPI were returned to the BPI processing center, now all checks whether of BPI or of FEBTC were brought to the BOMC. Since the clearing operations were previously done by the BPI processing center with BPI employees, said function should be performed by BPI employees and not by BOMC.[10]

On December 21, 2001, the NLRC came out with a resolution upholding the validity of the service agreement between BPI and BOMC and dismissing the charge of ULP. It ruled that the engagement by BPI of BOMC to undertake some of its activities was clearly a valid exercise of its management prerogative.[11] It further stated that the spinning off by BPI to BOMC of certain services and functions did not interfere with, restrain or coerce employees in the exercise of their right to self-organization.[12] The Union did not present even an iota of evidence showing that BPI had terminated employees, who were its members. In fact, BPI exerted utmost diligence, care and effort to see to it that no union member was terminated.[13] The NLRC also stressed

[10] *Id.* at 91.

[11] *Id.* at 93.

[12] *Id.* at 92.

[13] *Id.* at 93.

that Department Order *(D.O.)* No. 10 series of 1997, strongly relied upon by the Union, did not apply in this case as BSP Circular No. 1388, series of 1993, was the applicable rule.

After the denial of its motion for reconsideration, the Union elevated its grievance to the CA *via* a petition for *certiorari* under Rule 65. The CA, however, affirmed the NLRC's December 21, 2001 Resolution with modification that the enumeration of functions listed under BSP Circular No. 1388 in the said resolution be deleted. The CA noted at the outset that the petition must be dismissed as it merely touched on factual matters which were beyond the ambit of the remedy availed of.[14] Be that as it may, the CA found that the factual findings of the NLRC were supported by substantial evidence and, thus, entitled to great respect and finality. To the CA, the NLRC did not act with grave abuse of discretion as to merit the reversal of the resolution.[15]

Furthermore, the CA ratiocinated that, considering the ramifications of the corporate merger, it was well within BPI's prerogatives "to determine what additional tasks should be performed, who should best perform it and what should be done to meet the exigencies of business."[16] It pointed out that the Union did not, by the mere fact of the merger, become the bargaining agent of the merged employees[17] as the Union's right to represent said employees did not arise until it was chosen by them.[18]

As to the applicability of D.O. No. 10, the CA agreed with the NLRC that the said order did not apply as BPI, being a commercial bank, its transactions were subject to the rules and regulations of the BSP.

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[14] *Id.* at 96.

[15] *Id.* at 97.

[16] *Id.* at 98.

[17] *Id.* at 99.

[18] *Id.*

Not satisfied, the Union filed a motion for reconsideration which was, however, denied by the CA.

Hence, the present petition with the following

ASSIGNMENT OF ERRORS:

A. THE PETITION BEFORE THE COURT OF APPEALS INVOLVED QUESTIONS OF LAW AND ITS DECISION DID NOT ADDRESS THE ISSUE OF WHETHER BPI'S ACT OF OUTSOURCING FUNCTIONS FORMERLY PERFORMED BY UNION MEMBERS VIOLATES THE CBA.

B. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT DOLE DEPARTMENT ORDER NO. 10 DOES NOT APPLY IN THIS CASE.

The Union is of the position that the outsourcing of jobs included in the existing bargaining unit to BOMC is a breach of the union-shop agreement in the CBA. In transferring the former employees of FEBTC to BOMC instead of absorbing them in BPI as the surviving corporation in the merger, the number of positions covered by the bargaining unit was decreased, resulting in the reduction of the Union's membership. For the Union, BPI's act of arbitrarily outsourcing functions formerly performed by the Union members and, in fact, transferring a number of its members beyond the ambit of the Union, is a violation of the CBA and interfered with the employees' right to self organization. The Union insists that the CBA covers the agreement with respect, not only to wages and hours of work, but to all other terms and conditions of work. The union shop clause, being part of these conditions, states that the regular employees belonging to the bargaining unit, including those absorbed by way of the corporate merger, were required to join the bargaining union "as a condition for employment." Simply put, the transfer of former FEBTC employees to BOMC removed them from the coverage of unionized establishment. While the Union admitted that BPI has the prerogative to determine what should be done to meet the exigencies of business in accordance with the case of *Sime*

Darby Pilipinas, Inc. v. NLRC,[19] it insisted that the exercise of management prerogative is not absolute, thus, requiring good faith and adherence to the law and the CBA. Citing the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*,[20] the Union claims that it is unfair labor practice for an employer to outsource the positions in the existing bargaining unit.

Position of BPI-Davao

For its part, BPI defended the validity of its service agreement with BOMC on three (3) grounds: 1] that it was pursuant to the prevailing law at that time, CBP Circular No. 1388; 2] that the creation of BOMC was within management prerogatives intended to streamline the operations and provide focus for BPI's core activities; and 3] that the Union recognized, in its CBA, the exclusive right and prerogative of BPI to conduct the management and operation of its business.[21]

BPI argues that the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*,[22] cited by the Union, is not on all fours with the present case. In said case, the company dissolved its security guard section and replaced it with an outside agency, claiming that such act was a valid exercise of management prerogative. The Court, however, ruled against the said outsourcing because there was an express assurance in the CBA that the security guard section would continue to exist. Having failed to reserve its right to effect a dissolution, the company's act of outsourcing and transferring security guards was invalidated by the Court, ruling that the unfair labor practice strike called

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[19] 351 Phil. 1013 (1998).

[20] 148-A Phil. 229 (1971).

[21] Section 1, Article IV. Exclusive Rights and Prerogatives – The UNION all all its members hereby recognize that the management and operation of the business of the BANK which include, among others, the hiring of employees, promotion, transfers, and dismissal for just cause as well as the maintenance of order, discipline and efficiency in its operation are the sole and exclusive prerogative of the BANK.

[22] *Supra* note 20.

by the Union did have the impression of validity. In contrast, there is no provision in the CBA between BPI and the Union expressly stipulating the continued existence of any position within the bargaining unit. For BPI, the absence of this peculiar fact is enough reason to prevent the application of *Shell* to this case.

BPI likewise invokes settled jurisprudence,[23] where the Court upheld the acts of management to contract out certain functions held by employees, and even notably those held by union members. In these cases, the decision to outsource certain functions was a justifiable business judgment which deserved no judicial interference. The only requisite of this act is good faith on the part of the employer and the absence of malicious and arbitrary action in the outsourcing of functions to BOMC.

On the issue of the alleged curtailment of the right of the employees to self-organization, BPI refutes the Union's allegation that ULP was committed when the number of positions in the bargaining was reduced. It cites as correct the CA ruling that the representation of the Union's prospective members is contingent on the choice of the employee, that is, whether or not to join the Union. Hence, it was premature for the Union to claim that the rights of its prospective members to self-organize were restrained by the transfer of the former FEBTC employees to BOMC.

The Court's Ruling

In essence, the primordial issue in this case is whether or not the act of BPI to outsource the cashiering, distribution and bookkeeping functions to BOMC is in conformity with the law and the existing CBA. Particularly in dispute is the validity of the transfer of twelve (12) former FEBTC employees to BOMC, instead of being absorbed in BPI after the corporate merger.

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[23] *Cecille de Ocampo v. NLRC*, G.R. No. 101539, September 4, 1992, 213 SCRA 652; *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912 (1999). G.R. No. 131108, March 25, 1999, *Manila Electric Company v. Quisumbing*, 383 Phil. 47 (2000).

The Union claims that a union shop agreement is stipulated in the existing CBA. It is unfair labor practice for employer to outsource the positions in the existing bargaining unit, citing the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd*.[24]

The Union's reliance on the *Shell Case* is misplaced. The rule now is covered by Article 261 of the Labor Code, which took effect on November 1, 1974.[25] Article 261 provides:

> ART. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* — x x x Accordingly, **violations of a Collective Bargaining Agreement**, except those which are **gross** in character, **shall no longer be treated as unfair labor practice** and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, **gross violations** of Collective Bargaining Agreement shall mean **flagrant and/or malicious refusal to comply with the *economic provisions* of such agreement.** [Emphases supplied]

Clearly, only gross violations of the economic provisions of the CBA are treated as ULP. Otherwise, they are mere grievances.

In the present case, the alleged violation of the union shop agreement in the CBA, even assuming it was malicious and flagrant, is not a violation of an economic provision in the agreement. The provisions relied upon by the Union were those articles referring to the recognition of the union as the sole and exclusive bargaining representative of all rank-and-file employees, as well as the articles on union security, specifically, the maintenance of membership in good standing as a condition for continued employment and the union shop clause.[26] It failed to take into consideration its recognition of the bank's exclusive rights and prerogatives, likewise provided in the CBA, which included the hiring of employees, promotion, transfers, and

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[24] *Supra* note 20.

[25] *Bustamante v. NLRC*, 332 Phil. 833, 839 (1996).

[26] *Rollo*, p. 57.

dismissals for just cause and the maintenance of order, discipline and efficiency in its operations.[27]

The Union, however, insists that jobs being outsourced to BOMC were included in the existing bargaining unit, thus, resulting in a reduction of a number of positions in such unit. The reduction interfered with the employees' right to self-organization because the power of a union primarily depends on its strength in number.[28]

It is incomprehensible how the "reduction of positions in the collective bargaining unit" interferes with the employees' right to self-organization because the employees themselves were neither transferred nor dismissed from the service. As the NLRC clearly stated:

> In the case at hand, the union has not presented even an iota of evidence that petitioner bank has started to terminate certain employees, members of the union. In fact, what appears is that the Bank has exerted utmost diligence, care and effort to see to it that no union member has been terminated. In the process of the consolidation or merger of the two banks which resulted in increased diversification of functions, some of these non-banking functions were merely transferred to the BOMC without affecting the union membership.[29]

BPI stresses that not a single employee or union member was or would be dislocated or terminated from their employment as a result of the Service Agreement.[30] Neither had it resulted in any diminution of salaries and benefits nor led to any reduction of union membership.[31]

As far as the twelve (12) former FEBTC employees are concerned, the Union failed to substantially prove that their transfer, made to complete BOMC's service complement, was

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[27] *Id.* at 125.

[28] *Id.* at 37.

[29] *Id.* at 72-73.

[30] *Id.* at 125-126.

[31] *Id.*

motivated by ill will, anti-unionism or bad faith so as to affect or interfere with the employees' right to self-organization.

It is to be emphasized that contracting out of services is not illegal *per se*. It is an exercise of business judgment or management prerogative. Absent proof that the management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.[32] In this case, bad faith cannot be attributed to BPI because its actions were authorized by CBP Circular No. 1388, Series of 1993[33] issued by the Monetary

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[32] *Manila Electric Company v. Secretary Quisumbing*, 383 Phil. 47, 60 (2000).

[33] CBP CIRCULAR NO. 1388

Series of 1993

The Monetary Board, in its Resolution No. 231 dated March 19, 1993, approved the following amendments to Book I of the Manual of Regulations for Banks and Other Financial Intermediaries:

SECTION 1. The following new section is hereby added after Section 1176 of the Manual:

SECTION 1177. Bank Service Contract. — A bank with expanded commercial banking authority or a commercial bank may engage a bank service bureau or corporation to perform the following services:

(a) data processing systems development and maintenance;

(b) deposit and withdrawal recording;

(c) computation and recording of interests, service charges, penalties, and other fees;

(d) check-clearing processing, such as the transmission and receipt of check-clearing items/tapes to and from the Central Bank (CB), collection and delivery of checks not included in the Philippine Clearing House System, as well as the recording of the same;

(e) printing and delivery of bank statements; and

(f) providing general support services, such as purchasing of bank forms, equipment and supplies; messengerial, janitorial and services; necessary budget and expense accounting, and other similar services.

Banks may enter into contracts covering above-mentioned services, provided that:

1. The performance by the Service Bureau of aforesaid bank services pertinent to deposit operations will not in any way violate laws on secrecy of bank deposits;

Board of the then Central Bank of the Philippines *(now Bangko Sentral ng Pilipinas)*. The circular covered amendments in Book I of the Manual of Regulations for Banks and Other Financial Intermediaries, particularly on the matter of bank service contracts. A finding of ULP necessarily requires the alleging party to prove it with substantial evidence. Unfortunately, the Union failed to discharge this burden.

Much has been said about the applicability of D.O. No. 10. Both the NLRC and the CA agreed with BPI that the said order does not apply. With BPI, as a commercial bank, its transactions are subject to the rules and regulations of the governing agency which is the Bangko Sentral ng Pilipinas.[34] The Union insists that D.O. No. 10 should prevail.

The Court is of the view, however, that there is no conflict between D.O. No. 10 and CBP Circular No. 1388. In fact, they complement each other.

2. There will be no diminution of Central Bank's supervisory and examining authority over banks, nor in any manner impede CB's exercise thereof;

3. The administrative powers of CB over the bank, its directors and officers shall not be impaired by such transfer of activities;

4. The bank remains responsible for the performance of subject activities in the same manner and to the same extent as it was before the transfer of said services to the Bureau;

5. The Service Bureau shall be owned exclusively by banks and shall render services to banks; and

6. The bank shall continue to comply with all laws and regulations, covering the activities performed by the Service Bureau for and in its behalf such as, but may not be limited to, keeping of records and preparation of reports, signing authorities, internal control, and clearing regulations."

SECTION 2. Section 1379(a) is hereby amended by adding a paragraph after item (10), as follows:

"(11) Bank service corporations all of the capital of which is owned by one or more banks and organized to perform for and in behalf of banks the services enumerated in Section 1177."

This Circular shall take effect immediately.

JOSE L. CUISIA, JR.

Governor

[34] *Rollo*, pp. 100-101.

Consistent with the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus*, a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system of jurisprudence.[35] The seemingly conflicting provisions of a law or of two laws must be harmonized to render each effective.[36] It is only when harmonization is impossible that resort must be made to choosing which law to apply.[37]

In the case at bench, the Union submits that while the Central Bank regulates banking, the Labor Code and its implementing rules regulate the employment relationship. To this, the Court agrees. The fact that banks are of a specialized industry must, however, be taken into account. The competence in determining which banking functions may or may not be outsourced lies with the BSP. This does not mean that banks can simply outsource banking functions allowed by the BSP through its circulars, without giving regard to the guidelines set forth under D.O. No. 10 issued by the DOLE.

While D.O. No. 10, Series of 1997, enumerates the permissible contracting or subcontracting activities, it is to be observed that, particularly in Sec. 6(d) invoked by the Union, the provision is general in character — "x x x *Works or services not directly related or not integral to the main business or operation of the principal… x x x.*" This does not limit or prohibit the appropriate government agency, such as the BSP, to issue rules, regulations or circulars to further and specifically determine the permissible services to be contracted out. CBP Circular No. 1388[38] enumerated functions which are ancillary to the

[35] *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 474; *CSC v. CA*, G.R. No. 176162, October 9, 2012, sc.judiciary.gov.ph/jurisprudence/2012/october2012/176162.pdf, (last visited June 17, 2013).

[36] *Remo v. The Honorable Secretary of Foreign Affairs*, G.R. No. 169202, March 5, 2010, 614 SCRA 281, 290.

[37] *Dreamwork Construction, Inc. v. Janiola*, *supra* note 35 at 475.

[38] See Note 33.

business of banks, hence, allowed to be outsourced. Thus, sanctioned by said circular, BPI outsourced the cashiering (*i.e.*, cash-delivery and deposit pick-up) and accounting requirements of its Davao City branches.[39] The Union even described the extent of BPI's actual and intended contracting out to BOMC as follows:

> "As an initiatory move, the functions of the Cashiering Unit of the **Processing Center** of BPI, handled by its regular rank and file employees who are members of the Union, xxx [were] transferred to BOMC with the Accounting Department as next in line. The Distributing, Clearing and Bookkeeping functions of the **Processing Center** of the former FEBTC were likewise contracted out to BOMC."[40]

Thus, the subject functions appear to be not in any way directly related to the core activities of banks. They are functions in a processing center of BPI which does not handle or manage deposit transactions. Clearly, the functions outsourced are not inherent banking functions, and, thus, are well within the permissible services under the circular.

The Court agrees with BPI that D.O. No. 10 is but a guide to determine what functions may be contracted out, subject to the rules and established jurisprudence on legitimate job contracting and prohibited labor-only contracting.[41] Even if the Court considers D.O. No. 10 only, BPI would still be within the bounds of D.O. No. 10 when it contracted out the subject functions. This is because the subject functions were not related or not integral to the main business or operation of the principal which is the lending of funds obtained in the form of deposits.[42] From the

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[39] *Rollo*, pp. 181-182.

[40] *Rollo*, p. 219.

[41] *Rollo*, p. 201.

[42] Sec. 3.1., Chapter I, R.A. No. 8191, The General Banking Law of 2000; *First Planters Pawnshop, Inc. v. CIR*, G.R. No. 174134, July 30, 2008, 560 SCRA 606, 619; *Galvez v. CA*, G.R. No. 187919, April 25, 2012, 671 SCRA 223, 238.

very definition of "banks" as provided under the General Banking Law, it can easily be discerned that banks perform only two (2) main or basic functions — deposit and loan functions. Thus, cashiering, distribution and bookkeeping are but ancillary functions whose outsourcing is sanctioned under CBP Circular No. 1388 as well as D.O. No. 10. Even BPI itself recognizes that deposit and loan functions cannot be legally contracted out as they are directly related or integral to the main business or operation of banks. The CBP's Manual of Regulations has even categorically stated and emphasized on the prohibition against *outsourcing inherent banking functions,* which refer to any contract between the bank and a service provider for the latter to supply, or any act whereby the latter supplies, the manpower to service the deposit transactions of the former.[43]

In one case, the Court held that it is management prerogative to farm out any of its activities, *regardless of whether such activity is peripheral or core in nature*.[44] What is of primordial importance is that the service agreement does not violate the employee's right to security of tenure and payment of benefits to which he is entitled under the law. Furthermore, the outsourcing must not squarely fall under labor-only contracting where the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal or if any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.[45]

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[43] §X162.1 *(2008 – X169.1),* Manual of Regulations for Banks.

[44] *Alviado v. Procter & Gamble Phils., Inc.*, G.R. No. 160506, March 9, 2010, 614 SCRA 563, 577.

[45] *Id.;* Art. 106, Labor Code of the Philippines.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179607. July 24, 2013]

CIRILA MANOTA, for herself and in behalf of her children, CLAIRE, CATHERINE, CHARLES, PHILIP CHRISTOPHER, CARMI JOY, CARLO JOHN and CEDRIC JAMES, *petitioners, vs.* **AVANTGARDE SHIPPING CORPORATION and/or SEMBAWANG JOHNSON MANAGEMENT PTE., LTD,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT OF SEAFARERS; SECTION C (4) (C) OF THE 1989 POEA STANDARD EMPLOYMENT CONTRACT; THAT LIABILITY OF EMPLOYER ATTACHES ONLY WHEN THE SEAMAN SUFFERS INJURY OR ILLNESS "DURING THE TERM" OF HIS CONTRACT; REQUIRES SUBSTANTIAL EVIDENCE.— The employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Under the third paragraph of Enrique's Contract of Employment with respondents, it was stated that the terms and conditions provided under Memorandum Circular No. 41, Series of 1989 and amending circulars relative thereto, shall be strictly

and faithfully observed. Memorandum Circular No. 41, Series of 1989, or the "Revised Standard Employment Contract of All Filipino Seamen On Board Ocean-Going Vessels," as amended by POEA Memorandum Circular No. 05, Series of 1994, provides for the minimum requirements prescribed by the Government for the Filipino seafarer's overseas employment. x x x [Under] Section C (4) (c) of the 1989 POEA Standard Employment Contract (SEC), as amended, x x x [on] the liabilities of the employer when the seaman suffers injury or illness during the term of his contract, x x x it must be shown that the injury or illness was contracted during the term of the employment contract. The unqualified phrase "during the term" covered all injuries or illnesses occurring during the lifetime of the contract. And it is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence. Often described as more than a mere scintilla, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Any decision based on unsubstantiated allegations cannot stand as it will offend due process. Hence, the burden to prove entitlement to disability benefits lies on petitioners, thus they must establish that Enrique had contracted his illness which resulted to his disability during the term of the employment contract.

2. ID.; ID.; ID.; MANDATORY RULE THAT SEAMAN REPATRIATED FOR MEDICAL TREATMENT MUST SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN THREE WORKING DAYS FROM ARRIVAL IN THE PHILIPPINES; EXCEPTION.— [A]ssuming *arguendo* that Enrique was repatriated for medical treatment as he claimed, the provision clearly provides that it is mandatory for a seaman to submit himself to a post-employment medical examination within three (3) working days from his arrival in the Philippines before his right to a claim for disability or death benefits can prosper. The provision, however, admits of exception, *i.e.*, when the seafarer is physically incapacitated to do so, but there must be a written notice to the agency within the same period for the seaman to be considered to have complied with the 3-day

rule. The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment. x x x [T]he post-employment medical examination within 3 days from Enrique's arrival is required in order to ascertain his physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioners.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this Petition for Review on *Certiorari* is the Decision[1] dated January 30, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 70415, which affirmed *in toto* the Decision[2] dated June 8, 2001 and the Resolution[3] dated January 30, 2002 issued by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026489-00, which reversed the decision of the Labor Arbiter (LA) granting Enrique Manota's claim for

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Renato C. Dacudao and Hakim S. Abdulwahid, concurring; *rollo*, pp. 158-166.

[2] Per Commissioner Vicente S .E. Veloso, with Presiding Commissioner Roy V. Señeres and Alberto R. Quimpo, concurring; *id.* at 114-131.

[3] *Id.* at 141-143.

disability benefits. Also assailed is the CA Resolution[4] dated September 3, 2007 denying reconsideration thereof.

On April 10, 1996, Avantgarde Shipping Corporation, the local manning agent of Sembawang Johnson Mgt. Pte. Ltd. (respondents), hired Enrique Manota (Enrique) as an able seaman for a period of 7 months with a monthly salary of US$569.00, fixed monthly overtime pay of US$296.00, and monthly vacation leave with pay of US$108.00.[5] Their employment contract incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as prescribed by the Philippine Overseas Employment Administration (POEA).[6]

On April 23, 1996, Enrique departed from the Philippines to join his vessel "Henriette Kosan." He was repatriated on November 30, 1996 and arrived in the Philippines on December 2, 1996.

On January 6, 1997, Enrique had himself examined at the United Doctors Medical Center (UDMC), Quezon City, where he underwent an x-ray examination and the result[7] of which showed that he had pneumonia/ tuberculosis foci. On May 18, 1997, he also went to the Clinica Anda Laboratory, Davao City, for blood chemistry where it was shown that he had an elevated blood sugar.[8] Subsequent laboratory examinations showed a slight decrease in his blood sugar level.[9]

On November 4, 1999, Enrique went to the Seamen's Hospital for an examination where he was diagnosed as suffering from

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[4] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Hakim S. Abdulwahid and Lucenito N. Tagle, concurring; *rollo*, pp. 168-170.

[5] *Id.* at 37.

[6] *Id.*

[7] *Id.* at 43.

[8] *Id.* at 38.

[9] *Id.* at 39-41.

Diabetes Mellitus II, PTB cavitary class 3, and movement disorder (Ataxia) affecting the left side upper and lower extremities.[10] Based on such condition, he was deemed to have impediment Grade 1 disability and was deemed unfit for sea duty.[11]

On November 18, 1999, Enrique consulted with Dr. Efren Vicaldo for the assessment of his disability and for which the latter issued a medical certificate[12] on the same day confirming the former's disability as rated Grade 1. Thus, Enrique claimed from respondents disability and other benefits which were all denied.

Consequently, Enrique filed with the LA a Complaint[13] for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees. He alleged that after working with respondents as a seaman for 7 months, he was placed on repatriated illness on November 30, 1996 and arrived in the Philippines on December 2, 1996; that from the time he embarked from the vessel up to the filing of the complaint, he had yet to receive his sickness allowance equivalent to his basic wage for a period of 120 days; and that since his permanent total disability occurred during the term of his employment contract, he is entitled to Grade 1 disability under the POEA Schedule of Benefits in the amount of US$50,000.00. He also asked for moral and exemplary damages, and attorney's fees.[14]

In their Position Paper,[15] respondents contended that Enrique was not entitled to his claim on the ground of prescription, since the case was filed after almost three years from the expiration of the contract; that his failure to institute the case within one year as prescribed by the rules was fatal, hence, the complaint must be dismissed for lack of merit. Respondents also argued

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[10] *Id.* at 45.

[11] *Id*.

[12] *Id.* at 46.

[13] *Id.* at 47.

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

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

in their Reply[16] that Enrique was not entitled to claim for sickness allowance or disability benefits as he failed to comply with the post-employment medical examination within 3 days from his arrival.

On September 29, 2000, LA Daisy G. Cauton-Barcelona issued a Decision,[17] the decretal portion of which reads:

> WHEREFORE, as above discussed, respondents Avantgarde Shipping Corporation and Sembawang Johnson Management PTE., Ltd. are hereby ordered jointly and severally to pay the complainant his total disability benefit (Grade 1) in the amount of FIFTY THOUSAND DOLLARS (US$50,000.00) and attorney's fees equivalent to ten (10%) percent hereof.
>
> All other claims are dismissed for lack of merit.[18]

In so ruling, the LA found that the proximity of the time of Enrique's arrival in the Philippines on December 2, 1996 to the time he had his medical examination at the UDMC Hospital on January 6, 1997 where his x-ray result showed that he was suffering from pneumonia/tuberculosis foci, and the laboratory results showed high level of blood sugar, indicated that his sickness was contracted during the term of his employment contract; that the compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of the employment, but rather if the disease or injury is work-related or is aggravated by his working condition. The LA observed that before Enrique's hiring, he underwent a medical examination and was declared fit to work, but after 7 months of work was found suffering from pneumonia/tuberculosis foci, thus, it concluded that Enrique contracted the disease during the term of his employment.

Aggrieved, respondents filed their memorandum on appeal[19] with the NLRC, to which Enrique filed his Comment/Opposition thereto.[20]

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[16] *Id.* at 66-69.

[17] *Id.* at 75-83.

[18] *Id.* at 83.

[19] *Id.* at 84-104.

[20] *Id.* at 105-112.

On June 8, 2001, the NLRC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the decision of [the] Labor Arbiter below is SET ASIDE. The complaint below is dismissed for lack of merit.

SO ORDERED.[21]

The NLRC adopted the findings of LA Cristeta D. Tamayo to whom it referred the case for report and recommendation. The NLRC found that Enrique failed to adduce any evidence which established that he contracted or suffered from pneumonia/ tuberculosis foci while in the employ of respondents from April 23, 1996 to November 30, 1996 as there was not a single medical certificate issued while he was still on board the vessel; that what he presented were medical certificates issued long after he had already disembarked from the vessel. It also observed that the earliest date of Enrique's medical certificate was January 6, 1997 which was two months after his disembarkation, thus if he was indeed repatriated for medical reasons, he should have submitted a medical certificate which bore a date close to his disembarkation; and that absent any proof that he was repatriated due to medical reasons, the conclusion was that Enrique was repatriated upon completion of his seven-month contract.

The NLRC found that under Section 20 B-3 of Memorandum Circular No. 55, a seafarer who is medically repatriated should submit himself to a post-employment medical examination within three days upon his return or to notify the agency within the same period of his physical incapacity to do so, and the failure to comply would result in the forfeiture of the right to sickness allowance and disability benefits; that Enrique's admission that he was physically examined only on January 6, 1997, which was more than one month from the date of his arrival in the Philippines, therefore, forfeited his right to any disability benefit, even if we are to assume *arguendo* that it existed. The NLRC also noted that Enrique failed to give any reason for the delay in filing his claim, *i.e.*, two years and eleven months from his

[21] *Id.* at 130.

disembarkation; and, that despite Enrique's alleged continuous medical treatment, he never requested for payment or reimbursement of his medical expenses from respondents.

Enrique filed a petition for *certiorari* with the CA. After the parties submitted their respective pleadings, the case was submitted for decision.

On January 30, 2007, the CA issued its assailed Decision dismissing the petition for lack of merit and affirming *in toto* the NLRC decision. Enrique's motion for reconsideration was denied in a Resolution dated September 3, 2007.

Still dissatisfied, hence, this petition for review on *certiorari* is filed. Enrique died on October 19, 2004,[22] thus, the instant petition is filed by his widow, for herself and in behalf of her children.

The issue for resolution is whether or not petitioners are entitled to claim disability benefits from respondents.

The employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.[23]

Under the third paragraph of Enrique's Contract of Employment[24] with respondents, it was stated that the terms and conditions provided under Memorandum Circular No. 41, Series of 1989 and amending circulars relative thereto, shall be strictly and faithfully observed. Memorandum Circular No. 41, Series of 1989, or the "Revised Standard Employment Contract of All Filipino Seamen On Board Ocean-Going Vessels," as

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[22] *Id.* at 34.

[23] *Crew and Ship Management International, Inc. and Salena Inc. v. Jina T. Soria*, G.R. No. 175491, December 10, 2012, citing *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010, 621 SCRA 361, 369.

[24] *Rollo*, p. 37.

amended by POEA Memorandum Circular No. 05, Series of 1994, provides for the minimum requirements prescribed by the Government for the Filipino seafarer's overseas employment. This Circular is applicable in this case instead of Memorandum Circular No. 55, Series of 1996 applied by the NLRC, since the latter took effect on January 1, 1997 while Enrique's employment was terminated with his repatriation on November 30, 1996. Section C (4) (c) of the 1989 POEA Standard Employment Contract (SEC), as amended, provides:

SECTION C. COMPENSATION AND BENEFITS

x x x x x x x x x

4. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

x x x x x x x x x

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

Based on the foregoing provision, it must be shown that the injury or illness was contracted during the term of the employment contract. The unqualified phrase "during the term" covered all injuries or illnesses occurring during the lifetime of the contract.[25]

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[25] *Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 269, citing *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 334 (2006).

And it is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[26] Often described as more than a mere scintilla, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[27] Any decision based on unsubstantiated allegations cannot stand as it will offend due process.[28] Hence, the burden to prove entitlement to disability benefits lies on petitioners, thus they must establish that Enrique had contracted his illness which resulted to his disability during the term of the employment contract.

A review of the records shows that petitioners failed to prove by substantial evidence that Enrique's illness which resulted to his disability was acquired during the term of his employment contract. There was no record of medical complaint lodged by Enrique during his employment on board the vessel "Henriette Kosan" and even after his arrival in the Philippines on December 2, 1996. As the NLRC correctly observed, the medical certificates submitted were issued long after Enrique had disembarked from the vessel. Except for their bare allegation, petitioners failed to present any evidence that would indeed establish that Enrique contracted his illness during his employment. In fact, respondents were not even aware or apprised of Enrique's illness which was allegedly contracted during the term of his employment contract until the latter claimed for disability benefits almost 3

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[26] *Id*.

[27] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna*, G.R. No. 172086, December 3, 2012, citing *Abosta Shipmanagement Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 163252, July 27, 2011, 654 SCRA 505, 513-514.

[28] *Crew and Ship Management International Inc. and Salena Inc. v. Jina T. Soria*, G.R.No. 175491, December 10, 2012, citing *Aya-ay, Sr. v. Arpaphil Shipping Corporation*, 516 Phil. 628, 642, (2006), citing *De Paul/ King Philip Customs Tailor v. National Labor Relations Commission*, 364 Phil. 91, 102 (1999).

years later. Thus, we give credence to respondents' claim that Enrique was repatriated to the Philippines due to the completion of his employment contract and not on account of medical reason.

But assuming *arguendo* that Enrique was repatriated for medical treatment as he claimed, the above-quoted provision clearly provides that it is mandatory for a seaman to submit himself to a post-employment medical examination within three (3) working days from his arrival in the Philippines before his right to a claim for disability or death benefits can prosper. The provision, however, admits of exception, *i.e.*, when the seafarer is physically incapacitated to do so, but there must be a written notice to the agency within the same period for the seaman to be considered to have complied with the 3-day rule. The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.[29]

In this case, Enrique admitted that he had his physical examination at the UDMC on January 6, 1997, which was more than a month from his arrival in the Philippines, and his x-ray result showed that he had pneumonia/tuberculosis foci. Clearly, Enrique failed to comply with the required post-employment medical examination within 3 days from his arrival and there was no showing that he was physically incapacitated to do so to justify his non-compliance. Since the mandatory reporting is a requirement for a disability claim to prosper, Enrique's non-compliance thereto forfeits petitioners' right to claim the benefits[30] as to grant the same would not be fair to respondents.

Petitioners try to justify Enrique's non-compliance with the post-employment medical examination by alleging that such

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[29] *Crew and Ship Management International Inc. and Salena Inc. v. Jina T. Soria*, G.R.No. 175491, December 10, 2012.

[30] *Id*.

requirement applies only if the seafarer is fully aware that he already has the illness upon his disembarkation but not when he is not aware of its existence as the symptoms have not yet manifested, as in this case.

We find the argument unmeritorious.

Petitioners' admission that no symptoms of Enrique's illness had manifested at the time of his arrival in the Philippines revealed that he indeed was not suffering of any ailment then, and was even in good health upon his arrival which even bolstered our earlier findings that he was repatriated due to the completion of his employment contract and not due to any medical reason. Moreover, the post-employment medical examination within 3 days from Enrique's arrival is required in order to ascertain his physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits.[31] It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time.[32] In such a case, the employers would have no protection against unrelated disability claims.[33]

Petitioners contend that considering Enrique was declared fit to work prior to his embarkation on board the vessel, but upon his x-ray examination on January 6, 1997 had pneumonia/ tuberculosis foci, this circumstance would establish that he already had the illness while still on board the vessel as it was quite impossible for him to have acquired the illness only within 35 days upon his arrival in the Philippines on December 2, 1996.

We do not agree.

The fact that Enrique's pre-employment medical examination showed that he was fit to work would not necessarily follow

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[31] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 681.

[32] *Id.*

[33] *Id.*

that his illness was acquired during his employment as a seaman. To reiterate, there was no showing of any medical complaint from him while still on board the vessel. He also did not comply with the mandatory post-employment medical examination within 3 days from arrival in the Philippines where the designated physician could have evaluated his medical condition. More importantly, except for petitioners' bare allegation that Enrique could not have acquired his illness within the period of 35 days upon his disembarkation, they have not presented any concrete proof or medical expert opinion to substantiate their claim.

The case of *Wallem v. NLRC*[34] relied upon by petitioners finds no application in this case. In *Wallem*, the deceased seaman was discharged from the vessel two months before the expiration of his employment contract. We ruled then that the only plausible reason why he was all of a sudden and with no rational explanation discharged from the vessel was the finding that he was already in a deteriorating physical condition when he left the vessel. Our conclusion was buttressed by the events that transpired immediately upon his arrival in the Philippines, *i.e.*, he was hospitalized two (2) days later and died three (3) months after. Thus, we held then that the deceased seaman's failure to comply with the 3-day post-employment medical examination requirement was excusable as he was already physically incapacitated to do so since he was already ill when he left the vessel. We also ruled that even assuming that the seaman's ailment as argued by the employers was pre-existing, *i.e.*, contracted prior to his employment on board the vessel, was not a drawback to the compensability of the disease. Thus, we said that it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death. In contrast to this case, Enrique's failure to comply with the mandatory 3-day reporting was not justified at all as there was no showing that he was

[34] 376 Phil. 738 (1999).

physically incapacitated to do so. Moreover, as admitted, Enrique had no symptoms of any illness during his employment and even after his arrival in the Philippines on December 2, 1996. And there was no concrete evidence to establish that his employment contributed to his illness.

Finally, considering that the NLRC decision, as affirmed by the CA, dismissed Enrique's complaint not on the ground of prescription but after finding that the latter failed to adduce evidence that he contracted his illness during his employment with respondents and since he failed to submit himself to the post-employment medical examination without justifiable reason, we find no need to discuss petitioners' claim that the instant complaint was not barred by prescription.

WHEREFORE, the petition is **DENIED.** The Decision dated January 30, 2007 and the Resolution dated September 3, 2007 of the Court of Appeals, in CA-G.R. SP No. 70415, are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179786. July 24, 2013]

JOSIELENE LARA CHAN, *petitioner, vs.* **JOHNNY T. CHAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PHYSICIAN-PATIENT PRIVILEGED COMMUNICATION RULE; ELUCIDATED.—

The physician-patient privileged communication rule essentially means that a physician who gets information while professionally attending a patient cannot in a civil case be examined without the patient's consent as to any facts which would blacken the latter's reputation. This rule is intended to encourage the patient to open up to the physician, relate to him the history of his ailment, and give him access to his body, enabling the physician to make a correct diagnosis of that ailment and provide the appropriate cure. Any fear that a physician could be compelled in the future to come to court and narrate all that had transpired between him and the patient might prompt the latter to clam up, thus putting his own health at great risk.

2. ID.; ID.; PRESENTATION OF EVIDENCE; OBJECTION THERETO SHOULD BE AT THE TIME THEY ARE OFFERED "DURING TRIAL".— The case presents a procedural issue, given that the time to object to the admission of evidence, such as the hospital records, would be at the time they are offered. The offer could be made part of the physician's testimony or as independent evidence that he had made entries in those records that concern the patient's health problems. Section 36, Rule 132, states that objections to evidence must be made after the offer of such evidence for admission in court. x x x Since the offer of evidence is made at the trial, Josielene's request for subpoena *duces tecum* is premature. She will have to wait for trial to begin before making a request for the issuance of a subpoena *duces tecum* covering Johnny's hospital records. It is when those records are produced for examination at the trial, that Johnny may opt to object, not just to their admission in evidence, but more so to their disclosure.

3. ID.; ID.; PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS; DOCUMENTS MUST NOT BE PRIVILEGED; HOSPITAL RECORDS ARE PRIVILEGED INFORMATION THAT CANNOT BE ALLOWED WITHOUT PATIENT'S CONSENT.— It is possible to treat Josielene's motion for the issuance of a subpoena *duces tecum* covering the hospital records as a motion for production of documents, a discovery procedure available to a litigant prior to trial [under] Section 1, Rule 27 of the Rules of Civil Procedure. x x x But the right to compel the production of documents has a limitation; the documents to be disclosed are "not privileged." [Thus,] to allow the disclosure during discovery

procedure of the hospital records — the results of tests that the physician ordered, the diagnosis of the patient's illness, and the advice or treatment he gave him — would be to allow access to evidence that is inadmissible without the patient's consent. Physician memorializes all these information in the patient's records. Disclosing them would be the equivalent of compelling the physician to testify on privileged matters he gained while dealing with the patient, without the latter's prior consent.

LEONEN, *J., concurring opinion*:

REMEDIAL LAW; CIVIL PROCEDURE; PHYSICAL AND MENTAL EXAMINATION OF PERSONS; MAY BE ORDERED BY THE COURT WHEN THE MENTAL AND/OR PHYSICAL CONDITION OF THE PARTY IS IN CONTROVERSY; DISCUSSED.— I agree that the hospital records of respondent Johnny Chan may not be produced in court without his/her consent. Issuance of a subpoena *duces tecum* for its production will violate the physician-patient privilege rule under Rule 130, Sec. 24(c) of the Rules of Civil Procedure. However, this privilege is not absolute. The request of petitioner for a copy of the medical records has not been properly laid. Instead of a request for the issuance of a subpoena *duces tecum,* Josielene Lara Chan should avail of the mode of discovery under Rule 28 of the Rules of Civil Procedure. Discovery procedures provide a balance between the need of the plaintiff or claimant to fully and fairly establish her case and the policy to protect — to a certain extent — communication made between a patient and his doctor. Hence, the physician-patient privilege does not cover information discovered under Rule 28. This procedure is availed with the intention of making the results public during trial. Along with other modes of discovery, this would prevent the trial from being carried on in the dark.

APPEARANCES OF COUNSEL

Ubano Sianghio Lozada & Cabantac for petitioner.
Fragante Pooten Ferrer Fayre & Associates for respondent.

D E C I S I O N

ABAD, *J.:*

This case is about the propriety of issuing a subpoena *duces tecum* for the production and submission in court of the respondent husband's hospital record in a case for declaration of nullity of marriage where one of the issues is his mental fitness as a husband.

The Facts and the Case

On February 6, 2006 petitioner Josielene Lara Chan (Josielene) filed before the Regional Trial Court (RTC) of Makati City, Branch 144 a petition for the declaration of nullity of her marriage to respondent Johnny Chan (Johnny), the dissolution of their conjugal partnership of gains, and the award of custody of their children to her. Josielene claimed that Johnny failed to care for and support his family and that a psychiatrist diagnosed him as mentally deficient due to incessant drinking and excessive use of prohibited drugs. Indeed, she had convinced him to undergo hospital confinement for detoxification and rehabilitation.

Johnny resisted the action, claiming that it was Josielene who failed in her wifely duties. To save their marriage, he agreed to marriage counseling but when he and Josielene got to the hospital, two men forcibly held him by both arms while another gave him an injection. The marriage relations got worse when the police temporarily detained Josielene for an unrelated crime and released her only after the case against her ended. By then, their marriage relationship could no longer be repaired.

During the pre-trial conference, Josielene pre-marked the Philhealth Claim Form[1] that Johnny attached to his answer as proof that he was forcibly confined at the rehabilitation unit of a hospital. The form carried a physician's handwritten note that Johnny suffered from "methamphetamine and alcohol abuse." Following up on this point, on August 22, 2006 Josielene filed with the RTC a request for the issuance of a subpoena *duces*

[1] Annex "B".

tecum addressed to Medical City, covering Johnny's medical records when he was there confined. The request was accompanied by a motion to "be allowed to submit in evidence" the records sought by subpoena *duces tecum*.[2]

Johnny opposed the motion, arguing that the medical records were covered by physician-patient privilege. On September 13, 2006 the RTC sustained the opposition and denied Josielene's motion. It also denied her motion for reconsideration, prompting her to file a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 97913, imputing grave abuse of discretion to the RTC.

On September 17, 2007 the CA[3] denied Josielene's petition. It ruled that, if courts were to allow the production of medical records, then patients would be left with no assurance that whatever relevant disclosures they may have made to their physicians would be kept confidential. The prohibition covers not only testimonies, but also affidavits, certificates, and pertinent hospital records. The CA added that, although Johnny can waive the privilege, he did not do so in this case. He attached the Philhealth form to his answer for the limited purpose of showing his alleged forcible confinement.

Question Presented

The central question presented in this case is:

Whether or not the CA erred in ruling that the trial court correctly denied the issuance of a subpoena *duces tecum* covering Johnny's hospital records on the ground that these are covered by the privileged character of the physician-patient communication.

The Ruling of the Court

Josielene requested the issuance of a subpoena *duces tecum* covering the hospital records of Johnny's confinement, which

[2] *Rollo*, pp. 69-72.

[3] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

records she wanted to present in court as evidence in support of her action to have their marriage declared a nullity. Respondent Johnny resisted her request for subpoena, however, invoking the privileged character of those records. He cites Section 24(c), Rule 130 of the Rules of Evidence which reads:

> SEC. 24. *Disqualification by reason of privileged communication*.— The following persons cannot testify as to matters learned in confidence in the following cases:
>
> x x x x x x x x x
>
> (c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

The physician-patient privileged communication rule essentially means that a physician who gets information while professionally attending a patient cannot in a civil case be examined without the patient's consent as to any facts which would blacken the latter's reputation. This rule is intended to encourage the patient to open up to the physician, relate to him the history of his ailment, and give him access to his body, enabling the physician to make a correct diagnosis of that ailment and provide the appropriate cure. Any fear that a physician could be compelled in the future to come to court and narrate all that had transpired between him and the patient might prompt the latter to clam up, thus putting his own health at great risk.[4]

1. The case presents a procedural issue, given that the time to object to the admission of evidence, such as the hospital records, would be at the time they are offered. The offer could be made part of the physician's testimony or as independent

[4] Francisco, *The Revised Rules of Court of the Philippines*, Volume VII, Part I, 1997 ed., p. 282, citing *Will of Bruendi*, 102 Wis. 47, 78 N.W. 169 and *McRae v. Erickson*, 1 Cal. App. 326.

evidence that he had made entries in those records that concern the patient's health problems.

Section 36, Rule 132, states that objections to evidence must be made after the offer of such evidence for admission in court. Thus:

> SEC. 36. *Objection*.— Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.
>
> In any case, the grounds for the objections must be specified.

Since the offer of evidence is made at the trial, Josielene's request for subpoena *duces tecum* is premature. She will have to wait for trial to begin before making a request for the issuance of a subpoena *duces tecum* covering Johnny's hospital records. It is when those records are produced for examination at the trial, that Johnny may opt to object, not just to their admission in evidence, but more so to their disclosure. Section 24(c), Rule 130 of the Rules of Evidence quoted above is about non-disclosure of privileged matters.

2. It is of course possible to treat Josielene's motion for the issuance of a subpoena *duces tecum* covering the hospital records as a motion for production of documents, a discovery procedure available to a litigant prior to trial. Section 1, Rule 27 of the Rules of Civil Procedure provides:

> SEC. 1. *Motion for production or inspection; order*.— Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, **not privileged**, which constitute or contain evidence material to any matter involved in

the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (Emphasis supplied)

But the above right to compel the production of documents has a limitation: the documents to be disclosed are "not privileged."

Josielene of course claims that the hospital records subject of this case are not privileged since it is the "testimonial" evidence of the physician that may be regarded as privileged. Section 24(c) of Rule 130 states that the physician "cannot in a civil case, without the consent of the patient, be examined" regarding their professional conversation. The privilege, says Josielene, does not cover the hospital records, but only the examination of the physician at the trial.

To allow, however, the disclosure during discovery procedure of the hospital records—the results of tests that the physician ordered, the diagnosis of the patient's illness, and the advice or treatment he gave him—would be to allow access to evidence that is inadmissible without the patient's consent. Physician memorializes all these information in the patient's records. Disclosing them would be the equivalent of compelling the physician to testify on privileged matters he gained while dealing with the patient, without the latter's prior consent.

3. Josielene argues that since Johnny admitted in his answer to the petition before the RTC that he had been confined in a hospital against his will and in fact attached to his answer a Philhealth claim form covering that confinement, he should be deemed to have waived the privileged character of its records. Josielene invokes Section 17, Rule 132 of the Rules of Evidence that provides:

SEC. 17. *When part of transaction, writing or record given in evidence, the remainder admissible*.— When part of an act,

declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, writing or record is given in evidence, any other act, declaration, conversation, writing or record necessary to its understanding may also be given in evidence.

But, trial in the case had not yet begun. Consequently, it cannot be said that Johnny had already presented the Philhealth claim form in evidence, the act contemplated above which would justify Josielene into requesting an inquiry into the details of his hospital confinement. Johnny was not yet bound to adduce evidence in the case when he filed his answer. Any request for disclosure of his hospital records would again be premature.

For all of the above reasons, the CA and the RTC were justified in denying Josielene her request for the production in court of Johnny's hospital records.

ACCORDINGLY, the Court **DENIES** the petition and **AFFIRMS** the Decision of the Court of Appeals in CA-G.R. SP 97913 dated September 17, 2007.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I concur but add the following points:

I agree that the hospital records of respondent Johnny Chan may not be produced in court without his/her consent. Issuance of a subpoena *duces tecum* for its production will violate the physician-patient privilege rule under Rule 130, Sec. 24(c)[1] of the Rule of Civil Procedure.

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[1] RULES OF COURT, Rule 130, Sec. 24(c) provides:

However, this previlege is not absolute. The request of petitioner for a copy of medical records has not been properly laid.

Instead of a request for the issuance of a subpoena *duces tecum*, Josielene Lara Chan should avail of the mode of discovery under Rule 28 of the Rules of Civil Procedure.

Rule 28 pertains to the physical or mental examination of persons. This may be ordered by the court, in its discretion,[2] upon motion and showing of good cause[3] by the requesting party is in controversy.[4] Aside from showing good cause, the requesting party is needs only to notify the party to be examined (and all other parties) and specify the time, place, manner, conditions, and scope of the examination, including the name of the physician who will conduct the examination.[5]

The examined party may obtain a copy of the examining physician's report concerning his/her mental or physical examination.[6] The requesting party shall deliver this report to him/her.[7] After such delivery, however, the requesting party becomes entitled to any past or future medical report involving the same mental or physical condition.[8] Upon motion and notice, the court may order the examined party to deliver those medical

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> A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

[2] RULES OF COURT, Rule 28, Sec 1.

[3] RULES OF COURT, Rule 28, Sec 2.

[4] RULES OF COURT, Rule 28, Sec 1.

[5] RULES OF COURT, Rule 28, Sec 2.

[6] RULES OF COURT, Rule 28, Sec 3.

[7] RULES OF COURT, Rule 28, Sec 3.

[8] RULES OF COURT, Rule 28, Sec 3.

reports to the requesting party if the examined party refuses to do so.[9]

Moreover, if the examined party request a copy of the examining physician's report or if he/she takes the examining physician's deposition, the request waives the examined party's privileges when the testimony of any person who examined or will examine his/her mental of physical status is taken in the action or in any action involving the same controversy.[10]

Discovery procedures provide a balance between the need of the plaintiff or claimant to fully and fairly establish her case and the policy to protect - to a certain extent - communications made between a patient and his doctor. Hence, the physician-patient privilege does not cover information discovered under Rule 28. This procedure is availed with the intention of making the results public during trial. A long with other modes of discovery, this would prevent the trial from being carried on in the dark.[11]

In view of the foregoing, I vote to DENY the petition.

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[9] RULES OF COURT, Rule 28, Sec 3.

[10] RULES OF COURT, Rule 28, Sec 4.

[11] *Republic v. Sandiganbayan, Tantoco and Santiago,* G.R. No. 90478, November 21, 1991, 204 SCRA 212.

FIRST DIVISION

[G.R. No. 181163. July 24, 2013]

ASIAN TERMINALS, INC., *petitioner, vs.* **PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.),** *respondent.*

[G.R. No. 181262. July 24, 2013]

PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.), *petitioner, vs.* **WESTWIND SHIPPING CORPORATION and ASIAN TERMINALS, INC.,** *respondents.*

[G.R. No. 181319. July 24, 2013]

WESTWIND SHIPPING CORPORATION, *petitioner, vs.* **PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.) and ASIAN TERMINALS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE PROPER; EXCEPTIONS; IN CASE OF CONFLICT IN FINDINGS.— [T]he resolution of the issues raised by the present petitions is predicated on the appreciation of factual issues which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is settled that in petitions for review on *certiorari*, only questions of law may be put in issue. Questions of fact cannot be entertained. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or

relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. x x x, [T]he Court may nonetheless resolve questions of fact when the case falls under any of the following exceptions: x x x (5) when the findings of fact are conflicting. x x x (7) when the findings are contrary to those of the trial court.

2. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; RIGHT OF SUBROGATION; PAYMENT BY THE INSURER OF THE INSURANCE CLAIM; EFFECT.— The right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Petitioner Philam's action finds support in Article 2207 of the Civil Code, which provides as follows: Art. 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. x x x. In *Malayan Insurance Co., Inc. v. Alberto*, the Court explained the effect of payment by the insurer of the insurance claim in this wise: We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured 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. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PUBLIC AND PRIVATE DOCUMENTS, DISTINGUISHED.— The nature of documents as either public or private determines how the documents may be presented as evidence in court. Public documents, as enumerated under Section 19, Rule 132 of the Rules of Court, are self-authenticating and require no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed or instrument executed by a private person without the intervention of a notary or other

person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner prescribed under Section 20, Rule 132 of the Rules.

4. ID.; ID.; ID.; ID.; AUTHENTICATION OF PRIVATE DOCUMENT; WHEN EXCUSED.— The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules; (b) when the genuineness and authenticity of the actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.

5. COMMERCIAL LAW; CARRIAGE OF GOODS BY SEA ACT (COGSA); APPLICABLE TO ALL CONTRACTS FOR THE CARRIAGE OF GOODS BY SEA TO AND FROM PHILIPPINE PORTS IN FOREIGN TRADE; PRESCRIPTIVE PERIOD FOR FILING AN ACTION FOR THE LOSS OR DAMAGE OF THE GOODS UNDER THE COGSA.— The Carriage of Goods by Sea Act (COGSA) or Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of Commonwealth Act (C.A.) No. 65. x x x The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3, thus: (6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery. Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject

of joint survey or inspection. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

6. ID.; LETTER OF CREDIT; ELUCIDATED.— A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of his goods before paying. However, letters of credit are employed by the parties desiring to enter into commercial transactions, not for the benefit of the issuing bank but mainly for the benefit of the parties to the original transaction.

7. ID.; CARRIAGE OF GOODS BY SEA ACT (COGSA); LOSS OR DAMAGE; NOTICE REQUIREMENT; REQUEST FOR, AND THE RESULT OF A BAD ORDER EXAMINATION, DONE WITHIN THE REGLEMENTARY PERIOD FOR FURNISHING NOTICE OF LOSS OR DAMAGE TO THE CARRIER OR ITS AGENT, SERVES THE PURPOSE OF A CLAIM.— We have held in *Insurance Company of North America v. Asian Terminals, Inc.* that a request for, and the result of a bad order examination, done within the reglementary period for furnishing notice of loss or damage to the carrier or its agent, serves the purpose of a claim. A claim is required to be filed within the reglementary period to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available. x x x Moreover, paragraph (6), Section 3 of the COGSA clearly states that failure to comply with the notice requirement shall not affect or prejudice the right of the shipper to bring suit within one year after delivery of the goods.

8. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; VIGILANCE OVER THE GOODS; EXTRAORDINARY

DILIGENCE, REQUIRED.— Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.

9. COMMERCIAL LAW; CARRIAGE OF GOODS BY SEA ACT (COGSA); CARRIER'S RESPONSIBILITIES.— Section 2 of the COGSA provides that under every contract of carriage of goods by the sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carrier's responsibilities are to properly load, handle, stow, carry, keep, care for and discharge the goods carried. x x x It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. The Damage Survey Report of the survey conducted by Phil. Navtech Services, Inc. from April 20-21, 1995 reveals that Case No. 03-245-42K/1 was damaged by ATI stevedores due to overtightening of a cable sling hold during discharge from the vessel's hatch to the pier. Since the damage to the cargo was incurred during the discharge of the shipment and while under the supervision of the carrier, the latter is liable for the damage caused to the cargo.

10. ID.; ID.; ARRASTRE OPERATOR; FUNCTIONS AND RESPONSIBILITIES; CASE AT BAR.— The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. Handling cargo is mainly the arrastre operator's principal work so its drivers/operators

or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody. While it is true that an arrastre operator and a carrier may not be held solidarily liable at all times, the facts of these cases show that apart from ATI's stevedores being directly in charge of the physical unloading of the cargo, its foreman picked the cable sling that was used to hoist the packages for transfer to the dock. Moreover, the fact that 218 of the 219 packages were unloaded with the same sling unharmed is telling of the inadequate care with which ATI's stevedore handled and discharged Case No. 03-245-42K/1.

11. CIVIL LAW; DAMAGES; ACTUAL AND COMPENSATORY DAMAGES; RATE OF INTEREST ON DAMAGES AWARDED TO THE CARRIER PEGGED AT 6% PER ANNUM FROM THE DATE OF EXTRAJUDICIAL DEMAND UNTIL FULLY PAID.— Under Article 2209 of the Civil Code, when an obligation not constituting a loan or forbearance of money is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. In the similar case of *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., lnc.*, the Court reduced the rate of interest on the damages awarded to the carrier therein to 6% from the time of the filing of the complaint until the finality of the decision.

APPEARANCES OF COUNSEL

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Albert R. Palacios Law Office for Philam Insurance Co., Inc.

Balane Tamase Alampay Law Offices for Westwind Shipping Corp.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are three consolidated petitions for review on *certiorari* assailing the Decision[1] dated October 15, 2007 and the Resolution[2] dated January 11, 2008 of the Court of Appeals (CA) which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 96-062. The RTC had ordered Westwind Shipping Corporation (Westwind) and Asian Terminals, Inc. (ATI) to pay, jointly and severally, Philam Insurance Co., Inc. (Philam) the sum of ₱633,957.15, with interest at 12% per annum from the date of judicial demand and ₱158,989.28 as attorney's fees.

The facts of the case follow:

On April 15, 1995, Nichimen Corporation shipped to Universal Motors Corporation (Universal Motors) 219 packages containing 120 units of brand new Nissan Pickup Truck Double Cab 4x2 model, without engine, tires and batteries, on board the vessel S/S "Calayan Iris" from Japan to Manila. The shipment, which had a declared value of US$81,368 or ₱29,400,000, was insured with Philam against all risks under Marine Policy No. 708-8006717-4.[4]

The carrying vessel arrived at the port of Manila on April 20, 1995, and when the shipment was unloaded by the staff of ATI, it was found that the package marked as 03-245-42K/1 was in bad order.[5] The Turn Over Survey of Bad Order Cargoes[6]

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[1] *Rollo* (G.R. No. 181163), pp. 31-43. Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Apolinario D. Bruselas, Jr. concurring. The assailed decision was rendered in CA-G.R. CV No. 69284.

[2] *Id.* at 55-59.

[3] Records, Vol. II, pp. 399-408. Penned by Judge Oscar B. Pimentel.

[4] Records, Vol. I, pp. 159-160.

[5] Bad Order Cargo Receipt, Exhibit "T", *id.* at 188.

[6] *Id.* at 187.

dated April 21, 1995 identified two packages, labeled 03-245-42K/1 and 03/237/7CK/2, as being dented and broken. Thereafter, the cargoes were stored for temporary safekeeping inside CFS Warehouse in Pier No. 5.

On May 11, 1995, the shipment was withdrawn by R.F. Revilla Customs Brokerage, Inc., the authorized broker of Universal Motors, and delivered to the latter's warehouse in Mandaluyong City. Upon the request[7] of Universal Motors, a bad order survey was conducted on the cargoes and it was found that one Frame Axle Sub without LWR was deeply dented on the buffle plate while six Frame Assembly with Bush were deformed and misaligned.[8] Owing to the extent of the damage to said cargoes, Universal Motors declared them a total loss.

On August 4, 1995, Universal Motors filed a formal claim for damages in the amount of ₱643,963.84 against Westwind,[9] ATI[10] and R.F. Revilla Customs Brokerage, Inc.[11] When Universal Motors' demands remained unheeded, it sought reparation from and was compensated in the sum of ₱633,957.15 by Philam. Accordingly, Universal Motors issued a Subrogation Receipt[12] dated November 15, 1995 in favor of Philam.

On January 18, 1996, Philam, as subrogee of Universal Motors, filed a Complaint[13] for damages against Westwind, ATI and R.F. Revilla Customs Brokerage, Inc. before the RTC of Makati City, Branch 148.

On September 24, 1999, the RTC rendered judgment in favor of Philam and ordered Westwind and ATI to pay Philam, jointly and severally, the sum of ₱633,957.15 with interest at the rate

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[7] *Id.* at 166.

[8] CKD Crate B.O. Inspection Report, Exhibit "J", *id.* at 171.

[9] *Id.* at 168.

[10] *Id.* at 169.

[11] *Id.* at 170.

[12] *Id.* at 10.

[13] *Id.* at 1-7.

of 12% per annum, ₱158,989.28 by way of attorney's fees and expenses of litigation.

The court *a quo* ruled that there was sufficient evidence to establish the respective participation of Westwind and ATI in the discharge of and consequent damage to the shipment. It found that the subject cargoes were compressed while being hoisted using a cable that was too short and taut. The trial court observed that while the staff of ATI undertook the physical unloading of the cargoes from the carrying vessel, Westwind's duty officer exercised full supervision and control throughout the process. It held Westwind vicariously liable for failing to prove that it exercised extraordinary diligence in the supervision of the ATI stevedores who unloaded the cargoes from the vessel. However, the court absolved R.F. Revilla Customs Brokerage, Inc. from liability in light of its finding that the cargoes had been damaged before delivery to the consignee.

The trial court acknowledged the subrogation between Philam and Universal Motors on the strength of the Subrogation Receipt dated November 15, 1995. It likewise upheld Philam's claim for the value of the alleged damaged vehicle parts contained in Case Nos. 03-245-42K/1 and 03-245-51K or specifically for "7 [pieces] of Frame Axle Sub Without Lower and Frame Assembly with Bush."[14]

Westwind filed a Motion for Reconsideration[15] which was, however, denied in an Order[16] dated October 26, 2000.

On appeal, the CA affirmed with modification the ruling of the RTC. In a Decision dated October 15, 2007, the appellate court directed Westwind and ATI to pay Philam, jointly and severally, the amount of ₱190,684.48 with interest at the rate of 12% per annum until fully paid, attorney's fees of ₱47,671 and litigation expenses.

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[14] Records, Vol. II, p. 406.

[15] *Id.* at 409-413.

[16] *Id.* at 453-454.

The CA stressed that Philam may not modify its allegations by claiming in its Appellee's Brief[17] that the six pieces of Frame Assembly with Bush, which were purportedly damaged, were also inside Case No. 03-245-42K/1. The CA noted that in its Complaint, Philam alleged that "one (1) pc. FRAME AXLE SUB W/O LWR from Case No. 03-245-42K/1 [was] completely deformed and misaligned, and six (6) other pcs. of FRAME ASSEMBLY WITH BUSH from Case No. 03-245-51K [were] likewise completely deformed and misaligned."[18]

The appellate court accordingly affirmed Westwind and ATI's joint and solidary liability for the damage to only one (1) unit of Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It also noted that when said cargo sustained damage, it was not yet in the custody of the consignee or the person who had the right to receive it. The CA pointed out that Westwind's duty to observe extraordinary diligence in the care of the cargoes subsisted during unloading thereof by ATI's personnel since the former exercised full control and supervision over the discharging operation.

Similarly, the appellate court held ATI liable for the negligence of its employees who carried out the offloading of cargoes from the ship to the pier. As regards the extent of ATI's liability, the CA ruled that ATI cannot limit its liability to ₱5,000 per damaged package. It explained that Section 7.01[19] of the Contract for

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[17] CA *rollo*, pp. 710-763.

[18] Records, Vol. I, p. 4.

[19] Section 7.01. Responsibility and Liability for Losses and Damages; Exceptions — The CONTRACTOR shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (₱5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the

Cargo Handling Services[20] does not apply in this case since ATI was not yet in custody and control of the cargoes when the Frame Axle Sub without Lower suffered damage.

Citing *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*,[21] the appellate court also held that Philam's action for damages had not prescribed notwithstanding the absence of a notice of claim.

All the parties moved for reconsideration, but their motions were denied in a Resolution dated January 11, 2008. Thus,

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CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods. This amount of Five Thousand Pesos (₱5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. THE CONTRACTOR shall not be responsible for the condition or the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by force majeure or other causes beyond the CONTRACTOR'S control or capacity to prevent or remedy; PROVIDED, that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and Computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRACTOR within fifteen (15) days from day of issuance by the CONTRACTOR of a certificate of non-delivery; PROVIDED, however, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) day period within which to file the claim commences; PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee.

The CONTRACTOR shall submit to the AUTHORITY a list of all pending and new claims filed against it together with pertinent information on the nature of the claim and status of payments made by the CONTRACTOR. The CONTRACTOR shall have a formal Claims Division or Unit within its organization.

The CONTRACTOR shall be solely responsible for any and all injury or damage that may arise on account of the negligence or carelessness of the CONTRACTOR, its agent or employees in the performance of the undertaking under the Contract. Further, the CONTRACTOR hereby agrees to hold free the AUTHORITY, at all times, from any claim that may be instituted by its employee by reason of the provisions of the Labor Code, as amended.

[20] Records, Vol. II, pp. 291-297.

[21] G.R. No. 143133, June 5, 2002, 383 SCRA 23.

they each filed a petition for review on *certiorari* which were consolidated together by this Court considering that all three petitions assail the same CA decision and resolution and involve the same parties.

Essentially, the issues posed by petitioner ATI in G.R. No. 181163, petitioner Philam in G.R. No. 181262 and petitioner Westwind in G.R. No. 181319 can be summed up into and resolved by addressing three questions: (1) Has Philam's action for damages prescribed? (2) Who between Westwind and ATI should be held liable for the damaged cargoes? and (3) What is the extent of their liability?

Petitioners' Arguments

G.R. No. 181163

Petitioner ATI disowns liability for the damage to the Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It shifts the blame to Westwind, whom it charges with negligence in the supervision of the stevedores who unloaded the cargoes. ATI admits that the damage could have been averted had Westwind observed extraordinary diligence in handling the goods. Even so, ATI suspects that Case No. 03-245-42K/1 is "weak and defective"[22] considering that it alone sustained damage out of the 219 packages.

Notwithstanding, petitioner ATI submits that, at most, it can be held liable to pay only ₱5,000 per package pursuant to its Contract for Cargo Handling Services. ATI maintains that it was not properly notified of the actual value of the cargoes prior to their discharge from the vessel.

G.R. No. 181262

Petitioner Philam supports the CA in holding both Westwind and ATI liable for the deformed and misaligned Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It, however,

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[22] *Rollo* (G.R. No. 181163), p. 21.

faults the appellate court for disallowing its claim for the value of six Chassis Frame Assembly which were likewise supposedly inside Case Nos. 03-245-51K and 03-245-42K/1. As to the latter container, Philam anchors its claim on the results of the Inspection/Survey Report[23] of Chartered Adjusters, Inc., which the court received without objection from Westwind and ATI. Petitioner believes that with the offer and consequent admission of evidence to the effect that Case No. 03-245-42K/1 contains six pieces of dented Chassis Frame Assembly, Philam's claim thereon should be treated, in all respects, as if it has been raised in the pleadings. Thus, Philam insists on the reinstatement of the trial court's award in its favor for the payment of ₱633,957.15 plus legal interest, ₱158,989.28 as attorney's fees and costs.

G.R. No. 181319

Petitioner Westwind denies joint liability with ATI for the value of the deformed Frame Axle Sub without Lower in Case No. 03-245-42K/1. Westwind argues that the evidence shows that ATI was already in actual custody of said case when the Frame Axle Sub without Lower inside it was misaligned from being compressed by the tight cable used to unload it. Accordingly, Westwind ceased to have responsibility over the cargoes as provided in paragraph 4 of the Bill of Lading which provides that the responsibility of the carrier shall cease when the goods are taken into the custody of the arrastre.

Westwind contends that sole liability for the damage rests on ATI since it was the latter's stevedores who operated the ship's gear to unload the cargoes. Westwind reasons that ATI is an independent company, over whose employees and operations it does not exercise control. Moreover, it was ATI's employees who selected and used the wrong cable to lift the box containing the cargo which was damaged.

Westwind likewise believes that ATI is bound by its acceptance of the goods in good order despite a finding that Case No. 03-

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[23] Records, Vol. I, p. 179.

245-42K/1 was partly torn and crumpled on one side. Westwind also notes that the discovery that a piece of Frame Axle Sub without Lower was completely deformed and misaligned came only on May 12, 1995 or 22 days after the cargoes were turned over to ATI and after the same had been hauled by R.F. Revilla Customs Brokerage, Inc.

Westwind further argues that the CA erred in holding it liable considering that Philam's cause of action has prescribed since the latter filed a formal claim with it only on August 17, 1995 or four months after the cargoes arrived on April 20, 1995. Westwind stresses that according to the provisions of clause 20, paragraph 2[24] of the Bill of Lading as well as Article 366[25] of the Code of Commerce, the consignee had until April 20, 1995 within which to make a claim considering the readily apparent nature of the damage, or until April 27, 1995 at the latest, if it is assumed that the damage is not readily apparent.

Lastly, petitioner Westwind contests the imposition of 12% interest on the award of damages to Philam reckoned from the time of extrajudicial demand. Westwind asserts that, at most,

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[24] 20. Notice of loss, Time bar.

x x x x x x x x x

(2) Unless notice of loss or damage to the Goods and the general nature of it be given in writing to the Carrier at the Place of Delivery before or at the time of the removal of the Goods into the custody of the person entitled to delivery hereof under this Bill of Lading, or if the Loss or damages be not apparent, within seven (7) consecutive days hereafter, such removal shall be *prima facie* evidence of the delivery of the Carrier of the Goods as described in this Bill of Lading. x x x [*Rollo* (G.R. No. 181319), pp. 54-55. Emphasis and underscoring omitted.]

[25] Article 366. Within twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average which may be found therein upon opening of the packages may be made, provided the indications of the damage or the average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.

After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition on which the goods transported were delivered. (*Id.* at 55.)

it can only be charged with 6% interest since the damages claimed by Philam does not constitute a loan or forbearance of money.

The Court's Ruling

The three consolidated petitions before us call for a determination of who between ATI and Westwind is liable for the damage suffered by the subject cargo and to what extent. However, the resolution of the issues raised by the present petitions is predicated on the appreciation of factual issues which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is settled that in petitions for review on *certiorari*, only questions of law may be put in issue. Questions of fact cannot be entertained.[26]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[27]

In the present petitions, the resolution of the question as to who between Westwind and ATI should be liable for the damages to the cargo and to what extent would have this Court pass upon the evidence on record. But while it is not our duty to review, examine and evaluate or weigh all over again the probative value of the evidence presented,[28] the Court may nonetheless resolve questions of fact when the case falls under any of the following exceptions:

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[26] *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 375.

[27] *Insurance Company of North America v. Asian Terminals, Inc.*, G.R. No. 180784, February 15, 2012, 666 SCRA 226, 236.

[28] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126.

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of 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 those 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[29]

In the cases at bar, the fifth and seventh exceptions apply. While the CA affirmed the joint liability of ATI and Westwind, it held them liable only for the value of one unit of Frame Axle Sub without Lower inside Case No. 03-245-42K/1. The appellate court disallowed the award of damages for the six pieces of Frame Assembly with Bush, which petitioner Philam alleged, for the first time in its Appellee's Brief, to be likewise inside Case No. 03-245-42K/1. Lastly, the CA reduced the award of attorney's fees to ₱47,671.

Foremost, the Court holds that petitioner Philam has adequately established the basis of its claim against petitioners ATI and Westwind. Philam, as insurer, was subrogated to the rights of the consignee, Universal Motors Corporation, pursuant to the Subrogation Receipt executed by the latter in favor of the former. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.[30] Petitioner Philam's action finds support in Article 2207 of the Civil Code, which provides as follows:

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[29] *Insurance Company of North America v. Asian Terminals, Inc.*, *supra* note 27, at 236-237.

[30] *Gaisano Cagayan, Inc. v. Insurance Company of North America*, 523 Phil. 677, 693 (2006).

Art. 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. x x x.

In their respective comments[31] to Philam's Formal Offer of Evidence,[32] petitioners ATI and Westwind objected to the admission of Marine Certificate No. 708-8006717-4 and the Subrogation Receipt as documentary exhibits "B" and "P", respectively. Petitioner Westwind objects to the admission of both documents for being hearsay as they were not authenticated by the persons who executed them. For the same reason, petitioner ATI assails the admissibility of the Subrogation Receipt. As regards Marine Certificate No. 708-8006717-4, ATI makes issue of the fact that the same was issued only on April 27, 1995 or 12 days after the shipment was loaded on and transported via S/S "Calayan Iris."

The nature of documents as either public or private determines how the documents may be presented as evidence in court. Public documents, as enumerated under Section 19,[33] Rule 132 of the Rules of Court, are self-authenticating and require no

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[31] Records, Vol. I, pp. 191-195, 198-201.

[32] *Id.* at 147-156.

[33] 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;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied.)

further authentication in order to be presented as evidence in court.[34]

In contrast, a private document is any other writing, deed or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication[35] in the manner prescribed under Section 20, Rule 132 of the Rules:

> SEC. 20. *Proof of private document*. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21,[36] Rule 132 of the Rules; (b) when the genuineness and authenticity of the actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[37]

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[34] *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156.

[35] *Id.*

[36] SEC. 21. *When evidence of authenticity of private document not necessary*. – Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

[37] *Patula v. People*, *supra* note 34, at 156-157.

Indubitably, Marine Certificate No. 708-8006717-4 and the Subrogation Receipt are private documents which Philam and the consignee, respectively, issue in the pursuit of their business. Since none of the exceptions to the requirement of authentication of a private document obtains in these cases, said documents may not be admitted in evidence for Philam without being properly authenticated.

Contrary to the contention of petitioners ATI and Westwind, however, Philam presented its claims officer, Ricardo Ongchangco, Jr. to testify on the execution of the Subrogation Receipt, as follows:

ATTY. PALACIOS
Q How were you able to get hold of this subrogation receipt?
A Because I personally delivered the claim check to consignee and have them [receive] the said check.

Q I see. Therefore, what you are saying is that you personally delivered the claim check of Universal Motors Corporation to that company and you have the subrogation receipt signed by them personally?
A Yes, sir.

Q And it was signed in your presence?
A Yes, sir.[38]

Indeed, all that the Rules require to establish the authenticity of a document is the testimony of a person who saw the document executed or written. Thus, the trial court did not err in admitting the Subrogation Receipt in evidence despite petitioners ATI and Westwind's objections that it was not authenticated by the person who signed it.

However, the same cannot be said about Marine Certificate No. 708-8006717-4 which Ongchangcho, Jr. merely identified in court. There is nothing in Ongchangco, Jr.'s testimony which indicates that he saw Philam's authorized representative sign said document, thus:

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[38] TSN November 11, 1996, pp. 43-44.

ATTY. PALACIOS

Q Now, I am presenting to you a copy of this marine certificate 708-8006717-4 issued by Philam Insurance Company, Inc. to Universal Motors Corporation on April 15, 1995. Will you tell us what relation does it have to that policy risk claim mentioned in that letter?

A This is a photocopy of the said policy issued by the consignee Universal Motors Corporation.

ATTY. PALACIOS

I see. [May] I request, if Your Honor please, that this marine risk policy of the plaintiff as submitted by claimant Universal Motors Corporation be marked as Exhibit B.

COURT

Mark it.[39]

As regards the issuance of Marine Certificate No. 708-8006717-4 after the fact of loss occurred, suffice it to say that said document simply certifies the existence of an open insurance policy in favor of the consignee. Hence, the reference to an "Open Policy Number 9595093" in said certificate. The Court finds it completely absurd to suppose that any insurance company, of sound business practice, would assume a loss that has already been realized, when the profitability of its business rests precisely on the non-happening of the risk insured against.

Yet, even with the exclusion of Marine Certificate No. 708-8006717-4, the Subrogation Receipt, on its own, is adequate proof that petitioner Philam paid the consignee's claim on the damaged goods. Petitioners ATI and Westwind failed to offer any evidence to controvert the same. In *Malayan Insurance Co., Inc. v. Alberto*,[40] the Court explained the effect of payment by the insurer of the insurance claim in this wise:

We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that

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

[40] G.R. No. 194320, February 1, 2012, 664 SCRA 791.

the insured 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. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[41]

Neither do we find support in petitioner Westwind's contention that Philam's right of action has prescribed.

The Carriage of Goods by Sea Act (COGSA) or Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of Commonwealth Act (C.A.) No. 65.[42] Section 1 of C.A. No. 65 states:

> Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: *Provided,* That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application.

The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3, thus:

> (6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie*

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[41] *Id.* at 806.

[42] *Insurance Company of North America v. Asian Terminals, Inc.*, *supra* note 27, at 237.

evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the Bill of Lading[43] dated April 15, 1995, Rizal Commercial Banking Corporation (RCBC) is indicated as the consignee while Universal Motors is listed as the notify party. These designations are in line with the subject shipment being covered by Letter of Credit No. I501054, which RCBC issued upon the request of Universal Motors.

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of his goods before paying.[44] However, letters of credit are employed by the parties desiring to enter into commercial transactions, not for the benefit of the issuing bank but mainly for the benefit of the parties to the original transaction,[45] in these cases, Nichimen Corporation as

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[43] Records, Vol. I, p. 160.

[44] *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, 485 Phil. 699, 717 (2004).

[45] *Id.* at 721.

the seller and Universal Motors as the buyer. Hence, the latter, as the buyer of the Nissan CKD parts, should be regarded as the person entitled to delivery of the goods. Accordingly, for purposes of reckoning when notice of loss or damage should be given to the carrier or its agent, the date of delivery to Universal Motors is controlling.

S/S "Calayan Iris" arrived at the port of Manila on April 20, 1995, and the subject cargoes were discharged to the custody of ATI the next day. The goods were then withdrawn from the CFS Warehouse on May 11, 1995 and the last of the packages delivered to Universal Motors on May 17, 1995. Prior to this, the latter filed a Request for Bad Order Survey[46] on May 12, 1995 following a joint inspection where it was discovered that six pieces of Chassis Frame Assembly from two bundles were deformed and one Front Axle Sub without Lower from a steel case was dented. Yet, it was not until August 4, 1995 that Universal Motors filed a formal claim for damages against petitioner Westwind.

Even so, we have held in *Insurance Company of North America v. Asian Terminals, Inc.* that a request for, and the result of a bad order examination, done within the reglementary period for furnishing notice of loss or damage to the carrier or its agent, serves the purpose of a claim. A claim is required to be filed within the reglementary period to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.[47] Here, Universal Motors filed a request for bad order survey on May 12, 1995, even before all the packages could be unloaded to its warehouse.

Moreover, paragraph (6), Section 3 of the COGSA clearly states that failure to comply with the notice requirement shall not affect or prejudice the right of the shipper to bring suit

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[46] Records, Vol. I, p. 166.

[47] *Supra* note 27, at 242.

within one year after delivery of the goods. Petitioner Philam, as subrogee of Universal Motors, filed the Complaint for damages on January 18, 1996, just eight months after all the packages were delivered to its possession on May 17, 1995. Evidently, petitioner Philam's action against petitioners Westwind and ATI was seasonably filed.

This brings us to the question that must be resolved in these consolidated petitions. Who between Westwind and ATI should be liable for the damage to the cargo?

It is undisputed that Steel Case No. 03-245-42K/1 was partly torn and crumpled on one side while it was being unloaded from the carrying vessel. The damage to said container was noted in the Bad Order Cargo Receipt[48] dated April 20, 1995 and Turn Over Survey of Bad Order Cargoes dated April 21, 1995. The Turn Over Survey of Bad Order Cargoes indicates that said steel case was not opened at the time of survey and was accepted by the arrastre in good order. Meanwhile, the Bad Order Cargo Receipt bore a notation "B.O. not yet t/over to ATI." On the basis of these documents, petitioner ATI claims that the contents of Steel Case No. 03-245-42K/1 were damaged while in the custody of petitioner Westwind.

We agree.

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734[49]

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[48] Records, Vol. I, p. 188.

[49] ART. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act of the omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[50]

The court *a quo*, however, found both petitioners Westwind and ATI, jointly and severally, liable for the damage to the cargo. It observed that while the staff of ATI undertook the physical unloading of the cargoes from the carrying vessel, Westwind's duty officer exercised full supervision and control over the entire process. The appellate court affirmed the solidary liability of Westwind and ATI, but only for the damage to one Frame Axle Sub without Lower.

Upon a careful review of the records, the Court finds no reason to deviate from the finding that petitioners Westwind and ATI are concurrently accountable for the damage to the content of Steel Case No. 03-245-42K/1.

Section 2[51] of the COGSA provides that under every contract of carriage of goods by the sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2)[52] thereof then states that among the carrier's

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[50] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009, 582 SCRA 457, 466-467.

[51] Section 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

[52] Section 3. x x x

x x x x x x x x x

2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

responsibilities are to properly load, handle, stow, carry, keep, care for and discharge the goods carried.[53]

At the trial, Westwind's Operation Assistant, Menandro G. Ramirez, testified on the presence of a ship officer to supervise the unloading of the subject cargoes.

ATTY. LLAMAS

Q Having been present during the entire discharging operation, do you remember who else were present at that time?

A Our surveyor and our checker the foreman of ATI.

Q **Were there officials of the ship present also**?

A Yes, sir **there was an officer of the vessel on duty at that time**.[54]

x x x x x x x x x

Q **Who selected the cable slink to be used**?

A **ATI Operation**.

Q Are you aware of how they made that selection?

A Before the vessel arrived we issued a manifesto of the storage plan informing the ATI of what type of cargo and equipment will be utilitized in discharging the cargo.[55]

x x x x x x x x x

Q You testified that it **was the ATI foremen who select the cable slink to be used in discharging**, is that correct?

A **Yes sir**, because they are the one who select the slink and they know the kind of cargoes because they inspected it before the discharge of said cargo.

Q Are you aware that the ship captain is consulted in the selection of the cable sling?

A Because the ship captain knows for a fact the equipment being utilized in the discharge of the cargoes because before the ship leave the port of Japan the crew already utilized

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[53] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, *supra* note 50, at 467.

[54] TSN, February 17, 1998, p. 13.

[55] *Id.* at 15.

> the proper equipment fitted to the cargo.[56] (Emphasis supplied.)

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier.[57] The Damage Survey Report[58] of the survey conducted by Phil. Navtech Services, Inc. from April 20-21, 1995 reveals that Case No. 03-245-42K/1 was damaged by ATI stevedores due to overtightening of a cable sling hold during discharge from the vessel's hatch to the pier. Since the damage to the cargo was incurred during the discharge of the shipment and while under the supervision of the carrier, the latter is liable for the damage caused to the cargo.

This is not to say, however, that petitioner ATI is without liability for the damaged cargo.

The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[59]

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.[60]

While it is true that an arrastre operator and a carrier may not be held solidarily liable at all times,[61] the facts of these

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

[57] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, *supra* note 50, at 472.

[58] Records, Vol. I, p. 90.

[59] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, *supra* note 50, at 468.

[60] *Id.*

[61] *Id.* at 469.

cases show that apart from ATI's stevedores being directly in charge of the physical unloading of the cargo, its foreman picked the cable sling that was used to hoist the packages for transfer to the dock. Moreover, the fact that 218 of the 219 packages were unloaded with the same sling unharmed is telling of the inadequate care with which ATI's stevedore handled and discharged Case No. 03-245-42K/1.

With respect to petitioners ATI and Westwind's liability, we agree with the CA that the same should be confined to the value of the one piece Frame Axle Sub without Lower.

In the Bad Order Inspection Report[62] prepared by Universal Motors, the latter referred to Case No. 03-245-42K/1 as the source of said Frame Axle Sub without Lower which suffered a deep dent on its buffle plate. Yet, it identified Case No. 03-245-51K as the container which bore the six pieces Frame Assembly with Bush. Thus, in Philam's Complaint, it alleged that "the entire shipment showed one (1) pc. FRAME AXLE SUB W/O LWR from Case No. 03-245-42K/1 [was] completely deformed and misaligned, and six (6) other pcs. of FRAME ASSEMBLY WITH BUSH from Case No. 03-245-51K [were] likewise completely deformed and misaligned."[63] Philam later claimed in its Appellee's Brief that the six pieces of Frame Assembly with Bush were also inside the damaged Case No. 03-245-42K/1.

However, there is nothing in the records to show conclusively that the six Frame Assembly with Bush were likewise contained in and damaged inside Case No. 03-245-42K/1. In the Inspection Survey Report of Chartered Adjusters, Inc., it mentioned six pieces of chassis frame assembly with deformed body mounting bracket. However, it merely noted the same as coming from two bundles with no identifying marks.

Lastly, we agree with petitioner Westwind that the CA erred in imposing an interest rate of 12% on the award of damages.

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[62] Records, Vol. I, p. 171.

[63] *Supra* note 18.

Under Article 2209 of the Civil Code, when an obligation not constituting a loan or forbearance of money is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum.[64] In the similar case of *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*,[65] the Court reduced the rate of interest on the damages awarded to the carrier therein to 6% from the time of the filing of the complaint until the finality of the decision.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated October 15, 2007 and the Resolution dated January 11, 2008 of the Court of Appeals in CA-G.R. CV No. 69284 in that the interest rate on the award of ₱190,684.48 is reduced to 6% per annum from the date of extrajudicial demand, until fully paid.

With costs against the petitioners in G.R. No. 181163 and G.R. No. 181319, respectively.

SO ORDERED.

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

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[64] *Soriamont Steamship Agencies, Inc. v. Sprint Transport Services, Inc.*, G.R. No. 174610, July 14, 2009, 592 SCRA 622, 639-640; *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96.

[65] *Supra* note 21, at 42.

[*] Designated additional member per Raffle dated June 26, 2013.

FIRST DIVISION

[G.R. No. 181539. July 24, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN ALEMAN *Y* LONGHAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE FACTUAL FINDING OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT IS CONCLUSIVE TO THE COURT.— Both the RTC and the Court of Appeals found that accused-appellant stabbed the victim several times, causing the latter's death, for the purpose of depriving the victim of his personal properties, which personalities accused-appellant took away with him before leaving the scene of the crime. The killing of the victim was by reason of the robbery. It therefore constitutes the special complex crime of robbery with homicide. This finding of the trial court as affirmed by the appellate court is conclusive to this Court. Also, a review of the records show that both the trial and the appellate courts did not miss, misapply or misinterpret any relevant fact that would warrant an alteration of their identical conclusions as to the criminal responsibility of accused-appellant.

2. ID.; EVIDENCE; WITNESSES; DEAF-MUTES ARE COMPETENT WITNESSES WHERE THEY CAN UNDERSTAND AND APPRECIATE THE SANCTITY OF AN OATH, CAN COMPREHEND FACTS THEY ARE GOING TO TESTIFY ON, AND CAN COMMUNICATE THEIR IDEAS THROUGH A QUALIFIED INTERPRETER.— The mere fact that Mark is a deaf-mute does not render him unqualified to be a witness. The rule is that "all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses." A deaf-mute may not be able to hear and speak but his/her other senses, such as his/her sense of sight, remain functional and allow him/her to make observations about his/her environment and experiences. The inability to hear and speak may prevent a deaf-mute from communicating orally with others but he/she may still communicate with others in writing or through signs and

symbols and, as in this case, sketches. Thus, a deaf-mute is competent to be a witness so long as he/she has the faculty to make observations and he/she can make those observations known to others. As this Court held in *People v. Tuangco*: A deaf-mute is not incompetent as a witness. All persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Deaf-mutes are competent witnesses where they (1) can understand and appreciate the sanctity of an oath; (2) can comprehend facts they are going to testify on; and (3) can communicate their ideas through a qualified interpreter. Thus, in *People vs. De Leon* and *People vs. Sasota*, the accused was convicted on the basis of the testimony of a deaf-mute.

3. ID.; ID.; ID.; ID.; WHEN A DEAF-MUTE TESTIFIES IN COURT, THE MANNER IN WHICH THE EXAMINATION OF A DEAF-MUTE SHOULD BE CONDUCTED IS A MATTER TO BE REGULATED AND CONTROLLED BY THE TRIAL COURT IN ITS DISCRETION, AND THE METHOD ADOPTED WILL NOT BE REVIEWED BY THE APPELLATE COURT IN THE ABSENCE OF A SHOWING THAT THE COMPLAINING PARTY WAS IN SOME WAY INJURED BY REASON OF THE PARTICULAR METHOD ADOPTED.— When a deaf-mute testifies in court, "the manner in which the examination of a deaf-mute should be conducted is a matter to be regulated and controlled by the trial court in its discretion, and the method adopted will not be reviewed by the appellate court in the absence of a showing that the complaining party was in some way injured by reason of the particular method adopted." In this case, both the trial and the appellate courts found that Mark understood and appreciated the sanctity of an oath and that he comprehended the facts he testified on. This Court sees no reason in ruling otherwise.

4. ID.; ID.; CREDIBILITY OF WITNESSES; IMPERFECTIONS OR INCONSISTENCIES ON DETAILS WHICH ARE NEITHER MATERIAL NOR RELEVANT TO THE CASE DO NOT DETRACT FROM THE CREDIBILITY OF THE TESTIMONY OF THE WITNESS, MUCH LESS JUSTIFY THE TOTAL REJECTION OF THE SAME.— [T]he Court of Appeals correctly observed that "[d]espite intense and grueling cross-examinations, the eyewitness responded with consistency upon material details that could only come from a firsthand

knowledge of the shocking events which unfolded before his eyes." The imperfections or inconsistencies cited by accused-appellant were due to the fact that there is some difficulty in eliciting testimony where the witness is a deaf-mute. Besides they concerned material details which are neither material nor relevant to the case. As such, those discrepancies do not detract from the credibility of Mark's testimony, much less justify the total rejection of the same. What is material is that he positively identified accused-appellant and personally saw what accused-appellant did to the victim on the fateful night when the incident happened. The trial court's assessment of the credibility of Mark, which was affirmed by the appellate court, deserves the highest respect of this Court.

5. ID.; ID.; ID.; POSITIVE AND CREDIBLE TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT TO SECURE THE CONVICTION OF AN ACCUSED.— [T]he Court of Appeals correctly observed that Mark's testimony was corroborated by the findings of the medico-legal officer who autopsied the victim's corpse that the cause of death was "hemorrhagic shock secondary to multiple stab wounds [in] the thorax." The multiple mortal wounds inflicted on the victim constitute physical evidence which further establish the truth of Mark's testimony. Its evidentiary value far outweighs any corroborative testimony which accused-appellant requires of the prosecution. Moreover, the settled rule is that the positive and credible testimony of a single witness is sufficient to secure the conviction of an accused. The RTC and the Court of Appeals saw no improper motive which would impel Mark to testify falsely against accused-appellant. As the determination of bad faith, malice or ill motive is a question of fact, this Court respects the unanimous finding of the trial and the appellate courts on the matter.

6. ID.; ID.; ID.; A POLICE LINE-UP IS NOT ESSENTIAL TO PROPER IDENTIFICATION; WHAT MATTERS IS THAT THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME BE MADE BY THE WITNESS IN OPEN COURT.— Accused-appellant's attempt to render doubtful Mark's identification of him fails. Indeed, the law requires not simply an eyewitness account of the act of committing the crime but the positive identification of the accused as the perpetrator of the crime. Here, Mark has

positively pointed to accused-appellant as the perpetrator of the crime. The Court of Appeals correctly ruled that Mark's failure to identify accused-appellant in a police line-up on February 13, 2003 was of no moment. There is no law stating that a police line-up is essential to proper identification. What matters is that the positive identification of the accused as the perpetrator of the crime be made by the witness in open court. Nevertheless, the records show that Mark identified accused-appellant as the robber-killer of the victim in a police line-up on February 18, 2003 and, more importantly, in open court in the course of Mark's testimony.

7. CRIMINAL LAW; ROBBERY WITH HOMICIDE; CONVICTION OF THE ACCUSED FOR THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE AFFIRMED; PROPER PENALTY.— [T]he trial and the appellate courts correctly convicted accused-appellant for the special complex crime of robbery with homicide. Accused-appellant's crime is punishable under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659, by *reclusion perpetua* to death. Article 63 of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is not attended by any aggravating circumstance, the lesser penalty shall be imposed. Considering that no modifying circumstance attended the commission of the crime, the penalty imposed by the trial and the appellate courts, *reclusion perpetua*, is proper.

8. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The civil indemnity is increased from ₱50,000.00 to ₱75,000.00, the current amount of civil indemnity awarded in cases of murder. Robbery with homicide belongs to that class of felony denominated as "Robbery with violence against or intimidation of persons" under Article 294 of the Revised Penal Code and the killing or death of a person is committed "by reason or on occasion of the robbery." The increase in the amount of civil indemnity is called for as the special complex crime of robbery with homicide, like murder, involves a greater degree of criminal propensity than homicide alone where the civil indemnity awarded is ₱50,000.00. The ₱50,000.00 imposed as moral damages is proper and conforms to recent jurisprudence. The reimbursement of actual damages in the total amount of ₱477,054.30 for various funeral-related expenses is proper

as it is fully supported by evidence on record. The same holds true for the payment of the value of the items taken from the victim, namely, two cellphones at ₱3,500.00 each and the necklace at ₱20,000.00. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages (namely, the civil indemnity, moral damages and actual 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.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Edwin Aleman appeals from the Decision[1] dated September 28, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02100 affirming the Decision[2] dated November 16, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 76 in Criminal Case No. Q-03-118348 which found him guilty of the crime of robbery with homicide.

Accused-appellant was charged under the following Information:

That on or about the 10th day of February 2003, in Quezon City, Philippines, the said accused, conspiring and confederating with another person whose true name, identity and other personal circumstances have not as yet been ascertained and mutually helping each other, did then and there willfully, unlawfully and feloniously rob one RAMON JAIME BIROSEL *y* VILLA in the following manner, to wit: on the date and place aforementioned while said victim was inside his car having a conversation over his cellphone, the said accused suddenly appeared and with intent to gain and by means of

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[2] CA *rollo*, pp. 32-42.

violence approached the said vehicle and ordered said victim to open it and once opened thereafter stabbed the said victim with a bladed weapon hitting him on the thorax thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, and thereupon took, stole and carried away the following, to wit:

a) Two (2) NOKIA cellular phones
b) One (1) brown leather wallet
c) Undetermined amount of cash money
d) One (1) necklace
e) One (1) men's ring

all with undetermined value, belonging to said RAMON JAIME BIROSEL *y* VILLA, to the damage and prejudice of the heirs of said RAMON JAIME BIROSEL *y* VILLA.[3]

Accused-appellant pleaded not guilty to the charge when arraigned.[4] After pre-trial was conducted, trial ensued.

The prosecution established that, as shown in the medico-legal report prepared by Police Senior Inspector (P/S Insp.) Elizardo Daileg of the Philippine National Police (PNP) Crime Laboratory who autopsied the victim's cadaver, the cause of death was "hemorrhagic shock secondary to multiple stab wounds [in] the thorax." In particular, three penetrating stab wounds were inflicted on the upper left portion of the victim's chest, "piercing the upper lobe of the left lung and perforating the heart." He also suffered stab wounds in the right eye, stomach and left forearm and incised wounds in the left upper eyelid and left palm.[5]

The victim, Ramon Jaime Birosel, was a 55-year old real estate broker at the time of his death. He was survived by his widow, Maria Filomena Birosel, with whom he had no child. Filomena spent a total of ₱477,054.30 in funeral expenses in connection with the burial of her deceased husband. Filomena

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[3] Records, p. 1.

[4] *Id.* at 26; Order dated September 23, 2003.

[5] *Id.* at 226; Exhibit "K", Medico Legal Report No. M-0425-03.

stated that the Nokia 3315 and Siemens S-45 cellular phones taken away from Ramon were valued at ₱3,500.00 each, while the necklace snatched from him was worth ₱20,000.00.[6]

The prosecution's case against accused-appellant hinges on the following eyewitness account of Mark Almodovar:

> [O]n February 10, 2003[,] at about 7:00 o'clock in the evening, [Mark] went out of his house to play ball in the basketball court. He walked to the basketball court[, played there,] and at about 9:00 o'clock, he stopped playing as he then felt like urinating. He went to a place near the basketball court where there were five cars parked. While urinating, he saw a fat man walking towards a car. The fat man was talking on his cellular phone. He then noticed two men following the fat man, who entered a parked car. The two male persons who were then following the fat man then separated: one went to the left side of the fat man's car and stood by the door at the driver's side of the vehicle. While the other positioned himself by the door at the opposite side of the car. [Mark] made a diagram, rectangular shape and two circles on both sides, (Exhibit "L") depicting the car and the positions of the two men. The man who stood by the door at the driver's side had a knife while his companion was armed with a gun. He then witnessed the man with the knife in his hand stabbing the fat man repeatedly on different parts of his body, while the man with the gun fired once. After taking the fat man's personal belongings, including his ring, watch, wallet and cellular phone, the two men left. He followed them to a place which he described as far and there, he saw them buried the knife and covered it with soil. He made a drawing representing the place where he followed them (Exh. "M"). After burying the knife in the ground, the men left and he followed them again to a place which he described as near. While thereat, he saw one of the culprits uncovered his face. He recognized him as the person who went to the left side of the car and stabbed the victim who was later on identified as the accused Edwin Aleman. After which, the two men left. He decided not to follow them and went home instead. It was about 11:00 o'clock in the evening when he arrived home. After waking up at 8:00 o'clock the following morning, he returned to the scene of the incident. There were many people gathered in the area, including policemen. He saw a chubby

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[6] *Rollo*, p. 4.

girl and requested her to call the policemen. He rode in a car with the police officers and the chubby girl. They went to a house in a far place, but no one was there. He recognized and identified the face of the fat man depicted in the picture (Exhibit "N") shown to him.

On cross-examination, he stated that he did not receive any death t[h]reat. In the year 2003, his grandfather died in Nueva Ecija and he attended the wake. He stayed there until his father, grandmother and another person, whom he does not know but of the same age as that of his father, fetched him on September 12, 2003. He was taken to Antipolo where he stayed at the house of the relatives of the victim until December 10, 2003, the day he initially testified in court. There was no sign language interpreter in the said house. The relatives of the victim gave him some money which he used to buy for two shirts, two pants and a pair of shoes.

Before going to the basketball court which is a little farther from their house at 7:00 o'clock in the evening, he already ate his evening meal at 6:00 o'clock. There were six of them, boys and girls playing basketball. The basketball court was a full court but they were not playing a real game, just running and shooting. At about 8:00 o'clock, they stopped playing, they sat down and had soft drinks. After finishing his soft drink, he urinated in the shrubbery near the five parked cars.

He added that he is familiar with Sikatuna Bliss but he does not know what building in Sikatuna Bliss was fronting the five cars that were parked near the basketball court. It was the first time that he saw the fat man and the two male persons who wore black bonnets which covered their whole face. The fat man was already inside his car when he was repeatedly stabbed. The fat man was not using his cell phone when the one with the knife knocked twice on the window of the car. The window of the car was half-opened when the fat man was immediately stabbed. The man with a gun was on the other side of the car when he fired his gun once. He did not notice any argument between the fat man and his attacker. He kept a distance of about eight to ten meters between him and the two men as he followed them. There were no persons around when the two men attacked the fat man. After witnessing the stabbing, his initial reaction was to follow the culprits. He did not call his playmates because they were still playing. In fleeing, the two male persons did not run. They just walk[ed] fast. He had been [on] their trail for about nine minutes

before they removed their bonnets. He followed them for about thirty minutes.

When he gave his statements to the police, he did not tell them that the knife was buried under the ground. It was 9:56 o'clock when the men took off their bonnets. The man with the knife removed the bloodstained white t-shirt that he was wearing and, along with his bonnet, threw it away in a place he described as flowing or running water. At about 10:00 o'clock, the two men boarded a motorcycle and left. It was the man with the gun who drove the motorcycle. He took the same route when he walked back home. It was about 10:00 o'clock when he passed by the car of the fat man again. There were no persons when he went back to the basketball court. Thus, he just went home to sleep and the following morning, he gave his statement to the police.

On re-direct examination, he was asked and he made a drawing (Exhibit "O") showing the basketball court (Exhibit "O-1"), the five parked cars near the place where he urinated (Exhibit "O-2"), the exact spot where he urinated (Exhibit "O-3") and the car of the fat man (Exhibit "O-4"). When asked how he was able to see the face of the accused, he answered that "there was light in the area which he described as near the flowing water where the accused removed his bonnet." He stated that the light near the flowing water came from a light bulb and the distance from the witness stand up to second door outside the courtroom represents how far he was from the man with the knife when [the latter] took off his bonnet.[7]

Mark was 14 years old when he testified. He is a deaf-mute. He was assisted in his testimony by Daniel Catinguil, a licensed sign language interpreter from the Philippine Registry of Interpreters for the Deaf who has been teaching in the Philippine School for the Deaf since 1990. Catinguil had also completed a five-year course at the Philippine Normal University with a degree in teaching special education children.[8]

Accused-appellant was 26 years old and a resident of Area 6, Barangay Botocan, Project 2, Quezon City when he testified. He interposed denial and alibi as his defenses. He claimed that,

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[7] *Id.* at 5-7.

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

at the time the incident happened on February 10, 2003, he was at the billiards hall which was a 15-minute walk from his residence. A road separates the billiards hall from Sikatuna Bliss.[9]

On that particular night, accused-appellant went to the billiards hall at around 7:00 in the evening and played billiards against a certain Ruben. They played until around 10:00 in the evening. Just as they were finished playing, accused-appellant's sister, Hilda Aleman, arrived to fetch him for dinner. He went home with her. The following morning, after having breakfast, he watched a basketball game and talked to his friends. At around noon, while on his way back to his house, a neighbor, Vangie Barsaga, called him and informed him that police officers came to his house looking for him. At around 3:00 in the afternoon of that day, he went to the nearest police station, Camp Karingal, where he presented himself to Senior Police Officer (SPO) 1, at that time Police Officer 3, Leonardo Pasco of that station's District Police Intelligence Unit. He asked SPO1 Pasco if they were looking for a certain Edwin Aleman and, upon receiving a positive answer, he introduced himself. He was informed that he was a suspect in a killing incident. He was told to stay put while they were waiting for the alleged eyewitness to arrive. On February 13, 2003, he was twice made to join a police line-up together with five others. In both instances, they were ordered to turn around several times and they complied. Thereafter, he was given a spot report: re: Voluntary Surrender of Alleged Suspect in a Robbery w/ Homicide Case by a police officer and was informed that he would be turned over to the custody of the Criminal Investigation Division of Camp Karingal.[10]

Accused-appellant's testimony that he was at the billiards hall on February 10, 2003 playing against Ruben until around 10:00 in the evening was corroborated by Filomena Fungo, grandmother of Ruben, who saw accused-appellant and Ruben playing when she went to the billiards hall twice that night to

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[9] *Id.* at 8-9.

[10] *Id*.

fetch Ruben.[11] Hilda, accused-appellant's sister, also corroborated accused-appellant's testimony that she fetched him from the billiards hall at around 10:00 in the evening of February 10, 2003. She further stated that, upon getting home, she and accused-appellant ate dinner together and, thereafter, watched some television shows until accused-appellant went to sleep some 30 minutes later.[12]

Accused-appellant also attempted to show that the eyewitness, Mark, failed to identify him during the police line-up. Defense witness SPO1 Leonardo Pasco stated that he was the one who prepared the spot report although it was his superior who signed it. He further stated that Mark failed to identify accused-appellant during the police line-up. Another defense witness, *barangay kagawad* Ricofredo Barrientos, stated that he was with Mark on February 13, 2003 when Mark was asked to identify the robber-killer of the victim from a line-up. According to Barrientos, a police officer made a gesture to Mark by slashing his throat with the use of his hand and, after viewing the persons in the line-up, Mark shook his head. The line-up was presented to Mark twice and he shook his head in both instances.[13]

After studying the parties' respective evidence, the trial court rejected the defenses of accused-appellant for their inherent weakness and implausibility. On the other hand, it viewed the prosecution's evidence favorably, particularly the eyewitness testimony of Mark and his positive identification of accused-appellant as the one who stabbed the victim. In particular, the trial court found Mark's testimony simple and credible. He had no ill motive that would make him testify falsely against accused-appellant. While there were minor inconsistencies in his testimony, the discrepancies were inconsequential and did not affect the truthfulness of Mark's narration. Thus, in its Decision dated November 16, 2005, the trial court found accused-appellant

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[11] *Id.* at 10. The first time was at around 8:00 p.m. and the second time was at around 10:00 p.m. when she finally fetched Ruben.

[12] *Id.*

[13] *Id.* at 9-10.

guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the Decision reads:

> WHEREFORE, finding the accused Edwin Aleman guilty beyond reasonable doubt of the crime of Robbery with Homicide, described and penalized under Article 294 of the Revised Penal Code, as amended by Republic Act 7659, in relation to Article 63 of the Revised Penal Code, the court hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Ramon Jaime Birosel as follows:
>
> 1. The amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity for the death of the victim;
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> 2. The amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages; and
>
> 3. The amount of FOUR HUNDRED SEVENTY-SEVEN THOUSAND FIFTY-FOUR PESOS AND THIRTY CENTAVOS (₱477,054.30) as actual damages.
>
> He is also ordered to reimburse the heirs of the victim the amount of THREE THOUSAND FIVE HUNDRED PESOS (₱3,500.00) representing the value of the Nokia 3315 cellular phone, the amount of THREE THOUSAND FIVE HUNDRED PESOS (₱3,500.00) representing the value of the S-45 Siemens cellular phone, and the amount of TWENTY THOUSAND PESOS (₱20,000.00) representing the value of the necklace, which were all taken from the victim.
>
> With costs against the accused.[14]

Accused-appellant appealed his case to the Court of Appeals. He anchored his appeal on the claim that the trial court erred in convicting him for robbery with homicide. His claim was four-pronged, all aimed at discrediting the eyewitness, Mark.[15]

First, accused-appellant questioned the qualification of Mark to be a witness. Accused-appellant argued that, being a deaf-mute who cannot make known his perception to others as he has no formal education on sign language, Mark is unqualified

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[14] CA *rollo*, p. 42.

[15] *Id.* at 52-70. Brief for the Accused-Appellant.

to be a witness. In fact, he was unable to give a responsive answer to some questions propounded to him through the interpreter such as when he could not answer why he preferred to play in a basketball far from his house than in a nearer one.[16]

Second, accused-appellant asserted that Mark's testimony was not corroborated by his alleged playmates or by the "chubby girl" he mentioned in his testimony. Such lack of corroboration weakened Mark's testimony.[17]

Third, accused-appellant contended that Mark admitted receiving money, new clothes and shoes from the private complainant before he took the witness stand. This made his testimony highly suspicious.[18]

Fourth, accused-appellant highlighted Mark's failure to identify him as the perpetrator of the crime in the two instances that he was presented to Mark in a line-up. This made Mark's alleged positive identification of accused-appellant doubtful.[19]

In its Decision dated September 28, 2007, the Court of Appeals held that the contentions of accused-appellant lacked merit.[20]

The Court of Appeals declared that the capacity of a deaf-mute to testify has long been recognized. The witness may communicate his perceptions to the court through an interpreter. In this case, Mark's testimony was facilitated by Catinguil, a licensed sign language interpreter who has been teaching in the Philippine School for the Deaf since 1990. With the help of Catinguil, the trial court determined that Mark is not mentally deficient and that he was able to tell time, space and distance. He was able to draw and make sketches in open court to show the relative position of things and persons as he perceived like

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[16] *Id.* at 61-63.

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

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

[19] *Id.* at 66-70.

[20] *Rollo*, p. 12.

a normal person. By using signs and signals, he was able to recount clearly what he witnessed in the evening of February 10, 2003. According to the appellate court, the above established Mark's competence as a witness.[21]

The Court of Appeals also found that Mark's testimony was corroborated by the findings of the medico-legal officer who autopsied the victim's corpse that the cause of death was hemorrhagic shock secondary to multiple stab wounds in the thorax. This physical evidence is an eloquent manifestation of truth and its evidentiary weight is far more than that of corroborative testimonies.[22]

The Court of Appeals rejected as groundless accused-appellant's imputation to Mark of improper motive or bias. It also pointed out the irrelevance of non-identification of an accused in a police line-up. What is important is the positive identification of the accused as the perpetrator of the crime by the witness in open court.[23]

Thus, the Court of Appeals agreed with the trial court that the prosecution was able to establish beyond reasonable doubt all the elements of robbery with homicide. It upheld the conviction of accused-appellant for the said felony. The decretal portion of the Decision dated September 28, 2007 reads:

WHEREFORE, premises considered[,] the decision dated November 16, 2005 of the Regional Trial Court [(RTC)], National Capital Judicial Region, Branch 76, Quezon City, in Criminal Case No. Q-03-118348 is **AFFIRMED**.[24]

Accused-appellant is now before this Court insisting on the failure of the prosecution to prove his guilt beyond reasonable doubt on the very same grounds he raised in the Court of Appeals.

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

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

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

[24] *Id.* at 18.

This Court is not persuaded.

Both the RTC and the Court of Appeals found that accused-appellant stabbed the victim several times, causing the latter's death, for the purpose of depriving the victim of his personal properties, which personalities accused-appellant took away with him before leaving the scene of the crime. The killing of the victim was by reason of the robbery. It therefore constitutes the special complex crime of robbery with homicide. This finding of the trial court as affirmed by the appellate court is conclusive to this Court. Also, a review of the records show that both the trial and the appellate courts did not miss, misapply or misinterpret any relevant fact that would warrant an alteration of their identical conclusions as to the criminal responsibility of accused-appellant.[25]

The Court of Appeals has sufficiently addressed the concerns of accused-appellant. Accused-appellant has presented no compelling reason that would justify the reversal of his conviction.

The mere fact that Mark is a deaf-mute does not render him unqualified to be a witness. The rule is that "all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses."[26] A deaf-mute may not be able to hear and speak but his/her other senses, such as his/her sense of sight, remain functional and allow him/her to make observations about his/her environment and experiences. The inability to hear and speak may prevent a deaf-mute from communicating orally with others but he/she may still communicate with others in writing or through signs and symbols and, as in this case, sketches. Thus, a deaf-mute is competent to be a witness so long as he/she has the faculty to make observations and he/she can make those observations known to others. As this Court held in *People v. Tuangco*:[27]

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[25] The general rule is that the factual findings of the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misapprehended or misapplied some facts or circumstances of weight and substance which can alter the result of the case. (*Navarrete v. People*, 542 Phil. 496, 506 [2007].)

[26] Rules of Court, Rule 130, Section 20.

[27] 399 Phil. 147, 162 (2000).

A deaf-mute is not incompetent as a witness. All persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Deaf-mutes are competent witnesses where they (1) can understand and appreciate the sanctity of an oath; (2) can comprehend facts they are going to testify on; and (3) can communicate their ideas through a qualified interpreter. Thus, in *People vs. De Leon* and *People vs. Sasota*, the accused was convicted on the basis of the testimony of a deaf-mute. x x x. (Citations omitted.)

When a deaf-mute testifies in court, "the manner in which the examination of a deaf-mute should be conducted is a matter to be regulated and controlled by the trial court in its discretion, and the method adopted will not be reviewed by the appellate court in the absence of a showing that the complaining party was in some way injured by reason of the particular method adopted."[28]

In this case, both the trial and the appellate courts found that Mark understood and appreciated the sanctity of an oath and that he comprehended the facts he testified on. This Court sees no reason in ruling otherwise.

Mark communicated his ideas with the help of Catinguil, a licensed sign language interpreter from the Philippine Registry of Interpreters for the Deaf who has been teaching in the Philippine School for the Deaf since 1990 and possessed special education and training for interpreting sign language. The trial and the appellate courts found Catinguil qualified to act as interpreter for Mark. No ground to disturb that finding exists.

Mark communicated a credible account of the things he perceived on that fateful February 10, 2003 – the situation of the victim who had just boarded his car; the respective positions of accused-appellant and his still unidentified cohort *vis-à-vis* the victim; accused-appellant's knock on the window of the victim's car and the sudden series of stabs accused-appellant inflicted upon the victim; the taking of the victim's various personal properties; accused-appellant's walk away from the crime scene; and, the revelation of accused-appellant's identity

[28] *Id.* at 163.

when he finally removed the bonnet that covered his face, unaware that someone was secretly and silently watching. In this connection, the Court of Appeals correctly observed that "[d]espite intense and grueling cross-examinations, the eyewitness responded with consistency upon material details that could only come from a firsthand knowledge of the shocking events which unfolded before his eyes."[29] The imperfections or inconsistencies cited by accused-appellant were due to the fact that there is some difficulty in eliciting testimony where the witness is a deaf-mute.[30] Besides they concerned material details which are neither material nor relevant to the case. As such, those discrepancies do not detract from the credibility of Mark's testimony, much less justify the total rejection of the same. What is material is that he positively identified accused-appellant and personally saw what accused-appellant did to the victim on the fateful night when the incident happened. The trial court's assessment of the credibility of Mark, which was affirmed by the appellate court, deserves the highest respect of this Court.

Moreover, the Court of Appeals correctly observed that Mark's testimony was corroborated by the findings of the medico-legal officer who autopsied the victim's corpse that the cause of death was "hemorrhagic shock secondary to multiple stab wounds [in] the thorax."[31] The multiple mortal wounds inflicted on the victim constitute physical evidence which further establish the truth of Mark's testimony. Its evidentiary value far outweighs any corroborative testimony which accused-appellant requires of the prosecution. Moreover, the settled rule is that the positive and credible testimony of a single witness is sufficient to secure the conviction of an accused.[32]

The RTC and the Court of Appeals saw no improper motive which would impel Mark to testify falsely against accused-appellant.

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[29] *Rollo*, p. 13.

[30] *People v. Tuangco*, *supra* note 27 at 163.

[31] *Rollo*, p. 13.

[32] *People v. Sabado*, 398 Phil. 1107, 1120 (2000).

As the determination of bad faith, malice or ill motive is a question of fact, this Court respects the unanimous finding of the trial and the appellate courts on the matter.

Accused-appellant's attempt to render doubtful Mark's identification of him fails. Indeed, the law requires not simply an eyewitness account of the act of committing the crime but the positive identification of the accused as the perpetrator of the crime.[33] Here, Mark has positively pointed to accused-appellant as the perpetrator of the crime. The Court of Appeals correctly ruled that Mark's failure to identify accused-appellant in a police line-up on February 13, 2003 was of no moment. There is no law stating that a police line-up is essential to proper identification. What matters is that the positive identification of the accused as the perpetrator of the crime be made by the witness in open court.[34] Nevertheless, the records show that Mark identified accused-appellant as the robber-killer of the victim in a police line-up on February 18, 2003[35] and, more importantly, in open court in the course of Mark's testimony.

In sum, the trial and the appellate courts correctly convicted accused-appellant for the special complex crime of robbery with homicide. Accused-appellant's crime is punishable under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659, by *reclusion perpetua* to death. Article 63 of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is not attended by any aggravating circumstance, the lesser penalty shall be imposed.[36] Considering that no modifying circumstance attended the commission of the crime, the penalty imposed by the trial and the appellate courts, *reclusion perpetua*, is proper.

The civil indemnity is increased from ₱50,000.00 to ₱75,000.00, the current amount of civil indemnity awarded in

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[33] *People v. Paracale*, 442 Phil. 32, 43 (2002).

[34] *People v. Guillermo*, 461 Phil. 543, 561 (2003).

[35] Records, pp. 188-190; Exhibit "A", *Sinumpaang Salaysay ni Mark Almodovar y Cagolada*.

[36] *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 260.

cases of murder.[37] Robbery with homicide belongs to that class of felony denominated as "Robbery with violence against or intimidation of persons"[38] under Article 294 of the Revised Penal Code and the killing or death of a person is committed "by reason or on occasion of the robbery." The increase in the amount of civil indemnity is called for as the special complex crime of robbery with homicide, like murder, involves a greater degree of criminal propensity than homicide alone where the civil indemnity awarded is ₱50,000.00.

The ₱50,000.00 imposed as moral damages is proper and conforms to recent jurisprudence.[39]

The reimbursement of actual damages in the total amount of ₱477,054.30 for various funeral-related expenses is proper as it is fully supported by evidence on record. The same holds true for the payment of the value of the items taken from the victim, namely, two cellphones at ₱3,500.00 each and the necklace at ₱20,000.00.

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages (namely, the civil indemnity, moral damages and actual damages) interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.[40]

WHEREFORE, the Decision dated September 28, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02100 affirming

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[37] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206; *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 572.

[38] This felony includes robbery with homicide (paragraph 1), robbery with rape (paragraph 2), robbery with serious physical injuries (paragraphs 3 and 4) and simple robbery (paragraph 5).

[39] *Id*.

[40] *People v. Laurio, supra* note 37 at 573. *See also People v. Combate* (G.R. No. 189301, December 15, 2010, 638 SCRA 797, 824) where this Court ruled that interest of 6% *per annum* should be imposed on the award of civil indemnity and all damages, *i.e.*, actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

the Decision dated November 16, 2005 of the Regional Trial Court of Quezon City, Branch 76 in Criminal Case No. Q-03-118348 which found accused-appellant Edwin Aleman guilty beyond reasonable doubt of the special complex crime of robbery with homicide is **AFFIRMED with MODIFICATION** in so far as legal interest at the rate of 6% per annum is imposed on the civil indemnity, moral damages and actual damages awarded to the heirs of the victim, which shall commence from the date of finality of this decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182349. July 24, 2013]

REMAN RECIO, *petitioner, vs.* **HEIRS OF THE SPOUSES AGUEDO and MARIA ALTAMIRANO, namely: ALEJANDRO, ADELAIDA, CATALINA, ALFREDO, FRANCISCO, all surnamed ALTAMIRANO; VIOLETA ALTAMIRANO OLFATO, and LORETA ALTAMIRANO *VDA. DE* MARALIT and SPOUSES LAURO and MARCELINA LAJARCA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE SUPREME COURT IS NOT OBLIGED TO REVIEW ALL OVER AGAIN THE EVIDENCE WHICH THE PARTIES ADDUCED IN THE COURT *A QUO* EXCEPT WHERE THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT ARE CONFLICTING OR CONTRADICTORY.— Under Rule 45

of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory. In the instant case, the findings of the trial court and its conclusion based on the said findings contradict those of the CA. After a careful review, the Court finds no reversible error with the decision of the CA.

2. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; REQUISITES TO BE VALID; PRESENT.— At the core of the present petition is the validity of the verbal contract of sale between Alejandro and the petitioner; and the Deed of Absolute Sale between the Altamiranos and the Spouses Lajarca involving the subject property. A valid contract of sale requires: (a) a meeting of minds of the parties to transfer ownership of the thing sold in exchange for a price; (b) the subject matter, which must be a possible thing; and (c) the price certain in money or its equivalent. In the instant case, all these elements are present.

3. ID.; ID.; AGENCY; A SPECIAL POWER OF ATTORNEY IS REQUIRED BEFORE AN AGENT MAY SELL AN IMMOVABLE PROPERTY.— In *Alcantara v. Nido*, the Court emphasized the requirement of an SPA before an agent may sell an immovable property. x x x. Articles 1874 and 1878 of the Civil Code explicitly provide: Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Art. 1878. Special powers of attorney are necessary in the following cases: x x x (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration; Given the expressed requirement under the Articles 1874 and 1878 of the Civil Code that there must be a written authority to sell an immovable property, the petitioner's arguments must fail. The petitioner asserts that since TCT No. T-102563 contained a notice of *lis pendens*, the Altamiranos very well knew of the earlier sale to him by Alejandro. While this may be true, it does not negate the fact that Alejandro did not have

any SPA. It was a finding that need not be disturbed that Alejandro had no authority from his co-owners to sell the subject property.

4. ID.; ID.; ID.; A PARTY WHO RELIED ONLY ON THE WORDS OF THE AGENT WITHOUT SECURING A COPY OF THE SPECIAL POWER OF ATTORNEY IN FAVOR OF THE LATTER, IS BOUND BY THE RISK ACCOMPANYING SUCH TRUST ON THE MERE ASSURANCE OF THE AGENT.— [T]he fact that Alejandro allegedly represented a majority of the co-owners in the transaction with the Spouses Lajarca, is of no moment. The Court cannot just simply assume that Alejandro had the same authority when he transacted with the petitioner. In *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.* the Court stated that "persons dealing with an assumed agency, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it." In other words, when the petitioner relied only on the words of respondent Alejandro without securing a copy of the SPA in favor of the latter, the petitioner is bound by the risk accompanying such trust on the mere assurance of Alejandro.

5. ID.; ID.; ID.; PRINCIPLE OF APPARENT AUTHORITY; APPARENT AUTHORITY BASED ON ESTOPPEL CAN ARISE FROM THE PRINCIPAL WHO KNOWINGLY PERMITS THE AGENT TO HOLD HIMSELF OUT WITH AUTHORITY AND FROM THE PRINCIPAL WHO CLOTHES THE AGENT WITH *INDICIA* OF AUTHORITY THAT WOULD LEAD A REASONABLY PRUDENT PERSON TO BELIEVE THAT HE ACTUALLY HAS SUCH AUTHORITY.— The same *Woodchild* case stressed that apparent authority based on estoppel can arise from the principal who knowingly permits the agent to hold himself out with authority and from the principal who clothes the agent with *indicia* of authority that would lead a reasonably prudent person to believe that he actually has such authority. Apparent authority of an agent arises only from "acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as

claimant and such must have produced a change of position to its detriment." In the instant case, the sale to the Spouses Lajarca and other transactions where Alejandro allegedly represented a considerable majority of the co-owners transpired after the sale to the petitioner; thus, the petitioner cannot rely upon these acts or conduct to believe that Alejandro had the same authority to negotiate for the sale of the subject property to him. Indeed, the petitioner can only apply the principle of apparent authority if he is able to prove the acts of the Altamiranos which justify his belief in Alejandro's agency; that the Altamiranos had such knowledge thereof; and if the petitioner relied upon those acts and conduct, consistent with ordinary care and prudence.

6. ID.; ID.; CO-OWNERSHIP; A CO-OWNER CAN VALIDLY AND LEGALLY DISPOSE OF HIS SHARE EVEN WITHOUT THE CONSENT OF ALL THE OTHER CO-OWNERS; HOWEVER, THE SALE OF THE ENTIRE PROPERTY BY A CO-OWNER WITHOUT THE CONSENT OF ALL THE OTHER CO-OWNERS IS NULL AND VOID.— The instant case shows no evidence on record of specific acts which the Altamiranos made before the sale of the subject property to the petitioner, indicating that they fully knew of the representation of Alejandro. All that the petitioner relied upon were acts that happened after the sale to him. Absent the consent of Alejandro's co-owners, the Court holds that the sale between the other Altamiranos and the petitioner is null and void. But as held by the appellate court, the sale between the petitioner and Alejandro is valid insofar as the *aliquot* share of respondent Alejandro is concerned. Being a co-owner, Alejandro can validly and legally dispose of his share even without the consent of all the other co-heirs. Since the balance of the full price has not yet been paid, the amount paid shall represent as payment to his *aliquot* share. This then leaves the sale of the lot of the Altamiranos to the Spouses Lajarca valid only insofar as their shares are concerned, exclusive of the *aliquot* part of Alejandro, as ruled by the CA. The Court finds no reversible error with the decision of the CA in all respects.

APPEARANCES OF COUNSEL

Rodriguez Laluces Ecarma & Diaz Law Offices for petitioner.
Octavio Macatangay for Heirs of Sps. Aguedo and Maria Atamirano.
Evangeline Jorge-Lajarca for Sps. Lajarca.

D E C I S I O N

REYES, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to modify the Decision[2] of the Court of Appeals (CA) dated November 29, 2007 in CA-G.R. CV No. 86001, affirming with modification the Decision[3] dated August 23, 2005 of the Regional Trial Court (RTC) of Lipa City, Branch 85 in Civil Case No. 97-0107. The petitioner asks this Court to reinstate in full the said RTC decision.

The Facts

In the 1950's, Nena Recio (Nena), the mother of Reman Recio (petitioner), leased from the respondents Alejandro, Adelaida, Catalina, Alfredo, Francisco, all surnamed Altamirano, Violeta Altamirano Olfato, and Loreto Altamirano *Vda. De* Maralit (referred to as the Altamiranos) a parcel of land with improvements, situated at No. 39 10 de Julio Street (now Esteban Mayo Street), Lipa City, Batangas. The said land has an area of more or less eighty-nine square meters and fifty square decimeters (89.50 sq m), and is found at the northern portion of two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. 66009 and 66010 of the Registry of Deeds of Lipa City. The Altamiranos inherited the subject land from their

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[1] *Rollo,* pp. 8-25.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring; *id.* at 26-45.

[3] Under the sala of Judge Avelino G. Demetria; *id.* at 46-56.

deceased parents, the spouses Aguedo Altamirano and Maria Valduvia.[4]

Nena used the ground floor of the subject property as a retail store for grains and the upper floor as the family's residence. The petitioner claimed that in 1988, the Altamiranos offered to sell the subject property to Nena for Five Hundred Thousand Pesos (₱500,000.00). The latter accepted such offer, which prompted the Altamiranos to waive the rentals for the subject property. However, the sale did not materialize at that time due to the fault of the Altamiranos. Nonetheless, Nena continued to occupy and use the property with the consent of the Altamiranos.[5]

Meanwhile, the Altamiranos consolidated the two (2) parcels of land covered by TCT Nos. 66009 and 66010. They were eventually subdivided into three (3) parcels of land which were then denominated as Lots 1, 2, and 3 of the Consolidation-Subdivision Plan PCS-04-00367. Subsequently, TCT No. T-102563 of the Registry of Deeds of Lipa City was issued to cover the subject property. The petitioner and his family remained in peaceful possession of Lot No. 3.[6]

In the latter part of 1994, the petitioner renewed Nena's option to buy the subject property. The petitioner conducted a series of negotiations with respondent Alejandro who introduced himself as representing the other heirs. After the said negotiations, the Altamiranos through Alejandro entered into an oral contract of sale with the petitioner over the subject property. In January 1995, in view of the said oral contract of sale, the petitioner made partial payments to the Altamiranos in the total amount of One Hundred Ten Thousand Pesos (₱110,000.00). Alejandro duly received and acknowledged these partial payments as shown in a receipt dated January 24, 1995. On April 14, 1995, the petitioner made another payment in the amount of Fifty Thousand Pesos (₱50,000.00), which Alejandro again received and

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[4] *Id.* at 14-15, 28, 47.

[5] *Id.* at 15, 28-29, 48.

[6] *Id.* at 15, 29, 48.

acknowledged through a receipt of the same date. Subsequently, the petitioner offered in many instances to pay the remaining balance of the agreed purchase price of the subject property in the amount of Three Hundred Forty Thousand Pesos (₱340,000.00), but Alejandro kept on avoiding the petitioner. Because of this, the petitioner demanded from the Altamiranos, through Alejandro, the execution of a Deed of Absolute Sale in exchange for the full payment of the agreed price.[7]

Thus, on February 24, 1997, the petitioner filed a complaint for Specific Performance with Damages. On March 14, 1997, the petitioner also caused to annotate on the TCT No. T-102563 a Notice of *Lis Pendens*.[8]

Pending the return of service of summons to the Altamiranos, the petitioner discovered that the subject property has been subsequently sold to respondents Lauro and Marcelina Lajarca (Spouses Lajarca). TCT No. T-102563 was cancelled and a new title, TCT No. 112727, was issued in the name of the Spouses Lajarca by virtue of a Deed of Sale executed by the latter and the Altamiranos on February 26, 1998. Thus, the petitioner filed an Amended Complaint impleading the Spouses Lajarca and adding as a cause of action the annulment of the sale between the Altamiranos and the Spouses Lajarca.[9]

Thereafter, trial ensued. Alejandro was called to testify at the instance of the petitioner but after a brief testimony, he excused himself and never returned to the witness stand despite several subpoenas. For the respondents, the Altamiranos manifested that they would no longer present any witness while the Spouses Lajarca were considered to have waived their right to present evidence since they failed to appear on the day set for them to do so.[10]

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[7] *Id.* at 16-17, 29-30, 48-49.

[8] *Id.* at 10, 27, 46.

[9] *Id.* at 11, 27, 46.

[10] *Id.* at 12, 30-31, 47.

The Ruling of the RTC in Civil Case No. 97-0107

On August 23, 2005, the trial court rendered a decision,[11] the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendants as follows:

1. declaring as NULL AND VOID the Deed of Absolute Sale dated 26 February 1998 between the defendants Altamiranos and the defendants Lajarcas covering that parcel of land together with all improvements thereon situated at No. 39 10 de Julio Street (now Esteban Mayo Street), Lipa City, Batangas, containing an area of more or less Eighty[-]Nine Square Meters and Fifty Square Decimeters (89.50 sq. m) then covered by Transfer Certificate of Title No. T-102563 of the Registry of Deeds of Lipa City;

2. ordering the Register of Deeds of Lipa City to cancel Transfer Certificate of Title No. T-112727 of the Registry of Deeds of Lipa City in the name of the defendants Lajarcas and to reinstate Transfer Certificate of Title No. T-102563;

3. directing the defendants Altamiranos to execute a Deed of Absolute Sale in favor of plaintiff covering the parcel of land together with all improvements thereon situated at No. 39 10 de Julio Street (now Esteban Mayo Street), Lipa City, Batangas, containing an area of more or less Eighty[-]Nine Square Meters and Fifty Square Decimeters (89.50 sq. m) then covered by Transfer Certificate of Title No. T-102563 upon payment by said plaintiff of the balance of the purchase price in the amount of THREE HUNDRED FORTY THOUSAND PESOS ([₱]340,000.00).

4. directing the defendants Altamiranos and Lajarcas, jointly and severally, to pay plaintiff moral damages in the amount of [₱]100,000.00, actual and compensatory damages in the amount of [₱]100,000.00, [₱]50,000.00 as exemplary damages and the sum of [₱]50,000.00 as attorney's fees plus [₱]2,500.00 for every hearing attended as and for appearance fees, and costs of suit.

SO ORDERED.[12]

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[11] *Id.* at 46-56.

[12] *Id.* at 55-56.

Aggrieved, the Spouses Lajarca filed an appeal assailing the above RTC decision.

The Ruling of the CA in CA-G.R. CV No. 86001

In its Decision[13] dated November 29, 2007, the CA affirmed with modification, the dispositive portion of which states:

> WHEREFORE, premises considered, the August 23, 2005 ***Decision*** of the Regional Trial Court, Br. 85, Fourth Judicial Region, Lipa City, in Civil Case No. 97-0107, is hereby **AFFIRMED with MODIFICATION**. Concomitantly, judgment is hereby rendered, as follows:
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> 1) The complaint, as far as Adelaida Altam[i]rano, Catalina Altam[i]rano, Alfredo Altam[i]rano, Francisco Altam[i]rano, Violeta Altam[i]rano Olfato and Loreta Altam[i]rano *vda. de* Maralit are concerned, is hereby **DISMISSED**;
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> 2) The contract of sale between Alejandro Altam[i]rano and Reman Recio is **VALID** only with respect to the aliquot share of Alejandro Altam[i]rano in the lot previously covered by TCT No. T-102563 (now covered by TCT No. 112727);
>
> 3) The *Deed of Sale*, dated February 26, 1998, between the Altam[i]ranos and the Lajarca Spouses is declared **NULL and VOID** as far as the aliquot share of Alejandro Altam[i]rano is concerned;
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> 4) Reman Recio is **DECLARED** a co-owner of the Spouses Lauro and Marcelina Lajarca over the property previously covered by TCT No. T-102563 (now TCT No. 112727), his share being that which previously corresponds to the aliquot share of Alejandro Altam[i]rano; and
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> 5) The damages awarded below to Reman Recio are **AFFIRMED**. No costs.
>
> **SO ORDERED.**[14]

In *précis*, the CA found and ruled as follows:

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[13] *Id.* at 26-45.

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

1) That the summons to Alejandro is not summons to the other Altamiranos since Alejandro's authority to represent his co-heirs is disputed for lack of a written special power of attorney (SPA). Furthermore, the CA found that the Altamiranos, save for Alejandro and Violeta, reside abroad with unknown addresses. Thus, for the CA, summons to the non-resident Altamiranos should have been served extraterritorially as provided in Section 15, Rule 14[15] of the Revised Rules of Court.[16]

2) That there was a valid contract of sale entered into by Alejandro and the petitioner considering that: (a) Alejandro did not make any express reservation of ownership or title to the subject parcel of land, and that he issued receipts precisely to acknowledge the payments made for the purchase of Lot No. 3; (b) Alejendro actually delivered Lot No. 3 to the petitioner and waived the rental payments thereof; (c) Alejandro did not actually refuse the petitioner's offer to pay the balance of the purchase price but instead, merely avoided the petitioner; and (d) all the elements of a valid contract of sale exist in the transaction between the petitioner and the Altamiranos.[17]

3) That Alejandro's sale of Lot No. 3 did not bind his co-owners because a sale of real property by one purporting to be an agent of the owner without any written authority from the

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[15] Sec. 15. *Extraterritorial service* – When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which, is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached in the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

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

[17] *Id.* at 36-38.

latter is null and void. An SPA from the co-owners pursuant to Article 1878 of the New Civil Code is necessary. However, the CA held that the contract of sale between Alejandro and the petitioner is valid because under a regime of co-ownership, a co-owner can freely sell and dispose his undivided interest, citing *Acabal v. Acabal.*[18] Furthermore, the Spouses Lajarca were not buyers in good faith because they had knowledge of the prior sale to the petitioner who even caused the annotation of the Notice of *Lis Pendens* on TCT No. T-102563.[19]

The CA, thereby, held that insofar as the verbal contract of sale between Alejandro and the petitioner is concerned, Alejandro's disposition affects only his *pro indiviso* share, such that the transferee (the petitioner) receives only what corresponds to Alejandro's undivided share in the subject lot. Likewise, the CA declared the deed of absolute sale between the Altamiranos and the Spouses Lajarca valid only insofar as the *aliquot* shares of the other Altamiranos are concerned. Thus, in effect, the petitioner and the Spouses Lajarca are co-owners of the subject property.

Not satisfied with the decision, the petitioner sought reconsideration but his motion was denied in the CA Resolution[20] dated March 18, 2008.

Issue

The petitioner filed the instant petition alleging in the main that the CA gravely and seriously erred in modifying the RTC decision.

Our Ruling

The petition has no merit.

Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate

[18] 494 Phil. 528 (2005).

[19] *Rollo,* pp. 38-43.

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

court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.[21] In the instant case, the findings of the trial court and its conclusion based on the said findings contradict those of the CA. After a careful review, the Court finds no reversible error with the decision of the CA.

At the core of the present petition is the validity of the verbal contract of sale between Alejandro and the petitioner; and the Deed of Absolute Sale between the Altamiranos and the Spouses Lajarca involving the subject property.

A valid contract of sale requires: (a) a meeting of minds of the parties to transfer ownership of the thing sold in exchange for a price; (b) the subject matter, which must be a possible thing; and (c) the price certain in money or its equivalent.[22]

In the instant case, all these elements are present. The records disclose that the Altamiranos were the ones who offered to sell the property to Nena but the transaction did not push through due to the fault of the respondents. Thereafter, the petitioner renewed Nena's option to purchase the property to which Alejandro, as the representative of the Altamiranos verbally agreed. The determinate subject matter is Lot No. 3, which is covered under TCT No. T-102563 and located at No. 39 10 de Julio Street (now Esteban Mayo Street), Lipa City, Batangas.[23] The price agreed for the sale of the property was Five Hundred Thousand Pesos (₱500,000.00).[24] It cannot be denied that the oral contract of sale entered into between the petitioner and Alejandro was valid.

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[21] *Litonjua v. Fernandez,* 471 Phil. 440, 453 (2004).

[22] *Robern Development Corporation and Rodolfo M. Bernardo, Jr. v. People's Landless Association, represented by Florida Ramos and Nardo Labora,* G.R. No. 173622, March 11, 2013.

[23] *Rollo*, pp. 29, 47.

[24] *Id.* at 48.

However, the CA found that it was only Alejandro who agreed to the sale. There is no evidence to show that the other co-owners consented to Alejandro's sale transaction with the petitioner. Hence, for want of authority to sell Lot No. 3, the CA ruled that Alejandro only sold his *aliquot* share of the subject property to the petitioner.

In *Alcantara v. Nido*,[25] the Court emphasized the requirement of an SPA before an agent may sell an immovable property. In the said case, Revelen was the owner of the subject land. Her mother, respondent Brigida Nido accepted the petitioners' offer to buy Revelen's land at Two Hundred Pesos (₱200.00) per sq m. However, Nido was only authorized verbally by Revelen. Thus, the Court declared the sale of the said land null and void under Articles 1874 and 1878 of the Civil Code.[26]

Articles 1874 and 1878 of the Civil Code explicitly provide:

> Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.
>
> Art. 1878. Special powers of attorney are necessary in the following cases:
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> x x x x x x x x x
>
> (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

The petitioner insists that the authority of Alejandro to represent his co-heirs in the contract of sale entered into with the petitioner had been adequately proven during the trial. He alleges that the other Altamiranos are deemed to have knowledge of the contract of sale entered into by Alejandro with the petitioner since all of them, either personally or through their authorized representatives participated in the sale transaction with the Spouses Lajarca

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[25] G.R. No. 165133, April 19, 2010, 618 SCRA 333.

[26] *Id.* at 335-336, 339-341.

involving the same property covered by TCT No. T-102563. In fact, said TCT even contained a notice of *lis pendens* which should have called their attention that there was a case involving the property. Moreover, the petitioner points out that Alejandro represented a considerable majority of the co-owners as can be observed from other transaction and documents, *i.e.*, three (3) Deeds of Sale executed in favor of the Spouses Lajarca and the two other buyers of the parcels of land co-owned by the Altamiranos.[27]

The petitioner's contentions are untenable. Given the expressed requirement under the Articles 1874 and 1878 of the Civil Code that there must be a written authority to sell an immovable property, the petitioner's arguments must fail. The petitioner asserts that since TCT No. T-102563 contained a notice of *lis pendens*, the Altamiranos very well knew of the earlier sale to him by Alejandro. While this may be true, it does not negate the fact that Alejandro did not have any SPA. It was a finding that need not be disturbed that Alejandro had no authority from his co-owners to sell the subject property.

Moreover, the fact that Alejandro allegedly represented a majority of the co-owners in the transaction with the Spouses Lajarca, is of no moment. The Court cannot just simply assume that Alejandro had the same authority when he transacted with the petitioner.

In *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*[28] the Court stated that "persons dealing with an assumed agency, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[29] In other words, when the petitioner relied only

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[27] *Rollo*, pp. 20-22.

[28] 479 Phil. 896 (2004).

[29] *Id.* at 911.

on the words of respondent Alejandro without securing a copy of the SPA in favor of the latter, the petitioner is bound by the risk accompanying such trust on the mere assurance of Alejandro.

The same *Woodchild* case stressed that apparent authority based on estoppel can arise from the principal who knowingly permit the agent to hold himself out with authority and from the principal who clothe the agent with *indicia* of authority that would lead a reasonably prudent person to believe that he actually has such authority.[30] Apparent authority of an agent arises only from "acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant and such must have produced a change of position to its detriment."[31] In the instant case, the sale to the Spouses Lajarca and other transactions where Alejandro allegedly represented a considerable majority of the co-owners transpired after the sale to the petitioner; thus, the petitioner cannot rely upon these acts or conduct to believe that Alejandro had the same authority to negotiate for the sale of the subject property to him.

Indeed, the petitioner can only apply the principle of apparent authority if he is able to prove the acts of the Altamiranos which justify his belief in Alejandro's agency; that the Altamiranos had such knowledge thereof; and if the petitioner relied upon those acts and conduct, consistent with ordinary care and prudence.[32]

The instant case shows no evidence on record of specific acts which the Altamiranos made before the sale of the subject property to the petitioner, indicating that they fully knew of the representation of Alejandro. All that the petitioner relied upon were acts that happened after the sale to him. Absent the consent of Alejandro's co-owners, the Court holds that the sale between

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[30] *Id.* at 914.

[31] *Id.*

[32] *Id.*

the other Altamiranos and the petitioner is null and void. But as held by the appellate court, the sale between the petitioner and Alejandro is valid insofar as the *aliquot* share of respondent Alejandro is concerned. Being a co-owner, Alejandro can validly and legally dispose of his share even without the consent of all the other co-heirs.[33] Since the balance of the full price has not yet been paid, the amount paid shall represent as payment to his *aliquot* share. [34] This then leaves the sale of the lot of the Altamiranos to the Spouses Lajarca valid only insofar as their shares are concerned, exclusive of the *aliquot* part of Alejandro, as ruled by the CA. The Court finds no reversible error with the decision of the CA in all respects.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals dated November 29, 2007 in CA-G.R. CV No. 86001 is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185160. July 24, 2013]

POLYMER RUBBER CORPORATION and JOSEPH ANG, *petitioners, vs.* **BAYOLO SALAMUDING,** *respondent.*

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[33] *Calma v. Santos,* G.R. No. 161027, June 22, 2009, 590 SCRA 359, 375.

[34] *Rollo,* p. 39.

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; TO HOLD A DIRECTOR OR OFFICER PERSONALLY LIABLE FOR THE CORPORATE OBLIGATIONS, IT MUST BE ALLEGED IN THE COMPLAINT THAT THE DIRECTOR OR OFFICER ASSENTED TO PATENTLY UNLAWFUL ACTS OF THE CORPORATION OR THAT THE OFFICER WAS GUILTY OF GROSS NEGLIGENCE OR BAD FAITH AND THERE MUST BE PROOF THAT THE OFFICER ACTED IN BAD FAITH.— "A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith." To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith. In the instant case, the CA imputed bad faith on the part of the petitioners when Polymer ceased its operations the day after the promulgation of the SC resolution in 1993 which was allegedly meant to evade liability. The CA found it necessary to pierce the corporate fiction and pointed at Ang as the responsible person to pay for Salamuding's money claims. Except for this assertion, there is nothing in the records that show that Ang was responsible for the acts complained of. At any rate, we find that it will require a great stretch of imagination to conclude that a corporation would cease its operations if only to evade the payment of the adjudged monetary awards in favor of three (3) of its employees.

2. ID.; ID.; ID.; IN THE ABSENCE OF A FINDING THAT HE ACTED WITH MALICE OR BAD FAITH, THE CORPORATE DIRECTOR OR OFFICER CANNOT BE HELD PERSONALLY RESPONSIBLE FOR THE LIABILITIES OF THE CORPORATION.— The dispositive portion of the LA Decision dated November 21, 1990 which

Salamuding attempts to enforce does not mention that Ang is jointly and severally liable with Polymer. Ang is merely one of the incorporators of Polymer and to single him out and require him to personally answer for the liabilities of Polymer is without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the CA to hold him responsible. "x x x. *MAM Realty Development Corporation v. NLRC*, on solidary liability of corporate officers in labor disputes, enlightens: x x x 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 liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases: 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."

3. ID.; JUDGMENTS; FINAL AND EXECUTORY; AN *ALIAS* WRIT OF EXECUTION IS A NULLITY WHERE THE SAME DID NOT CONFORM, IS DIFFERENT FROM, AND WENT BEYOND OR VARIED THE TENOR OF THE JUDGMENT WHICH GAVE IT LIFE.— To hold Ang personally liable at this stage is quite unfair. The judgment of the LA, as affirmed by the NLRC and later by the SC had already long become final and executory. It has been held that a final and executory judgment can no longer be altered. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. "Since the *alias* writ of execution did not conform, is different from and thus went beyond or varied the tenor of the judgment which gave it life, it is a nullity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law."

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SEPARATION PAY; MUST BE COMPUTED ONLY UP TO THE TIME THE COMPANY CEASED ITS OPERATION; THE EMPLOYER CANNOT BE HELD LIABLE FOR THE PAYMENT OF SEPARATION

PAY BEYOND THE CLOSURE OF ITS BUSINESS BECAUSE EVEN IF THE ILLEGALLY DISMISSED EMPLOYEES WOULD BE REINSTATED, THEY COULD NOT POSSIBLY WORK BEYOND THE TIME OF THE CESSATION OF THE COMPANY'S OPERATION.— Anent the computation of their liability for the payment of separation pay in lieu of reinstatement in favor of Salamuding, the Court agrees with the ruling of the LA that it must be computed only up to the time Polymer ceased operations in September 1993. The computation must be based on the number of days when Polymer was in actual operation. It cannot be held liable to pay separation pay beyond such closure of business because even if the illegally dismissed employees would be reinstated, they could not possibly work beyond the time of the cessation of its operation. In the case of *Chronicle Securities Corp. v. NLRC,* we ruled that even an employer who is "found guilty of unfair labor practice in dismissing his employee may not be ordered so to pay backwages beyond the date of closure of business where such closure was due to legitimate business reasons and not merely an attempt to defeat the order of reinstatement."

APPEARANCES OF COUNSEL

Gerardo Rabanes for petitioners.
Law Firm of Chan Robles and Associates for respondent.

D E C I S I O N

REYES, *J.*:

The instant petition[1] assails the Decision[2] dated June 30, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98387 directing the recall of the *alias* writ of execution and the lifting of the notice of levy on the shares of stocks of petitioner Joseph

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[1] *Rollo,* pp. 3-16.

[2] Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa, concurring; *id.* at 17-31.

Ang (Ang). The Resolution[3] dated November 5, 2008 denied the motion for reconsideration thereof.

The antecedent facts are as follows:

Herein respondent Bayolo Salamuding (Salamuding), Mariano Gulanan and Rodolfo Raif (referred to as the complainants) were employees of petitioner Polymer Rubber Corporation (Polymer), who were dismissed after allegedly committing certain irregularities against Polymer.

On July 24, 1990, the three employees filed a complaint against Polymer and Ang (petitioners) for unfair labor practice, illegal dismissal, non-payment of overtime services, violation of Presidential Decree No. 851, with prayer for reinstatement and payment of back wages, attorney's fees, moral and exemplary damages.[4]

On November 21, 1990, the Labor Arbiter (LA) rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered dismissing the complainant unfair labor practice (*sic*) but directing the respondent the following:

1. Reinstate complainants to their former position with full back wages from the time they were illegally dismissed up to the time of reinstatement.

2. To pay individual complainants their 13th month pay and for the year 1990 in the following amount:

a.	Mariano Gulanan ……..	[₱]3,194
b.	Rodolfo Raif …….	[₱]3,439
c.	Bayolo Salam[u]ding ……	[₱]3,284

3. To pay individual complainants overtime in the amount of [₱]1,335 each.

4. To pay individual complainants overtime in the amount of [₱]6,608.80 each.

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[3] *Id.* at 33-34.

[4] *Id.* at 18.

5. To pay individual complainants moral and exemplary damages in the amount of [₱]10,000 each.

6. To pay attorney's fee equivalent to ten (10) percent of the total monetary award of the complainants.

SO ORDERED.[5]

A writ of execution was subsequently issued on April 18, 1991 to implement the aforesaid judgment.[6]

The petitioners appealed to the National Labor Relations Commission (NLRC).

On April 7, 1992, the NLRC affirmed the decision of the LA with modifications. The NLRC deleted the award of moral and exemplary damages, service incentive pay, and modified the computation of 13th month pay.[7] The corresponding Entry of Judgment was made on September 25, 1992,[8] and an *alias* writ of execution was issued on October 29, 1992, based on the NLRC decision.[9]

The case was subsequently elevated to the Supreme Court (SC) on a petition for *certiorari*. In a Resolution dated September 29, 1993, the Court affirmed the disposition of the NLRC with the further modification that the award of overtime pay to the complainants was deleted.[10]

On September 30, 1993, Polymer ceased its operations.[11]

Upon a motion dated November 11, 1994, the LA *a quo* issued a writ of execution on November 16, 1994 based on the SC resolution. Since the writ of execution was returned

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[5] *Id.* at 18-19.

[6] *Id.* at 19.

[7] *Id.* at 19-20.

[8] CA *rollo*, p. 28.

[9] *Rollo*, p. 20.

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

[11] *Rollo*, p. 26.

unsatisfied, another *alias* writ of execution was issued on June 4, 1997.[12]

In the latter part of 2004, Polymer with all its improvements in the premises was gutted by fire.[13]

On December 2, 2004, the complainants filed a Motion for Recomputation and Issuance of Fifth (5th) *Alias* Writ of Execution. The Research and Computation Unit of the NLRC came up with the total amount of ₱2,962,737.65. Due to the failure of the petitioners to comment/oppose the amount despite notice, the LA approved said amount.[14]

Thus, on April 26, 2005, the LA issued a 5th *Alias* Writ of Execution[15] prayed for commanding the sheriff to collect the amount.

In the implementation of this *alias* writ of execution dated April 26, 2005, the shares of stocks of Ang at USA Resources Corporation were levied.

On November 10, 2005, the petitioners moved to quash the 5th *alias* writ of execution, and to lift the notice of garnishment.[16] They alleged that: a) Ang should not be held jointly and severally liable with Polymer since it was only the latter which was held liable in the decision of the LA, NLRC and the Supreme Court; b) the computation of the monetary award in favor of the complainants in the amount of ₱2,962,737.65 was misleading, anomalous and highly erroneous; and c) the decision sought to be enforced by mere motion is already barred by the statute of limitations.[17]

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[12] CA *rollo*, pp. 29-30.

[13] *Rollo*, p. 28.

[14] CA *rollo*, pp. 48-50.

[15] *Id.*

[16] *Id.* at 51-55.

[17] *Id.*

In an Order[18] dated December 16, 2005, the LA granted the motion. The LA ordered the quashal and recall of the writ of execution, as well as the lifting of the notice of levy on Ang's shares of stocks.

The LA ruled that the Decision dated November 21, 1990 did not contain any pronouncement that Ang was also liable. To hold Ang liable at this stage when the decision had long become final and executory will vary the tenor of the judgment, or in excess of its terms. As to the extent of the computation of the backwages, the same must only cover the period during which the company was in actual operation. Further, the LA found that the complainant's motion to execute the LA's decision was already barred by the statute of limitations. The *fallo* of the decision reads:

> WHEREFORE, premises all considered, an order is hereby rendered quashing and recalling the Writ of Execution and lifting the Notice of Levy on the Shares of Stocks of respondent Joseph Ang.[19]

On appeal, the NLRC affirmed the findings of the LA in a Decision[20] dated September 27, 2006. It, however, made a pronouncement that the complainants did not sleep on their rights as they continued to file series of motions for the execution of the monetary award and are, thus, not barred by the statute of limitations. The appeal on the aspect of the lifting of the notice of levy on the shares of stocks of Ang was dismissed. The dispositive portion of the decision reads as follows:

> WHEREFORE, the assailed Order dated December 16, 2005 is hereby AFFIRMED with MODIFICATION declaring the rights of the complainants to execute the Decision dated November 21, 1990 not having barred by the statute of limitations. The appeal is hereby, DISMISSED for lack of merit.[21]

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

[19] *Id.* at 47.

[20] *Id.* at 26-36.

[21] *Id.* at 35.

On January 12, 2007, the NLRC denied the motion for reconsideration of the foregoing decision.[22]

Undeterred, Salamuding filed a Petition for *Certiorari*[23] before the CA.

On June 30, 2008, the CA found merit with the petition.[24] The CA stated that there has to be a responsible person or persons working in the interest of Polymer who may also be considered as the employer, invoking the cases of *NYK Int'l. Knitwear Corp. Phils. v. NLRC*[25] and *A.C. Ransom Labor Union-CCLU v. NLRC*.[26] Since Ang as the director of Polymer was considered the highest ranking officer of Polymer, he was therefore properly impleaded and may be held jointly and severally liable for the obligations of Polymer to its dismissed employees. Thus, the dispositive portion of the assailed decision reads as follows:

> **WHEREFORE**, the petition is granted in part. The Decision dated September 27, 2006 and the Resolution dated January 12, 2007 of respondent NLRC are hereby annulled and set aside insofar as they direct the recall and quashal of the Writ of Execution and lifting of the Notice of Levy on the shares of stock of respondent Joseph Ang. The Order dated December 16, 2005 of the Honorable Labor Arbiter Ramon Valentin C. Reyes is nullified.
>
> Let the records of the case be remanded to the Labor Arbiter for execution of the Decision dated November 21, 1990 as modified by the NLRC against the respondents Polymer Rubber Corporation and Joseph Ang.[27]

Aggrieved by the CA decision, the petitioners filed the instant petition raising the following questions of law:

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[22] *Id.* at 37-39.

[23] *Id.* at 2-24.

[24] *Rollo*, pp. 17-31.

[25] 445 Phil. 654 (2003).

[26] 226 Phil. 199 (1986).

[27] *Rollo*, pp. 30-31.

a. That upon the finality of the Decision, the same can no longer be altered or modified[;]

b. That the Officer of the Corporation cannot be personally held liable and be made to pay the liability of the corporation[;]

c. That the losing party cannot be held liable to pay the salaries and benefits of the employees beyond the companies [sic] existence;

d. That the separation pay of employees of the company which has closed its business permanently is only half month salary for every year of service.[28]

There is merit in the petition.

"A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith."[29]

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.[30]

In the instant case, the CA imputed bad faith on the part of the petitioners when Polymer ceased its operations the day after the promulgation of the SC resolution in 1993 which was allegedly meant to evade liability. The CA found it necessary to pierce the corporate fiction and pointed at Ang as the responsible person

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[28] *Id.* at 10.

[29] *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, G.R. No. 177114, April 13, 2010, 618 SCRA 208, 216.

[30] *Francisco v. Mallen, Jr.*, G.R. No. 173169, September 22, 2010, 631 SCRA 118, 123-124.

to pay for Salamuding's money claims. Except for this assertion, there is nothing in the records that show that Ang was responsible for the acts complained of. At any rate, we find that it will require a great stretch of imagination to conclude that a corporation would cease its operations if only to evade the payment of the adjudged monetary awards in favor of three (3) of its employees.

The dispositive portion of the LA Decision dated November 21, 1990 which Salamuding attempts to enforce does not mention that Ang is jointly and severally liable with Polymer. Ang is merely one of the incorporators of Polymer and to single him out and require him to personally answer for the liabilities of Polymer is without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the CA to hold him responsible.

In *Aliling v. Feliciano*,[31] the Court explained to wit:

> The CA held the president of WWWEC, Jose B. Feliciano, San Mateo and Lariosa jointly and severally liable for the monetary awards of Aliling on the ground that the officers are considered "employers" acting in the interest of the corporation. The CA cited *NYK International Knitwear Corporation Philippines (NYK) v. National Labor Relations Commission* in support of its argument. Notably, *NYK* in turn cited *A.C. Ransom Labor Union-CCLU v. NLRC.*
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> Such ruling has been reversed by the Court in *Alba v. Yupangco*, where the Court ruled:
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> "By Order of September 5, 2007, the Labor Arbiter denied respondent's motion to quash the 3rd *alias* writ. Brushing aside respondent's contention that his liability is merely joint, the Labor Arbiter ruled:
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> > Such issue regarding the personal liability of the officers of a corporation for the payment of wages and money claims to its employees, as in the instant case, has long been resolved by the Supreme Court in a long list of cases [A.C. *Ransom Labor Union-CLU vs. NLRC* (142 SCRA 269) and reiterated in the cases of *Chua vs.*

[31] G.R. No. 185829, April 25, 2012, 671 SCRA 186.

> *NLRC* (182 SCRA 353), *Gudez vs. NLRC* (183 SCRA 644)]. In the aforementioned cases, the Supreme Court has expressly held that the irresponsible officer of the corporation (*e.g.*, President) is liable for the corporation's obligations to its workers. Thus, respondent Yupangco, being the president of the respondent YL Land and Ultra Motors Corp., is properly jointly and severally liable with the defendant corporations for the labor claims of Complainants Alba and De Guzman. x x x

x x x x x x x x x

As reflected above, the Labor Arbiter held that respondent's liability is solidary.

There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires. *MAM Realty Development Corporation v. NLRC*, on solidary liability of corporate officers in labor disputes, enlightens:

> x x x 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 liabilities 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."[32] (Citations omitted and underscoring ours)

To hold Ang personally liable at this stage is quite unfair. The judgment of the LA, as affirmed by the NLRC and later by the SC had already long become final and executory. It has been held that a final and executory judgment can no longer be altered. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[33] "Since the *alias* writ of execution did not conform, is different from and thus went beyond or varied the tenor of the judgment which gave it life, it is a nullity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law."[34]

Anent the computation of their liability for the payment of separation pay in lieu of reinstatement in favor of Salamuding, the Court agrees with the ruling of the LA that it must be computed only up to the time Polymer ceased operations in September 1993. The computation must be based on the number of days when Polymer was in actual operation.[35] It cannot be held liable to pay separation pay beyond such closure of business because even if the illegally dismissed employees would be reinstated, they could not possibly work beyond the time of the cessation of its operation.[36] In the case of *Chronicle Securities Corp. v.*

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[32] *Id.* at 218-219.

[33] *Manning International Corp. v. NLRC*, G.R. No. 83018, March 13, 1991, 195 SCRA 155, 161.

[34] *Alba v. Yupangco*, G.R. No. 188233, June 29, 2010, 622 SCRA 503, 509, citing *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433 and *Cabang v. Basay*, G.R. No. 180587, March 20, 2009, 582 SCRA 172.

[35] *Durabuilt Recapping Plant & Co. v. NLRC*, 236 Phil. 351, 358 (1987).

[36] *J.A.T. General Services v. NLRC*, 465 Phil. 785, 798-799 (2004).

NLRC,[37] we ruled that even an employer who is "found guilty of unfair labor practice in dismissing his employee may not be ordered so to pay backwages beyond the date of closure of business where such closure was due to legitimate business reasons and not merely an attempt to defeat the order of reinstatement."[38]

WHEREFORE, the petition is **GRANTED**. The Decision dated June 30, 2008 and the Resolution dated November 5, 2008 of the Court of Appeals in CA-G.R. SP No. 98387 are **SET ASIDE**. The Decision of the National Labor Relations Commission dated September 27, 2006 is **REINSTATED**. Let the records of the case be remanded to the Labor Arbiter for proper computation of the award in accordance with this decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188046. July 24, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **AMERICAN RUBBER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; FACTORS

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[37] 486 Phil. 560 (2004).

[38] *Id.* at 572, citing *Pizza Inn/Consolidated Foods Corporation v. NLRC,* G.R. No. 74531, June 28, 1988, 162 SCRA 773, 778.

TO BE CONSIDERED IN DETERMINING JUST COMPENSATION.— Section 17 of the law enumerates the factors to be considered by the RTC in determining just compensation to be paid to the landowner: x x x Thus, the RTC shall be guided by the following factors in just compensation cases: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.

2. ID.; ID.; ID.; ID.; APPLICATION OF THE BASIC FORMULA LAID DOWN IN DAR A.O. NO. 5 TO DETERMINE JUST COMPENSATION IS MANDATORY.— The factors have been translated into the following basic formula under relevant issuances by the DAR: LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where: LV = Land Value CNI = Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration. The mandatory application by the RTC of the above formula in accordance with DAR administrative orders and circulars had been settled by this Court. x x x We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, and *Land Bank of the Philippines v. Barrido.* In *Barrido*, we were explicit in stating that: "While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation." **These rulings plainly impose on the RTC the duty to apply the formula laid down in the pertinent DAR administrative regulations to determine just compensation. Clearly, the CA and the**

RTC acted with grievous error when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the subject land. [T]he SAC is duty-bound to apply the formula laid down in DAR AO No. 5.

3. ID.; ID.; ID.; ID.; JUST COMPENSATION MEANS A FAIR AND FULL EQUIVALENT VALUE FOR THE LOSS SUSTAINED, TAKING INTO CONSIDERATION THE CONDITION OF THE PROPERTY AND ITS SURROUNDINGS, ITS IMPROVEMENTS AND CAPABILITIES.— The CA clearly erred in affirming the valuation by the SAC in this case based on the private appraiser's correlated income, market data and residual value approaches which did not conform to the guidelines set forth in DAR AO No. 5 and Joint DAR-LBP Memorandum Circular (MC) No. 7, Series of 1999. It must be stressed that MC No. 7 was issued to provide revised guidelines in determining the Capitalized Net Income (CNI) specifically for rubberlands x x x. We cannot accept petitioner's valuation as it failed to consider the value of the property *at the time of taking*, the current value of like properties being among those factors enumerated in Section 17. Indeed, these administrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. While rules and regulation issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power. This Court has defined "just compensation" for parcels of land taken pursuant to the agrarian reform program as "the **full and fair** equivalent of the property taken from its owner by the expropriator." The measure of compensation is not the taker's gain but the owner's loss. Just compensation means the equivalent for the value of the property at the time of its taking. It means a fair and full equivalent value for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered. Thus, the current value of like properties should have been considered by petitioner to accurately determine the value of the land *at the time of*

taking, that is, in August 2000 when respondent's title was transferred to the Government.

4. ID.; ID.; ID.; ID.; CASE AT BAR REMANDED TO THE SPECIAL AGRARIAN COURT FOR THE DETERMINATION OF JUST COMPENSATION.— [W]hile the CA correctly observed that petitioner's valuation omitted an integral factor mandated by Section 17, the records are bereft of any supporting evidence to compute the CS. The documents submitted by the respondent to the Commissioners consisted merely of sworn affidavits of adjacent owners/sellers and not registerable deeds of sale. The SAC's decision actually did not contain any discussion of its application of any formula to the facts established by evidence, as it merely adopted the Commissioners' Report, which in turn was based solely on the findings and computation of the Cuervo Appraisal Report. Considering, therefore, that the SAC based its valuation on a different formula, while petitioner failed to take into full consideration the factors set forth in Section 17, and in the absence of sufficient evidence for the determination of just compensation, we are constrained to remand the present case to the SAC for the determination of just compensation in accordance with Section 17 of RA 6657, DAR AO 5, Series of 1998 and Joint DAR-LBP MC No. 7, Series of 1999. The said trial court may, *motu proprio* or at the instance of any of the parties, again appoint one or more commissioners to ascertain facts relevant to the dispute and file a written report thereof.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Pejo Aquino and Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed by Land Bank of the Philippines (LBP) assailing the August 26, 2008

Decision[1] and May 12, 2009 Resolution[2] of the Court of Appeals (CA)-Mindanao Station in CA-G.R. SP No. 00990-MIN which affirmed with modification the Orders[3] dated June 16, 2005 and March 14, 2006 of the Regional Trial Court (Special Agrarian Court [SAC]) of Pagadian City, Branch 18.

The facts follow:

American Rubber Corporation (respondent) is the registered owner of two parcels of land with a combined area of 940.7276 hectares situated in Barangay Baluno, Isabela City, Basilan. The first parcel with an area of 927.9366 hectares is covered by Transfer Certificate of Title (TCT) No. T-1286, while the second parcel consists of 12.7910 hectares under TCT No. T-1285.[4]

Sometime in January 1998, respondent voluntarily offered to sell the two parcels and another property (TCT No. T-4747) together with all improvements for the total price of ₱105,732,921.00. Subsequently, respondent offered to sell only the properties covered by TCT Nos. T-1285 and T-1286 at the higher amount of ₱83,346.77 per hectare, for the total price of ₱1,066,588.60 (12.7970 hectares) and ₱76,928,492.00 (922.9930 hectares), respectively.[5]

The Department of Agrarian Reform (DAR) initially acquired 835.0771 hectares of respondent's landholding, with an average valuation of ₱64,288.16 per hectare or for a total amount of ₱53,685,570.62. Subsequently, an additional 37.7013 hectares were also covered, with an average valuation of ₱62,660.10

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[1] *Rollo*, pp. 89-118. Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Michael P. Elbinias and Ruben C. Ayson concurring.

[2] *Id.* at 121-122.

[3] Records, Vol. I, pp. 233-245, 275-276. Penned by Presiding Judge Reinerio (Abraham) B. Ramas.

[4] Records, Vol. III, p. 2. The areas of TCT Nos. T-1285 and T-1286 are sometimes stated as 12.7970 and 922.9930, respectively, while the combined area is sometimes stated as 935.7906 in some parts of the records. See also pages 4 to 5 of the Commissioners' Report on retained areas.

[5] *Id.* at 115, 117-118.

per hectare or for a total amount of ₱1,604,141.34. The total area acquired by DAR was 888.6489 hectares valued by petitioner at **₱55,682,832.67**.[6]

Since respondent rejected DAR's offer based on petitioner's valuation, the Provincial Agrarian Reform Office (PARO) endorsed the claim folder to the Department of Agrarian Reform Adjudication Board (DARAB) Central Office for summary administrative proceedings.[7] DAR also requested petitioner to deposit the amount fixed as compensation for respondent's land. On February 22, 2000, petitioner deposited in cash and agrarian reform bonds the sum of ₱53,685,570.62.[8] Upon orders of the DAR Secretary, respondent's titles were partially cancelled and new transfer certificates of title were issued over the areas taken in the name of the Republic of the Philippines on August 7, 2000. Thereafter, DAR issued Certificates of Land Ownership Award (CLOAs) in favor of the agrarian reform beneficiaries.[9]

Exasperated by DARAB's inaction for more than two years, respondent filed in the Regional Trial Court (SAC) a suit[10] for judicial determination of just compensation (Civil Case No. 4401-2K2). Petitioner filed a motion to dismiss[11] on the ground of non-exhaustion of administrative remedies, citing the pendency of administrative proceedings and respondent's admission that it had withdrawn and collected the preliminary amount of compensation deposited by petitioner. On January 28, 2003, the SAC denied the motion to dismiss.[12] Petitioner's motion for reconsideration was likewise denied.[13]

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[6] *Id.* at 120.

[7] Records, Vol. I, p. 2.

[8] Records, Vol. III, pp. 142-143.

[9] Records, Vol. I, p. 2.

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

[11] *Id.* at 30-33.

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

[13] *Id.* at 46-50, 57.

Pursuant to the Rules of Court, the SAC designated three commissioners nominated by the parties: an IBP member (Ret. Judge Cecilio G. Martin) as Chairman, and Engr. Sean C. Collantes from the Development Bank of the Philippines and BIR Revenue Officer Cesar P. Dayagdag as Members.

On July 29, 2004, the Commissioners' Report[14] was submitted to the Court, with the following findings and recommendation:

INVESTIGATIONS TAKEN

On March 8, 2004[,] we conducted an ocular inspection. The entire membership of the Court appointed commissioners were all present and both the contending parties also sent their duly authorized representatives.

Our ocular inspection reveal that both parcels of land are predominantly planted to rubber with an approximate density of 290-295 rubber trees per hectare. There are relatively smaller portions thereof which are devoted to the production of rice, cacao, coffee, black pepper, and coconuts. Also found inside the rubber plantation are plant nurseries, office buildings and other infrastructures. The land has an airstrip of about 10 hectares and is likewise traversed and criss-crossed by plantation roads, which were built by plaintiff, American Rubber, containing an area of 27 hectares more or less. The location [of] the rubber plantation is approximately 8 kilometers to the city proper of Isabela, Basilan.

During the course of ocular inspection, some of our members inquired from occupants/workers of the rubber plantation and adjoining owners to get information on the probable selling price of land particularly rubberland. Our inquiry revealed that rubberland commands a selling price of between ₱120,000 to ₱150,000 depending on the size of the land and condition of the rubber trees.

x x x x x x x x x

x x x we conducted inquiries from the different government agency/officials such as the City Assessors Office of Isabela, Department of Agriculture, Register of Deeds, Department of Agrarian Reform, and the Bureau of Internal Revenue for the purpose

[14] Records, Vol. III, pp. 2-19.

of obtaining information on the approximate selling price of rubberland in the Isabela City area. Our investigation reveal that the reasonable selling price of rubber [land] within the City of Isabela ranges from ₱90,000 to ₱150,000.

During the March 26, 2004 hearing, defendant LBP submitted a Valuation Summary for plaintiff's property while the plaintiff submitted a copy of the appraisal report prepared by Cuervo Appraisers Inc. x x x

x x x x x x x x x

RECOMMENDATIONS

x x x x x x x x x

In VIEW of all the foregoing considerations, this Commission hereby recommends that just compensation of the [plaintiff's] property be fixed at ONE HUNDRED FIFTEEN MILLION THREE HUNDRED SEVENTY TWO THOUSAND TWO HUNDRED SIX PESOS (₱115,372,206) x x x.[15]

On June 16, 2005, the SAC issued an Order[16] adopting the Commissioners' recommendation:

WHEREFORE, judgment is hereby rendered ordering defendant LBP and DAR to jointly and severally pay [plaintiff] the following:

1. Just compensation of [plaintiff's] property amounting to ONE HUNDRED FIFTEEN MILLION THREE HUNDRED SEVENTY TWO THOUSAND TWO HUNDRED SIX PESOS (₱115,372,206) which amount is broken down below:

LAND USE	AREA TAKEN	VALUE/ HECTARE	TOTAL VALUE
Rubberland	814.6625	₱130,342	₱106,184,739
Riceland	14.8470	₱126,000	₱ 1,870,722
Coconutland	5.5676	₱ 98,430	₱ 548,018
Cacaoland	0.8971	₱157,063	₱ 140,901

[15] *Id.* at 3-4, 18.

[16] *Supra* note 3, at 233-245.

Idle/Rawland	13.4160	₱ 80,000	₱ 1,073,280
Black Pepper land	0.5918	₱218,013	₱ 129,020
Plant Nursery	1.5574	₱200,000	₱ 311,480
Plantation road	27.5043	₱130,342	₱ 3,584,496
Airstrip	10.1970	₱150,000	₱ 1,529,550
		GRAND TOTAL	**₱115,372,206**

2. Interest based on the 91-day treasury bills rate as provided for under Section 18 of R.A. 6657 be reckoned from the [date] when [plaintiff's] property was taken and/or transferred to the Republic of the Philippines

3. Commissioners fees to be taxed as part of the costs pursuant to Section 12, Rule 67, of the 1997 RCP, as amended, which shall be claimed in a Bill of Costs to be submitted to the Court for its evaluation and proper action thereto;

4. Reasonable attorney's fees amounting to One Hundred Fifty Thousand Pesos (₱150,000.00);

5. Costs of suit.

SO ORDERED.[17]

After the SAC denied its motion for reconsideration, petitioner filed a petition for review under Rule 43 with the CA.

On August 26, 2008, the CA rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises foregoing, the instant petition is **PARTIALLY GRANTED**. The assailed Orders dated June 16, 2005 and March 14, 2006 of Branch 18 of the Regional Trial Court of Pagadian City is hereby **AFFIRMED** with **MODIFICATION** that the award of interest based on the 91-day treasury bill is deleted.

SO ORDERED.[18]

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[17] *Id.* at 244-245.

[18] *Rollo,* p. 118.

The CA also denied petitioner's motion for reconsideration.

Hence, this petition asserting that –

1. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN **AFFIRMING WITH MODIFICATION** THE ORDERS DATED JUNE 16, 2005 AND MARCH 14, 2006 OF THE SPECIAL AGRARIAN COURT (SAC), THE COMPENSATION FIXED BY THE SAC NOT BEING IN ACCORDANCE WITH THE LEGALLY PRESCRIBED VALUATION FACTORS UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 05, SERIES OF 1998 AND JOINT DAR-LBP MEMORANDUM CIRCULAR NO. 7, SERIES OF 1999, AND AS RULED BY THE SUPREME COURT IN THE CASES OF *SPS. BANAL*, G.R. NO. 143276 (JULY 20, 2004); *CELADA*, G.R. NO. 164876 (JANUARY 23, 2006); AND *LUZ LIM*, G.R. NO. 171941 (AUGUST 2, 2007).

2. THE HONORABLE COURT OF APPEALS [ERRED] IN HOLDING PETITIONER LBP LIABLE FOR COMMISSIONERS' FEE AS THE LATTER IS PERFORMING GOVERNMENTAL FUNCTION AND, THEREFORE, NOT LIABLE FOR COST.[19]

Petitioner assails the CA in affirming the SAC valuation which merely adopted the Commissioners' Report which, in turn, is based solely on the recommended valuation by respondent's private appraiser, Cuervo Appraisers, Inc. using a different criteria. It cites our ruling in *Land Bank of the Philippines v. Kumassie Plantation Company, Inc.*[20] where this Court noted that no basis had been shown in the appraisal report for concluding that the market data approach and income approach, the same criteria used by Cuervo Appraisers, Inc. in this case, "conformed to statutory and regulatory requirements."[21] Accordingly, we sustained in said case the valuation made by LBP, which was patterned after the applicable administrative order issued by the DAR.

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[19] *Id.* at 55-56.

[20] G.R. Nos. 177404 & 178097, June 25, 2009, 591 SCRA 1.

[21] *Rollo*, p. 75.

Petitioner further points out that the SAC's valuation violated AO 5 guidelines stating that "the computed value using the applicable formula *shall in no case exceed the [Landowner's] offer in case of VOs.*"[22] In this case, respondent's revised offer was only ₱83,346.77 per hectare but the SAC arrived at an average value of ₱129,742.38 per hectare which is 55.66% more than the landowner's offer.

Respondent, on the other hand, distinguished the factual setting of this case from that of *Land Bank v. Kumassie Plantation Company, Inc*.[23] It points out that in *Kumassie*, the SAC merely cited the location of the land and nature of the trees planted, and relied heavily on the appraisal report of the private appraiser which pegged the value of the land on its potential benefits of land ownership. But here, respondent claims that the SAC through its appointed commissioners, "appeared to have dwelt on the Market Data Approach, Income Approach and Residual Value Approach, in determining just compensation of respondent's property, the data gathered under the said approaches to valuation basically encompassed/embraced most, if not all, of the factors enumerated in Section 17, R.A. 6657 in relation to the relevant DAR Administrative Orders."[24] It cannot be said, therefore, that the SAC herein had no basis in fixing the just compensation of respondent's property after having taken into consideration the factors enumerated in Section 17 of R.A. No. 6657.

Respondent further invokes our ruling in *Apo Fruits Corporation v. Court of Appeals*,[25] where this Court upheld the valuation made by the RTC which did not merely rely on the report of Commissioners nor on the Cuervo appraiser's report but also took into account the nature of the property as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce, such valuation was considered to be in accordance with R.A. No. 6657.

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[22] *Id.* at 65.

[23] *Supra* note 20.

[24] *Rollo*, pp. 354-355.

[25] 543 Phil. 497, 527 (2007).

Section 17 of the law enumerates the factors to be considered by the RTC in determining just compensation to be paid to the landowner:

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

Thus, the RTC shall be guided by the following factors in just compensation cases: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.[26] These factors have been translated into the following basic formula under relevant issuances[27] by the DAR:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration[28]

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[26] *Land Bank of the Philippines v. Heirs of Salvador Encinas*, G.R. No. 167735, April 18, 2012, 670 SCRA 52, 60.

[27] DAR AO No. 06-92 dated October 30, 1992, as amended by DAR AO No. 11-94 dated September 13, 1994; see also DAR AO No. 05-98 dated April 15, 1998 and DAR AO No. 02-09 dated October 15, 2009.

[28] *Land Bank of the Philippines v. Heirs of Salvador Encinas*, *supra* note 26, at 60-61.

The mandatory application by the RTC of the above formula in accordance with DAR administrative orders and circulars had been settled by this Court. In *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[29] we cited a long line of jurisprudence and reiterated the standing rule on the matter:

> In *Land Bank of the Philippines v. Sps. Banal*, we recognized that the DAR, as the administrative agency tasked with the implementation of the agrarian reform program, already came up with a formula to determine just compensation which incorporated the factors enumerated in Section 17 of RA 6657. We said:
>
> "**These factors [enumerated in Section 17] have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992**, as amended by DAR Administrative Order No. 11, Series of 1994, **issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657**, as amended." [emphases ours]
>
> In *Landbank of the Philippines v. Celada*, we emphasized the duty of the RTC to apply the formula provided in the applicable DAR AO to determine just compensation, stating that:
>
> "While [the RTC] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. [The] DAR [Administrative Order] precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The [RTC] was at no liberty to disregard the formula which was devised to implement the said provision**.
>
> It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are

[29] G.R. No. 169903, February 29, 2012, 667 SCRA 255.

> entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. **As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same."** [emphases ours]

We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, and *Land Bank of the Philippines v. Barrido.* In *Barrido*, we were explicit in stating that:

> "While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation." (emphases ours)

These rulings plainly impose on the RTC the duty to apply the formula laid down in the pertinent DAR administrative regulations to determine just compensation. Clearly, the CA and the RTC acted with grievous error when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the subject land.[30] [Additional emphasis and underscoring supplied; citations omitted.]

In ruling for the respondent, the CA ruled that the RTC is not bound to adopt exclusively the formula set by DAR's issuances, citing this Court's ruling in *Apo Fruits Corporation v. Court of Appeals*,[31] and that the SAC "may in the exercise

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[30] *Id.* at 269-271.

[31] *Supra* note 25.

of its judicial discretion use other factors and alternative formula in fixing the proper valuation of just compensation.

As already mentioned, the SAC is duty-bound to apply the formula laid down in DAR AO No. 5. The CA clearly erred in affirming the valuation by the SAC in this case based on the private appraiser's correlated income, market data and residual value approaches which did not conform to the guidelines set forth in DAR AO No. 5 and Joint DAR-LBP Memorandum Circular (MC) No. 7, Series of 1999. It must be stressed that MC No. 7 was issued to provide revised guidelines in determining the Capitalized Net Income (CNI) specifically for rubberlands:

1. PREFATORY STATEMENT

The rubber plantation income models presented under the old rubber Land Valuation Guideline (LVG No. 6, Series of 1990) recognized the income of rubber plantations based on processed crumb rubber. However, recent consultations with rubber authorities (industry, research, *etc*.) disclosed that the standard income approach to valuation should measure the net income or productivity of the land based on the farm produce (in their raw forms) and not on the entire agri-business income enhanced by the added value of farm products due to processing. Hence, it is more appropriate to determine the Capitalized Net Income (CNI) of rubber plantations based on the actual yield and farm gate prices of raw products (field latex and cuplump) and the corresponding cost of production.

There is also a growing market for old rubber trees which are estimated to generate net incomes ranging between ₱20,000 and ₱30,000 per hectare or an average of about ₱100 per tree, depending on the remaining stand of old trees at the end of its economic life. This market condition for old rubber trees was not present at the time LVG No. 6, Series of 1990, was being prepared. (The terminal or salvage value of old rubber trees was at that time pegged at only ₱6,000 per hectare, representing the amount then being paid by big landholders to contractors for clearing and uprooting old trees.

LVG No. 6, Series of 1990, was therefore revised to address the foregoing considerations and in accordance with DAR Administrative Order (AO) No. 05, Series of 1998.

Petitioner, however, admits that it did not consider data on comparative sales transactions (CS) which it said are not applicable since under DAR AO 5, the sales transactions should have been executed "within the period January 1, 1985 to June 15, 1988 and registered within the period January 1, 1985 to September 13, 1988."[32]

We cannot accept petitioner's valuation as it failed to consider the value of the property *at the time of taking*, the current value of like properties being among those factors enumerated in Section 17. Indeed, these administrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. While rules and regulation issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power.[33]

This Court has defined "just compensation" for parcels of land taken pursuant to the agrarian reform program as "the **full and fair** equivalent of the property taken from its owner by the expropriator." The measure of compensation is not the taker's gain but the owner's loss.[34] Just compensation means the equivalent for the value of the property at the time of its taking. It means a fair and full equivalent value for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered.[35] Thus, the current value of like properties should have been considered by petitioner to accurately determine the value of the land *at*

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[32] *Rollo*, p. 402.

[33] *Land Bank of the Philippines v. Obias*, G.R. No. 184406, March 14, 2012, 668 SCRA 265, 271-272.

[34] *Apo Fruits Corporation v. Court of Appeals*, *supra* note 25, at 519.

[35] *Export Processing Zone Authority v. Dulay*, No. 59603, April 29, 1987, 149 SCRA 305, 314-315.

the time of taking, that is, in August 2000 when respondent's title was transferred to the Government.

In *Land Bank of the Philippines v. Heirs of Salvador Encinas* we said that:

The "taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding." In computing the just compensation for expropriation proceedings, the RTC should take into consideration the "**value of the land at the time of the taking**, not at the time of the rendition of judgment." "The 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic.[36]

However, while the CA correctly observed that petitioner's valuation omitted an integral factor mandated by Section 17, the records are bereft of any supporting evidence to compute the CS. The documents submitted by the respondent to the Commissioners consisted merely of sworn affidavits of adjacent owners/sellers and not registerable deeds of sale. The SAC's decision actually did not contain any discussion of its application of any formula to the facts established by evidence, as it merely adopted the Commissioners' Report, which in turn was based solely on the findings and computation of the Cuervo Appraisal Report.

Considering, therefore, that the SAC based its valuation on a different formula,[37] while petitioner failed to take into full consideration the factors set forth in Section 17, and in the absence of sufficient evidence for the determination of just

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[36] *Supra* note 26, at 59-60, citing *Land Bank of the Philippines v. Department of Agrarian Reform*, G.R. No. 171840, April 4, 2011, 647 SCRA 152, 169; *Land Bank of the Philippines v. Imperial*, 544 Phil. 378, 388 (2007); *Gabatin v. Land Bank of the Philippines*, 486 Phil. 366, 383-384 (2004); *Land Bank of the Philippines v. Livioco*, G.R. No. 170685, September 22 2010, 631 SCRA 86, 112-113; and *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009, 603 SCRA 576, 586-587.

[37] See *Land Bank of the Philippines v. Barrido*, G.R. No. 183688, August 18, 2010, 628 SCRA 454, 460.

compensation,[38] we are constrained to remand the present case to the SAC for the determination of just compensation in accordance with Section 17 of RA 6657, DAR AO 5, Series of 1998 and Joint DAR-LBP MC No. 7, Series of 1999. The said trial court may, *motu proprio* or at the instance of any of the parties, again appoint one or more commissioners to ascertain facts relevant to the dispute and file a written report thereof.[39]

WHEREFORE, the petition is **GRANTED.** The August 26, 2008 Decision and May 12, 2009 Resolution of the Court of Appeals-Mindanao Station in CA-G.R. SP No. 00990-MIN are **REVERSED** and **SET ASIDE.** The case is hereby **REMANDED** to the Regional Trial Court (Special Agrarian Court) of Pagadian City, Branch 18, which is directed to determine with dispatch, and with the assistance of at least three commissioners, the just compensation due to the respondent American Rubber Corporation, in accordance with Section 17 of R.A. No. 6657, DAR AO 5, Series of 1998, Joint DAR-LBP MC No. 7, Series of 1999 and other applicable DAR issuances.

No pronouncement as to costs.

SO ORDERED.

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

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[38] See *Land Bank of the Philippines v. Heirs of Salvador Encinas, supra* note 26, at 63.

[39] See *Land Bank of the Philippines v. Rufino,* G.R. Nos. 175644 & 175702, October 2, 2009, 602 SCRA 399, 412.

SECOND DIVISION

[G.R. No. 188500. July 24, 2013]

PROVINCE OF CAGAYAN, represented by HON. ALVARO T. ANTONIO, Governor, and ROBERT ADAP, Environmental and Natural Resources Officer, *petitioners, vs.* **JOSEPH LASAM LARA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; NOT DESIGNED TO PROTECT CONTINGENT OR FUTURE RIGHTS FOR THE POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF ACTUAL EXISTING RIGHT IS NOT A GROUND FOR AN INJUNCTION.— It is well-settled that a writ of injunction would issue upon the satisfaction of two (2) requisites, namely: (*a*) the existence of a right to be protected; and (*b*) acts which are violative of the said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.

2. ID.; ID.; ID.; RESPONDENT IS NOT ENTITLED TO AN INJUNCTION FOR HE HAS NO RIGHT TO CONDUCT HIS QUARRYING OPERATIONS FOR FAILURE TO COMPLY WITH ALL THE REQUIREMENTS IMPOSED NOT ONLY BY THE NATIONAL GOVERNMENT BUT ALSO BY THE LOCAL GOVERNMENT UNIT WHERE HIS BUSINESS IS SITUATED.— In order for an entity to legally undertake a quarrying business, he must first comply with all the requirements imposed not only by the national government, but also by the local government unit where his business is situated. Particularly, Section 138(2) of RA 7160 requires that such entity must first secure a governor's permit prior to the start of his quarrying operations, *viz*: SECTION 138. *Tax*

on Sand, Gravel and Other Quarry Resources. – x x x. The permit to extract sand, gravel and other quarry resources **shall be issued exclusively by the provincial governor**, pursuant to the ordinance of the sangguniang panlalawigan. x x x x In connection thereto, the Sangguniang Panlalawigan of Cagayan promulgated Provincial Ordinance No. 2005-07, Article H, Section 2H.04 of which provides: SECTION 2H.04. *Permit for Gravel and Sand Extraction and Quarrying*. – No person shall extract ordinary stones, gravel, earth, boulders and quarry resources from public lands or from the beds of seas, rivers, streams, creeks or other public waters **unless a permit has been issued by the Governor** (or his deputy as provided herein) x x x. A plain reading of the afore-cited provisions clearly shows that a governor's permit is a pre-requisite before one can engage in a quarrying business in Cagayan. Records, however, reveal that Lara admittedly failed to secure the same; hence, he has no right to conduct his quarrying operations within the Permit Area. Consequently, he is not entitled to any injunction.

APPEARANCES OF COUNSEL

Romeo G. Guillermo for petitioners.
Casauay & Associates Law Offices for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Decision[1] of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 (RTC), through a petition for review on *certiorari*[2] under Rule 45 of the Rules of Court, raising a pure question of law. In particular, petitioners assail the RTC's June 30, 2009 Decision in Civil Case No. 7077, enjoining them from disturbing the quarrying operations of respondent Joseph Lasam Lara (Lara).

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[1] *Rollo*, pp. 41-50. Penned by Judge Jezarene C. Aquino.

[2] *Id.* at 19-39.

The Facts

On September 14, 2007, Lara obtained an Industrial Sand and Gravel Permit[3] (ISAG Permit) from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR), authorizing him to conduct quarrying operations in a twenty-hectare area situated in Barangay Centro, Muncipality of Peñablanca (Peñablanca), Cagayan (Permit Area) and extract and dispose of sand, gravel, and other unconsolidated materials from the Permit Area. For the same purpose, Lara obtained an Environmental Compliance Certificate[4] (ECC) from the DENR Environmental Management Bureau (EMB).[5]

On January 3, 2008, Jovy Balisi (Balisi), Lara's representative, went to the Cagayan Provincial Treasurer's Office (Treasurer's Office) to pay the extraction fee and other fees for Lara's quarrying operations but she was directed to first secure an Order of Payment from the Environmental and Natural Resources Officer, petitioner Robert Adap (ENRO Adap). However, when Balisi went to ENRO Adap, the latter refused to issue an Order of Payment. Despite various pleas from Balisi and Atty. Victorio N. Casauay (Atty. Casauay), Lara's counsel, ENRO Adap remained adamant with his refusal. This prompted Atty. Casauay to tender and deposit the amount of ₱51,500.00 with the Treasurer's Office corresponding to the said extraction fee and other related fees.[6]

On January 11, 2008, Lara commenced his quarrying operations. Later that day, however, a total of four trucks loaded with sand and gravel extracted from the Permit Area were stopped and impounded by several local officials.[7] Consequently, Lara

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[3] *Id.* at 59-63.

[4] *Id.* at 73-78.

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

[6] *Id.* at 20-21, 42, and 48-49.

[7] *Id.* at 42. Referring to the Mayor of Peñablanca, Board Member Taguinod and other local officials.

filed an action for injunction with prayer for the issuance of a writ of preliminary injunction, docketed as Civil Case No. 7049, against the said officials, seeking to enjoin the stoppage of his quarrying operations. After due proceedings, a writ of preliminary injunction was issued enabling Lara to restart his business.[8]

Nonetheless, on March 17, 2008, Lara received a Stoppage Order[9] dated March 13, 2008 (Stoppage Order) this time from Cagayan Governor Alvaro T. Antonio (Gov. Antonio), directing him to stop his quarrying operations for the following reasons: (*a*) the ISAG Permit was not in accordance with Republic Act No. (RA) 7942,[10] otherwise known as the "Philippine Mining Act of 1995," and its implementing rules and regulations; (*b*) Lara's failure to pay sand and gravel fee under Provincial Ordinance No. 2005-07; and (*c*) [Lara's] failure to secure all necessary permits or clearances from the local government unit concerned as required by the [ECC].[11] Hence, Lara filed the present action for injunction and damages with an urgent and *ex-parte* motion for the issuance of a temporary restraining order and/or preliminary injunction before the RTC, docketed as Civil Case No. 7077.

In their Answer dated June 10, 2008, petitioners raised the following defenses: (*a*) the mere issuance of the ISAG Permit does not give Lara the right to commence his quarrying operations as he still had to comply with the terms and conditions stated therein; (*b*) Lara has neither secured all the necessary permits nor paid the local fees and taxes; and (*c*) Gov. Antonio was merely performing his duty to enforce all laws and ordinances relative to the governance of the Province of Cagayan pursuant to the provisions of RA 7160,[12] otherwise known as the "Local Government Code of 1991."[13]

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

[9] *Id.* at 65.

[10] "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION AND CONSERVATION."

[11] *Rollo*, p. 43.

[12] "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

[13] *Rollo*, pp. 43-44.

In an Order[14] dated August 11, 2008, the RTC granted Lara's application for a writ of preliminary injunction based on a *prima facie* finding that he is authorized to extract gravel and sand from the Permit Area. Petitioners filed a motion for reconsideration[15] which was, however denied on September 26, 2008.[16]

During the pre-trial, the parties stipulated on the following facts: (*a*) that Lara was able to secure an ISAG Permit from the MGB and an ECC from the DENR-EMB; (*b*) that Lara deposited the amount of ₱51,500.00 with the Treasurer's Office for the extraction and other related fees; and (*c*) that Gov. Antonio issued a Stoppage Order directing Lara to stop the quarrying operations in the Permit Area. The parties also determined that the submission of documentary evidence would be sufficient to reach a decision and as such, the RTC directed them to simultaneously file their respective memoranda.[17]

The RTC Ruling

In a Decision[18] dated June 30, 2009, the RTC made permanent the writ of preliminary injunction and thus, enjoined petitioners from stopping or disturbing Lara's quarrying operations.

It held that Lara legally acquired the right to operate his quarrying business, as evidenced by the ISAG Permit and ECC issued by the MGB and the EMB, respectively, which are the government agencies tasked to grant or deny any application for quarrying of industrial sand and gravel.[19] In this regard, the RTC observed that if Gov. Antonio perceived any defect in Lara's ISAG Permit, the proper recourse would have been to bring the matter to the attention of the MGB and not to issue

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

[15] *Id.* at 66-70.

[16] *Id.* at 71.

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

[18] *Id.* at 41-50.

[19] *Id.* at 46-47.

a Stoppage Order.[20] It further noted that Lara could not pay the extraction and other related fees only because ENRO Adap adamantly refused to issue an Order of Payment. In this relation, the RTC concluded that there was substantial compliance with the requirements since Lara, in good faith, tendered and deposited the amount of ₱51,500.00 with the Treasurer's Office, which can be treated as Lara's payment of the pertinent fees.[21] Finally, the RTC found no need to touch on the necessity of securing a mayor's permit before starting his quarrying operations, given that it is the main issue in another case, Civil Case No. 7049, pending before the same court.[22]

Aggrieved, petitioners sought direct recourse to the Court via the instant petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether the RTC properly issued the permanent injunction subject of this case.

Among others, petitioners argue that despite the issuance of the ISAG Permit, Lara has yet to comply with its terms and conditions – as he has yet to secure the necessary permits and clearances from the local government unit concerned – and hence, remains to be proscribed from conducting any quarrying operations.[23]

On the other hand, Lara maintains that the MGB and DENR-EMB had already authorized him to extract sand and gravel from the Permit Area, as evidenced by the ISAG Permit and ECC, thereby dispensing with the need to secure any permit from the local government. In any case, he contends that the only reason why he failed to secure such permits was because

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[20] *Id.* at 48.

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

[22] *Id.* at 49.

[23] *Id.* at 25-37.

the local government officials deliberately refused to process his applications without any legitimate reason whatsoever.[24]

The Court's Ruling

The petition is meritorious.

It is well-settled that a writ of injunction would issue upon the satisfaction of two (2) requisites, namely: (*a*) the existence of a right to be protected; and (*b*) acts which are violative of the said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.[25]

In order for an entity to legally undertake a quarrying business, he must first comply with all the requirements imposed not only by the national government, but also by the local government unit where his business is situated. Particularly, Section 138(2) of RA 7160[26] requires that such entity must first secure a governor's permit prior to the start of his quarrying operations, *viz*:

SECTION 138. *Tax on Sand, Gravel and Other Quarry Resources.* – x x x.

The permit to extract sand, gravel and other quarry resources **shall be issued exclusively by the provincial governor**, pursuant to the ordinance of the sangguniang panlalawigan. (Emphasis and underscoring supplied)

x x x x x x x x x

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[24] *Id.* at 111.

[25] *BP Philippines, Inc. (Formerly Burmah Castrol Philippines, Inc.) v. Clark Trading Corporation*, G.R. No. 175284, September 19, 2012, 681 SCRA 365, 375, citing *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, 508 Phil. 354, 375 (2005).

[26] "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

In connection thereto, the Sangguniang Panlalawigan of Cagayan promulgated Provincial Ordinance No. 2005-07, Article H, Section 2H.04 of which provides:

> SECTION 2H.04. *Permit for Gravel and Sand Extraction and Quarrying*. – No person shall extract ordinary stones, gravel, earth, boulders and quarry resources from public lands or from the beds of seas, rivers, streams, creeks or other public waters **unless a permit has been issued by the Governor** (or his deputy as provided herein) x x x. (Emphasis and underscoring supplied)

A plain reading of the afore-cited provisions clearly shows that a governor's permit is a pre-requisite before one can engage in a quarrying business in Cagayan. Records, however, reveal that Lara admittedly failed to secure the same; hence, he has no right to conduct his quarrying operations within the Permit Area. Consequently, he is not entitled to any injunction.

In view of the foregoing, the Court need not delve into the issue respecting the necessity of securing a mayor's permit, especially since it is the main issue in another case, Civil Case No. 7049, which remains pending before the court *a quo*.

WHEREFORE, the petition is **GRANTED**. Accordingly, the June 30, 2009 Decision of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 in Civil Case No. 7077 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 188767. July 24, 2013]

SPOUSES ARGOVAN AND FLORIDA GADITANO, *petitioners, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; HAS JURISDICTION TO REVIEW THE RESOLUTION OF THE JUSTICE SECRETARY VIA A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT, SOLELY ON THE GROUND THAT THE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION.— The Court of Appeals is clothed with jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court *albeit* solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction. In *Alcaraz v. Gonzalez,* we stressed that the resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the Court of Appeals may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess of lack of jurisdiction. Also, in *Tan v. Matsuura,* we held that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court of Appeals may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court. We agree with

the Court of Appeals that the DOJ abused its discretion when it affirmed the prosecutor's suspension of the criminal investigation due to the existence of an alleged prejudicial question.

2. ID.; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; EXISTS WHERE A CIVIL ACTION AND A CRIMINAL ACTION ARE BOTH PENDING AND THERE EXISTS IN THE FORMER AN ISSUE WHICH MUST BE PREEMPTIVELY RESOLVED BEFORE THE LATTER MAY PROCEED, BECAUSE HOWSOEVER THE ISSUE RAISED IN THE CIVIL ACTION IS RESOLVED WOULD BE DETERMINATIVE *JURIS ET DE JURE* OF THE GUILT OR INNOCENCE OF THE ACCUSED IN THE CRIMINAL CASE; RATIONALE; ELEMENTS OF PREJUDICIAL QUESTION.— A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. Section 7, Rule 111 of the 2000 Rules of Criminal Procedure states the two elements necessary for a civil case to be considered a prejudicial question, to wit: **Section 7. Elements of prejudicial question.** – The elements of a prejudicial question are: **(a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action,** and **(b) the resolution of such issue determines whether or not the criminal action may proceed.** If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided that the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action

based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

3. ID.; ID.; ID.; NO PREJUDICIAL QUESTION WOULD LIKELY EXIST FROM A CIVIL ACTION INVOLVING THE GARNISHMENT OF THE PARTIES' SAVINGS ACCOUNT BY THE BANK AND THE CRIMINAL INVESTIGATION AGAINST THE SAME PARTIES FOR ESTAFA AND VIOLATION OF *BATAS PAMBANSA BLG*. 22.— The issue in the criminal case is whether the petitioner is guilty of estafa and violation of *Batas Pambansa Blg.* 22, while in the civil case, it is whether AsiaTrust Bank had lawfully garnished the ₱378,000.00 from petitioners' savings account. The subject of the civil case is the garnishment by AsiaTrust Bank of petitioner's savings account. Based on petitioners' account, they deposited the check given to them by Fatima in their savings account. The amount of said check was initially credited to petitioners' savings account but the Fatima check was later on dishonored because there was an alleged alteration in the name of the payee. As a result, the bank debited the amount of the check from petitioners' savings account. Now, petitioners seek to persuade us that had it not been for the unlawful garnishment, the funds in their savings account would have been sufficient to cover a check they issued in favor of SMC. The material facts surrounding the civil case bear no relation to the criminal investigation being conducted by the prosecutor. The prejudicial question in the civil case involves the dishonor of another check. SMC is not privy to the nature of the alleged materially altered check leading to its dishonor and the eventual garnishment of petitioners' savings account. The source of the funds of petitioners' savings account is no longer SMC's concern. The matter is between petitioners and AsiaTrust Bank. On the other hand, the issue in the preliminary investigation is whether petitioners issued a bad check to SMC for the payment of beer products. x x x. Based on the foregoing, we rule that the resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal investigation against them. There is no necessity that

the civil case be determined first before taking up the criminal complaints.

4. CRIMINAL LAW; *BATAS PAMBANSA BLG.* 22; MERE ISSUANCE OF WORTHLESS CHECKS WITH KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS TO SUPPORT THE CHECKS IS IN ITSELF THE OFFENSE.— The gravamen of the offense punished by *Batas Pambansa Blg.* 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. *Batas Pambansa Blg.* 22 punishes the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer. The thrust of the law is to prohibit the making of worthless checks and putting them into circulation. Even if the trial court in the civil case declares AsiaTrust Bank liable for the unlawful garnishment of petitioners' savings account, petitioners cannot be automatically adjudged free from criminal liability for violation of *Batas Pambansa Blg.* 22, because the mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself the offense. Furthermore, three notices of dishonor were sent to petitioners, who then, should have immediately funded the check. When they did not, their liabilities under the bouncing checks law attached. Such liability cannot be affected by the alleged prejudicial question because their failure to fund the check upon notice of dishonour is itself the offense.

5. ID.; ESTAFA BY MEANS OF DECEIT; ARTICLE 315. PARAGRAPH 2(d) OF THE REVISED PENAL CODE; THE FRAUD OR DECEIT EMPLOYED BY THE ACCUSED IN ISSUING A WORTHLESS CHECK IS PENALIZED; A *PRIMA FACIE* PRESUMPTION OF DECEIT ARISES WHEN A CHECK IS DISHONORED FOR LACK OR INSUFFICIENCY OF FUNDS.— In the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, deceit and damage are additional and essential elements of the offense. It is the fraud or deceit employed by the accused in issuing a worthless check that is penalized. A *prima facie* presumption of deceit arises when a check is dishonored for lack or insufficiency of funds. Records show that a notice of dishonor as well as demands for payment, were sent to petitioners. The

presumption of deceit applies, and petitioners must overcome this presumption through substantial evidence. These issues may only be threshed out in a criminal investigation which must proceed independently of the civil case.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
Silvestre E. Dollete for respondent.

D E C I S I O N

PEREZ, *J.*:

For review on *certiorari* are the Decision dated 11 March 2008 and Resolution dated 16 July 2009 of the Court of Appeals in CA-G.R. SP No. 88431 which reversed the Resolutions issued by the Secretary of Justice, suspending the preliminary investigation of I.S. No. 01-4205 on the ground of prejudicial question.

Petitioner Spouses Argovan Gaditano (Argovan) and Florida Gaditano (Florida), who were engaged in the business of buying and selling beer and softdrink products, purchased beer products from San Miguel Corporation (SMC) in the amount of ₱285,504.00 on 7 April 2000. Petitioners paid through a check signed by Florida and drawn against Argovan's AsiaTrust Bank Current Account. When said check was presented for payment on 13 April 2000, the check was dishonored for having been drawn against insufficient funds. Despite three (3) written demands,[1] petitioner failed to make good of the check. This prompted SMC to file a criminal case for violation of *Batas Pambansa Blg.* 22 and estafa against petitioners, docketed as I.S. No. 01-4205 with the Office of the Prosecutor in Quezon City on 14 March 2001.

In their Counter-Affidavit, petitioners maintained that their checking account was funded under an automatic transfer arrangement, whereby funds from their joint savings account with AsiaTrust Bank were automatically transferred to their

checking account with said bank whenever a check they issued was presented for payment. Petitioners narrated that sometime in 1999, Fatima Padua (Fatima) borrowed ₱30,000.00 from Florida. On 28 February 2000, Fatima delivered Allied Bank Check No. 82813 dated 18 February 2000 payable to Florida in the amount of ₱378,000.00. Said check was crossed and issued by AOWA Electronics. Florida pointed out that the amount of the check was in excess of the loan but she was assured by Fatima that the check was in order and the proceeds would be used for the payroll of AOWA Electronics. Thus, Florida deposited said check to her joint AsiaTrust Savings Account which she maintained with her husband, Argovan. The check was cleared on 6 March 2000 and petitioners' joint savings account was subsequently credited with the sum of ₱378,000.00. Florida initially paid ₱83,000.00 to Fatima. She then withdrew ₱295,000.00 from her joint savings account and turned over the amount to Fatima. Fatima in turn paid her loan to Florida.

Petitioners claimed that on 7 April 2000, the date when they issued the check to SMC, their joint savings account had a balance of ₱330,353.17.[2] As of 13 April 2000, petitioners' balance even amounted to ₱412,513.17.[3]

On 13 April 2000, Gregorio Guevarra (Guevarra), the Bank Manager of AsiaTrust Bank, advised Florida that the Allied Bank Check No. 82813 for ₱378,000.00, the same check handed to her by Fatima, was not cleared due to a material alteration in the name of the payee. Guevarra explained further that the check was allegedly drawn payable to LG Collins Electronics, and not to her, contrary to Fatima's representation. AsiaTrust Bank then garnished the ₱378,000.00 from the joint savings account of petitioners without any court order. Consequently, the check issued by petitioners to SMC was dishonored having been drawn against insufficient funds.

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[1] Records, pp. 83-85.

[2] *Id.* at 73.

[3] *Id.* at 70 and 72.

On 23 October 2000, petitioners filed an action for specific performance and damages against AsiaTrust Bank, Guevarra, SMC and Fatima, docketed as Civil Case No. Q-00-42386. Petitioners alleged that AsiaTrust Bank and Guevarra unlawfully garnished and debited their bank accounts; that their obligation to SMC had been extinguished by payment; and that Fatima issued a forged check.

Petitioners assert that the issues they have raised in the civil action constitute a bar to the prosecution of the criminal case for violation of *Batas Pambansa Blg.* 22 and estafa.

On 29 January 2002, the Office of the Prosecutor recommended that the criminal proceedings be suspended pending resolution of Civil Case No. Q-00-42386. SMC thereafter filed a motion for reconsideration before the Office of the Prosecutor but it was denied for lack of merit on 19 September 2002.

SMC filed with the Department of Justice (DOJ) a petition for review challenging the Resolutions of the Office of the Prosecutor. In a Resolution dated 3 June 2004, the DOJ dismissed the petition. SMC filed a motion for reconsideration, which the DOJ Secretary denied in a Resolution dated 15 December 2004.

Undaunted, SMC went up to the Court of Appeals by filling a petition for *certiorari*, docketed as CA-G.R. SP No. 88431. On 11 March 2008, the Court of Appeals rendered a Decision granting the petition as follows:

> IN THE LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Resolutions of the Department of Justice dated June 3, 2004 and December 15, 2004 are SET ASIDE. In view thereof, let the suspension of the preliminary investigation of the case docketed as I.S. No. 01-4205 with the Office of the Prosecutor of Quezon City be LIFTED. Accordingly, the continuation of the preliminary investigation until completed is ordered and if probable cause exists, let the corresponding information against the respondents be filed.[4]

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[4] *Rollo,* p. 47.

The Court of Appeals drew a distinction between the civil case which is an action for specific performance and damages involving petitioners' joint savings account, and the criminal case which is an action for estafa/violation of *Batas Pambansa Blg.* 22 involving Argovan's current account. The Court of Appeals belied the claim of petitioners about an automatic fund transfer arrangement from petitioners' joint savings account to Argovan's current account.

By petition for review, petitioners assail the ruling of the Court of Appeals on the following grounds:

I. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND EXCEEDED THE BOUNDS OF ITS JURISDICTION IN GIVING DUE COURSE TO RESPONDENT'S PETITION FOR *CERTIORARI*.

II. THE COURT OF APPEALS ERRED IN REVERSING THE RESOLUTIONS DATED JUNE 3, 2004 AND DECEMBER 15, 2004 OF THE DOJ, THERE BEING NO GRAVE ABUSE OF DISCRETION.

III. THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO PREJUDICIAL QUESTION BELOW BECAUSE TWO DIFFERENT BANK ACCOUNTS ARE INVOLVED IN THE CIVIL AND CRIMINAL CASES.

IV. THE APPELLATE COURT ERRED IN REQUIRING PETITIONERS TO PRESENT EVIDENCE TO PROVE THE PREJUDICIAL QUESTION DURING THE PRELIMINARY INVESTIGATION.[5]

The issues raised by petitioners are divided into the procedural issue of whether *certiorari* is the correct mode of appeal to the Court of Appeals and the substantive issue of whether a prejudicial question exists to warrant the suspension of the criminal proceedings.

On the procedural issue, petitioners contend that SMC's resort to *certiorari* under Rule 65 was an improper remedy because the DOJ's act of sustaining the investigating prosecutor's resolution

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[5] *Id.* at 20.

to suspend the criminal proceedings due to a valid prejudicial question was an error in judgment and not of jurisdiction. Petitioners further assert that nevertheless, an error of judgment is not correctible by *certiorari* when SMC had a plain, speedy and adequate remedy, which was to file an appeal to the Office of the President.

The procedure taken up by petitioner was correct.

The Court of Appeals is clothed with jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court *albeit* solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[6]

In *Alcaraz v. Gonzalez*,[7] we stressed that the resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the Court of Appeals may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess of lack of jurisdiction.[8]

Also, in *Tan v. Matsuura*,[9] we held that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of

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[6] *Chong v. Dela Cruz*, G.R. No. 184948, 21 July 2009, 593 SCRA 311, 314-315.

[7] 533 Phil. 796 (2006).

[8] *Id.* at 807.

[9] G.R. No. 179003, 9 January 2013 citing *Tan v. Ballena*, G.R. No. 168111, 4 July 2008, 557 SCRA 229, 252-253.

probable cause is ignored, the Court of Appeals may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.[10]

We agree with the Court of Appeals that the DOJ abused its discretion when it affirmed the prosecutor's suspension of the criminal investigation due to the existence of an alleged prejudicial question.

We expound.

Petitioners insist that the Court of Appeals erroneously ruled against the existence of a prejudicial question by separately treating their joint savings account and Argovan's current account, and concluding therefrom that the civil and criminal cases could proceed independently of each other. It is argued that the appellate court overlooked the fact that petitioners had an automatic transfer arrangement with AsiaTrust Bank, such that funds from the savings account were automatically transferred to their checking account whenever a check they issued was presented for payment. Petitioners maintain that since the checking account was funded by the monies deposited in the savings account, what mattered was the sufficiency of the funds in the savings account. Hence, petitioners' separate action against AsiaTrust Bank for unlawfully garnishing their savings account, which eventually resulted in the dishonor of their check to SMC, poses a prejudicial question in the instant criminal proceedings.

Moreover, petitioners argue that they were not required to fully and exhaustively present evidence to prove their claims. The presentation of their passbook, which confirmed numerous withdrawals made on the savings account and indicated as "FT" or "Fund Transfer," proved the existence of fund transfer from their savings account to the checking account.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the latter may proceed, because howsoever the

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[10] *Tan v. Matsuura, id.*

issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.[11]

Section 7, Rule 111 of the 2000 Rules of Criminal Procedure states the two elements necessary for a civil case to be considered a prejudicial question, to wit:

> **Section 7. Elements of prejudicial question.** – The elements of a prejudicial question are: **(a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action,** and **(b) the resolution of such issue determines whether or not the criminal action may proceed.** (Emphasis supplied).

If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided that the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.[12]

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[11] *Jose v. Suarez,* G.R. No. 176795, 30 June 2008, 556 SCRA 773, 781-782 citing *Carlos v. Court of Appeals*, 335 Phil. 490, 499 (1997) citing further *Tuanda v. Sandiganbayan*, G.R. No. 110544, 17 October 1995, 249 SCRA 342, 350-351.

[12] *Reyes v. Rossi,* G.R. No. 159823, 18 February 2013; *Yap v. Cabales*, G.R. No. 159186, 5 June 2009, 588 SCRA 426, 432-433; *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, 30 July 2008, 560 SCRA 518, 539-540; *People v. Consing, Jr.*, 443 Phil. 454, 460 (2003); *Sabandal v. Hon. Tongco*, 419 Phil. 13, 18 (2001).

The issue in the criminal case is whether the petitioner is guilty of estafa and violation of *Batas Pambansa Blg.* 22, while in the civil case, it is whether AsiaTrust Bank had lawfully garnished the ₱378,000.00 from petitioners' savings account.

The subject of the civil case is the garnishment by AsiaTrust Bank of petitioner's savings account. Based on petitioners' account, they deposited the check given to them by Fatima in their savings account. The amount of said check was initially credited to petitioners' savings account but the Fatima check was later on dishonored because there was an alleged alteration in the name of the payee. As a result, the bank debited the amount of the check from petitioners' savings account. Now, petitioners seek to persuade us that had it not been for the unlawful garnishment, the funds in their savings account would have been sufficient to cover a check they issued in favor of SMC.

The material facts surrounding the civil case bear no relation to the criminal investigation being conducted by the prosecutor. The prejudicial question in the civil case involves the dishonor of another check. SMC is not privy to the nature of the alleged materially altered check leading to its dishonor and the eventual garnishment of petitioners' savings account. The source of the funds of petitioners' savings account is no longer SMC's concern. The matter is between petitioners and AsiaTrust Bank. On the other hand, the issue in the preliminary investigation is whether petitioners issued a bad check to SMC for the payment of beer products.

The gravamen of the offense punished by *Batas Pambansa Blg.* 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment.[13] *Batas Pambansa Blg.* 22 punishes the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer.[14]

[13] *Medalla v. Laxa*, G.R. No. 193362, 18 January 2012, 663 SCRA 461, 466.

[14] *Resterio v. People*, G. R. No. 177438, 24 September 2012, 681 SCRA 592, 597.

The thrust of the law is to prohibit the making of worthless checks and putting them into circulation.[15]

Even if the trial court in the civil case declares AsiaTrust Bank liable for the unlawful garnishment of petitioners' savings account, petitioners cannot be automatically adjudged free from criminal liability for violation of *Batas Pambansa Blg.* 22, because the mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself the offense.[16]

Furthermore, three notices of dishonor were sent to petitioners, who then, should have immediately funded the check. When they did not, their liabilities under the bouncing checks law attached. Such liability cannot be affected by the alleged prejudicial question because their failure to fund the check upon notice of dishonour is itself the offense.

In the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, deceit and damage are additional and essential elements of the offense. It is the fraud or deceit employed by the accused in issuing a worthless check that is penalized.[17] A *prima facie* presumption of deceit arises when a check is dishonored for lack or insufficiency of funds.[18] Records show that a notice of dishonor as well as demands for payment, were sent to petitioners. The presumption of deceit applies, and petitioners must overcome this presumption through substantial evidence. These issues may only be threshed out in a criminal investigation which must proceed independently of the civil case.

Based on the foregoing, we rule that the resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal investigation against

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[15] *Ty v. People*, 482 Phil. 427, 445 (2004) citing *Caram Resources Corp. v. Contreras*, A.M. No. MTJ-93-849, 26 October 1994, 237 SCRA 724, 732-733; *Cruz v. Court of Appeals*, G.R. No. 108738, 17 June 1994, 233 SCRA 301, 308-309.

[16] *Yap v. Cabales*, *supra* note 12 at 433.

[17] *People v. Reyes*, 494 Phil. 620, 629 (2005).

[18] *Dy v. People*, G.R. No. 158312, 14 November 2008, 571 SCRA 59, 74.

them. There is no necessity that the civil case be determined first before taking up the criminal complaints.

WHEREFORE, the petition is **DENIED**. The assailed Decision of the Court of Appeals dated 11 March 2008 and its Resolution dated 16 July 2009, in CA-G.R. SP No. 88431, are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190340. July 24, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO RAMOS and MARISSA INTERO RAMOS,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES; THE ACCUSED MUST SHOW AND PROVE BY CLEAR AND CONVINCING EVIDENCE THAT HIS ACT WAS JUSTIFIED, OTHERWISE HIS CONVICTION MUST BE UPHELD AND HE CANNOT BE EXONERATED FROM CRIMINAL LIABILITY.— Rogelio admits that he killed Abacco albeit in self-defense. "The rule consistently adhered to in this jurisdiction is that when the accused [admits] that he [is] the author of the death of the victim and his defense [is] anchored on self-defense, it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court." With this admission, the burden of evidence is shifted to the appellant to prove that all the

essential elements of self-defense are present. He must show and prove by clear and convincing evidence that his act was justified. Otherwise his conviction must be upheld and he cannot be exonerated from criminal liability. On this score, the accused must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence. To successfully invoke the justifying circumstance of self-defense, the following requisites must be present: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; (3) lack of sufficient provocation on the part of the person defending himself.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; THE UNLAWFUL AGGRESSION OF THE VICTIM MUST PUT THE LIFE AND PERSONAL SAFETY OF THE PERSON DEFENDING HIMSELF IN ACTUAL PERIL FOR A MERE THREATENING OR INTIMIDATING ATTITUDE DOES NOT CONSTITUTE UNLAWFUL AGGRESSION.— Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing as there is nothing to repel. The unlawful aggression of the victim must put the life and personal safety of the person defending himself in actual peril. A mere threatening or intimidating attitude does not constitute unlawful aggression. x x x. [A]bacco cannot be considered as the aggressor. For one, eyewitnesses attest that Abacco was unarmed when he went to appellants' house. Also, Abacco's act of going to their house and calling out Rogelio so they may talk can hardly be considered as unlawful aggression under the law. Even Abacco's injuries which proved to be multiple and fatal reveal that it was Rogelio and Marissa who were truly the aggressors. In contrast, the injuries sustained by Rogelio were minor requiring no special care or attention. Dr. Soriano, the physician who attended to Rogelio, even testified in court on the possibility that the wounds could have been self-inflicted. This Court is thus convinced that Abacco was by no means the unlawful aggressor.

3. ID.; ID.; ID.; ID.; A PLEA OF SELF-DEFENSE IS BELIED BY THE NATURE, NUMBER AND LOCATION OF THE WOUNDS INFLICTED ON THE VICTIM SINCE THE GRAVITY OF SAID WOUNDS IS INDICATIVE OF A DETERMINED EFFORT TO KILL AND NOT JUST TO

DEFEND.— With regard to the second element of self-defense, the Court finds that the means employed by Rogelio is grossly disproportionate to Abacco's alleged unlawful aggression. Abacco was violently slain and practically butchered. He suffered multiple blows to the head, neck, arms, and back. The blade of the *samurai* sword not only sliced through his flesh but penetrated and even exposed his bones. In fact, one particular laceration almost transected his spinal cord. Suffice it to say that a plea of self-defense is belied by the "nature, number, and location of the wounds" inflicted on the victim "since the gravity of said wounds is indicative of a determined effort to kill and not just to defend." Here, the wounds sustained by Abacco clearly show Rogelio's intent to kill him and not merely to prevent or repel an attack from him. Verily, the means employed by Rogelio were unreasonable and excessive, thus, his plea of self-defense is unacceptable.

4. REMEDIAL LAW; EVIDENCE; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE THE SHE WAS PRESENT AT ANOTHER PLACE AT THE TIME OF THE PERPETRATION OF THE CRIME AND THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HER TO BE AT THE SCENE OF THE CRIME DURING ITS COMMISSION.— [F]or the defense of alibi to prosper, "the accused must prove (a) that [she] was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for [her] to be at the scene of the crime" during its commission. "Physical impossibility refers to distance and the facility of access between the [crime scene] and the location of the accused when the crime was committed. [She] must demonstrate that [she] was so far away and could not have been physically present at the [crime scene] and its immediate vicinity when the crime was committed." In the case at bench, Marissa failed to satisfy these requisites. During trial, it was shown that the distance between *Kagawad* Tavora's house and the house of the appellants was only 400 meters. Surely, a distance of 400 meters is not what jurisprudence contemplates when it refers to physical impossibility of the accused to be present at the scene of the crime. We have previously held that two kilometers, three kilometers, and even five kilometers were not too far as to preclude the possibility of the presence of the accused at the crime scene. The mere fact, therefore, that

Marissa went to the house of *Kagawad* Tavora did not preclude her presence at their house at the time the crime happened.

5. ID.; ID.; ID.; POSITIVE IDENTIFICATION PREVAILS OVER ALIBI SINCE THE LATTER CAN EASILY BE FABRICATED AND IS INHERENTLY UNRELIABLE.— Marissa was positively identified by eyewitnesses to be present at the scene of the crime and to have participated in its commission. Time and again, this Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.

6. ID.; ID.; CREDIBILITY OF WITNESSES; IN THE ABSENCE OF MISAPPREHENSION OF FACTS OR GRAVE ABUSE OF DISCRETION, AND ESPECIALLY WHEN THE FINDINGS OF THE JUDGE HAVE BEEN AFFIRMED BY THE COURT OF APPEALS, THE FINDINGS OF THE TRIAL COURT SHALL NOT BE DISTURBED.— The Court finds no reason to disturb the findings of the trial court. It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first hand account on the witnesses' manner of testifying in court and their demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility. Moreover in the absence of misapprehension of facts or grave abuse of discretion, and especially when the findings of the judge have been affirmed by the CA as in this case, the findings of the trial court shall not be disturbed. Besides, even assuming that Anthony and Gina were indeed impelled by improper motive, appellants failed to impeach Ryan, an eyewitness to the incident who positively identified them as the assailants.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN IT EXISTS; TREACHERY QUALIFIES THE KILLING TO MURDER.— This Court is likewise convinced that treachery was employed by the appellants in killing Abacco. 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. This is exactly the manner by which appellants committed the crime. x x x. And as treachery qualifies the killing to murder, the crime committed in this case is murder under Article 248 of the RPC.

8. ID.; MURDER; PROPER PENALTY.— The penalty for murder is *reclusion perpetua* to death. "There being no aggravating or mitigating circumstance, the RTC, as affirmed by the [CA] properly imposed [upon appellants] the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2 of the [RPC]."

9. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— "Anent the award of damages, 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 for litigation; and, (6) interest, in proper cases." Hence, the Court finds as proper the RTC's awards to the heirs of Abacco, as affirmed by the CA, the amounts of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages. However, the ₱25,000.00 exemplary damages awarded by the CA must be increased to ₱30,000.00 in line with current jurisprudence. Also, as the prosecution was able to submit in evidence receipts representing the expenses incurred in connection with Abacco's burial, actual damages in the amount of ₱40,000.00 must likewise be awarded. "In addition and in conformity with current policy [the Court] also impose[s] on all the monetary awards for damages interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid."

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

In convincing this Court to overturn their conviction for murder, appellants in this case invoke self-defense, denial and alibi.

On appeal is the September 9, 2009 Decision[1] of the Court of Appeals (CA) in CA-GR CR-H.C. No. 02785, which affirmed with modification the February 28, 2007 Decision[2] of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32 in Criminal Case No. A-5295. The RTC found the appellants Rogelio Ramos (Rogelio) and Marissa Intero Ramos (Marissa) guilty beyond reasonable doubt of the crime of murder, sentenced them to *reclusion perpetua*, and ordered them to pay the heirs of the victim Ronald A. Abacco (Abacco) civil indemnity and moral damages in the amounts of ₱75,000.00 and ₱50,000.00, respectively.

Factual Antecedents

On June 28, 2006, appellants were charged with the crime of murder under Article 248 of the Revised Penal Code (RPC). The Information[3] reads thus:

> The undersigned Prosecutor accuses ROGELIO RAMOS & MARISSA INTERO-RAMOS of the crime of MURDER with the Aggravating Qualifying circumstances of treachery and abuse of superior strength committed as follows:
>
> That on or about April 11, 2006 at about 7:00 pm or immediately thereafter, at the Municipality of Sto. Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the accused, with intent to kill, conspiring, confederating and helping one another by using their superior strength to subdue the victim RONALD A. ABACCO, did then and there willfully, unlawfully and feloniously kill [the] said victim by attacking him with a bladed weapon, pulling him to the ground to subdue him and while there on the ground and defenseless, accused ROGELIO RAMOS hack[ed] him several times while accused MARISSA INTERO-RAMOS shout[ed], "kill him, kill him" thus causing massive injuries to the body of the victim that caused his death to the damage and prejudice of his heirs.

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[1] CA *rollo*, pp. 148-162; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Jose C. Reyes, Jr.

[2] Records, pp. 187-206; penned by Judge Clifton U. Ganay.

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

The crime is attended by the qualifying circumstances of treachery by attacking a defenseless victim and with abuse of superior strength.

CONTRARY TO LAW.[4]

Upon arraignment on June 29, 2006, both appellants pleaded not guilty to the crime charged.[5] After pre-trial, trial on the merits followed.

Version of the Prosecution

Eight witnesses testified for the prosecution: Dr. Arsenio Parazo (Dr. Parazo), PO3 Aris De Guzman, Onofre Tandoc (Tandoc), Anthony Ramos (Anthony), Ryan Roquero (Ryan), Gina Ramos (Gina), Adrian Ruther Abacco, and PO2 Eduardo Laroya. Their testimonies are summarized as follows.

In the evening of April 11, 2006, Rogelio threw stones at the house of his brother-in-law, Ramon Ramos, where Tandoc and his daughter, as well as Abacco, were resting. After Tandoc warned Rogelio to stop throwing stones as he might hit his daughter, Rogelio retreated to his house. After a while, Marissa went out and shouted at them. Tandoc then suggested to Abacco that they leave the place to avert further trouble. However, instead of leaving, Abacco, then unarmed, approached the appellants' house and asked Rogelio to come out so they could talk. Rogelio and Marissa then opened their gate. As soon as the gate was opened, Rogelio hacked Abacco twice with a *samurai* sword. When Abacco fell to the ground, the appellants dragged him into their yard and banged his head on the wall of their house. Abacco begged for his life crying out, "*Tama na bayaw, tama na, hindi ako lalaban.*"[6] Despite this, Marissa hacked Abacco on his back with a bolo while he was still on the ground. She then told Rogelio, "*Sige, patayin mo na yan!*"[7]

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[4] *Id.* at 52.

[5] *Id.* at 60.

[6] TSN, September 11, 2006, p. 16.

[7] TSN, August 3, 2006, p. 22.

Notwithstanding the plea for mercy, Rogelio still hacked Abacco several times until the latter died.

Dr. Parazo who conducted the autopsy, testified that Abacco died of hypovolemic shock or massive blood loss secondary to multiple hacked wounds in different parts of the body, such as the head, neck, shoulders, forearms, and back.[8] He further testified that the injuries on Abacco's head and on his right hand might have been caused by a sharp-edged instrument like a *samurai* sword, bolo, or knife. The wounds were so deep that some of Abacco's bones such as the scapula (shoulder blades) and the humerus (upper arm bone) were exposed. The wound in the lumbar area (lower back) almost transected the spinal cord.[9] Abacco's body bore 12 wounds.

Version of the Defense

The defense presented six witnesses: Basilio Tavora (Tavora), Elpidio Barroga, William Bumanlag (Bumanlag), Dr. Emmanuel Soriano (Dr. Soriano), and Marissa and Rogelio. Rogelio invoked self-defense while Marissa interposed denial and alibi. Their testimonies are summarized as follows.

At about 7:00 p.m. of April 11, 2006, Rogelio was in his house with his live-in partner Marissa. While Rogelio was taking a bath near their deep well, Abacco threw stones at their house hitting the roof five times. Abacco then shouted at Rogelio and challenged him to come out so they could talk. Rogelio then went inside the house and told Marissa to call the *barangay* officials. At about 8:00 p.m., Marissa went out to seek the aid of the *barangay* officials. Abacco was still outside shouting and challenging Rogelio. When Abacco stopped shouting, Rogelio went out of the house to look for Marissa. As he reached the gate and was about to go out of the compound, he was suddenly hacked on his right arm by Abacco with a bolo. He stepped back since Abacco again swung at him with his bolo. Rogelio

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[8] TSN, July 10, 2006, pp. 17-21.

[9] *Id.* at p. 18.

went inside his house to get his *samurai* sword so that he could defend himself. Abacco resumed his attack as soon as Rogelio came out. Parrying the blow of Abacco, Rogelio was able to get a hold of Abacco's hand as well as the bolo. He then hacked Abacco with the *samurai* sword several times until he was dead.

Abacco was already lifeless when *Kagawad* Barroga arrived. Rogelio surrendered to Barroga and told him that he killed the deceased out of self-defense. Later on, Marissa arrived with the *barangay* officials.

Marissa corroborated the testimony of Rogelio. To bolster her defense of denial and alibi, Marissa testified that after Abacco repeatedly challenged Rogelio, she went to the house of Liwayway del Prado to ask someone to accompany her to the house of a *barangay kagawad*.[10] Bumanlag accompanied her to the house of *Kagawad* Rafanan but no one was there. Marissa and Bumanlag then proceeded to the house of *Kagawad* Tavora arriving there at about 9:00 p.m. When Marissa told Tavora that Abacco was going berserk,[11] Tavora refused to go with them saying that the area is outside of his sector and instead advised them to go to the municipal hall. However, they no longer got to the municipal hall because when they passed by appellants' house, they learned that Abacco was already dead.

Ruling of the Regional Trial Court

After hearing all the testimonies presented by both sides and receiving their respective evidence, the RTC on February 28, 2007 convicted Rogelio and Marissa of the crime of murder. The dispositive part of the Decision reads:

WHEREFORE, upon the foregoing, judgment is hereby rendered adjudging both accused Rogelio Ramos and Marissa Intero-Ramos **guilty beyond reasonable doubt of the crime of Murder.** They are sentenced to suffer the penalty of *Reclusion Perpetua.*

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[10] TSN, October 23, 2006, pp. 7-8.

[11] *Id.* at 10.

They are also ordered to pay civil indemnity to the heirs of Ronald Abacco of STO. TOMAS, La Union in the amount of Seventy-Five Thousand pesos* and moral damages in the amount of Fifty Thousand pesos for a total of One Hundred Twenty Five Thousand pesos.

SO ORDERED.[12]

The RTC rejected the claim that Rogelio only acted in lawful self-defense. It held that the elements of self-defense, specifically unlawful aggression on the part of Abacco and reasonable necessity of the means employed to repel the aggression, were not established.

With respect to the element of unlawful aggression on Abacco's part, the RTC ratiocinated thus:

Assuming *arguendo* that Ronald Abacco was indeed armed when he confronted Rogelio Ramos at the latter's house, Rogelio became the unlawful aggressor from the time he was able to get hold of Abacco's hand and started hacking him. At that moment, the unlawful aggression made by Abacco, if ever there was any, ceased and evidently shifted to the accused Rogelio Ramos.[13]

Anent the element of reasonable necessity of the means employed to repel the aggression, the RTC held that the number of wounds sustained by the deceased reveals that the means employed by Rogelio was unreasonable. In addition, in comparison with Rogelio's injuries which the attending physician and the RTC found to be minor, the fatal wounds suffered by Abacco belie the claim of self-defense.

As to Marissa, the RTC held that her claim of denial and alibi cannot prevail over the positive testimonies of the prosecution witnesses positively identifying her to have participated in the commission of the crime.

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[12] Records, p. 206. Emphases and symbol in the original.

[13] *Id.* at 203.

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the Decision of the RTC. The dispositive portion of the CA's assailed September 9, 2009 Decision reads:

> **WHEREFORE,** the instant appeal is **DENIED**. The decision appealed from is **AFFIRMED** with the modification that the appellants Rogelio Ramos and Marissa Ramos are ordered to pay, jointly and severally, additional ₱25,000.00 as exemplary damages, to the heirs of Ronald Abacco.
>
> **IT IS SO ORDERED.**[14]

The CA held that the appellants failed to discharge the burden of evidence in proving that Rogelio killed Abacco in self-defense. Instead, what Rogelio did was an act of retaliation. With respect to Marissa, the said court ruled that her defense of denial and alibi cannot prosper as it was not physically impossible for her to have been at the scene of the crime at the time of its commission.

Assignment of Errors

Not satisfied, the appellants now appeal to this Court adopting the same issues they raised before the CA. They assert that the trial court gravely erred in:

I

X X X CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER, WHEN THEIR GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

X X X GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCREDULOUS TESTIMONIES OF THE PROSECUTION'S EYEWITNESSES, AND IN DISREGARDING THE CREDIBLE VERSION OF THE DEFENSE.

III

X X X RULING THAT THE CRIME COMMITTED WAS MURDER DESPITE THE ABSENCE OF PROOF THAT THE AGGRAVATING

[14] CA *rollo*, p. 161.

CIRCUMSTANCE OF TREACHERY ATTENDED THE COMMISSION OF THE CRIME.[15]

Our Ruling

The appeal has no merit.

Rogelio's claim of self-defense is unavailing.

Rogelio admits that he killed Abacco albeit in self-defense. "The rule consistently adhered to in this jurisdiction is that when the accused [admits] that he [is] the author of the death of the victim and his defense [is] anchored on self-defense, it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court."[16] With this admission, the burden of evidence is shifted to the appellant to prove that all the essential elements of self-defense are present. He must show and prove by clear and convincing evidence that his act was justified. Otherwise his conviction must be upheld and he cannot be exonerated from criminal liability. On this score, the accused must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.

To successfully invoke the justifying circumstance of self-defense, the following requisites must be present:

(1) unlawful aggression;

(2) reasonable necessity of the means employed to prevent or repel it;

(3) lack of sufficient provocation on the part of the person defending himself.[17]

Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim

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

[16] *People v. Mayingque*, G.R. No. 179709, July 6, 2010, 624 SCRA 123, 141.

[17] REVISED PENAL CODE, Art. 11(1).

is established, self-defense is unavailing as there is nothing to repel. The unlawful aggression of the victim must put the life and personal safety of the person defending himself in actual peril. A mere threatening or intimidating attitude does not constitute unlawful aggression.[18]

In this case, appellants claim that Abacco went to Rogelio's house and threw stones at it, shouted at Rogelio, and challenged him to come out. When Rogelio finally came out, Abacco suddenly hacked him with a bolo. And to defend himself, Rogelio went inside his house, armed himself with a *samurai* sword, and in parrying the blows of Abacco, hacked the latter to death. In essence, Rogelio claims that the unlawful aggression originated from Abacco.

On the other hand, the prosecution witnesses stated that Abacco was unarmed when he went to the house of Rogelio. They testified that Rogelio and Marissa were crouching behind a gumamela bush before Rogelio opened their gate. Thereupon, Rogelio dealt the first blow when he suddenly hacked Abacco with a *samurai* sword twice.[19]

Ineluctably, Abacco cannot be considered as the aggressor. For one, eyewitnesses attest that Abacco was unarmed when he went to appellants' house. Also, Abacco's act of going to their house and calling out Rogelio so they may talk can hardly be considered as unlawful aggression under the law. Even Abacco's injuries which proved to be multiple and fatal reveal that it was Rogelio and Marissa who were truly the aggressors. In contrast, the injuries sustained by Rogelio were minor requiring no special care or attention. Dr. Soriano, the physician who attended to Rogelio, even testified in court on the possibility that the wounds could have been self-inflicted.[20] This Court is thus convinced that Abacco was by no means the unlawful aggressor.

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[18] *Calim v. Court of Appeals*, 404 Phil. 391, 401-402 (2001).

[19] TSN, August 3, 2006, p. 19.

[20] TSN, November 20, 2006, p. 10.

With regard to the second element of self-defense, the Court finds that the means employed by Rogelio is grossly disproportionate to Abacco's alleged unlawful aggression. Abacco was violently slain and practically butchered. He suffered multiple blows to the head, neck, arms, and back. The blade of the *samurai* sword not only sliced through his flesh but penetrated and even exposed his bones. In fact, one particular laceration almost transected his spinal cord. Suffice it to say that a plea of self-defense is belied by the "nature, number, and location of the wounds" inflicted on the victim "since the gravity of said wounds is indicative of a determined effort to kill and not just to defend."[21] Here, the wounds sustained by Abacco clearly show Rogelio's intent to kill him and not merely to prevent or repel an attack from him. Verily, the means employed by Rogelio were unreasonable and excessive, thus, his plea of self-defense is unacceptable.

Marissa's defense of denial and alibi must likewise fail.

Marissa invokes the defense of denial and alibi. She claims that she was not present at the crime scene at the time of the killing since she was at the house of *Barangay Kagawad* Tavora to ask for aid in pacifying Abacco who was challenging Rogelio.

However, for the defense of alibi to prosper, "the accused must prove (a) that [she] was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for [her] to be at the scene of the crime"[22] during its commission. "Physical impossibility refers to distance and the facility of access between the [crime scene] and the location of the accused when the crime was committed. [She] must demonstrate that [she] was so far away and could not have been physically present at the [crime scene] and its immediate vicinity when the crime was committed."[23]

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[21] *People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 617.

[22] *People v. Mosquerra*, 414 Phil. 740, 749 (2001).

[23] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233, 253

In the case at bench, Marissa failed to satisfy these requisites. During trial, it was shown that the distance between *Kagawad* Tavora's house and the house of the appellants was only 400 meters. Surely, a distance of 400 meters is not what jurisprudence contemplates when it refers to physical impossibility of the accused to be present at the scene of the crime. We have previously held that two kilometers,[24] three kilometers,[25] and even five kilometers[26] were not too far as to preclude the possibility of the presence of the accused at the crime scene. The mere fact, therefore, that Marissa went to the house of *Kagawad* Tavora did not preclude her presence at their house at the time the crime happened.

Moreover, Marissa was positively identified by eyewitnesses to be present at the scene of the crime and to have participated in its commission. Time and again, this Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[27]

Factual findings of the trial court involving the credibility of witnesses are accorded respect especially when affirmed by the CA.

Appellants challenge the RTC's reliance on the testimonies of the prosecution witnesses claiming the same to be highly incredulous. They particularly question the credibility of prosecution witnesses, husband and wife Anthony and Gina, who they claim had testified against them for improper motives. They aver that since they previously filed a complaint against Anthony for cutting down their narra tree, the said spouses had every reason to falsely testify against them. By virtue of their previous altercation, the testimonies of the said witnesses should not be given weight as they are not considered credible witnesses.

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[24] *People v. Lumantas*, 139 Phil. 20, 26-27 (1969).

[25] *People v. Binsol*, 100 Phil. 713, 731 (1957).

[26] *People v. Manabat*, 100 Phil. 603, 608 (1956).

[27] *People v. Dejillo*, G.R. No. 185005, December 10, 2012.

The Court finds no reason to disturb the findings of the trial court. It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first hand account on the witnesses' manner of testifying in court and their demeanor during trial.[28] The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility. Moreover in the absence of misapprehension of facts or grave abuse of discretion, and especially when the findings of the judge have been affirmed by the CA as in this case, the findings of the trial court shall not be disturbed.[29] Besides, even assuming that Anthony and Gina were indeed impelled by improper motive, appellants failed to impeach Ryan, an eyewitness to the incident who positively identified them as the assailants. As observed by the CA:

> While the appellants question the credibility of the prosecution witness Anthony Ramos, who allegedly had ill motive in testifying against them because appellant Marissa had filed charges against him for cutting the *narra* tree in front of their house, they failed to impute similar motive on the part of Ryan (Roquero) who also witnessed the incident. x x x[30]

Treachery attended the killing of Abacco, hence, the crime committed is murder.

This Court is likewise convinced that treachery was employed by the appellants in killing Abacco.

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.[31] This is exactly

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[28] *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 783.

[29] *Josue v. People*, G.R. No. 199579, December 10, 2012.

[30] CA *rollo*, p. 158.

[31] REVISED PENAL CODE, Art. 14, par. 16(2).

the manner by which appellants committed the crime. As aptly depicted in the assailed CA Decision:

> As the victim lay on the ground, appellant Rogelio repeatedly hacked the victim. Apart from the admission of appellant Rogelio, Anthony and Ryan, who happened to pass by, also witnessed this incident. Furthermore, Anthony and Ryan likewise saw appellant Marissa hack the victim at his back. Indisputably, the appellants attacked the victim with treachery because the latter, who had fallen to the ground and begging the appellants to stop, was in no position to offer any defense to ward off the attack nor provide a semblance of risk to life or limb of the attackers. x x x[32]

And as treachery qualifies the killing to murder,[33] the crime committed in this case is murder under Article 248 of the RPC.

Penalty and Award of Damages

The penalty for murder is *reclusion perpetua* to death.[34] "There being no aggravating or mitigating circumstance, the RTC, as affirmed by the [CA] properly imposed [upon appellants] the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 235 of the [RPC]."[36]

"Anent the award of damages, 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

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[32] CA *rollo*, p. 159.

[33] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 799.

[34] *People v. Agacer*, G.R. No. 177751, January 7, 2013.

[35] ART. 63. *Rules for the application of indivisible penalties*. x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

(2) When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[36] *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 159-160.

damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses for litigation; and, (6) interest, in proper cases."[37] Hence, the Court finds as proper the RTC's awards to the heirs of Abacco, as affirmed by the CA, the amounts of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.[38] However, the ₱25,000.00 exemplary damages awarded by the CA must be increased to ₱30,000.00 in line with current jurisprudence.[39] Also, as the prosecution was able to submit in evidence receipts representing the expenses incurred in connection with Abacco's burial,[40] actual damages in the amount of ₱40,000.00 must likewise be awarded. "In addition and in conformity with current policy [the Court] also impose[s] on all the monetary awards for damages interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid."[41]

WHEREFORE, the appeal is **DISMISSED.** The September 9, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02785 is **AFFIRMED with modifications**. Appellants Rogelio Ramos and Marissa Intero Ramos are further ordered to pay the heirs of Ronald A. Abacco (1) exemplary damages in an increased amount of ₱30,000.00; (2) actual damages in the amount of ₱40,000.00; and, (3) interest at the legal rate of 6% *per annum* on all the monetary awards for damages from date of finality of this Decision until fully paid.

SO ORDERED.

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

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[37] *People v. Rarugal*, G.R. No. 188603, January 16, 2013.

[38] *People v. Escleto, supra* note 36 at 160.

[39] *People v. Paling*, G.R. No. 185390, March 16, 2011, 645 SCRA 627, 644.

[40] Exhibits "M" and "N", Folder of Exhibits, pp. 31-32; see also TSN dated October 2, 2006, pp. 231-232.

[41] *People v. Rarugal, supra* note 37.

FIRST DIVISION

[G.R. No. 192896. July 24, 2013]

DREAM VILLAGE NEIGHBORHOOD ASSOCIATION, INC., represented by its Incumbent President, GREG SERIEGO, *petitioner, vs.* **BASES CONVERSION DEVELOPMENT AUTHORITY,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; THE TITLES OF THE BASES CONVERSION DEVELOPMENT AUTHORITY (BCDA) OVER FORT BONIFACIO ARE VALID, AND INDEFEASIBLE.— That the BCDA has title to Fort Bonifacio has long been decided with finality. In *Samahan ng Masang Pilipino sa Makati, Inc. v. BCDA*, it was categorically ruled as follows: First, it is unequivocal that the Philippine Government, and now the BCDA, has title and ownership over Fort Bonifacio. The case of *Acting Registrars of Land Titles and Deeds of Pasay City, Pasig and Makati* is final and conclusive on the ownership of the then *Hacienda de* Maricaban estate by the Republic of the Philippines. Clearly, the issue on the ownership of the subject lands in Fort Bonifacio is laid to rest. Other than their view that the USA is still the owner of the subject lots, petitioner has not put forward any claim of ownership or interest in them. The facts in *Samahan ng Masang Pilipino sa Makati* are essentially not much different from the controversy below. There, 20,000 families were long-time residents occupying 98 has. of Fort Bonifacio in Makati City, who vainly sought to avert their eviction and the demolition of their houses by the BCDA upon a claim that the land was owned by the USA under TCT No. 2288. The Supreme Court found that TCT No. 2288 had in fact been cancelled by TCT No. 61524 in the name of the Republic, which title was in turn cancelled on January 3, 1995 by TCT Nos. 23888, 23887, 23886, 22460, 23889, 23890, and 23891, all in the name of the BCDA. The Court ruled that the BCDA's aforesaid titles over Fort Bonifacio are valid, indefeasible and beyond question, since TCT No. 61524 was cancelled in favor of BCDA pursuant to

an explicit authority under R.A. No. 7227, the legal basis for BCDA's takeover and management of the subject lots.

2. ID.; ID.; PROCLAMATION NOS. 2476 AND 172; DREAM VILLAGE LIES OUTSIDE THE AREA DECLARED AS ALIENABLE AND DISPOSABLE.— Pursuant to Proclamation No. 2476, x x x surveys were conducted by the Bureau of Lands to delimit the boundaries of the areas excluded from the coverage of Proclamation No. 423 x x x. However, the survey plan for Western Bicutan, Swo-13-000298, shows that Lots 3, 4, 5 and 6 thereof are inside the area segregated for the *Libingan ng mga Bayani* under Proclamation No. 208, which then leaves only Lots 1 and 2 of Swo-13-000298 as available for disposition. For this reason, it was necessary to amend Proclamation No. 2476. Thus, in Proclamation No. 172 only Lots 1 and 2 of Swo-13-000298 are declared alienable and disposable. The DENR verification survey report states that Dream Village is not situated in Lot 1 of Swo-13-000298 but actually occupies Lots 10, 11 and part of 13 of Swo-00-0001302 x x x. The mere fact that the original plan for C-5 Road to cross Swo-00-0001302 was abandoned by deviating it northward to traverse the southern part of *Libingan ng mga Bayani* does not signify abandonment by the government of the bypassed lots, nor that these lots would then become alienable and disposable. They remain under the title of the BCDA, even as it is significant that under Section 8(d) of R.A. No. 7227, a relocation site of 30.5 has. was to be reserved for families affected by the construction of C-5 Road. It is nowhere claimed that Lots 10, 11 and 13 of Swo-00-0001302 are part of the said relocation site. These lots border C-5 Road in the south, making them commercially valuable to BCDA, a farther argument against a claim that the government has abandoned them to Dream Village.

3. ID.; ID.; FOR AS LONG AS THE PROPERTY BELONGS TO THE STATE, ALTHOUGH ALREADY CLASSIFIED AS ALIENABLE OR DISPOSABLE, IT REMAINS PROPERTY OF THE PUBLIC DOMINION WHEN IT IS INTENDED FOR SOME PUBLIC SERVICE OR FOR THE DEVELOPMENT OF THE NATIONAL WEALTH.— Article 1113 of the Civil Code provides that "property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription." Articles 420 and 421

identify what is property of public dominion and what is patrimonial property x x x. In *Heirs of Mario Malabanan v. Republic*, it was pointed out that from the moment R.A. No. 7227 was enacted, the subject military lands in Metro Manila became alienable and disposable. However, it was also clarified that the said lands did not thereby become patrimonial, since the BCDA law makes the express reservation that they are to be sold in order to raise funds for the conversion of the former American bases in Clark and Subic. The Court noted that the purpose of the law can be tied to either "public service" or "the development of national wealth" under Article 420(2) of the Civil Code, such that the lands remain property of the public dominion, albeit their status is now alienable and disposable. The Court then explained that it is only upon their sale to a private person or entity as authorized by the BCDA law that they become private property and cease to be property of the public dominion: For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion when it is "intended for some public service or for the development of the national wealth."

4. ID.; ID.; PROPERTY REGISTRATION DECREE (PD NO. 1529); BEFORE ACQUISITIVE PRESCRIPTION CAN COMMENCE, THE PROPERTY SOUGHT TO BE REGISTERED MUST NOT ONLY BE CLASSIFIED AS ALIENABLE AND DISPOSABLE, IT MUST ALSO BE EXPRESSLY DECLARED BY THE STATE THAT IT IS NO LONGER INTENDED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH, OR THAT THE PROPERTY HAS BEEN CONVERTED INTO PATRIMONIAL; ABSENT SUCH AN EXPRESS DECLARATION BY THE STATE, THE LAND REMAINS TO BE PROPERTY OF PUBLIC DOMINION.— [U]nder Article 422 of the Civil Code, public domain lands become patrimonial property only if there is a declaration that these are alienable or disposable, together with an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth. Only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run. Also under Section 14(2) of

Presidential Decree (P.D.) No. 1529, it is provided that before acquisitive prescription can commence, the property sought to be registered must not only be classified as alienable and disposable, it must also be expressly declared by the State that it is no longer intended for public service or the development of the national wealth, or that the property has been converted into patrimonial. Absent such an express declaration by the State, the land remains to be property of public dominion. Since the issuance of Proclamation No. 423 in 1957, vast portions of the former *Maricaban* have been legally disposed to settlers, besides those segregated for public or government use. x x x. The above proclamations notwithstanding, Fort Bonifacio remains property of public dominion of the State, because although declared alienable and disposable, it is reserved for some public service or for the development of the national wealth, in this case, for the conversion of military reservations in the country to productive civilian uses. Needless to say, the acquisitive prescription asserted by Dream Village has not even begun to run.

5. ID.; ID.; ID.; LANDS UNDER A TORRENS TITLE CANNOT BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION.— Dream Village has been unable to dispute BCDA's claim that Lots 10, 11 and part of 13 of Swo-00-0001302 are the abandoned right-of-way of C-5 Road, which is within the vast titled territory of Fort Bonifacio. We have already established that these lots have not been declared alienable and disposable under Proclamation Nos. 2476 or 172. Moreover, it is a settled rule that lands under a Torrens title cannot be acquired by prescription or adverse possession. Section 47 of P.D. No. 1529, the Property Registration Decree, expressly provides that no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. And, although the registered landowner may still lose his right to recover the possession of his registered property by reason of *laches*, nowhere has Dream Village alleged or proved *laches*, which has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. Put any way, it is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on

some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.

6. ID.; ID.; THE JURISDICTION OF THE COMMISSION ON THE SETTLEMENT OF LAND PROBLEMS (COSLAP) IS LIMITED TO DISPUTES OVER PUBLIC LANDS NOT RESERVED OR DECLARED FOR A PUBLIC USE OR PURPOSE; COSLAP HAS NO JURISDICTION OVER THE COMPLAINT OF THE DREAM VILLAGE SETTLERS.— BCDA has repeatedly asserted that the COSLAP has no jurisdiction to hear Dream Village's complaint. Concurring, the CA has ruled that questions as to the physical identity of Dream Village and whether it lies in Lots 10, 11 and 13 of Swo-00-0001302, or whether Proclamation No. 172 has released the disputed area for disposition are issues which are *"manifestly beyond the scope of the COSLAP's jurisdiction vis-á-vis Paragraph 2, Section 3 of E.O. No. 561,*" rendering its Resolution a patent nullity and its pronouncements void. x x x We add that Fort Bonifacio has been reserved for a declared specific public purpose under R.A. No. 7227, which unfortunately for Dream Village does not encompass the present demands of its members. Indeed, this purpose was the very reason why title to Fort Bonifacio has been transferred to the BCDA, and it is this very purpose which takes the dispute out of the direct jurisdiction of the COSLAP. A review of the history of the COSLAP will readily clarify that its jurisdiction is limited to disputes over public lands not reserved or declared for a public use or purpose. x x x In the case at bar, COSLAP has invoked *Bañaga* to assert its jurisdiction. x x x. But as the Court has since clarified in *Longino* and in the other cases x x x, the land dispute in *Bañaga* was between private individuals who were free patent applicants over unregistered public lands. In contrast, the present petition involves land titled to and managed by a government agency which has been expressly reserved by law for a specific public purpose other than for settlement. Thus, as we have advised in *Longino,* the law does not vest jurisdiction on the COSLAP over any land dispute or problem, but it has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon

to prevent injuries to persons and damage or destruction to property.

APPEARANCES OF COUNSEL

A.D. Corvera and R.C. Tinga Law Firm for petitioner.
Maria Susana Borromeo-Garcia for respondent.

D E C I S I O N

REYES, *J.*:

Before us on Petition for Review[1] under Rule 45 of the Rules of Court is the Decision[2] dated September 10, 2009 and Resolution[3] dated July 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 85228 nullifying and setting aside for lack of jurisdiction the Resolution[4] dated April 28, 2004 of the Commission on the Settlement of Land Problems (COSLAP) in COSLAP Case No. 99-500. The *fallo* of the assailed COSLAP Resolution reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the subject property, covering an area of 78,466 square meters, now being occupied by the members of the Dream Village Neighborhood Association, Inc. to be outside of Swo-00-0001302 BCDA property.

2. In accordance with the tenets of social justice, members of said association are advised to apply for sales patent on their respective occupied lots with the Land Management Bureau, DENR-NCR, pursuant to R.A. Nos. 274 and 730.

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[1] *Rollo*, pp. 24-46.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Josefina Guevara-Salonga and Celia C. Librea-Leagogo, concurring; *id.* at 55-67.

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

[4] *Id.* at 112-116.

3. Directing the Land Management Bureau-DENR-NCR to process the sales patent application of complainants pursuant to existing laws and regulation.

4. The peaceful possession of actual occupants be respected by the respondents.

SO ORDERED.[5]

Antecedent Facts

Petitioner Dream Village Neighborhood Association, Inc. (Dream Village) claims to represent more than 2,000 families who have been occupying a 78,466-square meter lot in Western Bicutan, Taguig City since 1985 "in the concept of owners continuously, exclusively and notoriously."[6] The lot used to be part of the *Hacienda de Maricaban (Maricaban)*, owned by Dolores Casal *y* Ochoa and registered under a Torrens title,[7] Original Certificate of Title (OCT) No. 291, issued on October 17, 1906 by the Registry of Deeds of Rizal.[8] *Maricaban* covered several parcels of land with a total area of over 2,544 hectares spread out over Makati, Pasig, Taguig, Pasay, and Parañaque.[9]

Following the purchase of *Maricaban* by the government of the United States of America (USA) early in the American colonial period, to be converted into the military reservation known as Fort William Mckinley, Transfer Certificate of Title (TCT) No. 192 was issued in the name of the USA to cancel OCT No. 291.[10] The US government later transferred 30 has. of *Maricaban* to the Manila Railroad Company, for which TCT No. 192 was cancelled by TCT Nos. 1218 and 1219, the first

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[5] *Id.* at 115-116.

[6] *Id.* at 29.

[7] Pursuant to Act No. 496 (1902) or the Land Registration Act.

[8] *Rollo*, p. 56.

[9] *Samahan ng Masang Pilipino sa Makati, Inc. v. BCDA*, 542 Phil. 86 (2007).

[10] *Rollo*, p. 56.

in the name of the Manila Railroad Company for 30 has., and the second in the name of the USA for the rest of the *Maricaban* property.[11]

On January 29, 1914, TCT No. 1219 was cancelled and replaced by TCT No. 1688, and later that year, on September 15, 1914, TCT No. 1688 was cancelled and replaced by TCT No. 2288, both times in the name of the USA.[12] On December 6, 1956, the USA formally ceded Fort William Mckinley to the Republic of the Philippines (Republic), and on September 11, 1958, TCT No. 2288 was cancelled and replaced by TCT No. 61524, this time in the name of the Republic.[13] On July 12, 1957, President Carlos P. Garcia issued Proclamation No. 423 withdrawing from sale or settlement the tracts of land within Fort William Mckinley, now renamed Fort Bonifacio, and reserving them for military purposes.[14]

On January 7, 1986, President Ferdinand E. Marcos issued Proclamation No. 2476 declaring certain portions of Fort Bonifacio alienable and disposable[15] in the manner provided under Republic Act (R.A.) Nos. 274 and 730, in relation to the Public Land Act,[16] thus allowing the sale to the settlers of home lots in Upper Bicutan, Lower Bicutan, Signal Village, and Western Bicutan.[17]

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[11] *Id.* at 125; *supra* note 9, at 93.

[12] *Id.* at 125-126.

[13] *Id.* at 56, 126.

[14] *Id.* at 29, 126.

[15] *Id.* at 29.

[16] Under R.A. No. 274, passed on June 15, 1948, and R.A. No. 730, passed on June 18, 1952, the Director of Lands shall cause the subdivision into agricultural or residential lots of lands within military reservations owned by the RP which may be declared by the President of the Philippines as no longer needed for military purposes, for sale, first, to *bona fide* occupants, then to veterans, *etc*. The lots shall not be encumbered or alienated prior to the issuance of the patent, or for ten years thereafter, nor shall they be used to satisfy a debt contracted by the patent holder in the meantime.

[17] In a hand-written addendum by President Marcos to Proclamation No. 2476, Western Bicutan was also declared open for disposition, but in

On October 16, 1987, President Corazon C. Aquino issued Proclamation No. 172 amending Proclamation No. 2476 by limiting to Lots 1 and 2 of the survey Swo-13-000298 the areas in Western Bicutan open for disposition.[18]

Nagkakaisang Maralita ng Sitio Masigasig, Inc. v. Marine Shrine Services (G.R. No. 187587, June 5, 2013), the addendum was held as without legal effect for lack of publication.

[18] The additional lots declared open for disposition under Proclamation No. 172 were:

LOT 1 (WESTERN BICUTAN)

A PARCEL OF LAND (Lot 1 of the subdivision plan Swo-13-000298, being a portion of the Proclamation No. 2476) LRC Record No. — situated in the Bo. of Western Bicutan, Taguig, Metro Manila.

Bounded on the SW., and SE., along lines 1-2-3 by Lot 9100 (Manila Technician Institute) Proclamation No. 1160; on the NW., SW., and NW., along lines 3 to 16 by Circumferential Road, 50 m. wide); on the N.E., along lines 16-17 by Lot 2 of plan Swo-13-000298, and on the SE., along line 17-1 by Lot 8062 (Veteran's Center Compound) (Proclamation No. 192) of plan MCadm-590-D Taguig Cadastral Mapping.

NOTE: Lot 2 == Lot 10253, MCadm-590-D, Case 17, Taguig Cadastral Mapping

Beginning at a point marked "1" on plan, being S 63 deg. 25'W., 4346, 11 m. from BLBM No. 1, MCadm-590-D, Taguig Cadastral, thence —

x x x x x x x x x

beginning, containing an area of TWO HUNDRED FIFTY-TWO THOUSAND FOUR HUNDRED SEVENTY-SIX (252,476) SQUARE METERS. All points referred to are indicated on the plan and are marked on the ground by PS cyl. conc. wall, and pt l 17 by nail w/conc. hallow blocks; bearings grid, date of original survey, April 23, 1978-July 12, 1979, that of special work order, July 5-10, 1986, approved on Jan. 15, 1987.

LOT 2 SWO-13-000298 (WESTERN BICUTAN)

A PARCEL OF LAND (Lot 2 (Western Bicutan) of the subdivision plan Swo-13-000298, being a portion of land described in Proclamation No. 2476, LRC Record No. PSU-467), situated in the Bo. of Western Bicutan, Taguig, Metro Manila.

Bounded on the SE., along lines 1-2 by Veteran's Center Compound (Proclamation No. 192) (Lot 8092, MCad-s-90-D); on the SEW, along lines 3 to 11 by Circumferential Road (5 m. wide); on the NE., along lines 11-12 by Lot 0063 (Military Reservation) (Fort Bonifacio) portion of Lot 3, Psu-2030 (portion on) MCadm-590-D; on the SE., along lines 12-13 by Lot 1

On March 13, 1992, R.A. No. 7227 was passed[19] creating the Bases Conversion and Development Authority (BCDA) to oversee and accelerate the conversion of Clark and Subic military reservations and their extension camps (John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station and Capas Relay Station) to productive civilian uses. Section 8[20] of the said law provides that the capital

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Swo-13-000258 (Signal Village) (Lot 00202, MCads-590-D, Case 17, Taguig Cad Mapping and on the SW., along line 1s-1 by Veteran's Center Compound) (Proclamation No. 192) (Lot 8062, MCadm-590-D, Taguig Cad. Mapping.

NOTE: Lot 2 == Lot 10253, MCadm-590-D, Case 17, Taguig Cadastral Mapping.

Beginning at a point marked "1" on plan, being S. 64 deg. 051'W., 2805.47 m. from BLBM No. 1, MCadm 590-D, Taguig Cadastre; thence

x x x x x x x x x

beginning, containing an area of Three-Hundred Eighty-Five Thousand Thirty-Two (385,032) Square Meters. All points referred to are indicated on the plan and the marked on the ground by PS cyl. conc. mons.; except pts. 1 by BGY. No. 38; pt. 2 by nail with crown; pt. 12 by old PS cyl. conc. mons.; pt. 10 by edge of conc. wall; bearings and rod, date of original survey, April 23, 1978-July 27, 1979, that of the special work order July 5-10, 1986, approved on January 14, 1987. x x x.

[19] An Act Accelerating The Conversion of Military Reservations Into Productive Uses, Creating the Bases Conversion and Development Authority for This Purpose, Providing Funds Therefor and For Other Purposes.

[20] Sec. 8. *Funding Scheme*. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base, namely:

Camp	Area in has. (more or less)
Phase I (for immediate disposal)	
1. Camp Claudio	2.0
2. Camp Bago Bantay	5.0
3. Part of Villamor Air Base	135.10
4. Part of Fort Bonifacio	498.40
Total	640.50

of the BCDA will be provided from sales proceeds or transfers of lots in nine (9) military camps in Metro Manila, including

	Phase II	
1.	Camp Ver	1.9
2.	Camp Melchor	1.0
3.	Camp Atienza	4.9
4.	Part of Villamor Air Base	37.9
5.	Part of Fort Bonifacio	224.90
6.	Fort Abad	.60
	Total	271.20

Provided, That the following areas shall be exempt from sale:

(a) Approximately 148.80 hectares in Fort Bonifacio for the National Capital Region (NCR) Security Brigade, Philippine Army (PA) officers' housing area, and Philippine National Police (PNP) jails and support services (Presently Camp Bagong Diwa);

(b) Approximately 99.91 hectares in Villamor Air Base for the Presidential Airlift Wing, one squadron of helicopters for the NCR and respective security units;

(c) The following areas segregated by Proclamation Nos.:

(1) 461, series of 1965; (AFP Officers Village)

(2) 462, series of 1965; (AFP Enlisted Men's Village)

(3) 192, series of 1967; (Veterans Center)

(4) 208, series of 1967; (National Shrines)

(5) 469, series of 1969; (Philippine College of Commerce)

(6) 653, series of 1970; (National Manpower and Youth Council)

(7) 684, series of 1970; (University Center)

(8) 1041, series of 1972; (Open Lease Concession)

(9) 1160, series of 1973; (Manila Technical Institute)

(10) 1217, series of 1973; (Maharlika Village)

(11) 682, series of 1970; (Civil Aviation Purposes)

(12) 1048, series of 1975; (Civil Aviation Purposes)

(13) 1453, series of 1975; (National Police Commission)

(14) 1633, series of 1977; (Housing and Urban Development)

(15) 2219, series of 1982; (Ministry of Human Settlements, BLISS)

(16) 172, series of 1987; (Upper, Lower and Western Bicutan and Signal Housing)

723 has. of Fort Bonifacio. The law, thus, expressly authorized the President of the Philippines "to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties,"[21] specifically to raise capital for the BCDA. Titles to the camps were transferred to the BCDA for this purpose,[22] and TCT No. 61524 was cancelled on

(17) 389, series of 1989; (National Mapping and Resource Information Authority)

(18) 518, series of 1990; (CEMBO, SO CEMBO, W REMBO, E REMBO, COMEMBO, PEMBO, PITOGO)

(19) 467, series of 1968; (Greater Manila Terminal Food Market Site)

(20) 347, series of 1968; (Greater Manila Food Market Site)

(21) 376, series of 1968; (National Development Board and Science Community)

(d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: Provided, further, That the boundaries and technical description of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. x x x.

x x x x x x x x x

With respect to the military reservations and their extensions, the President upon recommendation of the Conversion Authority or the Subic Authority when it concerns the Subic Special Economic Zone shall likewise be authorized to sell or dispose those portions of lands which the Conversion Authority or the Subic Authority may find essential for the development of their projects. (Underscoring ours)

[21] *Id.*

[22] Also transferred to the BCDA were:

Section 7. *Transfer of Properties*. — Pursuant to paragraph (a), Section 4 hereof, the President shall transfer forthwith to the Conversion Authority:

January 3, 1995 by TCT Nos. 23888, 23887, 23886, 22460, 23889, 23890, and 23891, now in the name of the BCDA.[23]

Excepted from disposition by the BCDA are: a) approximately 148.80 has. reserved for the National Capital Region (NCR) Security Brigade, Philippine Army officers' housing area, and Philippine National Police jails and support services (presently known as Camp Bagong Diwa); b) approximately 99.91 has. in Villamor Air Base for the Presidential Airlift Wing, one squadron of helicopters for the NCR and respective security units; c) twenty one (21) areas segregated by various presidential proclamations; and d) a proposed 30.15 has. as relocation site for families to be affected by the construction of Circumferential Road 5 and Radial Road 4, provided that the boundaries and technical description of these exempt areas shall be determined by an actual ground survey.[24]

Now charging the BCDA of wrongfully asserting title to Dream Village and unlawfully subjecting its members to summary demolition, resulting in unrest and tensions among the residents,[25]

(a) Station — Area in has. (more or less)

John Hay Air Station	570
Wallace Air Station	167
O'Donnell Transmitter Station	1,755
San Miguel Naval Communications Station	1,100
Mt. Sta. Rita Station (Hermosa, Bataan)	

(b) Such other properties including, but not limited to, portions of Metro Manila military camps, pursuant to Section 8 of this Act: Provided, however, That the areas which shall remain as military reservations shall be delineated and proclaimed as such by the President.

[23] *Supra* note 9, at 98.

[24] *See* R.A. No. 7227, Sec. 8.

[25] Section 27 of R.A. No. 7279 authorizes the summary eviction and demolition of professional squatters, thus:

Sec. 27. *Action Against Professional Squatters and Squatting Syndicates.* — The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the

on November 22, 1999, the latter filed a letter-complaint with the COSLAP to seek its assistance in the verification survey of the subject 78,466-sq m property, which they claimed is within Lot 1 of Swo-13-000298 and thus is covered by Proclamation No. 172. They claim that they have been occupying the area for thirty (30) years "in the concept of owners continuously, exclusively and notoriously for several years," and have built their houses of sturdy materials thereon and introduced paved roads, drainage and recreational and religious facilities. Dream Village, thus, asserts that the lot is not among those transferred to the BCDA under R.A. No. 7227, and therefore patent applications by the occupants should be processed by the Land Management Bureau (LMB).

On August 15, 2000, Dream Village formalized its complaint by filing an Amended Petition[26] in the COSLAP. Among the reliefs it sought were:

d. DECLARING the subject property as alienable and disposable by virtue of applicable laws;

e. Declaring the portion of Lot 1 of subdivision Plan SWO-13-000298, situated in the barrio of Western Bicutan, Taguig, Metro Manila, which is presently being occupied by herein petitioner as within the coverage of Proclamation Nos. 2476 and 172 and outside the claim of AFP-RSBS INDUSTRIAL PARK COMPLEX and/or BASES CONVERSION DEVELOPMENT AUTHORITY.

f. ORDERING the Land Management Bureau to process the application of the ASSOCIATION members for the purchase of their respective lots under the provisions of Acts Nos. 274 and 730.[27] (Underscoring supplied)

PCUP-accredited urban poor organization in the area, shall adopt measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

[26] *Rollo*, pp. 82-90.

[27] *Id.* at 87.

Respondent BCDA in its Answer[28] dated November 23, 2000 questioned the jurisdiction of the COSLAP to hear Dream Village's complaint, while asserting its title to the subject property pursuant to R.A. No. 7227. It argued that under Executive Order (E.O.) No. 561 which created the COSLAP, its task is merely to coordinate the various government offices and agencies involved in the settlement of land problems or disputes, adding that BCDA does not fall in the enumeration in Section 3 of E.O. No. 561, it being neither a pastureland-lease holder, a timber concessionaire, or a government reservation grantee, but the holder of patrimonial government property which cannot be the subject of a petition for classification, release or subdivision by the occupants of Dream Village.

In its Resolution[29] dated April 28, 2004, the COSLAP narrated that it called a mediation conference on March 22, 2001, during which the parties agreed to have a relocation/verification survey conducted of the subject lot. On April 4, 2001, the COSLAP wrote to the Department of Environment and Natural Resources (DENR)-Community Environment and Natural Resources Office-NCR requesting the survey, which would also include Swo-00-0001302, covering the adjacent AFP-RSBS Industrial Park established by Proclamation No. 1218 on May 8, 1998 as well as the abandoned Circumferential Road 5 (C-5 Road).[30]

On April 1, 2004, the COSLAP received the final report of the verification survey and a blueprint copy of the survey plan from Atty. Rizaldy Barcelo, Regional Technical Director for Lands of DENR. Specifically, Item No. 3 of the DENR report states:

3. Lot-1, Swo-000298 is inside Proclamation 172. Dream Village Neighborhood Association, Inc. is outside Lot-1, Swo-13-000298 and inside Lot-10, 11 & Portion of Lot 13, Swo-00-0001302 with an actual area of 78,466 square meters. Likewise,

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[28] *Id.* at 107-111.

[29] *Id.* at 112-116.

[30] *Id.* at 125.

the area actually is outside Swo-00-0001302 of BCDA.[31] (Emphasis ours and underscoring supplied)

COSLAP Ruling

On the basis of the DENR's verification survey report, the COSLAP resolved that Dream Village lies outside of BCDA, and particularly, outside of Swo-00-0001302, and thus directed the LMB of the DENR to process the applications of Dream Village's members for sales patent, noting that in view of the length of time that they "have been openly, continuously and notoriously occupying the subject property in the concept of an owner, x x x they are qualified to apply for sales patent on their respective occupied lots pursuant to R.A. Nos. 274 and 730 in relation to the provisions of the Public Land Act."[32]

On the question of its jurisdiction over the complaint, the COSLAP cited the likelihood that the summary eviction by the BCDA of more than 2,000 families in Dream Village could stir up serious social unrest, and maintained that Section 3(2) of E.O. No. 561 authorizes it to "*assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action,*" even as Section 3(2)(d) of E.O. No. 561 also allows it to take cognizance of "*petitions for classification, release and/or subdivision of lands of the public domain,*" exactly the ultimate relief sought by Dream Village. Rationalizing that it was created precisely to provide a more effective mechanism for the expeditious settlement of land problems "in general," the COSLAP invoked as its authority the 1990 case of *Bañaga v. COSLAP*,[33] where this Court said:

It is true that Executive Order No. 561 provides that the COSLAP *may* take cognizance of cases which are "critical and explosive in

[31] *Id.* at 115.

[32] *Id.*

[33] 260 Phil. 643 (1990).

nature considering, for instance, the large number of parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action." However, the use of the word "may" does not mean that the COSLAP's jurisdiction is merely confined to the above mentioned cases. The provisions of the said Executive Order are clear that the COSLAP was created as a means of providing a more effective mechanism for the expeditious settlement of land problems *in general*, which are frequently the source of conflicts among settlers, landowners and cultural minorities. Besides, the COSLAP merely took over from the abolished PACLAP whose functions, including its jurisdiction, power and authority to act on, decide and resolve land disputes (Sec. 2, P.D. No. 832) were all assumed by it. The said Executive Order No. 561 containing said provision, being enacted only on September 21, 1979, cannot affect the exercise of jurisdiction of the PACLAP Provincial Committee of Koronadal on September 20, 1978. Neither can it affect the decision of the COSLAP which merely affirmed said exercise of jurisdiction.[34]

In its Motion for Reconsideration[35] filed on May 20, 2004, the BCDA questioned the validity of the survey results since it was conducted without its representatives present, at the same time denying that it received a notification of the DENR verification survey.[36] It maintained that there is no basis for the COSLAP's finding that the members of Dream Village were in open, continuous, and adverse possession in the concept of owner, because not only is the property not among those declared alienable and disposable, but it is a titled patrimonial property of the State.[37]

In the Order[38] dated June 17, 2004, the COSLAP denied BCDA's Motion for Reconsideration, insisting that it had due notice of the verification survey, while also noting that although

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[34] *Id.* at 653-654.

[35] *Rollo*, pp. 145-149.

[36] *Id.* at 146.

[37] *Id.* at 147-148.

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

the BCDA wanted to postpone the verification survey due to its tight schedule, it actually stalled the survey when it failed to suggest an alternative survey date to ensure its presence.

CA Ruling

On Petition for Review[39] to the CA, the BCDA argued that the dispute is outside the jurisdiction of the COSLAP because of the land's history of private ownership and because it is registered under an indefeasible Torrens title;[40] that Proclamation No. 172 covers only Lots 1 and 2 of Swo-13-000298 in Western Bicutan, whereas Dream Village occupies Lots 10, 11 and part of 13 of Swo-00-0001302, which also belongs to the BCDA;[41] that the COSLAP resolution is based on an erroneous DENR report stating that Dream Village is outside of BCDA, because Lots 10, 11, and portion of Lot 13 of Swo-00-0001302 are within the BCDA;[42] that the COSLAP was not justified in ignoring BCDA's request to postpone the survey to the succeeding year because the presence of its representatives in such an important verification survey was indispensable for the impartiality of the survey aimed at resolving a highly volatile situation;[43] that the COSLAP is a mere coordinating administrative agency with limited jurisdiction;[44] and, that the present case is not among those enumerated in Section 3 of E.O. No. 561.[45]

The COSLAP, on the other hand, maintained that Section 3(2)(e) of E.O. No. 561 provides that it may assume jurisdiction and resolve land problems or disputes in "other similar land problems

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[39] *Id.* at 121-139.

[40] *Id.* at 130, citing *Republic v. CA*, G.R. No. 84966, November 21, 1991, 204 SCRA 358.

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

[42] *Id.* at 131.

[43] *Id.* at 130-131.

[44] *Id.* at 127.

[45] *Id.* at 135-136.

of grave urgency and magnitude,"[46] and the present case is one such problem.

The CA in its Decision[47] dated September 10, 2009 ruled that the COSLAP has no jurisdiction over the complaint because the question of whether Dream Village is within the areas declared as available for disposition in Proclamation No. 172 is beyond its competence to determine, even as the land in dispute has been under a private title since 1906, and presently its title is held by a government agency, the BCDA, in contrast to the case of *Bañaga* relied upon by Dream Village, where the disputed land was part of the public domain and the disputants were applicants for sales patent thereto.

Dream Village's motion for reconsideration was denied in the appellate court's Order[48] of July 13, 2010.

Petition for Review in the Supreme Court

On petition for review on c*ertiorari* to this Court, Dream Village interposes the following issues:

A

IN ANNULLING THE RESOLUTION OF COSLAP IN COSLAP CASE NO. 99-500, THE HONORABLE [CA] DECIDED THE CASE IN A MANNER NOT CONSISTENT WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT;

B

THE HONORABLE [CA] ERRED IN RULING THAT COSLAP HAD NO JURISDICTION OVER THE CONTROVERSY BETWEEN THE PARTIES HEREIN[.][49]

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[46] Executive Order No. 561, Section 3, Paragraph 2(e).

[47] *Rollo*, pp. 55-67.

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

[49] *Id.* at 35.

The Court's Ruling

We find no merit in the petition.

The BCDA holds title to Fort Bonifacio.

That the BCDA has title to Fort Bonifacio has long been decided with finality. In *Samahan ng Masang Pilipino sa Makati, Inc. v. BCDA*,[50] it was categorically ruled as follows:

> First, it is unequivocal that the Philippine Government, and now the BCDA, has title and ownership over Fort Bonifacio. The case of *Acting Registrars of Land Titles and Deeds of Pasay City, Pasig and Makati* is final and conclusive on the ownership of the then *Hacienda de* Maricaban estate by the Republic of the Philippines. Clearly, the issue on the ownership of the subject lands in Fort Bonifacio is laid to rest. Other than their view that the USA is still the owner of the subject lots, petitioner has not put forward any claim of ownership or interest in them.[51]

The facts in *Samahan ng Masang Pilipino sa Makati* are essentially not much different from the controversy below. There, 20,000 families were long-time residents occupying 98 has. of Fort Bonifacio in Makati City, who vainly sought to avert their eviction and the demolition of their houses by the BCDA upon a claim that the land was owned by the USA under TCT No. 2288. The Supreme Court found that TCT No. 2288 had in fact been cancelled by TCT No. 61524 in the name of the Republic, which title was in turn cancelled on January 3, 1995 by TCT Nos. 23888, 23887, 23886, 22460, 23889, 23890, and 23891, all in the name of the BCDA. The Court ruled that the BCDA's aforesaid titles over Fort Bonifacio are valid, indefeasible and beyond question, since TCT No. 61524 was cancelled in favor of BCDA pursuant to an explicit authority under R.A. No. 7227, the legal basis for BCDA's takeover and management of the subject lots.[52]

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[50] 542 Phil. 86 (2007).

[51] *Id.* at 97-98.

[52] *Id.* at 98.

Dream Village sits on the abandoned C-5 Road, which lies outside the area declared in Proclamation Nos. 2476 and 172 as alienable and disposable.

Pursuant to Proclamation No. 2476, the following surveys were conducted by the Bureau of Lands to delimit the boundaries of the areas excluded from the coverage of Proclamation No. 423:

Barangay	Survey Plan	Date Approved
1. Lower Bicutan	SWO-13-000253	October 21, 1986
2. Signal Village	SWO-13-000258	May 13, 1986
3. Upper Bicutan	SWO-13-000258	May 13, 1986
4. Western Bicutan	SWO-13-000298	January 15, 1987[53]

However, the survey plan for Western Bicutan, Swo-13-000298, shows that Lots 3, 4, 5 and 6 thereof are inside the area segregated for the *Libingan ng mga Bayani* under Proclamation No. 208, which then leaves only Lots 1 and 2 of Swo-13-000298 as available for disposition. For this reason, it was necessary to amend Proclamation No. 2476. Thus, in Proclamation No. 172 only Lots 1 and 2 of Swo-13-000298 are declared alienable and disposable.[54]

The DENR verification survey report states that Dream Village is not situated in Lot 1 of Swo-13-000298 but actually occupies Lots 10, 11 and part of 13 of Swo-00-0001302: "*x x x [Dream Village] is outside Lot1, SWO-[13]-000298 and inside Lot 10, 11 & portion of Lot 13, SWO-[00]-0001302 with an actual area of 78466 square meters. The area is actually is* [sic] *outside SWO-00-0001302 of BCDA.*"[55] Inexplicably and gratuitously, the DENR also states that the area is outside of BCDA, completely oblivious that the BCDA holds title over

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[53] *Rollo,* p. 244.

[54] *Id.*

[55] *Id.* at 133.

the entire Fort Bonifacio, even as the BCDA asserts that Lots 10, 11 and 13 of SWO-00-0001302 are part of the abandoned right-of-way of C-5 Road. This area is described as lying north of Lot 1 of Swo-13-000298 and of Lots 3, 4, 5 and 6 of Swo-13-000298 (Western Bicutan) inside the *Libingan ng mga Bayani*, and the boundary line of Lot 1 mentioned as C-5 Road is really the proposed alignment of C-5 Road, which was abandoned when, as constructed, it was made to traverse northward into the *Libingan ng mga Bayani*. Dream Village has not disputed this assertion.

The mere fact that the original plan for C-5 Road to cross Swo-00-0001302 was abandoned by deviating it northward to traverse the southern part of *Libingan ng mga Bayani* does not signify abandonment by the government of the bypassed lots, nor that these lots would then become alienable and disposable. They remain under the title of the BCDA, even as it is significant that under Section 8(d) of R.A. No. 7227, a relocation site of 30.5 has. was to be reserved for families affected by the construction of C-5 Road. It is nowhere claimed that Lots 10, 11 and 13 of Swo-00-0001302 are part of the said relocation site. These lots border C-5 Road in the south,[56] making them commercially valuable to BCDA, a farther argument against a claim that the government has abandoned them to Dream Village.

While property of the State or any of its subdivisions patrimonial in character may be the object of prescription, those "intended for some public service or for the development of the national wealth" are considered property of public dominion and therefore not susceptible to acquisition by prescription.

Article 1113 of the Civil Code provides that "property of the State or any of its subdivisions not patrimonial in character

[56] *See* Sketch Plan; *id.* at 167.

shall not be the object of prescription." Articles 420 and 421 identify what is property of public dominion and what is patrimonial property:

> Art. 420. The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.
>
> Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

One question laid before us is whether the area occupied by Dream Village is susceptible of acquisition by prescription. In *Heirs of Mario Malabanan v. Republic*,[57] it was pointed out that from the moment R.A. No. 7227 was enacted, the subject military lands in Metro Manila became alienable and disposable. However, it was also clarified that the said lands did not thereby become patrimonial, since the BCDA law makes the express reservation that they are to be sold in order to raise funds for the conversion of the former American bases in Clark and Subic. The Court noted that the purpose of the law can be tied to either "public service" or "the development of national wealth" under Article 420(2) of the Civil Code, such that the lands remain property of the public dominion, albeit their status is now alienable and disposable. The Court then explained that it is only upon their sale to a private person or entity as authorized by the BCDA law that they become private property and cease to be property of the public dominion:[58]

> For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public

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[57] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[58] *Id.* at 204-205.

dominion if when it is "intended for some public service or for the development of the national wealth."[59]

Thus, under Article 422 of the Civil Code, public domain lands become patrimonial property only if there is a declaration that these are alienable or disposable, together with an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth. Only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run. Also under Section 14(2) of Presidential Decree (P.D.) No. 1529, it is provided that before acquisitive prescription can commence, the property sought to be registered must not only be classified as alienable and disposable, it must also be expressly declared by the State that it is no longer intended for public service or the development of the national wealth, or that the property has been converted into patrimonial. Absent such an express declaration by the State, the land remains to be property of public dominion.[60]

Since the issuance of Proclamation No. 423 in 1957, vast portions of the former *Maricaban* have been legally disposed to settlers, besides those segregated for public or government use. Proclamation No. 1217 (1973) established the Maharlika Village in Bicutan, Taguig to serve the needs of resident Muslims of Metro Manila; Proclamation No. 2476 (1986), as amended by Proclamation No. 172 (1987), declared more than 400 has. of *Maricaban* in Upper and Lower Bicutan, Signal Village, and Western Bicutan as alienable and disposable; Proclamation No. 518 (1990) formally exempted from Proclamation No. 423 the *Barangays* of Cembo, South Cembo, West Rembo, East Rembo, Comembo, Pembo and Pitogo, comprising 314 has., and declared them open for disposition.

The above proclamations notwithstanding, Fort Bonifacio remains property of public dominion of the State, because although

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[59] *Id.* at 203.

[60] *Id.*

declared alienable and disposable, it is reserved for some public service or for the development of the national wealth, in this case, for the conversion of military reservations in the country to productive civilian uses.[61] Needless to say, the acquisitive prescription asserted by Dream Village has not even begun to run.

Ownership of a land registered under a Torrens title cannot be lost by prescription or adverse possession.

Dream Village has been unable to dispute BCDA's claim that Lots 10, 11 and part of 13 of Swo-00-0001302 are the abandoned right-of-way of C-5 Road, which is within the vast titled territory of Fort Bonifacio. We have already established that these lots have not been declared alienable and disposable under Proclamation Nos. 2476 or 172.

Moreover, it is a settled rule that lands under a Torrens title cannot be acquired by prescription or adverse possession.[62] Section 47 of P.D. No. 1529, the Property Registration Decree, expressly provides that no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. And, although the registered landowner may still lose his right to recover the possession of his registered property by reason of *laches*,[63] nowhere has Dream Village alleged or proved *laches*, which has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. Put any way, it is a delay in the assertion of a right which works disadvantage to

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[61] *Republic v. Ching*, G.R. No. 186166, October 20, 2010, 634 SCRA 415, 427, citing *Heirs of Mario Malabanan*, *id.* at 210.

[62] *See Benin v. Tuason*, 156 Phil. 525 (1974); *Natalia Realty Corporation v. Vallez*, 255 Phil. 510 (1989).

[63] *Isabela Colleges, Inc. v. Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000).

another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.[64]

The subject property having been expressly reserved for a specific public purpose, the COSLAP cannot exercise jurisdiction over the complaint of the Dream Village settlers.

BCDA has repeatedly asserted that the COSLAP has no jurisdiction to hear Dream Village's complaint. Concurring, the CA has ruled that questions as to the physical identity of Dream Village and whether it lies in Lots 10, 11 and 13 of Swo-00-0001302, or whether Proclamation No. 172 has released the disputed area for disposition are issues which are *"manifestly beyond the scope of the COSLAP's jurisdiction vis-á-vis Paragraph 2, Section 3 of E.O. No. 561,"*[65] rendering its Resolution a patent nullity and its pronouncements void. Thus, the CA said, under Section 3 of E.O. No. 561, the COSLAP's duty would have been to refer the conflict to another tribunal or agency of government in view of the serious ramifications of the disputed claims:

> In fine, it is apparent that the COSLAP acted outside its jurisdiction in taking cognizance of the case. It would have been more prudent if the COSLAP has [sic] just referred the controversy to the proper forum in order to fully thresh out the ramifications of the dispute at bar. As it is, the impugned Resolution is a patent nullity since the tribunal which rendered it lacks jurisdiction. Thus, the pronouncements contained therein are void. "*We have consistently ruled that a judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right or the creator of any obligation. All acts*

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[64] *De Vera-Cruz v. Miguel*, 505 Phil. 593, 602-603 (2005).

[65] *Rollo*, p. 65.

performed pursuant to it and all claims emanating from it have no legal effect."[66] (Citation omitted)

We add that Fort Bonifacio has been reserved for a declared specific public purpose under R.A. No. 7227, which unfortunately for Dream Village does not encompass the present demands of its members. Indeed, this purpose was the very reason why title to Fort Bonifacio has been transferred to the BCDA, and it is this very purpose which takes the dispute out of the direct jurisdiction of the COSLAP. A review of the history of the COSLAP will readily clarify that its jurisdiction is limited to disputes over public lands not reserved or declared for a public use or purpose.

On July 31, 1970, President Marcos issued E.O. No. 251 creating the Presidential Action Committee on Land Problems (*PACLAP*) to expedite and coordinate the investigation and resolution of all kinds of land disputes between settlers, streamline and shorten administrative procedures, adopt bold and decisive measures to solve land problems, or recommend other solutions.[67] E.O. No. 305, issued on March 19, 1971, reconstituted the PACLAP and gave it exclusive jurisdiction over all cases involving public lands and other lands of the public domain,[68] as well as adjudicatory powers phrased in broad terms: "*To investigate, coordinate, and* ***resolve expeditiously land disputes****, streamline administrative proceedings, and, in general,* ***to adopt bold and decisive measures to solve problems involving public lands and lands of the public domain***."[69]

On November 27, 1975, P.D. No. 832 reorganized the PACLAP and enlarged its functions and duties. Section 2 thereof even granted it quasi judicial functions, to wit:

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[66] *Id.* at 66.

[67] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 554.

[68] *Id.*, citing *The United Residents of Dominican Hill, Inc. v. COSLAP*, 406 Phil. 354, 366 (2001).

[69] *Id.* at 554-555, citing *Davao New Town Development Corporation v. COSLAP*, 498 Phil. 530, 545 (2005).

Sec. 2. *Functions and duties of the PACLAP.* – The PACLAP shall have the following functions and duties:

1. Direct and coordinate the activities, particularly the investigation work, of the various government agencies and agencies involved in land problems or disputes, and streamline administrative procedures to relieve small settlers and landholders and members of cultural minorities of the expense and time-consuming delay attendant to the solution of such problems or disputes;

2. Refer for immediate action any land problem or dispute brought to the attention of the PACLAP, to any member agency having jurisdiction thereof: Provided, That when the Executive Committee decides to act on a case, its resolution, order or decision thereon shall have the force and effect of a regular administrative resolution, order or decision, and shall be binding upon the parties therein involved and upon the member agency having jurisdiction thereof;

x x x x x x x x x

4. Evolve and implement a system of procedure for the speedy investigation and resolution of land disputes or problems at provincial level, if possible. (Underscoring supplied)

On September 21, 1979, E.O. No. 561 abolished the PACLAP and created the COSLAP to be a more effective administrative body to provide a mechanism for the expeditious settlement of land problems among small settlers, landowners and members of the cultural minorities to avoid social unrest.[70] Paragraph 2, Section 3 of E.O No. 561 now specifically enumerates the instances when the COSLAP can exercise its adjudicatory functions:

Sec. 3. *Powers and Functions.* — The Commission shall have the following powers and functions:

1. Coordinate the activities, particularly the investigation work, of the various government offices and agencies involved in the settlement of land problems or disputes, and streamline administrative procedures to relieve small settlers and landholders and members of cultural minorities of the expense

[70] *Vda. de Herrera v. Bernardo*, G.R. No. 170251, June 1, 2011, 650 SCRA 87, 92.

and time consuming delay attendant to the solution of such problems or disputes;

2. Refer and follow-up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: Provided, That the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:

(a) Between occupants/squatters and pasture lease agreement holders or timber concessionaires;

(b) Between occupants/squatters and government reservation grantees;

(c) Between occupants/squatters and public land claimants or applicants;

(d) Petitions for classification, release and/or subdivision of lands of the public domain; and

(e) Other similar land problems of grave urgency and magnitude.

x x x x x x x x x

Citing the constant threat of summary eviction and demolition by the BCDA and the seriousness and urgency of the reliefs sought in its Amended Petition, Dream Village insists that the COSLAP was justified in assuming jurisdiction of COSLAP Case No. 99-500. But in *Longino v. Atty. General*,[71] it was held that as an administrative agency, COSLAP's jurisdiction is limited to cases specifically mentioned in its enabling statute, E.O. No. 561. The Supreme Court said:

Administrative agencies, like the COSLAP, are tribunals of limited jurisdiction and, as such, could wield only such as are specifically granted to them by the enabling statutes. x x x.

x x x x x x x x x

[71] 491 Phil. 600 (2005).

Under the law, [E.O. No. 561], the COSLAP has two options in acting on a land dispute or problem lodged before it, namely, (a) refer the matter to the agency having appropriate jurisdiction for settlement/resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2(a) to (e) of the law, if such case is critical and explosive in nature, taking into account the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action. In resolving whether to assume jurisdiction over a case or to refer the same to the particular agency concerned, the COSLAP has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property. The law does not vest jurisdiction on the COSLAP over any land dispute or problem.[72] (Citation omitted)

The *Longino* ruling has been consistently cited in subsequent COSLAP cases, among them *Davao New Town Development Corp. v. COSLAP*,[73] *Barranco v. COSLAP*,[74] *NHA v. COSLAP*,[75] *Cayabyab v. de Aquino*,[76] *Ga, Jr. v. Tubungan*,[77] *Machado v. Gatdula*,[78] and *Vda. de Herrera v. Bernardo*.[79]

Thus, in *Machado*, it was held that the COSLAP cannot invoke Section 3(2)(e) of E.O. No. 561 to assume jurisdiction over "other similar land problems of grave urgency," since the statutory construction principle of *ejusdem generis* prescribes that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such

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[72] *Id.* at 618-621.

[73] 498 Phil. 530 (2005).

[74] 524 Phil. 533 (2006).

[75] 535 Phil. 766 (2006).

[76] 559 Phil. 132 (2007).

[77] G.R. No. 182185, September 18, 2009, 600 SCRA 739.

[78] G.R. No. 156287, February 16, 2010, 612 SCRA 546.

[79] G.R. No. 170251, June 1, 2011, 650 SCRA 87.

general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same kind as those specifically mentioned.[80] Following this rule, COSLAP's jurisdiction is limited to disputes involving lands in which the government has a proprietary or regulatory interest,[81] or public lands covered with a specific license from the government such as a pasture lease agreements, a timber concessions, or a reservation grants,[82] and where moreover, the dispute is between occupants/squatters and pasture lease agreement holders or timber concessionaires; between occupants/squatters and government reservation grantees; and between occupants/squatters and public land claimants or applicants.

In *Longino,* the parties competed to lease a property of the Philippine National Railways. The high court rejected COSLAP's jurisdiction, noting that the disputed lot is not public land, and neither party was a squatter, patent lease agreement holder, government reservation grantee, public land claimant or occupant, or a member of any cultural minority, nor was the dispute critical and explosive in nature so as to generate social tension or unrest, or a critical situation which required immediate action.[83]

In *Davao New Town Development Corp.,* it was held that the COSLAP has no concurrent jurisdiction with the Department of Agrarian Reform (DAR) in respect of disputes concerning the implementation of agrarian reform laws, since "[t]he grant of exclusive and primary jurisdiction over agrarian reform matters on the DAR implies that no other court, tribunal, or agency is authorized to resolve disputes properly cognizable by the DAR."[84] Thus, instead of hearing and resolving the case, COSLAP should

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[80] *Supra* note 78, at 558, citing *Longino v. Atty. General, supra* note 71, at 622.

[81] *Id.* at 558, citing *Davao New Town Development Corp. v. COSLAP, supra* note 73, at 548.

[82] *Id.* at 557, citing *Barranco v. COSLAP, supra* note 74, at 547.

[83] *Supra* note 71, at 621-622.

[84] *Supra* note 73, at 547.

have simply referred private respondents' complaint to the DAR or DARAB. According to the Court:

> The abovementioned proviso [Section (3)(2) of E.O. No. 561], which vests COSLAP the power to resolve land disputes, does not confer upon COSLAP blanket authority to assume every matter referred to it. Its jurisdiction is confined only to disputes over lands in which the government has proprietary or regulatory interest. Moreover, the land dispute in *Bañaga* involved parties with conflicting free patent applications which was within the authority of PACLAP to resolve, unlike that of the instant case which is exclusively cognizable by the DAR.[85]

In *Barranco*, COSLAP issued a writ to demolish structures encroaching into private property. The Supreme court ruled that COSLAP may resolve only land disputes "involving public lands or lands of the public domain or those covered with a specific license from the government such as a pasture lease agreement, a timber concession, or a reservation grant."[86]

In *NHA*, it was held that COSLAP has no jurisdiction over a boundary dispute between two local government units, that its decision is an utter nullity correctible by *certiorari*, that it can never become final and any writ of execution based on it is void, and all acts performed pursuant to it and all claims emanating from it have no legal effect.[87]

In *Cayabyab*, it was held that "the jurisdiction of COSLAP does not extend to disputes involving the ownership of private lands, or those already covered by a certificate of title, as these fall exactly within the jurisdiction of the courts and other administrative agencies."[88]

In *Ga, Jr.*, it was reiterated that the COSLAP has no jurisdiction over controversies relating to ownership and possession of private

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[85] *Id.* at 548-549.

[86] *Supra* note 74, at 547, citing *Davao New Town Development Corp. v. COSLAP*, *supra* note 73, at 546.

[87] *Supra* note 75, at 775.

[88] *Supra* note 76, at 147.

lands, and thus, the failure of respondents to properly appeal from the COSLAP decision before the appropriate court was held not fatal to the petition for *certiorari* that they eventually filed with the CA. The latter remedy remained available despite the lapse of the period to appeal from the void COSLAP decision.[89]

In *Machado*, the high court ruled that COSLAP has no jurisdiction in disputes over private lands between private parties, reiterating the essential rules contained in Section 3 of E.O. No. 561 governing the exercise by COSLAP of its jurisdiction, to wit:

> Under these terms, the COSLAP has two different rules in acting on a land dispute or problem lodged before it, *e.g.*, COSLAP can assume jurisdiction only if the matter is one of those enumerated in paragraph 2(a) to (e) of the law. Otherwise, it should refer the case to the agency having appropriate jurisdiction for settlement or resolution. In resolving whether to assume jurisdiction over a case or to refer it to the particular agency concerned, the COSLAP considers: (a) the nature or classification of the land involved; (b) the parties to the case; (c) the nature of the questions raised; and (d) the need for immediate and urgent action thereon to prevent injury to persons and damage or destruction to property. The terms of the law clearly do not vest on the COSLAP the general power to assume jurisdiction over *any* land dispute or problem. Thus, under EO 561, the instances when the COSLAP may resolve land disputes are limited only to those involving public lands or those covered by a specific license from the government, such as pasture lease agreements, timber concessions, or reservation grants.[90] (Citations omitted)

In *Vda. de Herrera*, the COSLAP assumed jurisdiction over a complaint for "interference, disturbance, unlawful claim, harassment and trespassing" over a private parcel of land. The CA ruled that the parties were estopped to question COSLAP's jurisdiction since they participated actively in the proceedings. The Supreme Court, noting from the complaint that the case actually involved a claim of title and possession of private land,

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[89] *Supra* note 77, at 748.

[90] *Supra* note 78, at 557.

ruled that the RTC or the MTC has jurisdiction since the dispute did not fall under Section 3, paragraph 2 (a) to (e) of E.O. No. 561, was not critical and explosive in nature, did not involve a large number of parties, nor was there social tension or unrest present or emergent.[91]

In the case at bar, COSLAP has invoked *Bañaga* to assert its jurisdiction. There, Guillermo Bañaga had filed a free patent application with the Bureau of Lands over a public land with an area of 30 has. Gregorio Daproza (Daproza) also filed a patent application for the same property. The opposing claims and protests of the claimants remained unresolved by the Bureau of Lands, and neither did it conduct an investigation. Daproza wrote to the COSLAP, which then opted to exercise jurisdiction over the controversy. The high court sustained COSLAP, declaring that its jurisdiction is not confined to the cases mentioned in paragraph 2(a) to (e) of E.O. No. 561, but includes land problems in general, which are frequently the source of conflicts among settlers, landowners and cultural minorities.

But as the Court has since clarified in *Longino* and in the other cases aforecited, the land dispute in *Bañaga* was between private individuals who were free patent applicants over unregistered public lands. In contrast, the present petition involves land titled to and managed by a government agency which has been expressly reserved by law for a specific public purpose other than for settlement. Thus, as we have advised in *Longino*, the law does not vest jurisdiction on the COSLAP over any land dispute or problem, but it has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property.

WHEREFORE, premises considered, the petition is **DENIED**.

SO ORDERED.

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

[91] *Supra* note 79, at 94.

SECOND DIVISION

[G.R. No. 193874. July 24, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **RICORDITO N. DE ASIS, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; JURISDICTIONAL REQUIREMENTS; ACQUISITION OF JURISDICTION OVER A RECONSTITUTION CASE IS HINGED ON A STRICT COMPLIANCE WITH THE PUBLICATION, POSTING AND NOTICE REQUIREMENTS OF THE LAW.— [T]he Court notes that the present amended petition for reconstitution is anchored on the owner's duplicate copy of TCT No. 8240 – a source for reconstitution of title under Section 3(a) of RA 26 which, in turn, is governed by the provisions of Section 10 in relation to Section 9 of RA 26 with respect to the publication, posting, and notice requirements. x x x The x x x provisions, x x x require that (a) notice of the petition should be published in two (2) successive issues of the Official Gazette; and (b) publication should be made at least thirty (30) days prior to the date of hearing. Substantial compliance with this jurisdictional requirement is not enough; it bears stressing that the acquisition of jurisdiction over a reconstitution case is hinged on a *strict compliance* with the requirements of the law.

2. ID.; ID.; ID.; ID.; PUBLICATION REQUIREMENTS; PUBLICATION MEANS THE ACTUAL CIRCULATION OR RELEASE OF THE ISSUE OF THE OFFICIAL GAZETTE ON WHICH THE NOTICE OF THE PETITION IS PRINTED, FOR PUBLICATION WITHOUT ACTUAL CIRCULATION OF THE PRINTED MATERIAL IS WORTHLESS.— The factual antecedents of this case are undisputed: De Asis caused the publication of the notice of the amended petition in the December 23 and 30, 2002 issues of the Official Gazette. However, the NPO certified that the December 30, 2002 issue was officially released only on *January 3, 2003*, evidently

short of the thirty-day period preceding the *January 30, 2003* scheduled hearing. Indubitably, therefore, there was a defect in the mandatory publication of the notice required under Section 10 in relation to Section 9 of RA 26. x x x. Hence, while Section 9 merely required that the notice of the petition should be "published x x x twice in successive issues of the Official Gazette," jurisprudence expressly clarified that "publication" means the *actual circulation or release* of the issue of the Official Gazette on which the notice of the petition is printed. The law could not have possibly contemplated "publication" independent of its actual dissemination to the public, for whose benefit the requisite of publication is mandated in the first place. For sure, publication without actual circulation of the printed material is worthless.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE THIRTY-DAY PERIOD THAT PRECEDES THE SCHEDULED HEARING SHOULD BE RECKONED FROM THE TIME OF THE ACTUAL CIRCULATION OR RELEASE OF THE LAST ISSUE OF THE OFFICIAL GAZETTE, AND NOT ON THE DATE OF ITS ISSUE AS REFLECTED ON ITS FRONT COVER.— [T]he thirty-day period that precedes the scheduled hearing should be reckoned from the time of the *actual circulation or release* of the last issue of the Official Gazette, and not on the date of its issue as reflected on its front cover. To interpret it otherwise, as the CA had erroneously done in this case, would render nugatory the purposes of publication in reconstitution proceedings, which are to safeguard against spurious and unfounded land ownership claims, to apprise all interested parties of the existence of such action, and to give them enough time to intervene. Otherwise, unscrupulous parties would merely invoke compliance with the requirement of two-time publication in the Official Gazette, *without regard to the date of its actual release*, as a convenient excuse for their failure to observe the mandatory prerequisite of publication.

4. ID.; ID.; ID.; ID.; ID.; STRICT COMPLIANCE WITH THE PUBLICATION REQUIREMENT IS REQUIRED BY LAW AND ANY DEFECT THEREON RENDERS NULL AND VOID THE ENTIRE PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT FOR LACK OF JURISDICTION.— [W]hile it is true that the thirty-day period in this case was short by only three (3) days, the principle of

substantial compliance cannot apply, as the law requires strict compliance, without which the Court is devoid of authority to pass upon and resolve the petition. As the Court has declared in the case of *Castillo v. Republic*: x x x In all cases where the authority of the courts to proceed is conferred by a statute, the mode of proceeding is mandatory, and must be strictly complied with, or the proceeding will be utterly void. When the trial court lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects. **All the proceedings before the trial court, including its order granting the petition for reconstitution, are void for lack of jurisdiction**. x x x. Hence, in view of the defect in the mandatory requirement of publication set forth in Section 10 in relation to Section 9 of RA 26, therefore, the RTC did not acquire jurisdiction in this case, rendering null and void the entire proceedings before it.

5. ID.; ID.; ID.; RECONSTITUTION MUST BE GRANTED ONLY UPON CLEAR PROOF THAT THE TITLE SOUGHT TO BE RESTORED HAD PREVIOUSLY EXISTED AND WAS ISSUED TO THE PETITIONER; STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE LAW AIMS TO THWART DISHONEST PARTIES FROM ABUSING RECONSTITUTION PROCEEDINGS AS A MEANS OF ILLEGALLY OBTAINING PROPERTIES OTHERWISE ALREADY OWNED BY OTHER PARTIES.— [T]he Court notes that the RTC, as affirmed by the CA, failed to give due consideration to the LRA's report stating that the technical description of the subject property overlaps with other properties. In light of the LRA's finding, therefore, it behooved the RTC – in observance of diligence and prudence – to notify the adjoining lot owners of the proceedings or, at the very least, to order a resurvey of the subject property, at the expense of De Asis. As the Republic had pointed out, the RTC ought to have proceeded with the utmost caution, having been apprised of the LRA's report on the overlapping of properties. Records show, however, that neither the Republic nor the LRA was afforded the opportunity to appear and present further evidence in support of the LRA's report. Instead, the RTC merely disregarded the same. [I]t bears stressing that the nature of reconstitution proceedings under RA 26 denotes a restoration of the instrument, which is supposed to have been lost or

destroyed, in its original form and condition. As such, reconstitution must be granted only upon clear proof that the title sought to be restored had previously existed and was issued to the petitioner. Strict compliance with the requirements of the law aims to thwart dishonest parties from abusing reconstitution proceedings as a means of illegally obtaining properties otherwise already owned by other parties. As the Court had eloquently pronounced in *Director of Lands v. CA:* The efficacy and integrity of the Torrens system must be protected and preserved to ensure the stability and security of land titles for otherwise land ownership in the country would be rendered erratic and restless and can certainly be a potent and veritable cause of social unrest and agrarian agitation. The courts must exercise caution and vigilance in order to guard the indefeasibility and imprescriptibility of the Torrens Registration System against spurious claims and forged documents concocted and foisted upon the destruction and loss of many public records as a result of the last World War. The real purpose of the Torrens System which is to quiet title to the land must be upheld and defended, and once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court or sitting in the *mirador de su casa* to avoid the possibility of losing his land.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rick Brian Luneza and *Manuel A. Dalucapas* for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the January 26, 2010 Decision[2] and October 1, 2010 Resolution[3]

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[1] *Rollo,* pp. 20-66.

[2] *Id.* at 70-82. Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Hakim S. Abdulwahid and Florito S. Macalino, concurring.

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

of the Court of Appeals (CA) in CA-G.R. CV No. 79569 which affirmed *in toto* the May 27, 2003 Decision[4] of the Regional Trial Court of Quezon City, Branch 77 (RTC) in LRC Case No. Q-15289(02), granting the verified amended petition for reconstitution of title filed by respondent Ricordito N. De Asis, Jr. (De Asis).

The Facts

On August 7, 2002, De Asis filed a verified amended petition for reconstitution[5] (amended petition) of Transfer Certificate of Title (TCT) No. 8240 of the Register of Deeds of Quezon City (Register of Deeds) in the name of his uncle, Lauriano De Asis (Lauriano), covering Lot No. 804-C located at Pasong Tamo, Caloocan, Rizal (now No. 4, Panama St., Veterans Village, Brgy. Holy Spirit, Quezon City),[6] with an area of 30,052 square meters, more or less (subject property).

De Asis alleged that he purchased the subject property from Lauriano through a Deed of Absolute Sale[7] dated January 5, 1978 and that the same is free from any encumbrances. Likewise, no deed affecting it has been presented or is pending before the Register of Deeds. Unfortunately, the original copy of TCT No. 8240 was destroyed by the fire that gutted the Quezon City Hall on June 11, 1988,[8] hence, the amended petition based on the owner's duplicate copy of TCT No. 8240,[9] which was in his possession.

Finding the amended petition to be sufficient in form and substance, the RTC, in its September 4, 2002 Order,[10] scheduled

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[4] *Id.* at 96-97. Penned by Presiding Judge Vivencio S. Baclig.

[5] *Id.* at 85-88.

[6] *Id.* at 87.

[7] Records, pp. 19-20.

[8] *Id.* at 21. See Certification issued on July 16, 1992.

[9] *Id.* at 26, including the dorsal portion.

[10] *Rollo*, pp. 89-90.

the initial hearing on January 30, 2003 and directed that the Land Registration Authority (LRA), *inter alia*, be furnished a copy thereof. The RTC likewise ordered that notice of the amended petition be published in the Official Gazette once a week for two (2) consecutive weeks. The notice was published in the December 23, 2002 (Vol. 98, No. 51) and December 30, 2002 (Vol. 98, No. 52) issues of the Official Gazette.[11]

On January 30, 2003, after compliance with the jurisdictional requirements and without any opposition having been raised, the RTC allowed[12] De Asis to present his evidence *ex-parte*. Later, on February 7, 2003, the Office of the Solicitor General (OSG), as counsel for herein petitioner Republic of the Philippines (Republic), filed a notice of appearance[13] and deputized[14] the City Prosecutor of Quezon City to assist the OSG and appear in the case on its behalf, which the RTC noted.[15]

On February 20, 2003, upon request of the LRA[16] and in accordance with paragraph 4(a)[17] of LRC Circular No. 35, De Asis was required to submit a certified true copy of the owner's

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[11] Records, p. 58. See Certificate of Publication of the National Printing Office issued on January 3, 2003.

[12] *Id.* at 61.

[13] *Id.* at 66. See Notice of Appearance dated January 23, 2003.

[14] *Id.* at 67. See Letter dated January 23, 2003.

[15] *Id.* at 68. See Order dated February 13, 2003.

[16] *Id.* at 78. See Letter-Request dated January 24, 2003.

[17] Paragraph 4(a) of LRC Circular No. 35 reads:

4. Where the reconstitution is to be made from the sources enumerated in Sections 2 and 3(a-e) of Republic Act No. 26, the signed duplicate copy of the petition to be forwarded to this Administration must be accompanied by the following:

(a) A copy of the document on file in the Registrar of Deeds or title on the basis of which the reconstitution is to be made duly certified by the Clerk of Court of the Regional Trial Court where the petition is filed that the same is true and faithful reproduction of the document or title presented by the petitioner or owner.

duplicate certificate of title of the subject property,[18] with which he complied.[19] Subsequently, the LRA submitted its April 29, 2003 Report[20] (LRA's report) before the RTC stating that "[t]he technical description of Lot [No.] 804-C of the subdivision plan Psd-2341, appearing on the reproduction of [TCT] No. T-8240, was found correct after examination and due computation. Said technical description, however, when plotted in the Municipal Index Sheet No. 5708-B, it overlaps with (LRC) Psd-372628 and (LRC) Psd-314053."[21]

The RTC Ruling

In its May 27, 2003 Decision,[22] the RTC granted the amended petition based on the evidence presented *ex parte* by De Asis.

The Republic appealed the RTC Decision to the CA, arguing[23] that De Asis failed to strictly comply with the mandatory jurisdictional requirement on publication. It pointed out that while the notice of the amended petition was indeed published in the December 23 and 30, 2002 issues of the Official Gazette, the last issue was, however, officially released only on *January 3, 2003*, or less than thirty (30) days prior to the date of hearing set on January 30, 2003, per Certificate of Publication[24] of the National Printing Office (NPO).

Likewise, the Republic argued[25] that the RTC erred in granting the amended petition despite the LRA's report that the technical description of the subject property overlaps with other properties,

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[18] Records, p. 79. See Order dated February 20, 2003.

[19] *Id.* at 98. See Compliance dated May 9, 2003.

[20] *Id.* at 99-100.

[21] *Id.* at 99.

[22] *Id.* at 112-113.

[23] *Rollo*, pp. 116-120.

[24] Records, p. 58.

[25] *Rollo*, pp. 120-121.

rendering doubtful the authenticity of the title sought to be reconstituted.

The CA Ruling

In its assailed Decision, the CA affirmed the RTC Decision *in toto*, ratiocinating that the thirty-day notice should be reckoned from the *date of issue* of the Official Gazette, not from the date of its *actual release*, citing Section 13[26] of Republic Act No. 26 (RA 26).[27] While the CA conceded the stringent and mandatory nature of the requirement of publication, it however considered the fact that the source of the reconstitution in this case was the owner's duplicate copy of title in De Asis' possession, the authenticity of which was never disputed by the Republic.

Further, the appellate court cited the case of *Imperial v. CA (Imperial)*,[28] where the Court upheld the validity of the publication of the notice of the petition in the March 27, 1995 and April 3, 1995 issues of the Official Gazette despite the NPO certification that the last issue (pertaining to the April 3, 1995 issue) was officially released on *March 28, 1995*. The Court observed in the *Imperial* case that it is not uncommon among publishing companies to release issues before the actual date of issue reflected on the cover of the publication. What matters is that the petitioner in a reconstitution case caused the publication of the notice of

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[26] SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. x x x.

[27] Otherwise known as "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed," effective September 25, 1946.

[28] G.R. No. 158093, June 5, 2009, 588 SCRA 401.

the petition in two (2) consecutive issues of the Official Gazette thirty (30) days prior to the date of hearing.

Following the Court's pronouncement in *Imperial*, the CA ruled in the present case that since the notice of the amended petition was duly published in the December 23 and 30, 2002 issues of the Official Gazette, De Asis had sufficiently complied with the requirement of publication, despite the NPO's certification that the second issue was officially released on January 3, 2003, or three (3) days short of the thirty-day period before the scheduled January 30, 2003 hearing. Consequently, the RTC acquired jurisdiction over the case.

With respect to the Republic's second assigned error, the CA found that the RTC did not err in giving little credence to the LRA's report declaring that the technical description of the subject property overlaps with (LRC) Psd-372628 and (LRC) Psd-314053, which failed to mention sufficient details in support of its finding or to identify the specific titles with which TCT No. 8240 supposedly overlaps. Moreover, the CA held that the LRA's report was not even a condition *sine qua non* before a petition for reconstitution could be given due course.

The Republic's motion for reconsideration was denied in the CA's October 1, 2010 Resolution, hence, the present recourse.

The Issues Before The Court

The Republic insists that the CA committed reversible error in affirming the RTC Decision which granted the amended petition on the basis of (a) non-compliance with Sections 9 and 10 of RA 26 requiring publication of the notice of hearing in two (2) successive issues of the Official Gazette at least thirty (30) days prior to the date of hearing, a jurisdictional requisite; and (b) the LRA's report which declared that the technical description of the subject property overlaps with other properties. The Republic also bewails that it was not afforded its day in court despite the RTC's receipt of its notice of appearance.

The Court's Ruling

The petition is meritorious.

At the outset, the Court notes that the present amended petition for reconstitution is anchored on the owner's duplicate copy of TCT No. 8240 – a source for reconstitution of title under Section 3(a)[29] of RA 26 which, in turn, is governed by the provisions of Section 10 in relation to Section 9 of RA 26 with respect to the publication, posting, and notice requirements.[30] Section 10 reads:

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

Corollarily, Section 9 reads in part:

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

The foregoing provisions, therefore, clearly require that (a) notice of the petition should be published in two (2) successive

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[29] SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title[.]

[30] See *Puzon v. Sta. Lucia Realty and Development, Inc.*, 406 Phil. 263, 274-275 (2001).

issues of the Official Gazette; and (b) publication should be made at least thirty (30) days prior to the date of hearing. Substantial compliance with this jurisdictional requirement is not enough; it bears stressing that the acquisition of jurisdiction over a reconstitution case is hinged on a *strict compliance* with the requirements of the law.[31]

The factual antecedents of this case are undisputed: De Asis caused the publication of the notice of the amended petition in the December 23 and 30, 2002 issues of the Official Gazette. However, the NPO certified that the December 30, 2002 issue was officially released only on *January 3, 2003*, evidently short of the thirty-day period preceding the *January 30, 2003* scheduled hearing. Indubitably, therefore, there was a defect in the mandatory publication of the notice required under Section 10 in relation to Section 9 of RA 26.

In *The Register of Deeds of Malabon, Metro Manila v. RTC of Malabon, Metro Manila, Branch 170*,[32] the Court struck down as invalid the actual publication of the notice of the petition in the Official Gazette forty-seven (47) days after the August 17, 1988 hearing, despite the fact that notice of the petition was published in the May 23 and 30, 1988 issues of the Official Gazette. Finding that the May 30, 1988 issue was *released for circulation* only on October 3, 1988 and declaring that the said publication was not sufficient to vest jurisdiction upon the RTC to hear and decide the petition, the Court held:

> x x x The purpose of the publication of the notice of the petition for reconstitution in the Official Gazette is to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so within thirty (30) days before the date set by the court for hearing the petition. It is the **publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction** to hear and decide it.[33] (Emphasis supplied)

[31] *The Government of the Philippines v. Aballe*, 520 Phil. 181, 191 (2006).

[32] 260 Phil. 839 (1990).

[33] *Id.* at 843.

Hence, while Section 9 merely required that the notice of the petition should be "published x x x twice in successive issues of the Official Gazette," jurisprudence expressly clarified that "publication" means the *actual circulation or release* of the issue of the Official Gazette on which the notice of the petition is printed. The law could not have possibly contemplated "publication" independent of its actual dissemination to the public, for whose benefit the requisite of publication is mandated in the first place. For sure, publication without actual circulation of the printed material is worthless.

Consequently, the thirty-day period that precedes the scheduled hearing should be reckoned from the time of the *actual circulation or release* of the last issue of the Official Gazette, and not on the date of its issue as reflected on its front cover. To interpret it otherwise, as the CA had erroneously done in this case, would render nugatory the purposes of publication in reconstitution proceedings, which are to safeguard against spurious and unfounded land ownership claims, to apprise all interested parties of the existence of such action, and to give them enough time to intervene.[34] Otherwise, unscrupulous parties would merely invoke compliance with the requirement of two-time publication in the Official Gazette, *without regard to the date of its actual release*, as a convenient excuse for their failure to observe the mandatory prerequisite of publication.

Moreover, while it is true that the thirty-day period in this case was short by only three (3) days, the principle of substantial compliance cannot apply, as the law requires strict compliance,[35] without which the Court is devoid of authority to pass upon and resolve the petition. As the Court has declared in the case of *Castillo v. Republic*:[36]

x x x In all cases where the authority of the courts to proceed is conferred by a statute, the mode of proceeding is mandatory, and

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[34] *Republic of the Philippines v. Planes*, 430 Phil. 848, 869 (2002), citing *Republic of the Philippines v. Estipular*, 391 Phil. 211, 221 (2000).

[35] *Republic v. Estipular*, *id.*

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

must be strictly complied with, or the proceeding will be utterly void. When the trial court lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects. **All the proceedings before the trial court, including its order granting the petition for reconstitution, are void for lack of jurisdiction**.[37] (Emphasis supplied)

Furthermore, there is dearth of reason to afford liberality in this case as the Court had similarly done in the *Imperial* case, as cited by the CA. A punctilious scrutiny of the factual milieu in *Imperial* shows that despite the apparent discrepancy between the dates of issue of the Official Gazette where the notice of the petition was published (March 27, 1995 and April 3, 1995) and the date of the official release of the last issue (March 28, 1995), the thirty-day period required under Section 9 of RA 26 was nonetheless complied with, considering that the hearing was scheduled on *May 10, 1995*. Hence, it is inconsequential whether the thirty-day period was to be reckoned either from April 3, 1995, the date of issue of the second Official Gazette, or from March 28, 1995, the date of its official release – as the notice of the petition would still be considered as having been published at least thirty (30) days prior to the date of hearing on May 10, 1995. As the Court had ardently observed in that case:

> x x x We feel, too, that the petitioner can neither be faulted nor punished for the NPO's act of releasing the April 3, 1995 issue early; it was a matter wholly outside the petitioner's control given that this is a decision wholly for NPO to make. What is important, to the Court's mind, is that the petitioner fulfilled his obligation to cause the publication of the notice of the petition in two consecutive issues of the Official Gazette 30 days prior to the date of hearing. **We keenly realize that the early publication of the Official Gazette more than met these requirements, as the publication transpired more than 30 days before the date of hearing.** Thus, there is every reason to exercise liberality in the greater interest of justice.[38] (Emphasis supplied)

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[37] *Id.* at 614.

[38] *Imperial v. CA, supra* note 28, at 408-409.

Hence, in view of the defect in the mandatory requirement of publication set forth in Section 10 in relation to Section 9 of RA 26, therefore, the RTC did not acquire jurisdiction in this case, rendering null and void the entire proceedings before it.

Finally, the Court notes that the RTC, as affirmed by the CA, failed to give due consideration to the LRA's report stating that the technical description of the subject property overlaps with other properties. In light of the LRA's finding, therefore, it behooved the RTC – in observance of diligence and prudence – to notify the adjoining lot owners of the proceedings or, at the very least, to order a resurvey of the subject property, at the expense of De Asis. As the Republic had pointed out,[39] the RTC ought to have proceeded with the utmost caution, having been apprised of the LRA's report on the overlapping of properties. Records show, however, that neither the Republic nor the LRA was afforded the opportunity to appear and present further evidence in support of the LRA's report. Instead, the RTC merely disregarded the same.

On this score, it bears stressing that the nature of reconstitution proceedings under RA 26 denotes a restoration of the instrument, which is supposed to have been lost or destroyed, in its original form and condition.[40] As such, reconstitution must be granted only upon clear proof that the title sought to be restored had previously existed and was issued to the petitioner.[41] Strict compliance with the requirements of the law aims to thwart dishonest parties from abusing reconstitution proceedings as a means of illegally obtaining properties otherwise already owned by other parties. As the Court had eloquently pronounced in *Director of Lands v. CA:*[42]

The efficacy and integrity of the Torrens system must be protected and preserved to ensure the stability and security of land titles for

[39] *Rollo*, p. 56.

[40] *Republic v. Camacho*, G.R. No. 185604, June 13, 2013.

[41] *Republic v. Santua*, G.R. No. 155703, September 8, 2008, 564 SCRA 331, 337.

[42] G.R. No. L-45168, January 27, 1981, 102 SCRA 370.

otherwise land ownership in the country would be rendered erratic and restless and can certainly be a potent and veritable cause of social unrest and agrarian agitation. The courts must exercise caution and vigilance in order to guard the indefeasibility and imprescriptibility of the Torrens Registration System against spurious claims and forged documents concocted and foisted upon the destruction and loss of many public records as a result of the last World War. The real purpose of the Torrens System which is to quiet title to the land must be upheld and defended, and once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court or sitting in the *mirador de su casa* to avoid the possibility of losing his land.[43]

WHEREFORE, the instant petition is **GRANTED**. The assailed January 26, 2010 Decision and October 1, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 79569 are **REVERSED** and **SET ASIDE**. The amended petition for reconstitution docketed as LRC Case No. Q-15289(02) is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 195528. July 24, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL CLARA *Y* BUHAIN,** *accused-appellant.*

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[43] *Id.* at 451.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; IF THE PROSECUTION FAILS TO MEET THE REQUIRED AMOUNT OF EVIDENCE, THE DEFENSE MAY NOT PRESENT EVIDENCE ON ITS OWN BEHALF, IN WHICH CASE, THE PRESUMPTION PREVAILS AND THE ACCUSED SHOULD BE ACQUITTED.— It is basic in criminal prosecutions that an accused is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. It must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf, in which case, the presumption prevails and the accused should necessarily be acquitted. In this case, the prosecution failed to overcome such presumption when it presented inconsistent versions of an illegal sale.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ALTHOUGH THE ACCUSED'S DENIAL AS A DEFENSE IS WEAK, SUCH CANNOT RELIEVE THE PROSECUTION THE BURDEN OF PRESENTING PROOF BEYOND REASONABLE DOUBT THAT AN ILLEGAL TRANSACTION TOOK PLACE.— The testimony of PO3 Ramos, which apparently was given as proof

of all the elements that constitute an illegal sale of drug is however, inconsistent on material points from the recollection of events of PO3 Ramos, SPO2 Nagera and PO1 Jimenez regarding the marking, handling and turnover of the plastic sachet containing the dangerous drug of *shabu*. x x x. SPO2 Nagera narrated that it was PO1 Jimenez who marked the plastic sachet after it was handed by PO3 Ramos x x x. However, PO1 Jimenez later testified that it was PO3 Ramos who marked the plastic sachet in their office. x x x. Contradictory statements were further made as to who between PO3 Ramos and PO1 Jimenez held the *shabu* from the time of the arrest until arrival at the police station. PO3 Ramos pointed to PO1 Jimenez in his direct examination x x x. However, SPO2 Nagera pointed to PO3 Ramos as the one in possession x x x. The clear inconsistency in the presentation of facts is fatal. It creates doubts whether the transaction really occurred or not. Though Joel's denial as a defense is weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.

4. ID.; ID.; ID.; INCONSISTENCIES OF THE PROSECUTION WITNESSES REFERRING TO THE EVENTS THAT TRANSPIRED IN THE BUY-BUST OPERATION CAN OVERTURN THE JUDGMENT OF CONVICTION.— Inconsistencies of the prosecution witnesses referring to the events that transpired in the buy-bust operation can overturn the judgment of conviction. As held in *Zaragga v. People*, material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. Prosecution's failure to indubitably show the identity of the *shabu* led to the acquittal of the accused in that case. Inconsistencies and discrepancies referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. If the cited inconsistency has nothing to do with the elements of a crime, it does not stand as a ground to reverse a conviction. However, in this case, the material inconsistencies are furthered by inconsistencies of the police officers on minor details. Referring back to the narration of circumstances of the buy-bust operation, SPO2 Nagera was asked about the gender of the informant who went to their office to report about the illegal activities committed by Ningning.

He readily answered that the informant was a female. PO3 Ramos in turn, when asked to describe what happened in the afternoon before the buy-bust operation, testified that a male informant came to their office to report about a person selling illegal drugs. These conflicting statements of the prosecution effectively broke the chain of custody of evidence of the sale of dangerous drug.

5. ID.; ID.; ID.; CHAIN OF CUSTODY, EXPOUNDED.— Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides for the procedure to be observed in preserving the integrity of chain of custody x x x. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and finally for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. To establish the chain of custody in a buy-bust operation, the prosecution must establish the following links, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

6. ID.; ID.; ID.; CONDUCT OF BUY-BUST OPERATION, GUIDING PRINCIPLES.— The "*objective test*" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operation provides that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase

the drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. In view of these guiding principles, we rule that the prosecution failed to present a clear picture on how the police officers seized and marked the illegal drug recovered by the apprehending officer and how the specimen was turned over by the apprehending officer to the investigating officer.

7. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; FIRST AND SECOND LINKS IN THE CHAIN OF CUSTODY, NOT ESTABLISHED; THE SAVING CLAUSE PROVIDED UNDER SECTION 21(A) OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) THAT NON-COMPLIANCE WITH THE LEGAL REQUIREMENT SHALL NOT RENDER VOID AND INVALID SEIZURES OF AND CUSTODY OVER THE ITEMS IS APPLICABLE ONLY IF THE PROSECUTION WAS ABLE TO PROVE THE EXISTENCE OF JUSTIFIABLE GROUNDS AND PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS.— As to the *first link of marking*, the three police officers failed to agree on who among them marked the plastic sachet, which is highly improbable if they really had a clear grasp on what really transpired on the day of operation. x x x Likewise, they cannot seem to agree on the *second link* on who among them held the item confiscated from the time of arrest and confiscation until it was turned over to the investigator and the place where it was turned over. x x x In *Malillin v. People*, it was explained that the chain of custody rule includes testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The inconsistent statements of the police officers generated doubt on whether the identity of the evidence seized upon apprehension is the same evidence subjected to marking and inventory then given to the Jimenez for investigation and eventually submitted by PO3 Ramos for examination by

the forensic chemist. The prosecution cannot rely on the saving clause provided under Section 21(a) of the IRR that non-compliance with the legal requirements shall not render void and invalid seizures of and custody over said items. This saving clause is applicable only if prosecution was able to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the items. The procedural lapses in this case put to doubt the integrity of the items presented in court.

8. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; INCONSISTENCIES COMMITTED BY THE POLICE OFFICERS AMOUNTING TO PROCEDURAL LAPSES IN OBSERVING THE CHAIN OF CUSTODY OF EVIDENCE REQUIREMENT EFFECTIVELY NEGATED THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; IN CASE OF CONFLICT BETWEEN THE PRESUMPTION OF REGULARITY OF POLICE OFFICERS AND THE PRESUMPTION OF INNOCENCE OF THE ACCUSED, THE LATTER MUST PREVAIL AS THE LAW IMPOSES UPON THE PROSECUTION THE HIGHEST DEGREE OF PROOF OF EVIDENCE TO SUSTAIN CONVICTION.— In numerous cases, we were inclined to uphold the presumption of regularity in the performance of duty of public officers. However, this is not a hard-and-fast rule. It does not mean that we straight away and without a blink of the eye rule on the regularity of their performance of duties. We at all times harmonize the interest of the accused alongside the interest of the State. Inconsistencies committed by the police officers amounting to procedural lapses in observing the chain of custody of evidence requirement effectively negated this presumption. Their inaccurate recall of events amounted to irregularities that affected the presumption and tilted the evidence in favor of the accused. The absence of improper motive tends to sustain inexistence but does not absolutely rule out false charges. In case of conflict between the presumption of regularity of police officers and the presumption of innocence of the accused, we rule that the latter must prevail as the law imposes upon the prosecution the highest degree of proof of evidence to sustain conviction.

9. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165) INCONSISTENCIES IN THE TESTIMONIES OF THE POLICE OFFICERS AND THE FAILURE TO OBSERVE THE CHAIN OF CUSTODY WARRANT THE ACQUITTAL OF THE ACCUSED FOR VIOLATION THEREOF.— Due to x x x flagrant inconsistencies in the testimonies of police officers which directly constitute the recollection of events of buy-bust together and failure of observance of chain of custody of evidence which effectively broke the links to sustain conviction, we rule for the acquittal of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.:*

This is an appeal filed by herein accused Joel Clara *y* Buhain (Joel) from the Decision[1] of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court of Quezon City for violation of Section 5, Article II of R.A. No. 9165.[2]

The factual rendition of the prosecution follows:

Prosecution witness PO3 Leonardo R. Ramos (PO3 Ramos) narrated that he acted as a poseur-buyer in a buy-bust operation conducted by their office, the District Anti-Illegal Drug Special Task Group (DAID-SOTG) of Quezon City on 12 September

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[1] *Rollo*, pp. 2-9; Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario concurring.

[2] An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds

Therefor, and for Other Purposes.

2005.[3] He recalled that on or about 4:00 o'clock in afternoon of the said date, a male informant came to their office with the information that a person named "Ningning" was selling drugs at 22-C Salvador Drive, Balonbato, Quezon City.[4] Police team leader SPO2 Dante D. Nagera (SPO2 Nagera) endorsed the matter to their Chief of Office Col. Gerardo B. Ratuita (Col. Ratuita) for the conduct of a buy-bust operation.[5] A buy-bust group was created consisting of SPO2 Nagera, PO1 Peggy Lynne V. Vargas (PO1 Vargas), PO1 Teresita B. Reyes (PO1 Reyes), PO1 Alexander A. Jimenez (PO1 Jimenez) and PO3 Ramos who was designated as the poseur-buyer.[6] During the briefing, it was agreed upon that ₱200.00-worth of *shabu* would be bought from "Ningning" by PO3 Ramos. Before leaving for their target, PO1 Reyes prepared a Pre-Operation Report and forwarded it to the Tactical Operation Communication of Philippine Drug Enforcement Agency (PDEA) for coordination.[7] At 8:00 o'clock in the evening, the team proceeded to the area on board three vehicles: Nissan Sentra, Toyota Corolla and owner-type jeep.[8] Upon their arrival at 9:35 o'clock in the evening, PO3 Ramos and the informant knocked on the door of the house while the rest of the team positioned themselves ten meters away.[9] The informant identified "Gigi" as the accused Joel, Ningning's uncle.[10] Initiating a conversation, the informant introduced to Joel PO3 Ramos as a buyer of ₱200.00-peso worth of illegal drug. When PO3 Ramos asked for Ningning, Joel answered that she was

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[3] TSN, 31 July 2006, pp. 3-5; Testimony of PO3 Ramos.

[4] *Id.* at 4.

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

[6] *Id.* at 5; Pre-Operation/Coordination Report; A Certain Police Officer Ortiz was testified upon by Ramos as included in the team but his name appears to be nowhere in the records and Pre-Coordination Report.

[7] *Id.* at 6-8.

[8] *Id.* at 8-9.

[9] TSN, 20 February 2006, p. 7; Testimony of SPO2 Nagera.

[10] TSN, 31 July 2006, pp. 10-11; Testimony of PO3 Ramos.

upstairs. Joel asked for payment and PO3 Ramos handed the ₱200 marked money.[11] Joel went upstairs and called Ningning. Ningning opened the door and handed Joel a small plastic sachet of *shabu* which in turn was handed to PO3 Ramos.[12]

Thereafter, PO3 Ramos touched his head as a pre-arranged signal to prompt the back-up police officers of the consummation of the illegal sale. Immediately, the rest of the team rushed to the place to arrest Joel.[13] Joel tried to close the door to prevent the police officers from entering the house but PO3 Ramos was able to grab him. SPO2 Nagera quickly went upstairs to arrest Ningning but the latter was able to escape apprehension.[14] PO3 Ramos immediately frisked Joel inside the house but failed to recover anything from him; the marked money was given to Ningning when Joel went upstairs to get the plastic sachet.[15]

Joel was brought to the police station and was informed by PO1 Jimenez of his constitutional rights as a consequence of his arrest.[16] Afterwards, the small plastic sachet recovered was marked by PO1 Jimenez inside the station and an inventory receipt was prepared.[17] PO3 Ramos clarified that the plastic sachet was in the possession of PO1 Jimenez from the place of arrest until arrival at the police station. PO3 Ramos added that PO1 Jimenez was present at the time of arrest which explained his possession of the plastic sachet containing *shabu*.[18]

Inside the courtroom, PO3 Ramos identified Joel as the one involved in the illegal transaction.[19] He also identified the small

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

[12] *Id.* at 13.

[13] *Id.* at 15.

[14] *Id.* at 16.

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

[16] *Id.* at 18-19 and 23.

[17] *Id.* at 20.

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

[19] *Id.* at 22.

plastic sachet of *shabu* as the subject of the illegal transaction through the marking "LRR" he placed on it.[20] He testified that he brought the plastic sachet containing the specimen to the crime laboratory for examination[21] where it was tested positive for methamphetamine hydrochloride, as certified by the examining Forensic Chemist Engr. Leonard M. Jabonillo (Forensic Chemist Jabonillo) of Central Police District Crime Laboratory in his Chemistry Report.[22]

SPO2 Nagera was also called to the witness stand to present his version of the events. However, some inconsistencies surfaced during his examination at the witness stand.

When asked about the gender of the informant who came to their office, he answered that the informant was a female, contradicting the statement of PO3 Ramos.[23] He also differed from the statement of PO3 Ramos when he testified that only two modes of transportation, instead of three, were used by the buy-bust team in proceeding to the target area, one Nissan Maxima and one owner-type jeep.[24] He also had difficulty in identifying the accused inside the court room when he was asked upon by the prosecutor to do so.[25]

Further contradiction was made when SPO2 Nagera narrated that PO3 Ramos was the one holding the plastic sachet before it was turned over to PO1 Jimenez for investigation.[26] He also admitted in his cross examination that he never saw Ningning during the entire buy-bust operation.[27] Finally, when asked about

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[20] *Id.* at 14.

[21] *Id.* at 23.

[22] Records p. 3.

[23] TSN, 20 February 2006, p. 3; Testimony of SPO2 Nagera.

[24] *Id* at 5.

[25] *Id.* at 9-10.

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

[27] *Id.* at 15.

on who placed the initial "LRR" on the plastic sachet, he positively identified that it was the investigator who put the same.[28]

PO1 Jimenez was also presented in court as a prosecution witness to give details of the buy-bust operation. His version, however, also differed from the versions presented by PO3 Ramos and SPO2 Nagera. He testified that the plastic sachet confiscated was already marked by the apprehending officers when it was turned over to him for investigation, a contradiction of the statements of both PO3 Ramos and SPO2 Nagera that it was him who marked the plastic sachet with the initial "LRR."[29] He positively identified that he saw the item being marked by the apprehending officers in their office.[30]

The defense interposed denial.

Accused Joel denied any involvement in the buy-bust operation. He recalled that he was inside his house sleeping between 9:00 to 10:00 o'clock in the evening of 12 September 2005 when five uniformed police officers entered his house.[31] They got hold of his arm and frisked him but failed to recover anything.[32] The police officers did not inform him of the reason for his arrest; neither did they recite his constitutional rights. Afterwards, he was made to ride an owner type vehicle and was taken to the police station where he was only asked for his name.[33] He denied having sold drugs and having seen the marked money and plastic sachet containing *shabu*.[34]

On cross examination, Joel was also inconsistent in portions of his testimony. He testified that all of his siblings were in the province and his only companions in the house at the time of

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[28] *Id.* at 17.

[29] TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

[30] *Id.* at 7.

[31] TSN, 21 February 2007, pp. 3-4; Testimony of Joel.

[32] *Id.* at 4.

[33] *Id.* at 5.

[34] *Id.* at 6.

the arrest were his nephew and niece.[35] However, when asked why the door was still open at around 10:00 o'clock in the evening, he replied that he was waiting for his sister.[36] He also contradicted his earlier statement that he was sleeping with his nephew and niece downstairs when in his cross examination he said that his niece was staying on the second floor of the house at the time of the arrival of the police officers.[37]

Joel was eventually charged with Illegal Sale of Dangerous Drugs punishable under Section 5, Article II of R.A. No. 9165 before the Prosecutor's Office of Quezon City. The accusatory portion of the Information reads:

Criminal Case No. 05-136719

That on or about the 12th day of September, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT ZERO SEVEN (0.07) gram of [Methamphetamine] Hydrochloride (*shabu*), a dangerous drug.[38]

When arraigned, Joel pleaded not guilty to the offense charged.[39]

During pre-trial, it was agreed upon by both parties that Forensic Chemist Jabonillo had no personal knowledge as to how the plastic sachet containing specimen positive for illegal drug came to of police officers' possession. The forensic chemist merely examined the specimen and found it to be positive for methamphetamine hydrochloride. As a consequence of these stipulations, his testimony was dispensed with by the court.[40]

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[35] *Id.* at 7-8.

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

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

[38] Records, p. 1.

[39] *Id.* at 18.

[40] *Id.* at 23.

Ruling of the Trial Court

The trial court on 21 March 2007 found the accused guilty of the offense charged. The dispositive portion of the decision[41] reads:

> ACCORDINGLY, judgment is rendered finding the accused **JOEL CLARA *Y* BUHAIN GUILTY** beyond reasonable of the crime [in] violation of Sec. 5 of R.A. 9165 as charged (for drug pushing) and he is sentenced to suffer the prescribed jail term of **Life Imprisonment** and pay a fine of **₱500,000.00.**
>
> The shabu weighing 0.07 gram involved in this case is ordered transmitted to the PDEA thru DDB for disposal in accordance with R.A. 9165.[42]

The trial court ruled that Joel directly dealt with the poseur buyer and participated in all the stages of the illegal sale. It found conspiracy between Joel and Ningning. It pointed out that Ningning was able to escape the police dragnet while Joel was being arrested because of her familiarity as a drug operator with police operations.

The police operation and its coordination with the operatives of the PDEA would be recognized by the appellate court as legally performed.[43] On the contrary the prosecution's scenario that the police officers entered Joel's residence and hauled him out with no reason at all was found to be improbable.[44]

Ruling of the Court of Appeals

In affirming the ruling of the trial court, the appellate court ruled that all the elements of an illegal sale of dangerous drugs were present.[45] *First,* Joel, as the seller of illegal drug, was

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[41] Records pp. 74-81; RTC Decision.

[42] *Id.* at 81.

[43] *Id.* at 80.

[44] *Id.* at 81.

[45] *Rollo*, p. 6; CA Decision.

positively identified by the poseur buyer and the police officers; *Second*, the confiscated white crystalline substance which was found by the PNP crime laboratory as positive for Methamphetamine Hydrochloride which is a dangerous drug was presented during trial; and *Lastly*, the illegal sale was for a consideration of ₱200.00 given by PO3 Ramos as poseur buyer. The appellate court further held that the non-presentation of the marked money was not fatal since the prosecution witnesses were able to establish that the ₱200.00 bill used to purchase the illegal drug was in the possession of Ningning who was able to evade arrest.[46]

Our Ruling

After a careful review of the evidence, we resolve to reverse the ruling of conviction and render a judgment of acquittal in favor of the accused.

In his Brief, the accused-appellant contested his conviction due to the inconsistencies in the prosecution's presentation of a supposed buy-bust operation, coupled with its failure to establish with certainty the chain of custody of evidence. He also argued against the presumption of regularity of performance of duties. Finally, to substantiate his innocence, he pointed out that he was not even the target person in the PDEA Coordination Report and denied any conspiracy and involvement with such target person named "Ningning."[47]

Inspite of the imperfect narration of events by the accused Joel, we are constrained to render a judgment of acquittal due to the lapses of the prosecution that led to its failure to discharge the burden of proof beyond reasonable doubt that the accused committed the crime.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller,

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[46] *Id.* at 7.

[47] CA *rollo*, p. 35; Accused-Appellant's Brief.

the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

It is basic in criminal prosecutions that an accused is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required.

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[48] It must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf, in which case, the presumption prevails and the accused should necessarily be acquitted.[49]

In this case, the prosecution failed to overcome such presumption when it presented inconsistent versions of an illegal sale.

PO3 Ramos identified Joel as the seller who sold to him a small plastic sachet containing *shabu* in exchange of two hundred pesos. We quote the relevant portions:

FISCAL (to witness)

Q: What happened there?

A: When we reached the house sir, we knocked at the door and *alias* Gigi open (*sic*) it.

x x x x x x x x x

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[48] Section 2, Rule 133, Rules of Court; *People v. Tadepa*, G.R. No. 100354, 26 May 1995, 244 SCRA 339, 342.

[49] *People v. Capuno*, G.R. No. 185715, 19 January 2011 640 SCRA 233, 242-243 citing *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 207 and *People v. dela Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA, 273, 283.

Q: What was the conversation with you during that time?

A: The informant first introduced me to Gigi that I will be the one to buy *shabu*.

Q: What was the answer of Gigi at that time?

A: He asked how much.

Q: What was your answer?

A: I said '*dos*'.

Q: After informing him that you intend to buy dos of illegal drug, what happened?

A: I first asked where is Ningning.

Q: What was the answer of Gigi?

A: He said that she was upstairs.

Q: What happened after that?

A: He asked for my money, sir.

Q: Did you give the ₱200.00.

A: Yes sir, I gave the money.

Q: After giving that money to Gigi, what happened after that?

A: He called Ningning from up stair (sic).

Q: Did Ningning go to the place where you were talking with Gigi at that time?

A: No sir, she just open (*sic*) the door and handed the sachet of shabu.

x x x x x x x x x

Q: When he received that from Ningning at that time, what did you do?

A: After Gigi got it he gave it to me, sir.

Q: Can you describe that item you received from Gigi that came from Ningning at that time?

A: Yes sir.

Q: Can you describe?

A: Yes sir, just a small plastic sachet.[50]

PO3 Ramos initially testified that he placed his marking on the small plastic sachet he was able to buy from Joel:

Q: If that small plastic sachet is shown to you can you indentify the specimen?

A: Yes, sir.

Q: Why?

A: Because I placed my marking.

Q: What marking did you place?

A: LRR.

Q: Showing to you this transparent plastic sachet containing illegal drug, what can you say about that, what is the relation of that transparent plastic sachet to the plastic sachet you have just mentioned?

A: That is the sachet I was able to buy, sir.

Q: Where is the marking?

A: It was on top of the plastic sachet. [51] (Emphasis supplied)

However, he would later present a new version on who marked the plastic sachet:

Q: Now, going [back] to the police station, other than searching, what other matters [were] taken during the arrest?

A: **The evidence that I was able to get from Ningning and it was the investigator who marked it.**

Q: Other than putting the initial on the transparent plastic sachet immediately after the arrest Mr. Witness, what was the SOP

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[50] CA *rollo,* pp. 69-70; Brief for the Appellee; TSN, 31 July 2006, pp. 10-13; Testimony of PO3 Ramos.

[51] TSN, 31July 2006, p. 14; Testimony of PO3 Ramos.

in a buy-bust operation, after taking or receiving the item from the accused during the arrest?

A: We made the inventory receipt, sir.[52] (Emphasis supplied)

x x x x x x x x x

Q: x x x. **You said that it was the investigator who made the marking in the transparent plastic sachet, where were you when the marking was placed on it?**

A: I was in front of the investigator.

Q: What was the marking placed?

A: LRR.[53] (Emphasis supplied)

x x x x x x x x x

Q: **You said that the investigator placed the marking in the transparent plastic sachet and likewise he was the one who made the inventory receipt.** In what particular place that he prepared this particular document?

A: At the area, sir.

Q: What do you mean by area?

A: In front of the house of the accused, sir.

Q: What is the name of that investigator again?

A: Alexander Jimenez, sir.[54] (Emphasis supplied)

The testimony of PO3 Ramos, which apparently was given as proof of all the elements that constitute an illegal sale of drug is however, inconsistent on material points from the recollection of events of PO3 Ramos, SPO2 Nagera and PO1 Jimenez regarding the marking, handling and turnover of the plastic sachet containing the dangerous drug of *shabu*.

SPO2 Nagera narrated that it was PO1 Jimenez who marked the plastic sachet after it was handed by PO3 Ramos:

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[52] *Id.* at 19-20.

[53] *Id.* at 21.

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

Q: What did the investigator do to *shabu*, Mr. Witness?

A: They placed their initial and prepared request for examination address to the Crime Laboratory sir.[55] (Emphasis supplied)

x x x x

Q: Where was PO3 Ramos when that plastic sachet, **when the police investigator put the initial, Mr. Witness?**

A: We were there sir.[56] (Emphasis supplied)

However, PO1 Jimenez later testified that it was PO3 Ramos who marked the plastic sachet in their office.

Q: Being the investigator you saw the item confiscated?

A: Yes, sir.

Q: Was it already marked when it was received by you?

A: It was already marked by the apprehending officers.

Q: Did you [see] it marked by the apprehending officer?

A: Yes, sir.

Q: Where?

A: In our office.[57] (Emphasis supplied)

Contradictory statements were further made as to who between PO3 Ramos and PO1 Jimenez held the *shabu* from the time of the arrest until arrival at the police station. PO3 Ramos pointed to PO1 Jimenez in his direct examination:

Q: You said immediately after arresting and searching the accused in this case you said that you brought the accused to the police station, **who was in possession of the transparent plastic sachet from where you received that**

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[55] TSN, 20 February 2006, pp. 13-14; Testimony of SPO2 Nagera.

[56] *Id.* at 17.

[57] TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

transparent plastic sachet in exchange to ₱200.00 going to the police station Mr. Witness?

A: The investigator, sir.

Q: You mean to say that investigator was present when the accused was arrested in this case?

A: Yes sir, he was with us.[58] (Emphasis supplied)

However, SPO2 Nagera pointed to PO3 Ramos as the one in possession:

Q: What about the shabu, who was holding it in going to the police station, Mr. Witness?

A: Ramos, sir.

Q: What happened next, Mr. Witness?

A: It was turn (*sic*) over to the police investigator, sir.[59] (Emphasis supplied)

The clear inconsistency in the presentation of facts is fatal. It creates doubts whether the transaction really occurred or not. Though Joel's denial as a defense is weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.[60]

Inconsistencies of the prosecution witnesses referring to the events that transpired in the buy-bust operation can overturn the judgment of conviction. As held in *Zaragga v. People*,[61] material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on

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[58] TSN, 31 July 2006, pp. 21-22; Testimony of PO3 Ramos.

[59] TSN, 20 February 2006, p. 13; Testimony of SPO2 Nagera.

[60] *People v. Llanita,* G.R. No. 189817, 3 October 2012, 682 SCRA 288, 298-299 citing *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 further citing *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

[61] *Zarraga v. People*, G.R. No. 162064, 14 March 2006, 484 SCRA 639, 647-649.

the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. Prosecution's failure to indubitably show the identity of the *shabu* led to the acquittal of the accused in that case.[62]

Inconsistencies and discrepancies referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. If the cited inconsistency has nothing to do with the elements of a crime, it does not stand as a ground to reverse a conviction.[63] However, in this case, the material inconsistencies are furthered by inconsistencies of the police officers on minor details. Referring back to the narration of circumstances of the buy-bust operation, SPO2 Nagera was asked about the gender of the informant who went to their office to report about the illegal activities committed by Ningning. He readily answered that the informant was a female.[64] PO3 Ramos in turn, when asked to describe what happened in the afternoon before the buy-bust operation, testified that a male informant came to their office to report about a person selling illegal drugs.[65]

These conflicting statements of the prosecution effectively broke the chain of custody of evidence of the sale of dangerous drug.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides for the procedure to be observed in preserving the integrity of chain of custody:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

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[62] *People v. Ulat*, G.R. No. 180504, 5 October 2011, 658 SCRA 695, 709.

[63] *People v. Villahermosa*, G.R. No. 186465, 1 June 2011, 650 SCRA 256, 276 citing *People v. Sabardan*, G.R. No. 132135, 21 May 2004, 429 SCRA 9, 19 further citing *People v. Monieva*, G.R. No. 123912, 8 June 2000, 333 SCRA 244, 252 and *People v. Ignas*, 458 Phil. 965, 988.

[64] TSN, 20 February 2006, p. 3; Testimony of SPO2 Nagera.

[65] TSN, 31 July 2006, p. 4; Testimony of PO3 Ramos.

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 so confiscated, seized and/or surrendered, for disposition in the following manner:

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

"Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and finally for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[66]

To establish the chain of custody in a buy-bust operation, the prosecution must establish the following links, namely: *First*,

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[66] Dangerous Drugs Board Regulation No. 1, Series of 2002, Sec. 1 (b).

the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[67]

The "*objective test*" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operation provides that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. [68] The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.[69]

In view of these guiding principles, we rule that the prosecution failed to present a clear picture on how the police officers seized and marked the illegal drug recovered by the apprehending officer and how the specimen was turned over by the apprehending officer to the investigating officer.

As to the *first link of marking*, the three police officers failed to agree on who among them marked the plastic sachet, which is highly improbable if they really had a clear grasp on what really transpired on the day of operation.

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[67] *People v. Remegio*, G.R. No. 189277, 5 December 2012 citing *People v. Kamad*, G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308 and *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598.

[68] *People v. Ong*, G.R. No. 175940, [Formerly G.R. Nos. 155361-62], 6 February 2008, 544 SCRA 123, 132-133; *People v. Doria*, 361 Phil. 595 (1999).

[69] *Id.* at 133 citing *Cabugao v. People*, G.R. No. 158033, 30 July 2004, 435 SCRA 624; *People v. Ong*, G.R. No. 137348, 21 June 2004, 432 SCRA 471, 485;

PO3 Ramos testified that he placed his marking on the small plastic sachet but recanted his previous statement at the latter part of the examination and pointed out that it was the investigator PO1 Jimenez who put the marking in front of him at the area of arrest.[70] SPO2 Nagera in his testimony confirmed that it was PO1 Jimenez who put marking on the plastic sachet.[71] However, PO1 Jimenez in his testimony clarified that the item confiscated were already marked by the apprehending officers when it was turned over to him in their office.[72]

Likewise, they cannot seem to agree on the *second link* on who among them held the item confiscated from the time of arrest and confiscation until it was turned over to the investigator and the place where it was turned over.

PO3 Ramos positively pointed that it was PO1 Jimenez who took possession of the item from the time of the arrest until arrival at the police station.[73] However, when SPO2 Nagera was asked, he pointed out that it was PO3 Ramos who held the item from the time of the arrest until they reached the police where it was turned over to Jimenez for investigation.[74]

In *Malillin v. People*,[75] it was explained that the chain of custody rule includes testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.[76]

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[70] TSN, 31 July 2006, pp. 14 and 20-22; Testimony of PO3 Ramos.

[71] TSN, 20 February 2006, pp. 13-14 and 17; Testimony of SPO2 Nagera.

[72] TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

[73] TSN, 31July 2006, p. 21; Testimony of PO3 Ramos.

[74] TSN, 20 February 2006, p. 13; Testimony SPO2 Nagera.

[75] G. R. No. 172953, 30 April 2008, 553 SCRA 619.

[76] *People v. Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 324-325.

The inconsistent statements of the police officers generated doubt on whether the identity of the evidence seized upon apprehension is the same evidence subjected to marking and inventory then given to the Jimenez for investigation and eventually submitted by PO3 Ramos for examination by the forensic chemist.

The prosecution cannot rely on the saving clause provided under Section 21(a) of the IRR that non-compliance with the legal requirements shall not render void and invalid seizures of and custody over said items. This saving clause is applicable only if prosecution was able to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the items.[77] The procedural lapses in this case put to doubt the integrity of the items presented in court.

The People, through the Office of the Solicitor General, is adamant in its argument that there is a presumption of regularity in the performance of duty by police officers conducting buy-bust operation.

We agree but with qualification.

In numerous cases, we were inclined to uphold the presumption of regularity in the performance of duty of public officers.[78] However, this is not a hard-and-fast rule. It does not mean that we straight away and without a blink of the eye rule on the regularity of their performance of duties. We at all times harmonize the interest of the accused alongside the interest of the State.

Inconsistencies committed by the police officers amounting to procedural lapses in observing the chain of custody of evidence requirement effectively negated this presumption. Their inaccurate recall of events amounted to irregularities that affected the

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[77] *People v. Jose Alex Secreto y Villanueva,* G.R. No. 198115, 22 February 2013.

[78] *People v. Joseph Robelo y Tungala,* G.R. No. 184181, 26 November 2012, *Dimacuha v. People*, G.R. No. 143705, 23 February 2007, 516 SCRA 513, 525, *People v. Serrano*,G.R. No. 179038, 6 May 2010, 620 SCRA 327, 338.

presumption and tilted the evidence in favor of the accused. The absence of improper motive tends to sustain inexistence but does not absolutely rule out false charges.

In case of conflict between the presumption of regularity of police officers and the presumption of innocence of the accused, we rule that the latter must prevail as the law imposes upon the prosecution the highest degree of proof of evidence to sustain conviction.[79]

Due to foregoing flagrant inconsistencies in the testimonies of police officers which directly constitute the recollection of events of buy-bust together and failure of observance of chain of custody of evidence which effectively broke the links to sustain conviction, we rule for the acquittal of the accused.

WHEREFORE, the appeal is **GRANTED.** The 4 August 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02714 affirming the judgment of conviction dated 21 March 2007 of the Regional Trial Court, Branch 103 of Quezon City is hereby **REVERSED** and **SET ASIDE.** Accused-appellant **JOEL CLARA *y* BUHAIN** is hereby **ACQUITTED** and ordered immediately released from detention unless his continued confinement is warranted for some other cause or ground.

SO ORDERED.

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

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[79] *People v. Gatlabayan*, G.R. No. 186467, 13 July 2011, 653 SCRA 803, 824 citing *People v. Pagaduan*, G.R. No. 179029, 9 August 2010, 627 SCRA 308, 326 and *People v. Magat*, G.R. No. 179939, 29 September 2008, 567 SCRA 86, 99.

SECOND DIVISION

[G.R. No. 197537. July 24, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NINOY ROSALES *Y* ESTO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBLITY OF WITNESSES; NOT EVERY WITNESS TO OR VICTIM OF A CRIME CAN BE EXPECTED TO ACT REASONABLY AND CONFORMABLY TO THE USUAL EXPECTATIONS OF EVERYONE FOR PEOPLE MAY REACT DIFFERENTLY TO THE SAME SITUATION.— Appellant contends that AAA's testimony is incredible on the lone argument that the latter did not make an outcry when the alleged lustful advances were made against her. In *People v. Alipio*, the Court rebuked appellant therein for raising a similar argument. The Court went on to state that it is not fair to judge a mentally-retarded person, one who does not have a good grasp of information and who lacks the capacity to make a mental calculation of the events unfolding before her eyes, according to what is natural or unnatural for normal persons. In this case where the victim was proven to be a mental retardate, it could certainly not be expected that AAA would have behaved or acted in accordance with what appellant perceived to be as normal. At any rate, it is an oft-repeated principle that not every witness to or victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. People may react differently to the same situation. One person's spontaneous, or unthinking or even instinctive, response to a horrible and repulsive stimulus may be aggression, while another's may be cold indifference. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.

2. ID.; ID.; ID.; MENTAL RETARDATION *PER SE* DOES NOT AFFECT CREDIBILITY. THE ACCEPTANCE OF HER TESTIMONY DEPENDS ON THE QUALITY OF HER PERCEPTIONS AND THE MANNER SHE CAN MAKE THEM KNOWN TO THE COURT.— The fact of AAA's mental

retardation did not impair the credibility of her testimony. Mental retardation *per se* does not affect credibility. A one mentally retarded may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.

3. ID.; ID.; ID.; THE TRIAL JUDGE'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES ARE ACCORDED GREAT RESPECT IN THE ABSENCE OF ANY ATTENDANT GRAVE ABUSE OF DISCRETION.— We have thoroughly examined AAA's testimony and found no reason to depart from the legal adage that this Court accords the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant of grave abuse of discretion on the account that the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the Court of Appeals. Taking into consideration the positive and categorical declaration of AAA and the medical findings to support her claims, we affirm the lower courts' unanimous finding that AAA , by proof beyond reasonable doubt, was raped by the appellant.

4. ID.; ID.; DENIALS AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE, CONSISTENT AND STRAIGHTFORWARD TESTIMONY OF THE RAPE VICTIM; ACCUSED'S ALIBI CANNOT BE GIVEN ANY WEIGHT OR VALUE WHERE HE ADMITTED THAT HE WAS AT THE PLACE WHERE THE CRIME WAS COMMITTED.— Appellant's denials and alibi cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Appellant admitted that he was in fact with AAA at his house when the rape incident occurred. Considering that he was at the place where the crime was committed, his alibi cannot be given any weight or value.

5. CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY; WHEN RAPE IS COMMITTED BY AN ASSAILANT WHO HAS KNOWLEDGE OF THE VICTIM'S MENTAL RETARDATION, THE PENALTY IS INCREASED TO DEATH.— The lower courts, in vague terms, found appellant guilty of rape and imposed the penalty of *reclusion perpetua*. It is very clear from the Information that the allegations therein actually constitute a criminal charge for qualified rape under Article 266-A, paragraph (1)(a), in relation to Section 266-B, paragraph (10) of the Revised Penal Code, as amended x x x. Under the aforementioned provisions, when rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. This circumstance must be alleged in the information being a qualifying circumstance which increases the penalty to death and changes the nature of the offense from simple to qualified rape. Although appellant denied any knowledge about AAA's mental condition, it was he himself who volunteered the information that he had been living with AAA for four (4) months in his house. It is therefore logical to assume that appellant was fully aware of the workings of AAA's mental faculties. Furthermore, AAA's mental condition was sufficiently established by medical findings, as well as the testimony of AAA's mother. Considering the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court imposes on the appellant the supreme penalty of death. But with the enactment of Republic Act No. 9346, the imposition of the death penalty has been prohibited. This Court accordingly imposes the penalty of *reclusion perpetua* without eligibility for parole.

6. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The significance of raising the crime charged from simple rape to qualified rape relates to the award of damages. Since the crime of rape is perpetrated with a qualifying circumstance which required the imposition of the death penalty, the civil indemnity and moral damages for the victim shall be increased to ₱75,000.00 each. Also, the award of exemplary damages in the amount of ₱30,000.00 is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This Appeal seeks the reversal and setting aside of the Decision[1] dated 26 July 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03043, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 129 convicting appellant Ninoy Rosales *y* Esto of the crime of rape.

Appellant was charged with rape in an Information,[3] the accusatory portion of which reads as follows:

> That on or about the 27th day of June, 2004, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, having knowledge that [AAA],[4] 39 years old, is mentally retarded and has the mind of child below 18 years old, taking advantage of the victim's mental disability, wilfully, unlawfully and feloniously had sexual intercourse with said [AAA].

Appellant pleaded not guilty on arraignment. Trial on the merits ensued.

The victim, AAA, then 39 years of age, testified that in the morning of 27 June 2004, while she was holding a dog outside

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[1] Presided by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L.Villamor and Ruben C. Ayson, concurring. *Rollo,* pp. 2-13.

[2] Penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre. CA *rollo,* pp. 12-20.

[3] Records, p. 2.

[4] The real name and other personal circumstances of the victim are withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

her residence in x x x,[5] Quezon City, appellant approached her and gave her ₱200.00 to buy some junk food. Appellant then forced her to go with him to his house located inside a nearby cemetery in Caloocan City. Upon reaching appellant's house, appellant ordered AAA to lie down. He undressed her, sucked her nipple and inserted his penis in her vagina. AAA felt pain. Thereafter, appellant ordered her to put her dress on and took her cellular phone. Appellant sold AAA's phone and bought drinks for his drinking companions. AAA was later fetched by her sister at appellant's house. AAA identified appellant in court as the person who raped her.[6]

On 28 June 2004, BBB[7] accompanied her daughter AAA to the Women and Children Protection Desk of the Caloocan City Police Station to report the incident.

The police investigator immediately prepared a request so that AAA could be physically examined by a medico-legal.[8] After the medical examination, Medico-Legal Report No. M-366-04 was issued by Dr. Filemon C. Porciuncula, Jr. The Report contains the following pertinent findings and conclusion:

GENITAL:

PUBIC HAIR: Abundant
LABIA MAJORA: Full, convex & coapted
LABIA MINORA: With dark brown, hypertrophied. Labia minora congested & abraded on both sides.
HYMEN: Deep healed lacerations at 3&7 o'clock position.
POSTERIOR FOURCHETTE: Abraded, congested
EXTERNAL VAGINAL ORIFICE: Slight resistance of the examining index finger.
VAGINAL CANAL: Narrow with prominent rugosities.
CERVIX: Firm & closed.

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[5] *Id.*

[6] TSN, 6 September 2006, pp. 5-12.

[7] The real name of the victim's mother is likewise withheld to protect her privacy.

[8] Records, p. 92.

PERIURETHRAL AND VAGINAL SMEARS: Negative for spermatozoa & negative for gram negative diplococci.

CONCLUSION: Subject is non-virgin state physically. There are no external signs of application of any form of trauma.[9]

Dr. Lorenda Gozar (Dr. Gozar), a clerical psychologist working with the National Bureau of Investigaton, testified on AAA's mental condition. Dr. Gozar had examined AAA and concluded in her Neuro-Psychiatric Examination and Evaluation that AAA has been found suffering from "moderate mental retardation with a Mental Age of (6) six years and (8) eight months and an IQ of (41) forty-one." [10]

Appellant, testifying in his own behalf, denied that he raped AAA. He however admitted that he was having a drinking session in his house with AAA when the alleged rape incident occurred. Appellant stated that prior to the incident, AAA has lived in his house for 4 months. He then denied any knowledge of AAA's mental condition.[11]

On 19 September 2007, the RTC rendered judgment finding appellant guilty of rape and imposing the penalty of *reclusion perpetua*. The RTC also ordered appellant to pay ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.[12]

The trial court found AAA's testimony straightforward, notwithstanding her mental condition. The trial court also dismissed appellant's alibi as weak and unreliable.

On 26 September 2007, appellant filed a notice of appeal.[13]

On 26 July 2010, the Court of Appeals affirmed the decision of the trial court. Consequently, appellant filed a notice of appeal.[14]

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[9] *Id.* at 93.

[10] *Id.* at 87.

[11] TSN, 25 July 2007, pp. 4-9.

[12] CA *rollo*, p. 59.

[13] *Id.* at 21.

[14] *Rollo*, p. 14.

On 10 August 2011, this Court informed the parties that it had received the records from the Court of Appeals and required them to file their respective supplemental briefs.[15] Both parties manifested that they would no longer file supplemental briefs, since they had exhaustively argued all the relevant issues in the Briefs they had previously submitted before the Court of Appeals.[16]

The case is now before us. Appellant assigned two (2) errors in his appeal which were initially passed upon by the Court of Appeals, to wit: 1) whether the trial court gravely erred in considering the evidence adduced by the prosecution despite its apparent incredibility; and 2) whether the trial court gravely erred in rendering a verdict of conviction despite the fact that the guilt of the accused-appellant was not proven beyond reasonable doubt.[17]

Appellant contends that AAA's testimony is incredible on the lone argument that the latter did not make an outcry when the alleged lustful advances were made against her.

In *People v. Alipio,*[18] the Court rebuked appellant therein for raising a similar argument. The Court went on to state that it is not fair to judge a mentally-retarded person, one who does not have a good grasp of information and who lacks the capacity to make a mental calculation of the events unfolding before her eyes, according to what is natural or unnatural for normal persons.[19]

In this case where the victim was proven to be a mental retardate, it could certainly not be expected that AAA would have behaved or acted in accordance with what appellant perceived to be as normal.

At any rate, it is an oft-repeated principle that not every witness to or victim of a crime can be expected to act reasonably

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[15] *Id.* at 19.

[16] *Id.* at 21-22 and 25-26.

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

[18] G.R. No. 185285, 5 October 2009, 603 SCRA 40.

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

and conformably to the usual expectations of everyone. People may react differently to the same situation. One person's spontaneous, or unthinking or even instinctive, response to a horrible and repulsive stimulus may be aggression, while another's may be cold indifference. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.[20]

Moreover, when AAA was called to the witness stand, she never wavered in her assertion that appellant raped her. AAA's testimony is clear and concise, thus:

Q: Do you know the accused in this case named Ninoy Rosales?
A: Yes [s]ir.

Q: And why do you know Ninoy Rosales?
A: He is a carpenter in Magnas [s]ir.

Q: Where is this Magnas located?
A: In Quezon City [s]ir.

Q: Near your residence in Quezon City?
A: Far from our house [s]ir.

Q: Do you remember where were you on June 27, 2004 at about 9:00 a.m.?
A: I was outside [s]ir.

Q: Outside your residence?
A: Yes [s]ir.

Q: And while you were outside your residence, what were you doing?
A: I was holding a dog [s]ir.

Q: And while you were holding this dog, do you remember of any incident that happened on June 27, 2004 at 9:00 a.m.?
A: He [paid] me ₱200.00 [s]ir.

Q: Who paid you ₱200.00?
A: *Siya po* [s]ir.

Interpreter: The witness pointed to a person of the accused your Honor.

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[20] *People v. Rosare*, G.R. No. 118823, 19 November 1996, 264 SCRA 398, 411.

Fiscal Azarcon

Q: So, you want to impress to this Court that the accused handed to you ₱200.00?
A: Yes [s]ir.

Q: And can you tell this Court for what purpose is that ₱200.00 given to you?
A: It is for me to buy *"sitsirya"* (junk foods) [s]ir.

Q: After receiving this ₱200.00 from the accused in this case, what happened then?
A: He forced me to go with him in the cemetery [s]ir.

Q: And where is this cemetery located?
A: In Caloocan City [s]ir.

Q: And what is the name of that cemetery, if you can remember?
A: No [s]ir.

Q: And was he able to bring you to the cemetery in Caloocan City?
A: Yes [s]ir.

Q: What particular place do you remember in that cemetery in Caloocan City?
A: He brought me there in the cemetery and then he undressed me [s]ir.

Q: Could you remember what house, store or any building did he bring you?
A: In place where there is a concrete wall and a stairway [s]ir.

Q: Where does this stairway goes?
A: In going to their house [s]ir.

Q: House of whom?
A: To the accused [s]ir.

Q: You want to impress to this Court Ms. Witness that the house of the accused is located in the cemetery in Caloocan City?
A: Yes [s]ir.

Q: And he brought you there in that house?
A: Yes [s]ir.

Q: So, what did he do while you were inside his house?
A: He ordered me to lie down, he undressed me and then, he inserted his penis to my genitalia [s]ir.

Q: What were you wearing at that time?
A: Short [s]ir.

Q: And were you wearing panty at that time?
A: Yes [s]ir.

Q: Were you also wearing dress or t-shirt at that time?
A: No more [s]ir.

Q: Before going to the place of Ninoy Rosales, were you dressed at that time?
A: Yes [s]ir.

Q: What kind of dress were you wearing?
A: Red [s]ir.

Q: Is it a t-shirt or blouse?
A: Blouse [s]ir.

Q: You said that he undressed you inside the house in [the] cemetery located in Caloocan City, what was the first thing that he undressed you, the lower or upper portion?
A: All [s]ir.

Q: And when he undressed you, what did you do, if any?
A: I was not able to shout [s]ir[.]

Q: Why?
A: Because I do not know the people there [s]ir.

Q: There were other people inside that house or outside the house?
A: Outside the house [s]ir.

Q: How about inside the house, how many people were present?
A: Only the accused [s]ir.

Q: So, when he undressed you, you were only two inside the house of Ninoy Rosales?
A: Yes [s]ir.

Q: You said that after undressing you, he inserted his penis to your vagina, what did you feel, if any?
A: It was painful [s]ir.

Q: What else did the accused, Ninoy Rosales, do to you [other] than that?
A: He sucked my breast [s]ir.

Q: You said a while ago that "*pinahiga niya ako,*" was that in the occasion that he undressed you while you were lying down?
A: Yes [s]ir while he was on top of me [s]ir.

Q: After he inserted his penis to your private part, thereafter he finished, what happened next?
A: He ordered me to put on my dress [s]ir.

Q: And you put your dress on?
A: Yes [s]ir.[21]

x x x x x x x x x

Q: Madam, you are pointing to a person here, the accused in this case, as the one who brought you to his house and raped you, are you sure that that person was the one who brought you and raped you?
A: Yes [s]ir.

Q: Will you point to him again?
A: *Siya po* [s]ir.

Interpreter: The witness pointed to a person who responded by the name of Ninoy Rosales your Honor.[22]

The fact of AAA's mental retardation did not impair the credibility of her testimony. Mental retardation *per se* does not affect credibility. A one mentally retarded may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.[23]

We have thoroughly examined AAA's testimony and found no reason to depart from the legal adage that this Court accords

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[21] TSN, 6 September 2006, pp. 5-10.

[22] *Id.* at 12.

[23] *People v. Tamano,* G.R. No. 188855, 8 December 2010, 637 SCRA 672, 685 citing *People v. Macapal, Jr.*, 501 Phil. 675, 684 (2005).

the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant of grave abuse of discretion on the account that the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the Court of Appeals.[24]

Taking into consideration the positive and categorical declaration of AAA and the medical findings to support her claims, we affirm the lower courts' unanimous finding that AAA, by proof beyond reasonable doubt, was raped by the appellant.

Appellant's denials and alibi cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[25] Appellant admitted that he was in fact with AAA at his house when the rape incident occurred. Considering that he was at the place where the crime was committed, his alibi cannot be given any weight or value.

The lower courts, in vague terms, found appellant guilty of rape and imposed the penalty of *reclusion perpetua*. It is very clear from the Information that the allegations therein actually constitute a criminal charge for qualified rape under Article 266-A, paragraph (1)(a), in relation to Article 266-B, paragraph (10) of the Revised Penal Code, as amended, which provide:

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[24] *People v. Tablang*, G.R. No. 174859, 30 October 2009, 604 SCRA 757, 771 citing *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 382.

[25] *People v. Laurino*, G.R. No. 199264, 24 October 2012, 684 SCRA 612, 620 citing *People v. Arpon*, G.R. No. 183563, 14 December 2011, 662 SCRA 506, 529 citing further *People v. Tabio*, G.R. No. 179477, 6 February 2008, 544 SCRA 156, 166.

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. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

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

x x x x x x x x x

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Under the aforementioned provisions, when rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. This circumstance must be alleged in the information being a qualifying circumstance which increases the penalty to death and changes the nature of the offense from simple to qualified rape.[26]

Although appellant denied any knowledge about AAA's mental condition, it was he himself who volunteered the information

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[26] *People v. Monticalvo*, G.R. No. 193507, 30 January 2013 citing *People v. Maceda*, 405 Phil. 698, 724-725 (2001).

that he had been living with AAA for four (4) months in his house. It is therefore logical to assume that appellant was fully aware of the workings of AAA's mental faculties. Furthermore, AAA's mental condition was sufficiently established by medical findings, as well as the testimony of AAA's mother.

Considering the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court imposes on the appellant the supreme penalty of death. But with the enactment of Republic Act No. 9346,[27] the imposition of the death penalty has been prohibited. This Court accordingly imposes the penalty of *reclusion perpetua* without eligibility for parole.

The significance of raising the crime charged from simple rape to qualified rape relates to the award of damages. Since the crime of rape is perpetrated with a qualifying circumstance which required the imposition of the death penalty, the civil indemnity and moral damages for the victim shall be increased to ₱75,000.00 each.[28] Also, the award of exemplary damages in the amount of ₱30,000.00 is in order.[29]

WHEREFORE, the appeal is **DENIED**. The Decision dated 26 July 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03043 is **AFFIRMED WITH MODIFICATIONS**. Accused-appellant Ninoy Rosales *y* Esto is **GUILTY** of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole, and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral

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[27] Section 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[28] *People v. Osma, Jr.*, G.R. No. 187734, 29 August 2012, 679 SCRA 428, 443.

[29] *People v. Vitero*, G.R. No. 175327, 3 April 2013.

damages and ₱30,000.00 as exemplary damages. The amounts of damages awarded are subject further to interest of 6% *per annum* from the date of finality of this judgment until they are fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206505. July 24, 2013]

JEREME G. VILLANUEVA, SR., *petitioner, vs.* **BALIWAG NAVIGATION, INC., VICTORIA *VDA. DE* TENGCO and UNITRA MARITIME CO., LTD.,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; DENIAL OF THE CLAIM FOR DISABILITY BENEFITS, AFFIRMED; THE SEAFARER MUST PROVE BY SUBSTANTIAL EVIDENCE THAT AN ACUTE EXACERBATION OF HIS HEART DISEASE WAS PRECIPITATED BY THE UNUSUAL STRAIN BROUGHT ABOUT BY THE NATURE OF HIS WORK ON BOARD THE VESSEL.— We find no reversible legal error in the CA ruling affirming the denial of Villanueva's claim for disability benefits. We find it undisputed that he was repatriated for **finished contract**, not for medical reasons. More importantly, while the 2000 POEA-Standard Employment Contract (Section 32-A[11]) considers a heart disease as occupational, Villanueva failed to satisfy by substantial evidence the condition

laid down in the Contract that if the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work. Clearly, as the CA emphasized, Villanueva's repatriation for completion of his contract belies his submission that his claimed heart disease had been aggravated by his work on board the vessel *M/S Forestal Gaia*.

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Del Rosario Del Rosario for respondents.

R E S O L U T I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed pursuant to Rule 45 of the Rules of Court, assailing the Decision[2] dated December 10, 2012 and the Resolution[3] dated March 20, 2013 of the Court of Appeals (*CA*) in CA-G.R. SP No. 114521.

The case arose on February 15, 2006 when petitioner Jereme Villanueva, Sr. filed a complaint for permanent total disability benefits, medical reimbursement, sickness allowance, damages and attorney's fees against respondents Baliwag Navigation, Inc. (*agency*), its President Victoria *Vda. de* Tengco and its principal Unitra Maritime Co., Ltd.

On May 13, 2003, Villanueva entered into a ten-month employment contract with the respondents as bosun for the vessel *M/S Forestal Gaia*. After his pre-employment medical examination (*PEME*) on July 28, 2003, he was declared fit to

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[1] *Rollo*, pp. 3-25.

[2] *Id.* at 29-37; penned by Associate Justice Samuel H. Gaerlan, and concurred in by Associate Justices Rebecca L. de Guia-Salvador and Apolinario D. Bruselas, Jr.

[3] *Id.* at 39.

work, although the PEME report indicated that he had a heart disease. Villanueva joined the vessel *M/S Forestal Gaia* on August 17, 2003. Villanueva alleged that while in the performance of his duties on board the vessel one day, he suddenly felt pain in his chest and experienced difficulty in breathing. He asked for medical assistance but was given only oral medication to alleviate the pain. **He was repatriated on June 24, 2004 upon the expiration of his contract.**

On Villanueva's return to the Philippines, he *allegedly* reported to the agency and asked for a medical check-up, but was only referred to the Centerpoint Medical Services (*Centerpoint*) after several follow-ups. Centerpoint traced his medical history showing that he had a heart disease and declared him unfit to work. The declaration prompted him to ask for sickness allowance and disability benefits from the respondents but his requests were all denied.

At this point, he sought a second opinion from an internist-cardiologist who confirmed that he had a heart disease and declared him unfit for sea duty; he was given a Grade 1 disability rating. On this basis, he filed a formal claim for disability benefits against the respondents.

The respondents denied liability, contending that Villanueva was repatriated not for medical reasons, but for the completion of his contract. They maintained that Villanueva disembarked without any known illness and that his present ailment, if any, is not compensable because it was contracted outside his employment.

In a Decision[4] dated June 30, 2006, **Labor Arbiter (*LA*) Antonio Macam dismissed the complaint for lack of merit**, declaring that Villanueva's heart ailment is not compensable as it was not work-related.

On appeal, the **National Labor Relations Commission** (*NLRC*) rendered a Decision[5] dated March 26, 2008, **affirming**

[4] *Id*. at 84-93.

[5] *Id*. at 94-101.

***in toto* LA Macam's ruling**. Villanueva moved for reconsideration, but the NLRC denied the motion. He then sought relief from the CA through a Rule 65 petition for *certiorari* on the issue of whether the NLRC committed grave abuse of discretion in ruling that his ailment is not compensable.

In its now challenged Decision, **the CA denied the petition**, thereby sustaining the NLRC rulings. It brushed off Villanueva's submission that his heart ailment, which he allegedly contracted during his almost twenty (20) years of employment with the respondents, was aggravated by his work on board the vessel *M/S Forestal Gaia*. While the CA acknowledged that under Section 32-A(11) of the 2000 POEA-Standard Employment Contract, an aggravation would make his claimed heart ailment an occupational disease, no substantial evidence supported this situation.

Further, the CA stressed that the fact that Villanueva was repatriated for finished contract and not for medical reasons weakened, if not belied, his claim of illness on board the vessel. Lastly, the CA found that Villanueva failed to comply with the mandatory three-day post-employment medical examination under Section 20(B)(3) of the 2000 POEA-Standard Employment Contract, contrary to his claim that he reported to the agency upon his repatriation and asked for a medical check-up but was refused.

Villanueva moved for reconsideration of the CA Decision, but the CA denied the motion. Hence, the present recourse.

Villanueva prays for a reversal of the CA rulings, contending that the appellate court erred in dismissing his claim for disability benefits on the grounds that: (1) he failed to present evidence of work-connection for his heart condition; (2) he was repatriated on account of a finished contract; and (3) he failed to comply with the mandatory three-day post-employment medical examination under the 2000 POEA-Standard Employment Contract.

Villanueva insists that his heart ailment was work-connected because as early as July 28, 2003, he was no longer fit for sea

duties, but he was deployed nonetheless by the respondents for the obvious reason that they badly needed his services as bosun. He argues from this premise that his repatriation for finished contract does not militate against his claim for disability benefits. Further, the CA's conclusion that he failed to comply with the mandatory 3-day post-employment medical examination upon repatriation is erroneous as he stated under oath before the LA that he reported to the agency for the examination and asked for a medical check-up, but was refused.

We find no reversible legal error in the CA ruling affirming the denial of Villanueva's claim for disability benefits. We find it undisputed that he was repatriated for **finished contract**, not for medical reasons. More importantly, while the 2000 POEA-Standard Employment Contract (Section 32-A[11]) considers a heart disease as occupational, Villanueva failed to satisfy by substantial evidence the condition laid down in the Contract that if the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work.

Clearly, as the CA emphasized, Villanueva's repatriation for completion of his contract belies his submission that his claimed heart disease had been aggravated by his work on board the vessel *M/S Forestal Gaia*.

WHEREFORE, we dismiss the petition outright for its failure to show that the Court of Appeals committed any reversible error in its assailed ruling.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 9906. July 29, 2013]

ATTY. LESTER R. NUIQUE, *complainant, vs.* **ATTY. EDUARDO SEDILLO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION; A LAWYER MAY BE SUSPENDED OR DISBARRED FOR ANY MISCONDUCT SHOWING ANY FAULT OR DEFICIENCY IN HIS MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR; GROSS MISCONDUCT, EXPLAINED.— A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CONFLICT OF INTEREST; A LAWYER MAY NOT, WITHOUT BEING GUILTY OF PROFESSIONAL MISCONDUCT, ACT AS COUNSEL FOR A PERSON WHOSE INTEREST CONFLICTS WITH THAT OF HIS PRESENT OR FORMER CLIENT; CONCEPT OF CONFLICT OF INTEREST, EXPLAINED.— [R]ule 15.03, Canon 15 of the Code of Professional Responsibility provides that: Rule 15.03. – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. "A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client." It is only upon strict compliance with the condition of full disclosure of facts that a lawyer may appear against his client; otherwise, his representation of conflicting interests is reprehensible. Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client

relations is one of trust and confidence of the highest degree. In *Quiambao v. Atty. Bamba*, the Court explained the concept of conflict of interest. Thus: In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule. **Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

3. ID.; ID.; ID.; ID.; LAWYERS ARE EXPECTED NOT ONLY TO KEEP INVIOLATE THEIR CLIENT'S CONFIDENCE, BUT ALSO TO AVOID THE APPEARANCE OF TREACHERY AND DOUBLE-DEALING FOR ONLY THEN CAN LITIGANTS BE ENCOURAGED TO ENTRUST THEIR SECRETS TO THEIR LAWYERS, WHICH IS PARAMOUNT IN THE ADMINISTRATION OF JUSTICE; PROHIBITION ON REPRESENTATION OF CONFLICTING INTEREST VIOLATED BY THE RESPONDENT.— Based on the established facts of this case, the Court finds substantial evidence to conclude that the respondent violated the prohibition on representation of conflicting interests. It is uncontroverted that the respondent was still the counsel on record of Kiyoshi and Estrelieta in the case against Amasula at the time when he represented Estrelieta and Manuel in the complaint for falsification filed by Kiyoshi. Further, the respondent likewise appeared as counsel for Estrelieta and Manuel in the case for accounting, sum of money and attachment that was filed by Kimura Business Concepts, Inc., the assignee of Kiyoshi, despite being the counsel of Kiyoshi in the case against Amasula.

Clearly, the respondent violated the prohibition against representing conflicting interests. The respondent's representation of Estrelieta and Manuel against Kiyoshi, notwithstanding that he was still the counsel of Kiyoshi and Estrelieta in the case against Amasula, creates a suspicion of unfaithfulness or double-dealing in the performance of his duty towards his clients. Under the circumstances, the decent and ethical thing which the respondent should have done was to advise Estrelieta and Manuel to engage the services of another lawyer. The respondent should be reminded that lawyers are expected not only to keep inviolate their client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice.

4. ID.; ID.; ID.; ID.; TO BE HELD ACCOUNTABLE FOR VIOLATION OF THE PROSCRIPTION AGAINST REPRESENTATION OF CONFLICTING INTEREST, IT IS ENOUGH THAT THE OPPOSING PARTIES IN ONE CASE, ONE OF WHOM WOULD LOSE THE SUIT, ARE PRESENT CLIENTS AND THE NATURE OR CONDITIONS OF THE LAWYER'S RESPECTIVE RETAINERS WITH EACH OF THEM WOULD AFFECT THE PERFORMANCE OF THE DUTY OF UNDIVIDED FIDELITY TO BOTH CLIENTS.— [C]ontrary to the respondent's claim, the fact that the civil case instituted by Kiyoshi and Estrelieta against Amasula is totally unrelated to the subsequent cases in which he represented Estrelieta and Manuel against Kiyoshi is immaterial. The representation of opposing clients in said cases, even if unrelated, is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which this Court cannot allow. Moreover, in *Aniñon v. Sabitsana, Jr.*, the Court stated: The proscription against representation of conflicting interests applies to a situation where the opposing parties are present clients in the same action or in an unrelated action. The prohibition also applies even if the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated. To be held accountable under this rule, it is

enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients.

5. ID.; ID.; DISBARMENT OR SUSPENSION; THE COURT IS NOT BOUND BY THE DESISTANCE OF THE COMPLAINANT.— The Court notes that the complainant had already manifested before the Commission that he is no longer interested in pursuing his complaint against the respondent. Nevertheless, the Court is not bound by such desistance as the instant case involves public interest. The exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession.

6. ID.; ID.; ID.; SIX MONTHS SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR LAWYERS FOUND GUILTY OF MISCONDUCT FOR REPRESENTING CONFLICTING INTERESTS IN VIOLATION OF 15.03 CANON 15 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [A]s aptly found by the IBP Investigating Commissioner and the IBP Board of Governors, an administrative sanction against the respondent is warranted. In similar cases involving representation of conflicting interests, the Court has sanctioned erring lawyers either by reprimand, or by suspension from the practice of law from six (6) months to two (2) years. In the case under consideration, both the Investigating Commissioner and the IBP Board of Governors recommended that the respondent be suspended from the practice of law for six (6) months. Considering that this is the respondent's first offense, the Court adopts the recommendation of the Investigating Commissioner and the IBP Board of Governors and hereby suspends the respondent from the practice of law for a period of six (6) months effective upon receipt of this Resolution.

R E S O L U T I O N

REYES, *J.*:

The Court resolves the Complaint[1] for disbarment filed by Atty. Lester R. Nuique (complainant) with the Commission on Bar Discipline (Commission) of the Integrated Bar of the Philippines (IBP) against Atty. Eduardo Sedillo (respondent) who is charged with: (1) violating the prohibition on representing conflicting interests; (2) using abusive language against and disrespecting the court; and (3) spreading rumors against a colleague in the legal profession.

Factual Antecedents

The complainant alleged that, sometime in 1992, the respondent became the lawyer of Kiyoshi Kimura (Kiyoshi), a Japanese citizen, and his wife Estrelieta Patrimonio-Kimura (Estrelieta) in a case for collection/recovery of overpayment against Carlos Amasula, Jr. (Amasula).[2] Since the spouses Kimura had to leave the country, the case was prosecuted by their representative Manuel Patrimonio (Manuel), Estrelieta's brother. The spouses Kimura obtained a favorable decision in the trial court, but the case was still on appeal with this Court at the time when the instant complaint was filed. The respondent remained the counsel of record of the spouses Kimura until July 2007 when Kiyoshi terminated his services.

Kiyoshi, during the course of his marriage to Estrelieta, purchased several real properties in Dumaguete City, some of which were registered under the name of Estrelieta and Manuel. Sometime in September 2006, Kiyoshi and Estrelieta had a falling out. Apparently, Estrelieta and Manuel falsified Kiyoshi's signature to make it appear that he loaned ₱1,500,000.00 from the

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 6-9.

Development Bank of the Philippines and, as security for the said loan, surreptitiously mortgaged a parcel of land he owned.[3]

Sometime in November 2006, Kiyoshi engaged the services of the complainant. Kiyoshi, acting through his representative Danilo Estocoming (Danilo) and Kazuhiro Sampie (Kazuhiro), filed a complaint against Estrelieta and Manuel for falsification.[4] The respondent appeared as counsel of Estrelieta and Manuel.

On February 22, 2007, a civil action for accounting, sum of money and attachment was filed by Kimura Business Concepts, Inc., an assignee of Kiyoshi, in the Regional Trial Court (RTC) of Dumaguete City, Branch 44, against Estrelieta and Manuel. The respondent likewise entered his appearance as counsel for Estrelieta and Manuel in the said case.[5] Further, sometime in February 2007, Kiyoshi intervened in Civil Case No. 13866, entitled *Nelson Patrimonio v. Development Bank of the Philippines*, then pending before the RTC. The respondent opposed Kiyoshi's motion for intervention in Civil Case No. 13866.

The respondent likewise assisted Estrelieta in instituting a *habeas corpus* case against Danilo and Kazuhiro, alleging that they were detaining Kiyoshi against his will. The *habeas corpus* case, however, was dismissed after Kiyoshi appeared in court and testified that he was not detained by Danilo and Kazuhiro. The complainant averred that the respondent disrespected the court when, in the motion for reconsideration[6] which he prepared, he stated that he "would have taken the resolution with a grain of salt."[7]

The complainant further alleged that, after the *habeas corpus* case was dismissed, the respondent had spread rumors against

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[3] *Id.* at 2.

[4] *Id.* at 18.

[5] *Id.* at 19-20.

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

[7] *Id.* at 21.

the complainant; that the complainant supposedly detained Kiyoshi and provided him with women.

In its Order[8] dated February 15, 2008, the Commission directed the respondent to file his answer to the Complaint. In his Answer with Counterclaim,[9] the respondent denied that he was guilty of representing conflicting interests, asserting that it was Manuel who sought his legal assistance and not Kiyoshi. He explained that the civil case against Amasula was actively handled and personally pursued by Manuel, albeit in representation of the spouses Kimura. He stressed that there has been no personal and active intervention by Kiyoshi or of Estrelieta in any of the stages of the case. The respondent claims that, for all intents and purposes, his client is Manuel and the spouses Kimura were merely "litigation-beneficiaries-in-waiting." Further, with respect to the falsification case against Estrelieta and Manuel, the respondent claims that the same was instituted by Danilo and Kazuhiro and not Kiyoshi.

As to the charge of disrespect to the court, the respondent claims that the phrase "with a grain of salt" is but a common phraseology that is neither offensive nor disrespectful. The respondent further denied having spread rumors to malign the complainant.

On May 2, 2008, the Commission set the case for mandatory conference on May 27, 2008.[10] Only the respondent appeared during the scheduled mandatory conference.[11]

On December 2, 2008, the complainant manifested to the Commission that he is no longer interested in pursuing his complaint against the respondent, praying that he be allowed to withdraw the same.[12]

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[8] *Id.* at 26.

[9] *Id.* at 27-33.

[10] *Id.* at 61.

[11] *Id.* at 63.

[12] *Id.* at 79.

Findings of the IBP Investigating Commissioner

On February 9, 2010, the Investigating Commissioner issued a Report and Recommendation[13] which found the respondent guilty of representing conflicting interests. Thus:

> Based on the complaint and the answer thereto, this Commission finds that there is no question that the respondent is the counsel in the case filed by [Kiyoshi] and Estrelieta against the building contractor, Carlos Amasula. Such engagement remained until July 31, 2007 when [Kiyoshi] executed his "Revocation of Special Power of Attorney and Termination of Attorney".
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> Thus, when respondent entered his appearance as counsel for Estrelieta and her brother Manuel in the Falsification complaint (I.S. No. 2007-61), the respondent was still the counsel of [Kiyoshi] in the Amasula case. The defense of the respondent that his client was actually Manuel and not [Kiyoshi] and Estrelieta goes contrary to basic principles of law. The respondent admitted that Manuel was acting as mere agent of [Kiyoshi] and Estrelieta by virtue of a Special Power of Attorney. The respondent, therefore, can not deny that Manuel's principals, [Kiyoshi] and Estrelieta, were his real clients.
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> Furthermore, when Estrelieta and Manuel were subjected to preliminary investigation for the Falsification charges which was filed by [Kiyoshi] through his representative Danilo Estocoming and Kazuhiro Sampie, respondent consciously and deliberately ran in conflict with his duty to [Kiyoshi] by appearing as counsel for Estrelieta and Manuel. The respondent continued to represent Estrelieta and Manuel opposite [Kiyoshi] when probable cause was found against his clients, on appeal with the Department of Justice and even when the information was filed against them (Criminal Case C-170).
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> The same situation existed with Civil Case No. 2007-14067 as the respondent appeared opposite [Kiyoshi] despite the fact that he was still [Kiyoshi's] counsel in the Amasula case.[14] (Citation omitted)

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[13] *Id.* at 91-98.

[14] *Id.* at 96-97.

The Investigating Commissioner absolved the respondent from the charge of disrespect to the court, asserting that the use of the phrase "with a grain of salt" is not offensive. The Investigating Commissioner likewise pointed out that no evidence was presented to show that the respondent had spread rumor to malign the complainant.

The Investigating Commissioner recommended that the respondent be suspended from the practice of law for a period of six (6) months.

Findings of the IBP Board of Governors

In a Notice of Resolution[15] dated June 27, 2011, the IBP Board of Governors resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner, finding the same to be fully supported by the evidence on record and the applicable laws and rules.

The respondent sought to reconsider the Resolution dated June 27, 2011,[16] but the IBP Board of Governors denied his motion in its Resolution[17] dated January 3, 2013.

Issue

The issue in this case is whether the respondent should be administratively sanctioned based on the allegations in the Complaint.

Ruling of the Court

After a careful perusal of the records, the Court agrees with the findings and the recommendations of the Investigating Commissioner and the IBP Board of Governors.

Section 27, Rule 138 of the Rules of Court provides that a lawyer may be disbarred or suspended from the practice of law, *inter alia*, for gross misconduct. Thus:

[15] *Id.* at 90.

[16] *Id.* at 99-105.

[17] *Id.* at 123.

Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefore.* — **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court** for any deceit, malpractice, **or other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis ours)

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[18] Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.[19]

Concomitant to the foregoing, Rule 15.03, Canon 15 of the Code of Professional Responsibility provides that:

Rule 15.03. – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

"A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client."[20] It is only upon strict compliance with the condition of full disclosure of facts that a lawyer may appear against his client; otherwise, his representation of conflicting interests is reprehensible.[21] Such

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[18] *Sps. Donato v. Atty. Asuncion, Sr.*, 468 Phil. 329, 335 (2004).

[19] *Office of the Court Administrator v. Liangco,* A.C. No. 5355, December 13, 2011, 662 SCRA 103, 114, citing *Sps. Donato v. Atty. Asuncion, Sr., id.*

[20] *Heirs of Lydio Falame v. Atty. Baguio*, 571 Phil. 428, 440 (2008), citing *Frias v. Atty. Lozada*, 513 Phil. 512, 520 (2005).

[21] *Lim, Jr. v. Atty. Villarosa*, 524 Phil. 37, 55 (2006).

prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree.[22]

In *Quiambao v. Atty. Bamba*,[23] the Court explained the concept of conflict of interest. Thus:

> In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.
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> **Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[24] (Citations omitted and emphasis ours)

Based on the established facts of this case, the Court finds substantial evidence to conclude that the respondent violated the prohibition on representation of conflicting interests. It is uncontroverted that the respondent was still the counsel on record of Kiyoshi and Estrelieta in the case against Amasula at the time when he represented Estrelieta and Manuel in the complaint for falsification filed by Kiyoshi. Further, the respondent likewise appeared as counsel for Estrelieta and Manuel in the case for accounting, sum of money and attachment that was filed by Kimura Business Concepts, Inc., the assignee of Kiyoshi, despite

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[22] *Gonzales v. Cabucana, Jr.*, 515 Phil. 296, 304 (2006).

[23] 505 Phil. 126 (2005).

[24] *Id.* at 134.

being the counsel of Kiyoshi in the case against Amasula. Clearly, the respondent violated the prohibition against representing conflicting interests.

The respondent's representation of Estrelieta and Manuel against Kiyoshi, notwithstanding that he was still the counsel of Kiyoshi and Estrelieta in the case against Amasula, creates a suspicion of unfaithfulness or double-dealing in the performance of his duty towards his clients. Under the circumstances, the decent and ethical thing which the respondent should have done was to advise Estrelieta and Manuel to engage the services of another lawyer.

The respondent should be reminded that lawyers are expected not only to keep inviolate their client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice.[25]

Further, contrary to the respondent's claim, the fact that the civil case instituted by Kiyoshi and Estrelieta against Amasula is totally unrelated to the subsequent cases in which he represented Estrelieta and Manuel against Kiyoshi is immaterial. The representation of opposing clients in said cases, even if unrelated, is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which this Court cannot allow.[26]

Moreover, in *Aniñon v. Sabitsana, Jr.*,[27] the Court stated:

> The proscription against representation of conflicting interests applies to a situation where the opposing parties are present clients in the same action or in an unrelated action. The prohibition also applies even if the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information

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[25] See *Pacana, Jr. v. Pascual-Lopez*, A.C. No. 8243, July 24, 2009, 594 SCRA 1, 14.

[26] *See Gonzales v. Cabucana, Jr.*, *supra* note 22, at 305.

[27] A.C. No. 5098, April 11, 2012, 669 SCRA 76.

acquired from one to the disadvantage of the other as the two actions are wholly unrelated. To be held accountable under this rule, it is enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients.[28] (Citation omitted)

Likewise, the respondent's claim that it was Manuel who was his client in the case against Amasula and not Kiyoshi, since it was Manuel who sought his services and was the one who actively and personally pursued the said case, is untenable. It is but a futile attempt on the part of the respondent to extricate himself from his predicament. Manuel was merely the agent of Kiyoshi and Estrelieta in the case against Amasula. That Manuel was the one who actively prosecuted the said case is of no consequence; the real parties in interest in the case against Amasula were the principals of Manuel, *i.e.*, Kiyoshi and Estrelieta.

The Court notes that the complainant had already manifested before the Commission that he is no longer interested in pursuing his complaint against the respondent. Nevertheless, the Court is not bound by such desistance as the instant case involves public interest.[29] The exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession.[30]

Accordingly, as aptly found by the IBP Investigating Commissioner and the IBP Board of Governors, an administrative sanction against the respondent is warranted. In similar cases involving representation of conflicting interests, the Court has sanctioned erring lawyers either by reprimand, or by suspension from the practice of law from six (6) months to two (2) years.[31]

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[28] *Id.* at 81.

[29] See *Mercado v. Vitriolo*, 498 Phil. 49, 57 (2005).

[30] See *Rangwani v. Atty. Diño*, 486 Phil. 8 (2004).

[31] See *Buehs v. Bacatan*, A.C No. 6674, June 30, 2009, 591 SCRA 217, 227, citing *Paz v. Atty. Sanchez*, 533 Phil. 503, 512-513 (2006).

In the case under consideration, both the Investigating Commissioner and the IBP Board of Governors recommended that the respondent be suspended from the practice of law for six (6) months. Considering that this is the respondent's first offense, the Court adopts the recommendation of the Investigating Commissioner and the IBP Board of Governors and hereby suspends the respondent from the practice of law for a period of six (6) months effective upon receipt of this Resolution.

WHEREFORE, in view of the foregoing, the Court finds Atty. Eduardo Sedillo **GUILTY** of misconduct for representing conflicting interests in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law **for a period of six (6) months**, effective upon receipt of this Resolution, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let a copy of this Resolution be entered into the records of Atty. Eduardo Sedillo and furnished to the Office of the Clerk of Court, the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the Philippines, for their information and guidance.

Atty. Eduardo Sedillo is **DIRECTED** to inform the Court of the date of his receipt of this Resolution so that the Court can determine the reckoning point when his suspension shall take effect.

SO ORDERED.

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

SECOND DIVISION

[OCA I.P.I. No. 11-3589-RTJ. July 29, 2013]

KONRAD A. RUBIN and CONRADO C. RUBIN, *complainants, vs.* **JUDGE EVELYN CORPUS-CABOCHAN, Presiding Judge, Regional Trial Court, Branch 98, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, NOT ONLY DOES THE BURDEN OF PROOF THAT THE RESPONDENT COMMITTED THE ACT COMPLAINED OF RESTS ON COMPLAINANTS, THAT BURDEN IS NOT SATISFIED WHEN COMPLAINANTS RELY ON MERE ASSUMPTIONS AND SUSPICIONS AS EVIDENCE.— [T]he record is bereft of any evidence to prove complainants' contention that Judge Cabochan is guilty of serious or grave misconduct. Other than complainants' and their witness, Atty. Arceli A. Rubin's bare allegation that Judge Cabochan made a false accusation regarding the finger pointing incident, there were no other evidence adduced to rebut the statements made by respondent judge and her witnesses. Besides, the affidavit of Atty. Rubin cannot be said to have come from a disinterested person because not only is she one of the counsels of the complainants, she is also the wife of Conrado and the mother of Konrad. On the other hand, the allegation of Judge Cabochan regarding the finger pointing incident is fully supported by the statements of three of the court's staff and a disinterested lawyer, who were all present in the courtroom when the incident occurred. Complainants' insistence that these witnesses were influenced by respondent judge into making those statements deserves scant consideration. In administrative proceedings, not only does the burden of proof that the respondent committed the act complained of rests on complainants, that burden is not satisfied when complainants rely on mere assumptions and suspicions as evidence.

2. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; CHARGE OF MISCONDUCT; MISCONDUCT,

DEFINED; THE MISCONDUCT, IS GRAVE IF IT INVOLVES ANY OF THE ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW, OR TO DISREGARD ESTABLISHED RULES, WHICH MUST BE ESTABLISHED BY SUBSTANTIAL EVIDENCE; CHARGE OF GRAVE MISCONDUCT, NOT ESTABLISHED.— In the case of *Office of the Court Administrator v. Lopez*, the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. It is clear from the aforesaid definition that respondent Judge Cabochan is not guilty of grave or serious misconduct. Even assuming that Judge Cabochan erred in the narration of facts as stated in her order of inhibition, still she cannot be held liable in view of complainants' failure to establish that she was motivated by corruption or an intention to violate the law or to disregard established rules when she made the statement. What has been clearly established is that Conrado indeed pointed his finger during the alleged incident and even admitted such fact in his reply, although he claims that it was not directed to the judge but to the counsel for the defendants.

3. ID.; ID.; INHIBITION AND DISQUALIFICATION; VOLUNTARY INHIBITION IS PRIMARILY A MATTER OF CONSCIENCE AND SOUND DISCRETION ON THE PART OF THE JUDGE SINCE HE IS IN A BETTER POSITION TO DETERMINE WHETHER A GIVEN SITUATION WOULD UNFAIRLY AFFECT HIS ATTITUDE TOWARDS THE PARTIES OR THEIR CASES.— We have observed that complainants focused mainly on the finger pointing incident. A perusal of the order of inhibition, however, would reveal that the incident is not the primary reason for respondent Judge Cabochan's recusal from the case. She cited the "Request For Help" letter as her main basis as she believed that it is a clear indication that the complainants entertain serious doubts on her competence, partiality and integrity. She was therefore exercising her judicial prerogative and discretion when she recused herself from the case. We have always

maintained that judges, like Caesar's wife, should be above suspicion. In *People v. Hon. Ma. Theresa L. Dela Torre-Yadao et al.*, this Court held that voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases.

4. ID.; ID.; A PRESIDING JUDGE MUST MAINTAIN AND PRESERVE THE TRUST AND FAITH OF THE PARTIES-LITIGANTS. AT THE VERY FIRST SIGN OF LACK OF FAITH AND TRUST IN HIS ACTIONS, WHETHER WELL-GROUNDED OR NOT, THE JUDGE HAS NO OTHER ALTERNATIVE BUT TO INHIBIT HIMSELF FROM THE CASE.— Section 1, Rule 137 of the Rules of Court sets forth the rule on inhibition and disqualification of judges. The aforesaid rule enumerates the specific grounds upon which a judge may be disqualified from participating in a trial. It must be borne in mind that the inhibition of judges is rooted in the Constitution, specifically Article III, the Bill of Rights, which requires that a hearing is conducted before an impartial and disinterested tribunal because unquestionably, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge. Certainly, a presiding judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case. The better course for the judge under the circumstances is to disqualify himself. That way, he avoids being misunderstood; his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to. Hence, Judge Cabochan should not be condemned for her recusal in Civil Case No. Q-09-64898.

5. ID.; ID.; CHARGES OF IGNORANCE OF THE LAW AND RENDERING UNJUST JUDGMENT; A JUDGE MAY NOT BE ADMINISTRATIVELY SANCTIONED FROM MERE ERRORS OF JUDGMENT IN THE ABSENCE OF SHOWING OF ANY BAD FAITH, FRAUD, MALICE,

GROSS IGNORANCE, CORRUPT PURPOSE, OR A DELIBERATE INTENT TO DO ANY INJUSTICE ON HIS PART.— We likewise find the charges of ignorance of the law and rendering of an unjust judgment bereft of merit. It is clear that Judge Cabochan's judgment was issued in the proper exercise of her judicial functions, and as such, is not subject to administrative disciplinary action; especially considering that complainants failed to establish bad faith on the part of the judge. Well entrenched is the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.

6. ID.; ID.; ID.; A JUDGE CANNOT BE SUBJECTED TO LIABILITY FOR ANY OF HIS OFFICIAL ACTS, NO MATTER HOW ERRONEOUS, AS LONG AS HE ACTS IN GOOD FAITH.— Complainants were assailing the propriety of the decision rendered by Judge Cabochan. Complainants should be reminded that unfavorable rulings are not necessarily erroneous. Should they disagree with the ruling, there are judicial remedies available for them under the Rules of Court. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

7. ID.; ID.; ID.; ADMINISTRATIVE COMPLAINT AGAINST JUDGES CANNOT BE PURSUED SIMULTANEOUSLY WITH THE JUDICIAL REMEDIES ACCORDED TO PARTIES AGGRIEVED BY THE ERRONEOUS ORDERS OR JUDGMENTS OF THE FORMER.— [W]e have explained that administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality. In the instant case, complainants had in fact availed of the remedy of motion for reconsideration prior to their filing of the administrative complaint.

8. ID.; ID.; CHARGE OF GROSS INEFFICIENCY; FAILURE TO DECIDE CASES AND OTHER MATTERS WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY AND WARRANTS THE IMPOSITION OF ADMINISTRATIVE SANCTION AGAINST THE ERRING MAGISTRATES; PROPER PENALTY FOR GROSS INEFFICIENCY.— We agree with respondent judge that the case could not have been considered submitted for decision on 29 July 2009 as claimed by complainants. Such assertions were belied by the fact that Konrad, through his counsel, even filed on 5 October 2009 a Brief for Plaintiff as Appellee to refute the allegations of co-defendants in their memorandum. Be that as it may, whether the appeal was decided after ten months from the time it was submitted for decision, as insisted by the complainants, or slightly less than a month, as admitted by Judge Cabochan, the inescapable fact is that there was delay in deciding the appeal. The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. The penalty to be imposed on the judge varies depending on the attending circumstances of the case. In deciding the penalty to be imposed, the Court takes into consideration, among others, the period of delay; the damage suffered by the parties as a result of the delay; the number of years the judge has been in the service; the health and age of the judge; and the caseload of the court presided over by the judge. In the instant case, we find it reasonable to mitigate the penalty to be imposed on respondent judge taking into consideration that this is her first infraction in her more than 23 years in the service; her frail health; the caseload of her court; and her candid admission of her infraction. Thus, we admonish respondent judge to be more circumspect in the exercise of her judicial functions to ensure that cases in her court are decided within the period required by law.

D E C I S I O N

PEREZ, *J.*:

On 14 December 2010, a complaint was filed by Konrad A. Rubin (Konrad) and his father, Conrado C. Rubin (Conrado), against Hon. Evelyn Corpus-Cabochan (Judge Cabochan), Presiding Judge of the Regional Trial Court (RTC), Branch 98, Quezon City for serious misconduct, gross ignorance of the law, rendering an unjust judgment and gross inefficiency. The complaint stemmed from the decision rendered and order of voluntary inhibition issued by Judge Cabochan in Civil Case No. Q-09-64898.

ANTECEDENT FACTS

A civil case for damages was filed by Konrad before the RTC of Quezon City against Virgine Calvo, Alexander Ong and Martin Estores, as owner, general manager and employee, respectively, of Trans Orient Container Terminal Services (co-defendants). The case was raffled to RTC, Branch 82.

After due proceedings, the presiding judge of RTC, Branch 82 found that the totality of the claim was only ₱311,977.00, hence, ruled that it was the first level court that had jurisdiction over the case. The case was dismissed without prejudice to its re-filing before the proper court.

Consequently, Konrad filed the complaint before the Metropolitan Trial Court (MeTC) and this was raffled to Branch 32. The co-defendants filed a motion to dismiss on the ground of lack of jurisdiction for the reason that the additional substantial allegations in the new complaint changed the very nature of the action, such that the subject matter thereof became incapable of pecuniary estimation.

After due consideration of the motion to dismiss and plaintiff's opposition thereto, the presiding judge of the MeTC issued an order denying the motion to dismiss, upon a finding that the claim for damages as clearly stated in the complaint is capable

of pecuniary estimation, the amount of which falls within the jurisdiction of the MeTC.

Trial on the merits thereafter ensued.

On 24 June 2008, a decision was rendered in favor of plaintiff Konrad, directing the co-defendants to pay him the amounts of ₱7,000.00 as temperate damages; ₱10,000.00 as moral damages; ₱10,000.00 as exemplary damages; ₱10,000.00 as attorney's fees; and ₱2,901.90 for litigation costs.

Both of the opposing parties filed a motion for reconsideration.

In an order dated 19 March 2009, the MeTC decision was modified by increasing the award of moral and exemplary damages and attorney's fees to ₱20,000.00 each.

Still not satisfied with the decision, both parties appealed the case to the RTC of Quezon City. The case was docketed as Civil Case No. Q-09-64898 and was raffled to RTC, Branch 98, presided over by Judge Cabochan.

On 1 June 2010, Judge Cabochan rendered her judgment on the appeal. She reversed and set aside the decision of the MeTC based on her finding that the latter court had no jurisdiction over the original action. She ruled that the RTC had original jurisdiction over the case and pursuant to Section 8, Rule 40 of the 1997 Rules of Civil Procedure, her court "will proceed to try the case on the merits upon payment of the appropriate docket fees, as if the case was originally filed with it without prejudice to the admission of amended pleadings and additional evidence in the interest of justice."[1]

Konrad filed a motion for reconsideration assailing respondent Judge Cabochan's judgment. The motion was heard on 23 July 2009.

Several days after the hearing of the Motion for Reconsideration, Konrad, together with his parents, sent a letter entitled "Request For Help" to the executive judge of RTC,

[1] *Rollo,* p. 185.

Quezon City, copy furnished Judge Cabochan; the presiding judges of RTC, Branch 82 and MeTC, Branch 32; the Chief Justice; and the Court Administrator. In their letter, they expressed their grief over the judgment rendered by Judge Cabochan which allegedly resulted in a mockery of justice. They claimed that the judgment not only made the litigation of the case very expensive, it also prolonged the litigation, in violation of the Constitutional provision and the Rules of Court mandating a just, speedy and inexpensive disposition of every action and proceeding in court.[2]

In reaction to the "Request For Help" letter filed, Judge Cabochan issued an Order[3] voluntarily inhibiting herself from the case. She noted that while Konrad had already filed his motion for reconsideration assailing her judgment, he still resorted to an unfair and inappropriate manner of questioning her ruling. She contended that the letter expressed the complainant's serious doubts on her competence, partiality and integrity.[4] She stressed that should she continue presiding over the case, her action will appear to be tainted with bias, hence, she deemed it proper to voluntarily recuse from the case.

To emphasize her point, Judge Cabochan narrated that during the hearing on complainants' motion for reconsideration on 23 July 2010, Conrado requested that he be allowed to say a word regarding the controversy, which she graciously granted. To everyone's surprise, Conrado took the occasion to express his utter disappointment on the outcome of the case while pointing his finger at the judge and declaring that the judgment rendered was unacceptable to Conrado. She contended that the incident, without a doubt, exposed the animosity of Conrado towards her.[5]

On 25 August 2010, Conrado wrote a letter to Judge Cabochan reacting on the order of inhibition issued by the latter. He expressed

[2] *Id.* at 335-337.

[3] *Id.* at 89-94.

[4] *Id.* at 91.

[5] *Id.* at 142; Comment of Judge Cabochan dated 10 July 2011.

his opposition over the inhibition and denied the finger pointing allegation of respondent judge. He maintained that he never pointed a finger at the judge, but only expressed his sentiment over the outcome of the judgment and moved for the speedy disposition of the motion for reconsideration. He explained that the opposition to the voluntary inhibition is only for the purpose of giving the judge a chance to justify/rectify herself.

In a resolution dated 28 September 2010, Acting Executive Judge Fernando T. Sagun, Jr. (Acting Executive Judge Sagun, Jr.), upheld the voluntary recusal of Judge Cabochan. He relied on administrative circulars and jurisprudence establishing that a judge's voluntary inhibition is a judicial action which does not require prior administrative approval.[6] He maintained that the question of whether to inhibit in a case is best left to the sound discretion and conscience of the presiding judge.

Undeterred, complainants filed a Joint Motion for Reconsideration questioning the resolution issued by Acting Executive Judge Sagun, Jr., maintaining their vigorous opposition to the voluntary inhibition of respondent judge. They invoked Konrad's right to a speedy resolution of his claim for damages.

Atty. Salvador B. Aguas, counsel for complainant Konrad, likewise filed a Motion for Reconsideration questioning the acting executive judge's resolution. He contended that respondent Judge Cabochan's right to inhibit from further handling the case, particularly in resolving plaintiff-appellee/appellant's Motion for Reconsideration, should not work against the important right of his client to a speedy disposition of his case, as the judge's right to inhibit is inferior to the superior mandate of the Constitution because such inhibition will not serve public interest.[7]

On 4 November 2010, Acting Executive Judge Sagun, Jr., issued an Order[8] denying for lack of merit the two motions for

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[6] *Id.* at 169.

[7] *Id.* at 116.

[8] *Id.* at 119-120.

reconsideration filed by Konrad and his counsel. He directed that parties and their counsels file any and subsequent pleadings regarding the case before the RTC where the case had been re-raffled.

Konrad and Conrado, thereafter, filed the instant administrative complaint against Judge Cabochan. They alleged that Judge Cabochan committed serious or grave misconduct for falsely accusing complainant Conrado of pointing his finger at her in the presence of the court's staff and other litigants; claiming that such statement is untrue and absolutely fabricated. They also claimed that Judge Cabochan acted in gross ignorance of the law when she ruled that it was the RTC and not the MeTC that had original jurisdiction over the case. Such ruling allegedly annulled the 19 February 2011 order of a co-equal court that it was the MeTC that had original jurisdiction over the case. They likewise accused Judge Cabochan of rendering an unjust judgment for directing the plaintiff to again pay docket fees and undergo rigorous trial after more than 10 years of litigation which will, in turn, subject Konrad to bear more expenses, and to suffer more delay and trauma. Finally, they charged respondent judge of gross inefficiency for rendering judgment on the appeal beyond the 90-day reglementary period, in violation of Konrad's right to a speedy disposition of his case.[9]

For the alleged infractions, complainants insisted that Judge Cabochan should not only be dismissed from the service but should also be disbarred.

In her comment dated 10 February 2011, Judge Cabochan refuted point by point the accusations hurled against her by the complainants. She maintained that she is not guilty of serious or grave misconduct because she did not falsely accuse Conrado when she stated that the latter pointed his finger at her while loudly expressing his utter disappointment at the outcome of the case. She averred that the incident was done in full view of everyone present in the courtroom at that time. To attest to

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[9] *Id.* at 1-18.

such fact, she attached to her comment the affidavits of Court Stenographer Gloria E. de Leon, Court Aide Rosalina C. Nunag, Court Interpreter Joseph H. Garcia and Attorney Romeo L. Erenio, who all witnessed the incident that transpired during the hearing.

She explained that she is not guilty of gross ignorance of the law because her judgment was based on her sound appreciation of the evidence on record and the applicable law and jurisprudence on the matter. Her conclusion that the original jurisdiction was vested in the RTC was done in good faith and without malice nor with deliberate intention to favor or perpetuate an injustice to any of the parties. She maintained that her decision is based on the fact that the total amount of damages claimed was within the RTC's jurisdictional threshold.

She averred that she is likewise not guilty of rendering an unjust judgment because there is no final decree yet declaring that her judgment was grossly erroneous. She insisted that the filing of the administrative complaint is premature considering that the parties are not without judicial remedies to question her ruling.

As regards the charge of gross inefficiency, Judge Cabochan explained that the case was submitted for decision only after the parties had been given ample opportunity to file their respective memorandum on appeal. Contrary to complainants' allegations, the case was not yet considered submitted for decision on 29 July 2009. She argued that the reckoning date to determine the presence of delay is not 29 July 2009 but 4 February 2010, after the issuance of her Order declaring the case submitted for decision. She noted that in the spirit of fair play and observance of due process, she issued Orders dated 17 August 2009 and 28 October 2009, directing co-defendant Martin Estores to file his brief/memorandum. Unfortunately, the latter Order was returned with the annotation that Mr. Estores had already died.

If ever there was delay in the resolution of the appeal, Judge Cabochan submitted that it was only for a matter of less than a month and not ten months as alleged by the complainants.

She explained that the delay was attributable to her frail health condition and her court's heavy caseload.

REPORT AND RECOMMENDATION OF THE OFFICE OF THE COURT ADMINISTRATOR

In its report[10] dated 26 November 2012, the Office of the Court Administrator (OCA) found respondent Judge Cabochan not guilty of serious or grave misconduct; of gross ignorance of the law; and of rendering an unjust judgment. The OCA, however, found her guilty of gross inefficiency for her delay in rendering a decision on the appeal.

OUR RULING

We agree with the findings of the OCA. The record is bereft of any evidence to prove complainants' contention that Judge Cabochan is guilty of serious or grave misconduct. Other than complainants' and their witness, Atty. Arceli A. Rubin's bare allegation that Judge Cabochan made a false accusation regarding the finger pointing incident, there were no other evidence adduced to rebut the statements made by respondent judge and her witnesses. Besides, the affidavit of Atty. Rubin cannot be said to have come from a disinterested person because not only is she one of the counsels of the complainants, she is also the wife of Conrado and the mother of Konrad.

On the other hand, the allegation of Judge Cabochan regarding the finger pointing incident is fully supported by the statements of three of the court's staff and a disinterested lawyer, who were all present in the courtroom when the incident occurred. Complainants' insistence that these witnesses were influenced by respondent judge into making those statements deserves scant consideration. In administrative proceedings, not only does the burden of proof that the respondent committed the act complained of rests on complainants, that burden is not satisfied when

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[10] *Id.* at 456-491.

complainants rely on mere assumptions and suspicions as evidence.[11]

In the case of *Office of the Court Administrator v. Lopez*,[12] the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.

It is clear from the aforesaid definition that respondent Judge Cabochan is not guilty of grave or serious misconduct. Even assuming that Judge Cabochan erred in the narration of facts as stated in her order of inhibition, still she cannot be held liable in view of complainants' failure to establish that she was motivated by corruption or an intention to violate the law or to disregard established rules when she made the statement. What has been clearly established is that Conrado indeed pointed his finger during the alleged incident and even admitted such fact in his reply, although he claims that it was not directed to the judge but to the counsel for the defendants.[13]

We have observed that complainants focused mainly on the finger pointing incident. A perusal of the order of inhibition, however, would reveal that the incident is not the primary reason for respondent Judge Cabochan's recusal from the case. She cited the "Request For Help" letter as her main basis as she believed that it is a clear indication that the complainants entertain serious doubts on her competence, partiality and integrity. She was therefore exercising her judicial prerogative and discretion when she recused herself from the case. We have always maintained that judges, like Caesar's wife, should be above suspicion.[14]

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[11] *Dela Peña v. Huelma*, A.M. No. P-06-2218, 15 August 2006, 498 SCRA, 593, 602.

[12] A.M. No. P-10-2788, 18 January 2011, 639 SCRA 633, 638.

[13] *Rollo*, pp. 95-97; Letter-reply of Conrado dated 25 August 2010.

[14] *Chan v. Judge Majaducan*, 459 Phil. 754, 764 (2003) citing *Vedana v. Judge Valencia*, 356 Phil 317 (1998).

In *People v. Hon. Ma. Theresa L. Dela Torre-Yadao et al.*,[15] this Court held that voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases.

Section 1, Rule 137 of the Rules of Court sets forth the rule on inhibition and disqualification of judges, to wit:

> SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
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> **A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons** other than those mentioned above. (Emphasis supplied.)

The aforesaid rule enumerates the specific grounds upon which a judge may be disqualified from participating in a trial. It must be borne in mind that the inhibition of judges is rooted in the Constitution, specifically Article III, the Bill of Rights, which requires that a hearing is conducted before an impartial and disinterested tribunal because unquestionably, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[16]

Certainly, a presiding judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself

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[15] G.R. Nos. 162144-54, 13 November 2012.

[16] *People v. Hon. Ong*, 523 Phil. 347, 356 (2006).

above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case.[17] The better course for the judge under the circumstances is to disqualify himself. That way, he avoids being misunderstood; his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to.[18] Hence, Judge Cabochan should not be condemned for her recusal in Civil Case No. Q-09-64898.

We likewise find the charges of ignorance of the law and rendering of an unjust judgment bereft of merit. It is clear that Judge Cabochan's judgment was issued in the proper exercise of her judicial functions, and as such, is not subject to administrative disciplinary action; especially considering that complainants failed to establish bad faith on the part of the judge. Well entrenched is the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.[19]

Complainants were assailing the propriety of the decision rendered by Judge Cabochan. Complainants should be reminded that unfavorable rulings are not necessarily erroneous. Should they disagree with the ruling, there are judicial remedies available for them under the Rules of Court. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in

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[17] *Madula v. Judge Santos*, 457 Phil. 625, 634 (2003) citing *Gutang v. Court of Appeals*, 354 Phil. 77, 84 (1998).

[18] *Id.* citing *Gutang v. Court of Appeals*, 354 Phil. 77, 84 (1998) further citing *Intestate Estate of the Late Vito Borromeo v. Fortunato Borromeo*, No. L-41171, 23 July 1987, 152 SCRA 171.

[19] *Ceniza-Layese v. Asis*, A.M. No. RTJ-07-2034, 15 October 2008, 569 SCRA 51, 54-55.

the process of administering justice can be infallible in his judgment.[20]

Moreover, we have explained that administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality.[21] In the instant case, complainants had in fact availed of the remedy of motion for reconsideration prior to their filing of the administrative complaint.

Acting Executive Judge Sagun, Jr., was correct when he ruled on the inhibition request in accordance with existing issuances of the Court and caused the re-raffling of the case to another RTC in the station for continuation of hearing.[22] Interestingly, we note that complainants did not take it against Judge Romero-Maglaya, the judge to whom the case was reassigned, when the latter affirmed the ruling of Judge Cabochan regarding the requirement to pay again the docket fees. Neither did they assail the judgment as being unjust or oppressive.

On the charge of undue delay in resolving the appeal, we adopt the findings of the OCA that Judge Cabochan is indeed guilty thereof.

We agree with respondent judge that the case could not have been considered submitted for decision on 29 July 2009 as claimed

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[20] *Crisologo v. Daray*, A.M. No. RTJ-07-2036, 20 August 2008, 562 SCRA 382, 389.

[21] *Rodriguez v. Gatdula*, A.M. No. MTJ-00-1252, 17 December 2002, 394 SCRA 105, 110.

[22] Section 8 (a), Chapter V, A.M. No. 03-8-02-SC, 15 February 2004:

(a) Where a judge in a multiple-branch court is disqualified or voluntarily inhibits himself/herself, the records shall be returned to the Executive Judge and the latter shall cause the inclusion of the said case in the next regular raffle for re-assignment. A newly-filed case shall be assigned by raffle to the disqualifiedor inhibiting judge to replace the case so removed from his/her court.

by complainants. Such assertions were belied by the fact that Konrad, through his counsel, even filed on 5 October 2009 a Brief for Plaintiff as Appellee to refute the allegations of co-defendants in their memorandum.

Be that as it may, whether the appeal was decided after ten months from the time it was submitted for decision, as insisted by the complainants, or slightly less than a month, as admitted by Judge Cabochan, the inescapable fact is that there was delay in deciding the appeal.

The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate.[23] The penalty to be imposed on the judge varies depending on the attending circumstances of the case. In deciding the penalty to be imposed, the Court takes into consideration, among others, the period of delay; the damage suffered by the parties as a result of the delay; the number of years the judge has been in the service; the health and age of the judge; and the caseload of the court presided over by the judge.

In the instant case, we find it reasonable to mitigate the penalty to be imposed on respondent judge taking into consideration that this is her first infraction in her more than 23 years in the service; her frail health; the caseload of her court; and her candid admission of her infraction. Thus, we admonish respondent judge to be more circumspect in the exercise of her judicial functions to ensure that cases in her court are decided within the period required by law.

WHEREFORE, the complaint of serious or grave misconduct, gross ignorance of the law and rendering an unjust judgment

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[23] *OCA v. Judge Marianito C. Santos*, A.M. No. MTJ-11-1787, 11 October 2012, 684 SCRA 1, 9; *Re:Cases Submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan,* A.M. No. RTJ-10-2226, 22 March 2010, 616 SCRA 280, 283; *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato,* A.M. No. 02-8-441-RTC, 3 March 2004, 424 SCRA 206, 211.

against Judge Evelyn Corpus-Cabochan, RTC, Branch 98, Quezon City is **DISMISSED** for lack of merit. For her delay in resolving Civil Case No. Q-09-64898, Judge Cabochan is **ADMONISHED** to be more circumspect in the exercise of her judicial functions. She is warned that a commission of the same or similar offense in the future shall merit a more severe sanction from the Court. Judge Cabochan is reminded to be mindful of the due dates of cases submitted for decision in her court to avoid delay in the dispensation of justice.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159371. July 29, 2013]

D.M. CONSUNJI CORPORATION, *petitioner, vs.* **ROGELIO P. BELLO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; THE EXTENSION OF THE EMPLOYMENT OF A PROJECT EMPLOYEE LONG AFTER THE SUPPOSED PROJECT HAS BEEN COMPLETED REMOVES THE EMPLOYEE FROM THE SCOPE OF A PROJECT EMPLOYEE AND MAKES HIM A REGULAR EMPLOYEE.— A project employee is, therefore, one who is hired for a specific project or undertaking, and the completion or termination of such project or undertaking has been determined at the time of engagement

of the employee. In the context of the law, Bello was a project employee of DMCI at the beginning of their employer-employee relationship. The project employment contract they then entered into clearly gave notice to him at the time of his engagement about his employment being for a specific project or phase of work. He was also thereby notified of the duration of the project, and the determinable completion date of the project. However, the history of Bello's appointment and employment showed that he performed his tasks as a mason in DMCI's various constructions projects. x x x. [W]e affirm the CA's conclusion that Bello acquired in time the status of a regular employee by virtue of his continuous work as a mason of DMCI. The work of a mason like him – a skilled workman working with stone or similar material – was really related to building or constructing, and was undoubtedly a function necessary and desirable to the business or trade of one engaged in the construction industry like DMCI. His being hired as a mason by DMCI in not one, but several of its projects revealed his necessity and desirability to its construction business. It is settled that the extension of the employment of a project employee long after the supposed project has been completed removes the employee from the scope of a project employee and makes him a regular employee. In this regard, the length of time of the employee's service, while not a controlling determinant of project employment, is a strong factor in determining whether he was hired for a specific undertaking or in fact tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. On the other hand, how DMCI chose to categorize the employment status of Bello was not decisive of his employment status. What were of consequence in that respect were his actual functions and the length of his stay with DMCI. Verily, the principal test for determining whether an employee is a project employee, as distinguished from a regular employee, is whether or not he is assigned to carry out a specific project or undertaking, the duration and scope of which are specified at the time he is engaged for the project.

2. ID.; ID.; ID.; THE SUCCESSIVE REENGAGEMENT OF THE EMPLOYEE IN ORDER TO PERFORM THE SAME KIND OF WORK FIRMLY MANIFESTED THE NECESSITY AND DESIRABILITY OF HIS WORK IN THE COMPANY'S

USUAL BUSINESS.— DMCI contends that Bello's services as a mason were deemed necessary and desirable in its usual business only for the period of time it had taken it to complete the project. The contention may be correct if each engagement of Bello as a mason over the span of eight years was to be treated separately. The contention cannot be upheld, however, simply because his *successive* re-engagement in order to perform the *same* kind of work as a mason firmly manifested the necessity and desirability of his work in DMCI's usual business of construction.

3. ID.; ID.; RESIGNATION; THE EMPLOYER WHO INTERPOSES THE DEFENSE OF VOLUNTARY RESIGNATION OF THE EMPLOYEE IN AN ILLEGAL DISMISSAL CASE MUST PROVE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT THE RESIGNATION WAS VOLUNTARY, AND THAT THE EMPLOYER CANNOT RELY ON THE WEAKNESS OF THE DEFENSE OF THE EMPLOYEE.— The CA's reliance on the conclusion and finding by ELA Panganiban-Ortiguerra was warranted. Her observation that the handwriting in the resignation letter was "undeniably different" from that of Bello could not be ignored or shunted aside simply because she had no expertise to make such a determination, as the NLRC tersely stated in its decision. To begin with, her supposed lack of expertise did not appear in the records, rendering the NLRC's statement speculative and whimsical. If we were now to outrightly discount her competence to make that observation, we would disturb the time-honored practice of according respect to the findings of the first-line trier of facts in order to prefer the speculative and whimsical statement of an appellate forum like the NLRC. Yet, even had the letter been actually signed by him, the voluntariness of the resignation could not be assumed from such fact alone. His claim that he had been led to believe that the letter would serve only as the means of extending his sick leave from work should have alerted DMCI to the task of proving the voluntariness of the resignation. It was obvious that, if his claim was true, then he did not fully comprehend the import of the letter, rendering the resignation farcical. The doubt would then be justifiably raised against the letter being at all intended to end his employment. Under the circumstances, DMCI became burdened with the obligation to prove the due

execution and genuineness of the document as a letter of resignation. We reiterate that it is axiomatic in labor law that the employer who interposes the defense of voluntary resignation of the employee in an illegal dismissal case must prove by clear, positive and convincing evidence that the resignation was voluntary; and that the employer cannot rely on the weakness of the defense of the employee. The requirement rests on the need to resolve any doubt in favor of the working man.

APPEARANCES OF COUNSEL

Bernas Pagaspas Balatbat for petitioner.

Estanislao L. Cesa, Jr. Marc Raymund S. Cesa & Maria Rosario S. Cesa for respondent.

D E C I S I O N

BERSAMIN, *J.*:

For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive and convincing. The employer cannot rely on the weakness of the employee's evidence.

The Case

We now review the decision promulgated on February 18, 2003,[1] whereby the Court of Appeals (CA) granted the petition for *certiorari* of respondent Rogelio P. Bello, reversed and set aside the resolutions dated January 3, 2002[2] and February 26, 2002[3] of the National Labor Relations Commission (NLRC), and reinstated the decision rendered on January 9, 2001 by the

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[1] *Rollo*, pp. 167-176; penned by Associate Justice Josefina Guevara-Salonga (retired), with the concurrence of Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[2] *Id.* at 134-139.

[3] *Id.* at 144-146.

Executive Labor Arbiter (ELA) declaring Bello to have been illegally dismissed and ordering petitioner D.M. Consunji Corporation (DMCI) to reinstate him, and to pay him full backwages reckoned from the time of his dismissal until his actual reinstatement. [4]

Antecedents

Bello brought a complaint for illegal dismissal and damages against DMCI and/or Rachel Consunji. In his position paper, he claimed that DMCI had employed him as a mason without any interruption from February 1, 1990 until October 10, 1997 at an hourly rate of ₱25.081; that he had been a very diligent and devoted worker and had served DMCI as best as he could and without any complaints; that he had never violated any company rules; that his job as a mason had been necessary and desirable in the usual business or trade of DMCI; that he had been diagnosed to be suffering from pulmonary tuberculosis, thereby necessitating his leave of absence; that upon his recovery, he had reported back to work, but DMCI had refused to accept him and had instead handed to him a termination paper; that he had been terminated due to "RSD" effective November 5, 1997; that he did not know the meaning of "RSD" as the cause of his termination; that the cause had not been explained to him; that he had not been given prior notice of his termination; that he had not been paid separation pay as mandated by law; that at that time of his dismissal, DMCI's projects had not yet been completed; and that even if he had been terminated due to an authorized cause, he should have been given at least one month pay or at least one-half month pay for every year of service he had rendered, whichever was higher.

In its position paper submitted on March 6, 2000,[5] DMCI contended that Bello had only been a project employee, as borne out by his contract of employment and appointment papers;

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[4] *Id.* at 81-89.

[5] *Id.* at 30-39.

that after his termination from employment, it had complied with the reportorial requirements of the Department of Labor and Employment (DOLE) pursuant to the mandates of Policy Instruction No. 20, as revised by Department Order No. 19, series of 1993; and that although his last project employment contract had been set to expire on October 7, 1997, he had tendered his voluntary resignation on October 4, 1997 for health reasons that had rendered him incapable of performing his job, per his resignation letter.

On January 9, 2001, ELA Isabel G. Panganiban-Ortiguerra rendered a decision,[6] disposing thusly:

> WHEREFORE, premises considered, judgment is hereby rendered declaring respondent company DM Consunji, Inc., guilty of illegal dismissal and it is hereby ordered to reinstate complainant to his former position without loss of seniority rights and to pay him full backwages reckoned from the time of his dismissal up to his actual reinstatement which as of this date is in the amount of ₱232,648,81.
>
> SO ORDERED.

DMCI appealed to the NLRC, citing the following grounds, namely:

> I. THE [LABOR] ARBITER *A QUO* GRAVELY ABUSED HER DISCRETION IN HOLDING THAT COMPLAINANT IS A REGULAR EMPLOYEE [NOT] EVEN AS THIS IS CONTRARY TO LAW, EVIDENCE AND JURISPRUDENCE.
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> II. THE [LABOR] ARBITER *A QUO* GRAVELY ABUSED HER DISCRETION IN DECLARING COMPLAINANT'S TERMINATION AS ILLEGAL EVEN AS HE HAD VOLUNTARILY RESIGNED FROM HIS LAST PROJECT EMPLOYMENT.[7]

On January 3, 2002, the NLRC issued its resolution setting aside the decision of ELA Panganiban-Ortiguerra, and dismissing Bello's claims,[8] *viz*:

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[6] *Supra* note 4.

[7] *Rollo*, p. 94.

[8] *Id.* at 134-139.

Addressing the first issue on appeal, a cursory reading of the records indeed show that contrary to the declaration of the Labor Arbiter that complainant's years of service was without any gaps and was continuous to warrant regularity of employment, the same was not so. In fine what was clearly illustrated by respondents in their appeal memorandum by way of matrix, there were considerable and substantial gaps between complainant's employment. In addition, it is of judicial notice that respondent company, being one of the biggest and well known construction company, as even admitted by the Executive Labor Arbiter, cater to so many clients/projects. So much that it is not improbable that complainant may be hired continuously one after the other in different projects considering that he is a mason whose functions are more than highly needed in construction. Even as it is, the matrix presented by respondents still showed considerable gaps. The fact that sometimes complainant's contract is extended beyond approximated date of finish contract, do not in anyway (sic) readily make his employment regular. For it is common among construction projects for a certain phase of work to be extended, depending on varied factors such as weather, availability of materials, whims and caprice of clients and many more. So much so, it was error on the part of the Executive Labor Arbiter to take this against respondents and pin it as another determining factor of regularity of employment. Neither can it be said that as mason complainant's function is necessary and desirable to respondents business hence, he is a regular employee. x x x we simply cannot close our eyes to the reality that complainant is a project employee and that the case she is citing does not fit herein as it is akin to a square peg being in a round hole. To top it all, records show that respondents have faithfully complied with the provision of Policy Instruction No. 20 on project employees.

Lastly, records do show that complainant executed a voluntary resignation. And while there may indeed be a slight difference in the signature and handwriting, this do not readily mean that complainant did not execute the same as was the inclination of the Executive Labor Arbiter. For one, she has no expertise to determine so. Secondly, and [as] was validly pointed out, complainant if indeed he was coerced, cheated or shortchanged, would ordinarily almost immediately seek redress. In the case at bar, he sat it out and waited two (2) years. Is this case, an afterthought? We believe so.

ACCORDINGLY, finding merit in respondent's appeal, the decision of the Executive Labor Arbiter is hereby SET ASIDE and this case DISMISSED for want of merits (*sic*).

SO ORDERED.

Bello moved for a reconsideration,[9] but the NLRC denied his motion on February 26, 2002. [10]

Ruling of the CA

Bello then assailed the dismissal of his complaint *via* petition for *certiorari*,[11] averring that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in upholding DMCI's appeal, in setting aside the decision of the ELA, and in dismissing his complaint and denying his motion for reconsideration.

On February 18, 2003, the CA promulgated its assailed decision,[12] finding Bello to have acquired the status of a regular employee although he had started as a project employee of DMCI by his having been employed as a mason who had performed tasks that had been usually necessary and desirable in the business or trade of DMCI continuously from February 1, 1990 to October 5, 1997; that his repeated re-hiring and the continuing need for his services over a long span of time had undeniably made him a regular employee; that DMCI's compliance with the reportorial requirements under Policy Instruction No. 20 (by which the project employer was required to make a report to the Department of Labor and Employment of every termination of its projects) could not preclude the acquisition of tenurial security by the employee; that the cause of his dismissal after he had acquired the status of a regular employee – the completion of the phase of work – could not be considered as a valid cause under Article 282 of the *Labor Code*; and that his supposedly voluntary

[9] *Id.* at 140-143.

[10] *Id.* at 144-146.

[11] *Id.* at 147-163.

[12] *Supra* note 1.

resignation could not be accorded faith after the ELA had concluded that the handwriting in the supposed resignation letter was "undeniably different from that of complainant," a fact "not rebutted by herein respondents."

DMCI sought the reconsideration of the decision, but the CA denied its motion on July 24, 2003.[13]

Issues

Hence, DMCI appeals, presenting the following issues for our consideration and resolution, to wit:

I. WHETHER OR NOT PRIVATE RESPONDENT WAS A REGULAR EMPLOYEE; AND

II. WHETHER OR NOT PRIVATE RESPONDENT WAS DISMISSED OR VOLUNTARILY RESIGNED.

Ruling of the Court

The petition for review lacks merit.

The provision that governs the first issue is Article 280 of the *Labor Code*, which is quoted hereunder as to its relevant part, *viz*:

> Article 280. *Regular and Casual Employment* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary and desirable to the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. (Emphasis supplied)
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> x x x x x x x x x

[13] *Id.* at 178.

A project employee is, therefore, one who is hired for a specific project or undertaking, and the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.[14] In the context of the law, Bello was a project employee of DMCI at the beginning of their employer-employee relationship. The project employment contract they then entered into clearly gave notice to him at the time of his engagement about his employment being for a specific project or phase of work. He was also thereby notified of the duration of the project, and the determinable completion date of the project.

However, the history of Bello's appointment and employment showed that he performed his tasks as a mason in DMCI's various constructions projects, as the following tabulation indicates, to wit:[15]

Project	Duration of Employment	Actual Termination	Cause	Annexes
SM Megamall	2-01-90 to 05-01-90	10-28-91	CPW	1 & 1-A
JMT	10-28-91 to 01-28-91	05-29-92	CPW	2 & 2-A
Renaissance	05-29-92 to 08-29-92	09-10-92	CPW	3 & 3-A
Bayview	09-11-92 to 12-11-92	06-15-93	CPW	4 &4-A
Golden Bay I	06-17-93 to 09-17-93	04-18-94	CPW	5 & 5-A
Golden Bay II	04-18-94 to 07-18-94	09-06-94	CPW	6& 6-A
ADC	09-07-94 to 10-07-94	02-09-96	CPW	7 & 7-A
ADC	02-10-96 to 03-10-96	10-01-96	CPW	8 & 8-A
ICEC	09-07-97 to 10-07-97	10-07-97	CPW	9 & 9-A

[14] *Philippine National Construction Corporation v. NLRC*, G.R. No. 85323, June 20, 1989, 174 SCRA 191, 193; *Uy v. National Labor Relations Commission*, G.R. No. 117983, September 6, 1996, 261 SCRA 505, 513.

[15] *Rollo*, p. 85.

Based on the foregoing, we affirm the CA's conclusion that Bello acquired in time the status of a regular employee by virtue of his continuous work as a mason of DMCI. The work of a mason like him – a skilled workman working with stone or similar material[16] – was really related to building or constructing, and was undoubtedly a function necessary and desirable to the business or trade of one engaged in the construction industry like DMCI. His being hired as a mason by DMCI in not one, but several of its projects revealed his necessity and desirability to its construction business.

It is settled that the extension of the employment of a project employee long after the supposed project has been completed removes the employee from the scope of a project employee and makes him a regular employee.[17] In this regard, the length of time of the employee's service, while not a controlling determinant of project employment, is a strong factor in determining whether he was hired for a specific undertaking or in fact tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer.[18] On the other hand, how DMCI chose to categorize the employment status of Bello was not decisive of his employment status. What were of consequence in that respect were his actual functions and the length of his stay with DMCI. Verily, the principal test for determining whether an employee is a project employee, as distinguished from a regular employee, is whether or not he is assigned to carry out a specific project or undertaking, the duration and scope of which are specified at the time he is engaged for the project.[19]

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[16] *Webster's Third New International Dictionary*. 1993.

[17] *Tomas Lao Construction v. National Labor Relations Commission*, G.R. No. 116781, September 5, 1997, 278 SCRA 716, 726, citing *Phesco, Inc. v. National Labor Relations Commission*, G.R. Nos. 104444-49, December 27, 1994, 239 SCRA 446; *Capitol Industrial Construction Groups v. NLRC*, G.R. No. 105359, April 22, 1993, 221 SCRA 469.

[18] *Id.* at 726-727.

[19] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, August 2, 1994, 234 SCRA 678, 685.

Still, DMCI contends that Bello's services as a mason were deemed necessary and desirable in its usual business only for the period of time it had taken it to complete the project.

The contention may be correct if each engagement of Bello as a mason over the span of eight years was to be treated separately. The contention cannot be upheld, however, simply because his *successive* re-engagement in order to perform the *same* kind of work as a mason firmly manifested the necessity and desirability of his work in DMCI's usual business of construction.[20]

Lastly, DMCI claims that Bello voluntarily resigned from work. It presented his supposed handwritten resignation letter to support the claim. However, Bello denied having resigned, explaining that he had signed the letter because DMCI had made him believe that the letter was for the purpose of extending his sick leave.

In resolving the matter against DMCI, the CA relied on the conclusion by ELA Panganiban-Ortiguerra that she could not give credence to the voluntary resignation for health reasons in the face of Bello's declaration that he had been led to sign the letter to obtain the extension of his leave of absence due to illness, and on her observation that "the handwriting in the supposed resignation letter is undeniably different from that of complainant," something that she said DMCI had not rebutted.[21]

The CA's reliance on the conclusion and finding by ELA Panganiban-Ortiguerra was warranted. Her observation that the handwriting in the resignation letter was "undeniably different" from that of Bello could not be ignored or shunted aside simply because she had no expertise to make such a determination, as the NLRC tersely stated in its decision. To begin with, her supposed lack of expertise did not appear in the records, rendering the NLRC's statement speculative and whimsical. If we were

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[20] *Samson v. National Labor Relations Commission*, G.R. No. 113166, February 1, 1996, 253 SCRA 112, 123.

[21] *Supra* note 1.

now to outrightly discount her competence to make that observation, we would disturb the time-honored practice of according respect to the findings of the first-line trier of facts in order to prefer the speculative and whimsical statement of an appellate forum like the NLRC. Yet, even had the letter been actually signed by him, the voluntariness of the resignation could not be assumed from such fact alone. His claim that he had been led to believe that the letter would serve only as the means of extending his sick leave from work should have alerted DMCI to the task of proving the voluntariness of the resignation. It was obvious that, if his claim was true, then he did not fully comprehend the import of the letter, rendering the resignation farcical. The doubt would then be justifiably raised against the letter being at all intended to end his employment. Under the circumstances, DMCI became burdened with the obligation to prove the due execution and genuineness of the document as a letter of resignation.[22]

We reiterate that it is axiomatic in labor law that the employer who interposes the defense of voluntary resignation of the employee in an illegal dismissal case must prove by clear, positive and convincing evidence that the resignation was voluntary; and that the employer cannot rely on the weakness of the defense of the employee.[23] The requirement rests on the need to resolve any doubt in favor of the working man.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 18, 2003; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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

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[22] *Id.*

[23] *Vicente v. Court of Appeals,* G.R. No. 175988, August 24, 2007, 531 SCRA 240, 250; *Mobile Protective & Detective Agency v. Ompad,* G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323.

SECOND DIVISION

[G.R. No. 165386. July 29, 2013]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES SALVADOR and NENITA CRUZ, SPOUSES EDMUNDO and MERLA BARZAGA, SPOUSES CRISANTO and JULIETA DELA CRUZ, SPOUSES LORENZO and ROSALINA PALAGANAS, SPOUSES RICARDO and LOLITA SAGUID, SPOUSES CARMELITA and RESTITUTO ALCID, HIPOLITA NASALGA, CRISELDA and REDENTOR REYES, ILUMINADA ALIPIO, REYNALDO ALIPIO, CORAZON PELAYO, SPOUSES ROLANDO and FELICIDAD BAONGUIS, SPOUSES JOSELITO and CAROLINE MENDOZA, SPOUSES ERLINDA and CELSO DE GUZMAN, SPOUSES MIGUEL and VIRGINIA CASAS, SPOUSES ERLINDA and CELSO DICCION, MA. RENITA MARIANO, VICTORIA ESPIRITU, SPOUSES VICTOR and ROSARION SOTELO, RENATO GUIEB, DANIEL STA. MARIA, SPOUSES MELANIO and SOTERIA TORRES, SPOUSES CIRIACO and PERLITA BENDIJO, SPOUSES LILIA and DOMINGO TORRES, PACITA TORRES and GREGORIA CASTILLO, SPOUSES HILARIO and AMANDA DONIZA, SPOUSES JEREMIAS and ISABEL GARCIA, SPOUSES EDUARDO and MA. MARIN CALDERON, SPOUSES ERNESTO and PELAGIA LUCAS, CORAZON ACOSTA, TERESITA LACSON and JULIANA DE GUZMAN, PERLA REYES, SPOUSES ESMELITON and REMEDIOS ESPIRITU, SPOUSES ROGELIO and AURORA ABALON, DITAS GARCIA, TERESITA CAPATI, SPOUSES EFREN and MERCEDES MARTIN, SPOUSES HIPOLITO and ANTONIA STA. MARIA, DIONISIO and ATANACIA DOMONDON, JAOQUIN and MA. THERESA DELA ROSA, SPOUSES ROMULO and NORMA DUCUSIN, GENOVEVA CRUZ and A.**

BAUTISTA, PURITA SUNICO, SPOUSES MINERVA and ROQUE NUALLA, and SPOUSES GABINO, JR. and CRISPINA ALIPIO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; QUALIFICATIONS OF COMMISSIONERS; THE COMMISSIONERS TO BE APPOINTED TO ASCERTAIN THE JUST COMPENSATION FOR THE PROPERTY SOUGHT TO BE TAKEN SHOULD NOT BE MORE THAN THREE AND THAT THEY SHOULD BE COMPETENT AND DISINTERESTED PARTIES; APPOINTMENT OF THE BULACAN PROVINCIAL APPRAISAL COMMITTEE (PAC) COMPOSED OF THE PROVINCIAL ASSESSOR, THE PROVINCIAL ENGINEER AND THE PROVINCIAL TREASURER, AS COMMISSIONERS, SUBSTANTIALLY COMPLIES WITH THE RULE.— The settled rule in expropriation proceedings is that the determination of just compensation is a judicial function. To assist the courts in this task, Section 5, Rule 67 of the Rules of Court requires the appointment of "not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." Although the appointment of commissioners is mandatory, the Rules do not impose any qualifications or restrictions on the appointment, other than that the commissioners should not number more than three and that they should be competent and disinterested parties. In this case, the Court finds that the appointment of the PAC as commissioners substantially complies with Section 5, Rule 67 of the Rules of Court. It is immaterial that the RTC appointed a *committee* instead of three *persons* to act as commissioners, since the PAC is composed of *three members* – the Provincial Assessor, the Provincial Engineer, and the Provincial Treasurer. Considering their positions, we find each member of the PAC competent to perform the duty required of them, *i.e.*, to appraise the valuation of the affected lots. As correctly found by the CA, they "are government officials entrusted with the updating and time-to-time determination

of currently assessed, as well as, market value of properties within their jurisdiction[.]" The mere fact that they are government officials does not disqualify them as disinterested persons, as the provincial government has no significant interest in the case. Instead, what we find material is that the PAC was tasked to perform precisely the same duty that the commissioners, under Section 5, Rule 67 of the Rules of Court, are required to discharge. The RTC order dated September 17, 1997 directed the PAC "to review and submit an updated appraisal report on the property to be acquired by the plaintiff NAPOCOR from the defendants to judicially guide the [c]ourt in fixing the amount to be paid [by] the plaintiff to the defendants." The appointment of the PAC served the same function as an appointment of three persons as commissioners under the Rules.

2. ID.; ID.; ID.; ID.; ID.; OBJECTIONS TO THE APPOINTMENT OF ANY OF THE COMMISSIONERS MUST BE FILED EARLY AND NOT BELATEDLY BE RAISED ON APPEAL, OTHERWISE, THE PARTY IS DEEMED TO HAVE WAIVED ITS OBJECTIONS AGAINST ANY SUPPOSED IRREGULARITY IN THE APPOINTMENT THEREOF.— If Napocor found the appointment of the PAC to be objectionable, it should have filed its objections early on and not belatedly raise them in its appeal with the CA. The second paragraph of Section 5, Rule 67 states that – Copies of the order [of appointment] shall be served on the parties**. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service**, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections. We find nothing in the records indicating that Napocor seasonably objected to the appointment of the PAC or to any aspect in the order of appointment (*e.g.*, the supposed failure of the order to state the time and place of the first session of the hearing, and the time which the commissioners' report shall be submitted). Instead, Napocor belatedly raised its objections only in its appeal with the CA. For its failure to comply with the Rules, we consider Napocor to have waived its objections against any supposed irregularity in the appointment of the PAC.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE PAC MEMBERS, UPON THEIR APPOINTMENT AND OATH AS COMMISSIONERS, ARE CONSIDERED OFFICERS OF THE COURT AND THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS CAN BE EXTENDED TO THEM.— Neither do we find significant Napocor's claim that it was denied due process in the determination of the amount of just compensation. As against Napocor's bare allegation that it was not notified of the PAC's hearing, the obtaining circumstances, x x x lead us to believe otherwise. The PAC members, upon their appointment and oath, are considered officers of the court, and we can extend to them the presumption of regularity in the performance of their official functions. It is hard to believe that Napocor was completely left in the dark in the proceedings conducted by the PAC to determine just compensation, considering its interest in the case.

4. ID.; ID.; ID.; ID.; ID.; ANY OBJECTIONS ON THE AMOUNT OF JUST COMPENSATION FIXED IN THE COMMISSIONERS' REPORT MUST BE FILED WITHIN TEN (10) DAYS FROM THE RECEIPT OF THE NOTICE OF THE REPORT.— [W]e find untenable Napocor's claim that the amount of just compensation was without factual and legal basis. That the properties were valued at ₱427.76 per square meter in August 1996, then at ₱2,200.00 in October 1997 does not necessarily indicate that the assessment by the PAC was manipulated. Napocor itself acknowledge an increase in the value of the properties when it modified its offered settlement from ₱427.76 to ₱1,900.00. Also, the LBP Appraisal Report, which Napocor itself commissioned, has pegged the fair market value of the properties at ₱2,200.00 per square meter. The report considered important improvements in the vicinity, among them, the construction of a school, a church and several public buildings. If Napocor had any objections on the amount of just compensation fixed in the commissioners' report, its remedy was to file its objections within ten (10) days from receipt of the notice of the report. Section 7, Rule 67 of the Rules of Court states: Section 7. *Report by commissioners and judgment thereupon*. – x x x Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners

were notified of their appointment, which time may be extended in the discretion of the court. **Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire**. However, as with the objections to the appointment of the PAC, Napocor failed to make a timely objection to the report of the commissioners and raised them only before the CA.

5. REMEDIAL LAW; APPEALS; THE AUTHORITY OF THE COURT OF APPEALS TO RESOLVE THE APPEAL CAN NO LONGER BE ASSAILED BY THE PETITIONER AFTER IT CONSISTENTLY FAILED TO FURNISH THE SAID COURT OF A COPY OF THE COMPROMISE AGREEMENT DESPITE THE NUMEROUS EXTENSIONS IT REQUESTED.— It appears to us that Napocor has demonstrated a pattern of procrastination in this case. We note that not only did it belatedly file its objections to the appointment of the PAC and to the commissioners' report; it also failed to submit copies of the compromise agreement with the CA despite the numerous extensions it requested. As early as August 2001, during the pendency of its appeal with the CA, Napocor already manifested that it had entered into a compromise agreement with the respondents and would be filing a copy thereof with the CA. The CA initially gave Napocor 60 days to submit a copy of the agreement, but Napocor requested for (and was granted) an extension of 30 days. Days before the extension expired, Napocor requested for another 30-day extension. Napocor would repeat these requests for extension whenever the deadline loomed, without it filing a copy of the agreement. All in all, Napocor requested for an extension of 180 days. The long delay compelled the CA to finally resolve the appeal on the basis of the available records, notwithstanding Napocor's manifestation of a compromise agreement. Significantly, the execution of the compromise agreement, by itself, did not enjoin the CA from resolving the appeal. By its terms and as found out by the CA, the compromise agreement required the approval of the CA for it to take effect. Thus, Napocor can no longer assail the CA's authority to resolve the appeal after it consistently failed to furnish the CA a copy of the agreement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Reynaldo B. Hernandez for Sps. Cruz, *et al.*
Principe Villano Clemente & Associates Law Firm for Felicidad C. Baonguis, *et al.*
Bienvenido N. Quiñones for Sps. Doniza.
Samonte Felicen Tria Samonte Law Offices for Victoria Espiritu.
Marc Terry C. Perez for Sps. Chua.

D E C I S I O N

BRION, *J.*:

For the Court's resolution is the petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court by the National Power Corporation (*Napocor*). Napocor seeks to annul and set aside the decision[2] dated February 10, 2004 and the resolution[3] dated September 13, 2004 of the Court of Appeals (*CA*) in CA-G.R. CV No. 62911, which affirmed with modification the order dated March 31, 1998 of the Regional Trial Court (*RTC*) of Malolos, Bulacan, Branch 15, in Civil Case No. 111-M-97.

THE FACTS

Civil Case No. 111-M-97 was an expropriation proceeding commenced by Napocor against respondents Spouses Salvador and Nenita Cruz, Spouses Edmundo and Merla Barzaga, Spouses Crisanto and Julieta dela Cruz, Spouses Lorenzo and Rosalina Palaganas, Spouses Ricardo and Lolita Saguid, Spouses Carmelita and Restituto Alcid, Hipolita Nasalga, Criselda and Redentor

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[1] *Rollo*, pp. 7-34.

[2] Penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justices Mariano C. del Castillo (now a Member of this Court) and Rosalinda Asuncion-Vicente; *id.* at 38-46.

[3] *Id.* at 47-50.

Reyes, Iluminada Alipio, Reynaldo Alipio, Corazon Pelayo, Spouses Rolando and Felicidad Boanguis, Spouses Joselito and Caroline Mendoza, Spouses Erlinda and Celso de Guzman, Spouses Miguel and Virginia Casas, Spouses Erlinda and Celso Diccion, Ma. Renita Mariano, Victoria Espiritu, Spouses Victor and Rosarion Sotelo, Renato Guieb, Daniel Sta. Maria, Spouses Melanio and Soteria Torres, Spouses Ciriaco and Perlita Bendijo, Spouses Lilia and Domingo Torres, Pacita Torres and Gregoria Castillo, Spouses Hilario and Amanda Doniza, Spouses Jeremias and Isabel Garcia, Spouses Eduardo and Ma. Marin Calderon, Spouses Ernesto and Pelagia Lucas, Corazon Acosta, Teresita Lacson and Juliana de Guzman, Perla Reyes, Spouses Esmeliton and Remedios Espiritu, Spouses Rogelio and Aurora Abalon, Ditas Garcia, Teresita Capati, Spouses Efren and Mercedes Martin, Spouses Hipolito and Antonia Sta. Maria, Dionisio and Atanacia Domondon, Jaoquin and Ma. Theresa dela Rosa, Spouses Romulo and Norma Ducusin, Genoveva Cruz and A. Bautista, Purita Sunico, Spouses Minerva and Roque Nualla, and Spouses Gabino, Jr. and Crispina Alipio, who are the owners of individual lots located in Del Monte Park Subdivision, Dulong Bayan, San Jose Del Monte, Bulacan. The complaint, filed on February 17, 1997, primarily sought the **determination of just compensation** due the respondents after the negotiations for the purchase of the lots failed.

In its **order dated September 17, 1997**, the RTC directed the Bulacan Provincial Appraisal Committee (*PAC*) "to review and submit an updated appraisal report on the properties to be acquired by [Napocor] in order 'to judicially guide the Court in fixing the amount to be paid by the plaintiff to the defendants.'"[4] In the meantime, the RTC allowed Napocor to take possession of the lots, after Napocor deposited an amount equivalent to their assessed value pursuant to Section 2, Rule 67 of the Rules of Court.[5]

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[4] *Id.* at 39.

[5] Section 2. *Entry of plaintiff upon depositing value with authorized government depositary*. — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the

On October 22, 1997, the PAC submitted its report[6] to the RTC which pegged the just compensation at ₱2,200.00 per square meter. After considering the PAC's report, the RTC issued an **order dated March 31, 1998** fixing the just compensation at ₱3,000.00 per square meter. Although the RTC found the PAC's recommended amount of ₱2,200.00 reasonable, it noted that an additional amount of ₱800.00 was necessary in view of the then prevailing economic crises and the devaluation of the peso.

Napocor appealed the RTC's March 31, 1998 order with the CA. It assailed the appointment of the PAC, claiming that its appointment was contrary to Rule 67 of the Rules of Court. It also alleged that the determination of the amount of just compensation was without basis.

THE CA RULING

The CA affirmed the RTC's March 31, 1998 order, subject to a modification. It upheld the appointment of the PAC and the recommendation to set the just compensation at ₱2,200.00 per square meter, but removed the additional ₱800.00 that the RTC imposed. The CA instead imposed legal interest at 12% per annum on the amount of just compensation, to compensate for the constant fluctuation and inflation of the value of the currency.

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right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

[6] Embodied in PAC Resolution No. 97-016.

Its motion for reconsideration of the CA decision having been denied,[7] Napocor elevates the case to us through the present petition.

THE PARTIES' ARGUMENTS

Napocor asserts that the appointment of the PAC as commissioners was contrary to Rule 67 of the Rules of Court, specifically, Section 5 thereof which states:

> Section 5. *Ascertainment of compensation*. – Upon the rendition of the order of expropriation, the court shall **appoint not more than three (3) competent and disinterested persons as commissioners** to ascertain and report to the court the just compensation for the property sought to be taken. **The order of appointment shall designate the time and place of the first session of the hearing** to be held by the commissioners and specify **the time within which their report shall be submitted to the court**.
>
> Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections. [italics supplied; emphases ours]

It contends that Rule 67 requires the trial court to appoint three ***persons***, and not a committee like the PAC. The members of the PAC also did not subscribe to an oath which is required under Section 6, Rule 67 of the Rules of Court.[8]

Napocor also points out that the RTC's March 31, 1998 order did not specify the time and place for the first hearing of the commissioners and the time the commissioners' report should be submitted. No notice of hearing on the commissioners' report was, in fact, given to Napocor, depriving it of its right to present evidence to controvert the findings of the PAC.

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[7] CA Resolution, *supra* note 3.

[8] Section 6. *Proceedings by commissioners*.—Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which

Napocor further alleges that the CA erred in disregarding the compromise agreement it entered into with the respondents. The agreement was executed during the pendency of the appeal with the CA and fixed the amount of just compensation at ₱1,900.00 per square meter. As the agreement was validly entered into by the parties, Napocor claims it is binding on the parties and could not be disregarded by the CA.

The respondents, on the other hand, assert that Napocor's allegations are unmeritorious. They claim that the appointment of the PAC constituted substantial compliance with Section 5, Rule 67 of the Rules of Court, since the PAC was composed of three members (the provincial assessor, the provincial engineer, and the provincial treasurer) who are government officials without interest in the outcome of the litigation, and who are competent to evaluate and assess valuation of the properties. They have been specifically tasked "to guide the Court in fixing the amount to be paid by the plaintiff to the defendants,"[9] which is the same task required of the commissioners by Rule 67 of the Rules of Court.

They further claim that it was Napocor's inaction itself that denied it the opportunity to present evidence due to its own failure to question the appointment of the commissioners and the commissioners' report within the period provided under the

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oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties, to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. [italics supplied]

[9] *Rollo*, p. 60, referring to the RTC Order of September 17, 1997.

Rules. Likewise, it was Napocor which should be faulted for the CA's refusal to take cognizance of the compromise agreement. Although Napocor manifested that an agreement was entered into by the parties, it consistently failed to submit a copy to the CA for the latter's approval. For over a year, the CA granted Napocor's numerous motions for extension to submit a copy, but Napocor failed to comply. Consequently, the CA should not be faulted for refusing to consider and approve the agreement. At any rate, the respondents claim that the agreement does not bind them, as they were made to sign it without the benefit of counsel during the pendency of the case.

Finally, the respondents allege that the amount of ₱2,200.00 as just compensation is fully supported not only by the findings in the report, but also by the Appraisal Report, which Napocor obtained from the Land Bank of the Philippines (*LBP*). The LBP Appraisal Report fixed the market value of the expropriated properties at ₱2,200.00.[10]

Incidental Matters

The majority of the respondents who filed the Comment dated February 16, 2005 are represented by Atty. Reynaldo B. Hernandez.[11] During the pendency of the case, Atty. Hernandez submitted before the Court an *Omnibus Motion*[12] (1) seeking clarification on the participation of one Atty. Pedro S. Principe of *Principe, Villano, Villacorta, Clemente and Associates* in the present proceeding, and (2) praying for an order from the Court enjoining the RTC from hearing and resolving Atty. Principe's *Motion to Enter Attorney's Charging Lien into*

[10] Supplemental Comment; *id.* at 83-85.

[11] The other respondents are represented accordingly: respondent Victoria Espiritu is represented by Atty. Jose J. Estrella, with the law firm Samonte Felicen Tria Samonte as collaborating counsel; respondent spouses Hilario and Amanda Doniza are represented by Atty. Bienvenido N. Quiñones; respondent spouses Edmundo and Merla Barzaga are represented by Atty. Benjamin Mendoza; and respondent spouses Celso and Erlinda Diccion are represented by former Judge Erlinda Diccion.

[12] *Rollo*, pp. 106-109.

the Records of This Case Even Before Final Judgment is Rendered.

According to Atty. Hernandez, Atty. Principe claims to be the counsel of the same respondents that he (Atty. Hernandez) is representing. However, the respondents themselves have repudiated Atty. Principe's claim. Atty. Hernandez also states that, as borne by the records, the RTC has already denied Atty. Principe's appearance and motion to intervene in the expropriation proceedings. Atty. Principe wanted to intervene, supposedly to protect his 40% share in the expropriated properties, which he (Atty. Principe) claimed constituted part of his legal fees.

In response to Atty. Hernandez's allegations, Atty. Principe denies that he is a "nuisance interloper." Atty. Principe claims that he is the counsel for SANDAMA,[13] an organization formed by owners of the affected expropriated properties, of which the respondents are members. It was SANDAMA, through its President, Danilo Elfa, which engaged his and his firm's legal services; to date, his authority has not been withdrawn or revoked. Hence, Atty. Principe should be recognized as the counsel of record for the respondents. As counsel for the respondents, Atty. Principe claims that there is nothing improper with his motion to enter into the records his charging lien, adding that the lien will not anyway be enforced until final judgment in this case.

Also, during the pendency of this case, Napocor filed a *Motion to Approve Attached Compromise Agreement*,[14] which it entered into with respondent Ditas C. Garcia on July 3, 2006. In light of the compromise agreement, the Court issued a Resolution[15] dated March 28, 2011 and considered the case closed and terminated insofar as respondent Ditas was concerned.

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[13] *Samahan ng mga Dadaanan at Maapektuhan ng National Power Corporation*, see *Malonso v. Principe*, Adm. Case No. 6289, December 16, 2004, 447 SCRA 1, 7.

[14] Dated February 25, 2011; *rollo*, pp. 447-449.

[15] *Id.* at 470-471.

THE COURT'S RULING

The Court **denies** the petition.

The appointment of the PAC as commissioners

The settled rule in expropriation proceedings is that the determination of just compensation is a judicial function.[16] To assist the courts in this task, Section 5, Rule 67 of the Rules of Court requires the appointment of "not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." Although the appointment of commissioners is mandatory, the Rules do not impose any qualifications or restrictions on the appointment, other than that the commissioners should not number more than three and that they should be competent and disinterested parties.

In this case, the Court finds that the appointment of the PAC as commissioners substantially complies with Section 5, Rule 67 of the Rules of Court. It is immaterial that the RTC appointed a *committee* instead of three *persons* to act as commissioners, since the PAC is composed of *three members* – the Provincial Assessor, the Provincial Engineer, and the Provincial Treasurer. Considering their positions, we find each member of the PAC competent to perform the duty required of them, *i.e.*, to appraise the valuation of the affected lots. As correctly found by the CA, they "are government officials entrusted with the updating and time-to-time determination of currently assessed, as well as, market value of properties within their jurisdiction[.]"[17] The mere fact that they are government officials does not disqualify them as disinterested persons, as the provincial government has no significant interest in the case.

Instead, what we find material is that the PAC was tasked to perform precisely the same duty that the commissioners, under

[16] *Export Processing Zone Authority v. Judge Dulay*, 233 Phil. 313, 326 (1987).

[17] *Rollo*, p. 45.

Section 5, Rule 67 of the Rules of Court, are required to discharge. The RTC order dated September 17, 1997 directed the PAC "to review and submit an updated appraisal report on the property to be acquired by the plaintiff NAPOCOR from the defendants to judicially guide the [c]ourt in fixing the amount to be paid [by] the plaintiff to the defendants."[18] The appointment of the PAC served the same function as an appointment of three persons as commissioners under the Rules.

If Napocor found the appointment of the PAC to be objectionable, it should have filed its objections early on and not belatedly raise them in its appeal with the CA. The second paragraph of Section 5, Rule 67 states that –

> Copies of the order [of appointment] shall be served on the parties**. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service**, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections. [emphasis ours]

We find nothing in the records indicating that Napocor seasonably objected to the appointment of the PAC or to any aspect in the order of appointment (*e.g.*, the supposed failure of the order to state the time and place of the first session of the hearing, and the time which the commissioners' report shall be submitted). Instead, Napocor belatedly raised its objections only in its appeal with the CA. For its failure to comply with the Rules, we consider Napocor to have waived its objections against any supposed irregularity in the appointment of the PAC.

The determination of just compensation

Neither do we find significant Napocor's claim that it was denied due process in the determination of the amount of just compensation. As against Napocor's bare allegation that it was not notified of the PAC's hearing, the obtaining circumstances, set out below, lead us to believe otherwise.

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[18] *Id.* at 44.

The PAC members, upon their appointment and oath, are considered officers of the court, and we can extend to them the presumption of regularity in the performance of their official functions.[19] It is hard to believe that Napocor was completely left in the dark in the proceedings conducted by the PAC to determine just compensation, considering its interest in the case.

Likewise, we find untenable Napocor's claim that the amount of just compensation was without factual and legal basis. That the properties were valued at ₱427.76 per square meter in August 1996, then at ₱2,200.00 in October 1997 does not necessarily indicate that the assessment by the PAC was manipulated. Napocor itself acknowledge an increase in the value of the properties when it modified its offered settlement from ₱427.76 to ₱1,900.00. Also, the LBP Appraisal Report, which Napocor itself commissioned, has pegged the fair market value of the properties at ₱2,200.00 per square meter. The report considered important improvements in the vicinity, among them, the construction of a school, a church and several public buildings.

If Napocor had any objections on the amount of just compensation fixed in the commissioners' report, its remedy was to file its objections within ten (10) days from receipt of the notice of the report. Section 7, Rule 67 of the Rules of Court states:

> Section 7. *Report by commissioners and judgment thereupon.* – x x x Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. **Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire**. [italics supplied; emphasis ours]

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[19] In *Kriedt v. E. C. McCullough & Co.*, 37 Phil. 474, 482 (1918), the Court ruled that "[w]hen a referee [commissioner] is appointed he becomes for the time being an accredited agent and an officer of the court[.]"

However, as with the objections to the appointment of the PAC, Napocor failed to make a timely objection to the report of the commissioners and raised them only before the CA.

The compromise agreement

It appears to us that Napocor has demonstrated a pattern of procrastination in this case. We note that not only did it belatedly file its objections to the appointment of the PAC and to the commissioners' report; it also failed to submit copies of the compromise agreement with the CA despite the numerous extensions it requested.

As early as August 2001, during the pendency of its appeal with the CA, Napocor already manifested that it had entered into a compromise agreement with the respondents and would be filing a copy thereof with the CA.

The CA initially gave Napocor 60 days to submit a copy of the agreement, but Napocor requested for (and was granted) an extension of 30 days. Days before the extension expired, Napocor requested for another 30-day extension. Napocor would repeat these requests for extension whenever the deadline loomed, without it filing a copy of the agreement. All in all, Napocor requested for an extension of 180 days. The long delay compelled the CA to finally resolve the appeal on the basis of the available records, notwithstanding Napocor's manifestation of a compromise agreement.

Significantly, the execution of the compromise agreement, by itself, did not enjoin the CA from resolving the appeal. By its terms and as found out by the CA, the compromise agreement required the approval of the CA for it to take effect. Thus, Napocor can no longer assail the CA's authority to resolve the appeal after it consistently failed to furnish the CA a copy of the agreement.

The representation of Atty. Principe

We take note of the respondents' misgivings on the claims of Atty. Principe. However, we point out that the Court has

resolved the issue of Atty. Principe's interest in the expropriation proceedings in *Malonso v. Principe*.[20] Julian Malonso is the owner of one of the expropriated properties and a member of SANDAMA.[21] He assailed the authority of Atty. Principe to represent him in the same expropriation proceedings that is the subject of the present case and the latter's claim of 40% of the amount to be paid by Napocor. On the basis of these contentions, he sought Atty. Principe's disbarment.

Ruling in favor of Atty. Principe, we found reasonable grounds supporting his claim that he possessed authority to represent SANDAMA and its members in the expropriation proceedings[22]

[20] A.C. No. 6289, December 16, 2004, 447 SCRA 1.

[21] Malonso, however, is not a respondent in the present case.

[22] The pertinent portion of our ruling in *Malonso* states:

A review of the records reveals that respondent had grounds to believe that he can intervene and claim from the individual landowners. For one, the incorporation of the landowners into SANDAMA was made and initiated by respondent's firm so as to make negotiations with NAPOCOR easier and more organized. SANDAMA was a non-stock, non-profit corporation aimed towards the promotion of the landowners' common interest. It presented a unified front which was far easier to manage and represent than the individual owners. In effect, respondent still dealt with the members, albeit in a collective manner.

Second, respondent relied on the representation of Danilo Elfa, former SANDAMA president and attorney-in-fact of the members, with whom he entered into a contract for legal services. Respondent could not have doubted the authority of Elfa to contract his firm's services. After all, Elfa was armed with a Board Resolution from SANDAMA, and more importantly, individual grants of authority from the SANDAMA members, including Malonso.

Third, the contract for legal services clearly indicated a contingent fee of forty percent (40%) of the selling price of the lands to be expropriated, the same amount which was reflected in the deed of assignment made by the individual members of SANDAMA. Respondent could have easily and naturally assumed that the same figure assigned to SANDAMA was the same amount earmarked for its legal services as indicated in their service contract. Being a non-stock, non-profit corporation, where else would SANDAMA get the funds to pay for the legal fees due to respondent and his firm but from the contribution of its members.

Lastly, respondent's legal services were disengaged by SANDAMA's new President Yolanda Bautista around the same time when the SANDAMA

and could not validly be accused of misrepresentation. Since Atty. Principe and his law firm have already rendered legal and even extra-legal services for SANDAMA, they rightfully moved to recover the attorney's fees due them and to protect this interest. However, the Court refrained from ruling on Atty. Principe's entitlement to the claimed attorney's fees of 40% of the purchase price since *Malonso* only involved a disbarment proceeding.

Although the Court's ruling in *Malonso* has become final, we cannot fully adopt it in the present case so as to make a

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members abandoned and disauthorized former SANDAMA president Elfa, just when the negotiations bore fruit. With all these circumstances, respondent, rightly or wrongly, perceived that he was also about to be deprived of his lawful compensation for the services he and his firm rendered to SANDAMA and its members. With the prevailing attitude of the SANDAMA officers and members, respondent saw the immediate need to protect his interests in the individual properties of the landowners. The hairline distinction between SANDAMA and its individual members' interests and properties, flowing as it does from a legal fiction which has evolved as a mechanism to promote business intercourse but not as an instrument of injustice, is simply too tenuous, impractical and even unfair in view of the circumstances.

Thus, the Court cannot hold respondent guilty of censurable conduct or practice justifying the penalty recommended. While filing the claim for attorney's fees against the individual members may not be the proper remedy for respondent, the Court believes that he instituted the same out of his honest belief that it was the best way to protect his interests. After all, SANDAMA procured his firm's services and led him to believe that he would be paid for the same. There is evidence which tend to show that respondent and his firm rendered legal and even extra-legal services in order to assist the landowners get a favorable valuation of their properties. They facilitated the incorporation of the landowners to expedite the negotiations between the owners, the appraisers, and NAPOCOR. They sought the assistance of several political personalities to get some leverage in their bargaining with NAPOCOR. Suddenly, just after concluding the compromise price with NAPOCOR and before the presentation of the compromise agreement for the court's approval, SANDAMA disengaged the services of respondent's law firm.

With the validity of its contract for services and its authority disputed, and having rendered legal service for years without having received anything in return, and with the prospect of not getting any compensation for all the services it has rendered to SANDAMA and its members, respondent and his law firm auspiciously moved to protect their interests; *supra* note 20.

conclusive finding on the question of Atty. Principe's representation and entitlement to attorney's fees as far as the present respondents are concerned. The available documents in the records disclose that only a few of the respondents have executed a special power of attorney, similar to the one Malonso executed in favor of Danilo Elfa (then SANDAMA President), that would authorize Elfa to hire Atty. Principe and his law firm to represent them. The same documents do not show if these respondents are members of SANDAMA, which Atty. Principe claims he represents. Also, nothing in the records would show the extent of services that Atty. Principe has performed for the respondents. In the absence of these pertinent facts, we deem it prudent to remand the matter to the RTC the determination of Atty. Principe's authority to represent the respondents and his entitlement to attorney's fees, taking into consideration the Court's ruling in *Malonso*.

WHEREFORE, in view of the foregoing, the assailed decision dated February 10, 2004 and the resolution dated September 13, 2004 of the Court of Appeals in CA-G.R. CV No. 62911 are **AFFIRMED**.

The questions of Atty. Pedro Principe's representation and his entitlement to attorney's fees, insofar as the respondents are concerned, are **REMANDED** to the Regional Trial Court of Malolos, Bulacan, Branch 15, for resolution. The trial court is hereby ordered to resolve these matters with due haste.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[*] In lieu of Associate Justice Mariano C. del Castillo per Raffle dated February 22, 2010.

SPECIAL SECOND DIVISION

[G.R. No. 173226. July 29, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **MANUEL O. GALLEGO, JR., JOSEPH L. GALLEGO and CHRISTOPHER L. GALLEGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; TO BE JUST, THE COMPENSATION MUST BE REAL, SUBSTANTIAL, FULL AND AMPLE; SECOND ALTERNATIVE RECOMMENDED BY THE COURT OF APPEALS FOR COMPUTING JUST COMPENSATION, ADOPTED BY THE COURT.— After consideration of the record and of the parties' respective arguments, we adopt the second alternative recommended by the CA using the basic formula *"LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)."* We, however, arrived at the slightly different amount of Fifty Million, Four Hundred Thirty-Two Thousand, Sixty-Three Pesos and 89/100 (₱50,432,063.89). We find that the second alternative presents a more accurate formula and computation in the determination of the just compensation due the respondents for their property. As pointed out earlier, DAR A.O. No. 05-98 provides the basic formula *"LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)"* for valuating lands acquired pursuant to the government's agrarian reform program. In cases where not all three factors of CNI, CS and MV are present, relevant and applicable, the same regulation provides three alternate formulae that can be used to compute for just compensation. In the present case, we deem all three factors of CNI, CS and MV "relevant and applicable" for, as the CA observed, they substantially complied with the prescribed formula. In disregarding the computation proposed by the LBP, the CA found inapplicable the data necessary to compute the CNI because they pertained to different locations and calendar years. Nevertheless, in offering the second alternative which used the prescribed basic formula, the CA essentially pointed out that the data necessary for determining the CS were equally inapplicable as they did not comply with the requirements of

Items II.C.2.b and II.C.2.c of DAR A.O. No. 05-98. If we were to strictly apply the formula laid down in DAR A.O. No. 05-98 and disregard both the CNI and CS factors to be equally flawed, then the only present, relevant and applicable factor left is MV, which, when used following the third alternate formula *"LV = MV x 2,"* will significantly reduce the just compensation to an absurd amount. Clearly, we cannot support this, as our agrarian reform laws never intended to deprive landowners of their property without just compensation. Just compensation refers to the full and fair equivalent of the property taken from the owner. In several cases, we emphasized that **to be "just," the compensation must be real, substantial, full and ample**.

2. ID.; ID.; ID.; ID.; JUST COMPENSATION DOES NOT ONLY REFER TO THE FULL AND FAIR EQUIVALENT OF THE PROPERTY TAKEN BUT ALSO THE PAYMENT IN FULL WITHOUT DELAY; 12% INTEREST ON THE AMOUNT OF JUST COMPENSATION AWARDED TO THE OWNER OF THE PROPERTY TAKEN, BY WAY OF DAMAGES, TO ENSURE PROMPT PAYMENT OF THE VALUE OF THE LAND AND LIMIT THE OPPORTUNITY LOSS OF THE OWNER THAT CAN DRAG FROM DAYS TO DECADES.— The records show that the government had taken the respondents' property in 1972 pursuant to its agrarian reform program. More than four decades and three generations of the Gallegos after, the respondents have yet to receive the full and fair equivalent of the property taken from them. All of the farmer-beneficiaries of their property had benefited and continues to benefit from the portions respectively received by each of them, and, in fact, several of them had either sold or converted their respective portions to non-agricultural ventures, contrary to the intents of our agrarian reform laws. The respondents, all the while however, had been permanently deprived of any income from their property. We also observed that the LBP initially valued the respondents' property at ₱12,110.11/h (totaling ₱1,289,674.27 for 106.4957h) which is roughly 97% lower than the RTC-SAC's valuation of ₱425,000.00/h (totaling ₱52,209,720.00 for 122.8464h). As we held in *Apo Fruits Corporation v. Land Bank of the Philippines*, this staggering difference in the valuation of the respondents' property "betrays the lack of good faith on the

part of the government in dealing with the landowners." The sheer inadequacy of this amount prompted the respondents to initiate this action. Twenty years passed and long after the title to the respondents' property had been transferred to the various farmer-beneficiaries, the respondents have only been paid a total of ₱29,538,820.38 (the bulk of which — ₱26,359,793.38 - was paid only in 2010) or roughly half of the actual value of their property as finally determined by this Court. These circumstances – the gross inadequacy of the LBP's valuation of the respondents' property and the loss of income suffered by the respondents — taken together undeniably confirm the unconscionable delay in the payment of just compensation. **Just compensation does not only refer to the full and fair equivalent of the property taken; it also means**, equally if not more than anything, **payment in full without delay**. Consequently, we deem it proper to award the respondents 12% interest per annum from the time of taking until full payment. In several cases, this Court has awarded, by way of damages, 12% interest on the amount of just compensation, which, in effect, makes the obligation on the part of the government one of forbearance. "This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades."

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel and *LBP Legal Department* for petitioner.

Augusto Jose Y. Arreza and *Hugo E. Gutierrez* for respondents.

R E S O L U T I O N

BRION, *J.*:

We rule on the amount of just compensation due respondents Manuel O. Gallego, Jr., Joseph L. Gallego, and Christopher L. Gallego for the 120-hectare portion, more or less, of their property situated in Barangays Sta. Rita and Concepcion, Cabiao, Nueva Ecija, placed under the government's land reform program under Presidential Decree No. 27 and Republic Act *(R.A.)* No. 6657 (the *Comprehensive Agrarian Reform Law of 1988*).

On August 10, 2006, petitioner Land Bank of the Philippines *(LBP)* filed a Rule 45 petition for review on *certiorari*[1] challenging the September 29, 2005 Decision[2] and the June 23, 2006 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 77676. In its September 29, 2005 decision, the CA affirmed with modification the March 14, 2003 Decision[4] of the Regional Trial Court, Third Judicial Region, Branch 29, Cabanatuan City, acting as a Special Agrarian Court *(RTC-SAC)*, in Agr. Case No. 127. The CA reduced the amount of just compensation that the RTC-SAC fixed at ₱52,209,720.00 to ₱30,711,600.00.

The Factual Antecedents

We restate the facts of the case, as found by this Court in its January 20, 2009 Decision,[5] as follows:

> Respondents Manuel O. Gallego, Jr., Joseph L. Gallego and Christopher L. Gallego are the co-owners of several parcels of agricultural lands located in Barangay Sta. Rita and Barangay Concepcion in Cabiao, Nueva Ecija. The lands have an aggregate area of 142.3263 hectares and are covered by Transfer Certificate of Title Nos. T-139629, T-139631 and T-139633.
>
> Sometime in 1972, the DAR placed a portion of the property under the coverage of Presidential Decree No. 27 (P.D. No. 27). However, the DAR and respondents failed to agree on the amount of just compensation, prompting respondents to file on 10 December 1998 a petition before the RTC of Cabanatuan City. The petition, docketed as Agrarian Case No. 127-AF, named the DAR and herein petitioner Land Bank of the Philippines (LBP) as respondents and prayed that just compensation be fixed in accordance with the valuation formula under P.D. No. 27 based on an Average Gross Production of

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[1] *Rollo*, pp. 23-53.

[2] Penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Hakim S. Abdulwahid and Fernanda Lampas-Peralta; *id.* at 54-63.

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

[4] Penned by Judge Ubaldino A. Lacurom; *id.* at 107-115.

[5] *Id.* at 398-416. Penned by then Associate Justice Dante O. Tinga.

109.535 cavans per hectare including interest at 6% compounded annually as provided under PARC Resolution No. 92-24-1.

Petitioner LBP filed an answer, averring that only 76.8324 hectares and not 89.5259 hectares as was alleged in the petition were placed under the coverage of P.D. No. 27 and that just compensation should be determined based on an Average Gross Production of 65 cavans and/or 56.6 cavans per hectare which were the values at the time of taking of the property. Although the DAR did not file an answer, it was represented at the hearings by a certain Atty. Benjamin T. Bagui.

During the course of the hearing of the petition, the coverage of respondents' lands had expanded to a bigger area. In order to conform to the increase in the area placed under agrarian reform, respondents filed on 14 October 2002 an amended petition, stating that as certified by the Municipal Agrarian Reform Office (MARO) of Cabiao, Nueva Ecija, 122.8464 hectares of the property had already been placed under the operation of P.D. No. 27. In the answer filed by the DAR as well as during pre-trial, the counsels for DAR and petitioner LBP stipulated that the property subject of the petition was irrigated and had a total area of 120 hectares, more or less.

After the pre-trial conference, the trial court issued an Order dated 08 November 2002, embodying the agreed stipulation that the property placed under agrarian reform had an area of 120 hectares, more or less x x x. In a Supplemental Pre-Trial Order dated 25 November 2002, the trial court stated that in view of the parties' agreement that the property was irrigated and had an area of 120 hectares, the only factual issue to be resolved would be the correct Average Gross Production x x x on which just compensation would be fixed.

On 14 March 2003, the trial court rendered a Decision, adopting respondents' formula which was based on an Average Gross Production of 121.6 cavans per hectare. x x x

x x x x x x x x x

Both petitioner LBP and the DAR separately moved for the reconsideration of the trial court's Decision. In its Order dated 28 April 2003, the trial court denied both motions.

Only petitioner LBP appealed from the trial court's Decision. According to petitioner LBP, the trial court erred in applying values that had no basis in law instead of adopting the Average Gross

Production established by the Barangay Committee on Land Production under DAR Circular No. 26, series of 1973, and the mandated Government Support Price of ₱35 per cavan of *palay* under Section 2 of Executive Order (E.O.) No. 228.

Upon motion by respondents, the Court of Appeals issued a Resolution on 5 November 2004, ordering the release of ₱2,000,000.00 in favor of respondents as partial execution of the Decision of the trial court. The appellate court allowed the partial execution on the grounds that respondent Manuel Gallego was in need of an urgent medical operation and that there was no longer any question that respondents were entitled to just compensation.

The Court of Appeals rendered the assailed Decision on 29 September 2005. The appellate court agreed that the values applied by the trial court in fixing just compensation had no legal basis because the formula under P.D. No. 27 and E.O. No. 228 mandated a Government Support Price of ₱35.00 per cavan of *palay*. x x x

x x x x x x x x x

Petitioner LBP sought reconsideration but was denied in a Resolution dated 23 June 2006. Hence, the instant petition[.][6] (citation omitted)

In a decision dated January 20, 2009, we denied the petition, reversed and set aside the September 29, 2005 and the June 23, 2006 rulings of the CA, and remanded the case to the CA for further reception of evidence and for the determination of the amount of just compensation under the terms of Section 17 of R.A. No. 6657 and Department of Agrarian Reform Administrative Order *(DAR A.O.)* No. 05-98, as amended.

On February 18, 2009, the LBP filed an urgent omnibus motion (for partial reconsideration of the January 20, 2009 decision and for referral of the instant case to the Court sitting *en banc*).[7] In its April 29, 2009 resolution, the Court denied the LBP's motion. The CA submitted its Report[8] on April 30, 2009.

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[6] *Id.* at 399-404.

[7] *Id.* at 432-447.

[8] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison; *id.* at 618-639.

The CA's Report

In the April 30, 2009 Report,[9] the CA recommended two alternative solutions for computing the disputed just compensation. In the ***first alternative***, the CA recommended the use of the alternate formula *"LV=(CS x 0.9) + (MV x 0.1)"* as proposed by the respondents, for a just compensation of Ninety-Five Million, Three Hundred Fifty Thousand, Forty-Nine Pesos and 27/100 (₱95,350,049.27). In the ***second alternative***, the CA recommended the use of the basic formula *"LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)"* as provided under Item II.A. of DAR A.O. No. 05-98, for a just compensation of Fifty Million, Four Hundred Thirty-One Thousand, Five Hundred Six Pesos (₱50,431,506.00).

First alternative recommended by the CA for computing just compensation

In determining the amount of just compensation, both parties agreed that reference should be made to DAR A.O. No. 05-98. The formula for computing just compensation, as outlined in Item II.A. of DAR A.O. No. 05-98, reads:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LVC = Land Value

CNI = Capitalized Net Income

CSC = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

When, however, the factors of Capitalized Net Income *(CNI)*, Comparable Sales *(CS)* or Market Value per Tax Declaration

[9] *Ibid.*

(MV) are not all present, relevant and applicable, Item II.A. of DAR A.O. No. 05-98 provides for three alternate formulae:

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

Since DAR A.O. No. 05-98 provides for alternate formulae depending on the presence, relevance and applicability of the indicated factors, the LBP and the respondents arrived at significantly divergent amounts for land value when the presence, relevance and applicability of the indicated factors were differently appreciated.

A. The LBP's computation

The LBP claimed that the amount of just compensation should be fixed at Twenty Four Million, Six Hundred Sixty-Five Thousand, Seven Hundred Forty-Nine Pesos and 99/100 (₱24,665,749.99) using the alternate formula *"LV = (CNI x 0.9) + (MV x 0.1),"*[10] as provided under Item II.A.1 of DAR A.O. No. 05-98. The LBP insisted that the Appraisal Report[11] presented by the respondents, as basis for computing the CS factor, should not be used, following Items II.C.2.b and II.C.2.c of DAR A.O. No. 05-98.[12] Item II.C.2.b requires that the

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[10] *Id.* at 628-629. See also the LBP's Memorandum dated March 25, 2009; *id.* at 522-546.

[11] Prepared by Philippine Appraisal Co., Inc., dated August 4, 2006, attached as Annex "A" to the respondents' Comment; pages subsequent to page 230.

[12] C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

expropriated property, as well as the property subject of the comparable sales transactions, should be similar in topography and land use, while Item II.C.2.c provides that the comparable sales transactions should have been executed within the period of January 1, 1985 to June 15, 1988 and registered within the period of January 1, 1985 to September 13, 1988. The LBP claimed that the property subject of the comparable sales transactions (some were residential subdivision lots)[13] and the respondents' property (which is agricultural) are not devoted to identical purposes and the data used in the Appraisal Report were not registered and were executed beyond the allowable period. Considering the absence of CS, the LBP applied the alternate formula *"LV = (CNI x 0.9) + (MV x 0.1)."*

In arriving at the amount of ₱24,665,749.99, the LBP separately computed the CNI and the MV and then added the figures arrived at for each factor. The LBP used the following formula (as provided under Item II.B, DAR A.O. No. 05-98) and data in computing for the "CNI":[14]

$$CNI = \frac{AGP \times SP \times NIR}{0.12}$$

Where: AGP = Annual Gross Production

SP = Selling Price

NIR = Net Income Rate

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x x x x x x x x x

b. **The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land use**, *i.e.*, planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density.

c. The **comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988**. [emphases ours]

[13] See Appraisal Report; CA *rollo*, pp. 447-448.

[14] *Rollo*, p. 628.

AGP = 9,000 kg/ha based on the AGP of irrigated lands in Brgy. San Fernando Sur for the years 2005 and 2006 as certified to by the Municipal Agriculturist of Cabiao, Nueva Ecija[15]

SP = 15.54 /kg based on the selling price of palay for the year 2008 as shown on the Farm Prices Survey Provincial Summary[16]

NIR = 20% as fixed by DAR A.O. No. 5

Thus: $CNI = \frac{9{,}000 \times 15.54/kg \times 0.20}{0.12}$

CNI = ₱233,100.00/ha or ₱23.31/sqm[17]

In computing for the "MV," the LBP used the following formula (per DAR A.O. No. 05-98) and data:[18]

MV = UMV x LAF x RCPI

Where: UMV = Unit Market Value

LAF = Location Adjustment Factor

RCPI = Regional Consumer Price Index

UMV= ₱200,050.00/ha for first class irrigated rice lands based on the schedule of unit market values of different agricultural lands for the year 2006 from the Provincial Assessor of Nueva Ecija[19]

LAF = 91% as fixed by DAR A.O. No. 5

RCPI = 1.0 as fixed by DAR A.O. No. 5

Thus: MV = ₱200,050.00/ha x 0.91 x 1.0

MV = ₱182,045.50/ha[20]

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[15] CA *rollo,* p. 482.

[16] *Id.* at 483-493.

[17] *Rollo,* p. 629.

[18] *Ibid.*

[19] CA *rollo,* pp. 494-495. Per the certification of the Provincial Assessor, the 2006 Schedule of Market Value still applied for 2008; CA *rollo,* p. 501.

[20] *Rollo,* p. 629.

Finally, the LBP computed the total land value as follows:

LV = (CNI x 0.90) + (MV x 0.10)
= (₱233,100.00/ha x 0.90) + (₱182,045.50/ha x 0.10)
= ₱227,994.55/ha

TLV = LV x total area subjected to CARP
= ₱227,994.55/ha x 108.1857

TLV = ₱24,665,749.99[21]

B. The respondents' computation

The respondents, on the other hand, claimed that the amount of just compensation should be fixed at Ninety-Five Million, Three Hundred Fifty Thousand, Forty-Nine Pesos and 27/100 (₱95,350,049.27) using the alternate formula *"LV = (CS x 0.9) + (MV x 0.1)"*[22] per Item II.A.2, DAR A.O. No. 05-98.

The respondents took exception to the LBP's use of the factor "CNI" in computing the amount of just compensation; they argued that the LBP used flawed data. The respondents pointed out that the data used by the LBP for "AGP" pertained to: (1) a *barangay* different from where the subject property was located, although these *barangays* belonged to the same municipality; and (2) a year different from the data that the LBP used for selling price (*SP*). Considering the absence of CNI, the respondents applied the alternate formula *"LV = (CS x 0.9) + (MV x 0.1)."*

In arriving at the amount of ₱95,350,049.27, the respondents presented in evidence the Appraisal Report[23] to compute for the "CS" which showed that different portions of the property command different selling prices, depending on the location and use. For the "MV," the respondents submitted the 2006 Tax Declaration[24] and computed for its value by dividing the

[21] *Ibid.*

[22] *Id.* at 630-631. See also the respondents' Memorandum dated March 25, 2009, *id.* at 549-562.

[23] *Supra* note 13.

[24] CA *rollo*, pp. 465-467.

stated adjusted market value by the land area. The respondents computed the land value (*LV*) as follows:[25]

1. Lot A = consists of 60.7331 hectares and commands a selling price of ₱100.00/sqm

   LV = (₱100.00/sqm x 0.9) + (15.95/sqm x 0.1)

   = ₱90.00/sqm + ₱1.595/sqm

   = ₱91.595/sqm x 607,331 sqm

   LV = ₱55,628,482.94

2. Lot B = consists of 49.4807 hectares and commands a selling price of ₱75.00/sqm

   LV = (₱75.00/sqm x 0.9) + (15.95/sqm x 0.1)

   = ₱67.50/sqm + ₱1.595/sqm

   = ₱69.095/sqm x 494,807 sqm

   LV = ₱34,188,689.66

3. Lot C = consists of 11.8744 hectares and commands a selling price of ₱50.00/sqm

   LV = (₱50.00/sqm x 0.9) + (15.95/sqm x 0.1)

   = ₱45.00/sqm + 1.595/sqm

   = ₱46.595 x 118,744 sqm

   LV = ₱5,532,876.68

Adding all three figures, the respondents arrived at the following total land value:

TLV = ₱55,628,482.94 + ₱34,188,689.66
+ ₱5,532,876.68

= ₱95,350,049.27[26]

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[25] *Rollo,* pp. 630-631.

[26] *Id.* at 631.

Confronted with these two conflicting computations, the CA was inclined to consider the respondents' computation which used the alternate formula "*LV = (CS x 0.9) + (MV x 0.1).*"[27] The CA gave the following reasons:

First, as the respondents pointed out, the available data for computing the CNI was irrelevant and inapplicable as not only did the data used for computing the AGP pertain to a different *barangay*; it also referred to a year different from the data used for computing the SP.

Second, the LBP included only 108.1857 hectares of the respondents' property in its computation of just compensation, although the parties had already agreed before the RTC-SAC that the total area acquired by the government was 122.8464 hectares, more or less.

Third, the amount proposed by the LBP was unreasonably low inasmuch as the respondents had not been paid, up to this date, the amount due them as just compensation for their property. In addition, several infrastructural developments had been made in the area and certain portions of the property had already been devoted to more lucrative purposes other than agriculture.

Finally, the amount proposed by the LBP ran contrary to the January 20, 2009 Decision of this Court which declared that the amount to which the respondents are entitled as just compensation should not be lower than ₱30,711,600.00 (the amount which the CA awarded in its earlier Decision).

Second alternative recommended by the CA for computing just compensation

In arriving at the amount of ₱50,431,506.00 using the basic formula "*LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1),*" the CA sustained both the LBP's computation of the CNI (₱23.31) and the respondents' computation of the CS (₱100, ₱75 and

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[27] *Id.* at 631-636.

₱50).[28] For the MV, the CA used the market value reflected on the latest available Tax Declaration. Applying these figures to the formula, the CA computed the just compensation as follows:[29]

Lot A = consists of 60.7331 hectares and commands a selling price of ₱100.00/sqm

LV = (₱23.31 x 0.6) + (₱100 x 0.3) + (₱15.95 x 0.1)
= ₱13.986 + ₱30.00 + ₱1.820
= ₱ 45.806 x 607,331 sqm
LV = ₱27,682,754.00

Lot B = consists of 49.4807 hectares and commands a selling price of ₱75.00/sqm

LV = (₱23.31 x 0.6) + (₱75 x 0.3) + (₱15.95 x 0.1)
= ₱13.986 + ₱22.5 + ₱1.820
= ₱ 38.306 x 494,807 sqm
LV = ₱18,842,745.00

Lot C = consists of 11.8744 hectares and commands a selling price of ₱50.00/sqm

LV = (₱23.31 x 0.6) + (₱50 x 0.3) + (₱15.95 x 0.1)
= ₱13.986 + ₱15.00 + ₱1.820
= ₱30.80 x 118,744 sqm
LV = ₱3,658,027.00

Total LV = ₱27,682,754.00 + ₱18,842,745.00 + ₱3,658,027.00
= ₱50,431,506.00

The CA justified this second alternative by harking on the established judicial prerogative of the courts to determine the amount of just compensation, upon proper evaluation of the three factors and with due consideration of the list provided in Section 17 of R.A. No. 6657. Thus, the CA considered the data used by the LBP (for the CNI) and by the respondents

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[28] *Id.* at 636-637.

[29] *Id.* at 637-638. The figures cited here were merely copied from the CA's Report. Clearly, the CA committed errors in its computation.

(for the CS) as "substantially compliant" and therefore relevant and applicable despite the respective objections raised by the parties to the other's computation.

The Court's Ruling

After consideration of the record and of the parties' respective arguments, we adopt the second alternative recommended by the CA using the basic formula "*LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1).*" We, however, arrived at the slightly different amount of Fifty Million, Four Hundred Thirty-Two Thousand, Sixty-Three Pesos and 89/100 (₱50,432,063.89).

We find that the second alternative presents a more accurate formula and computation in the determination of the just compensation due the respondents for their property. As pointed out earlier, DAR A.O. No. 05-98 provides the basic formula "*LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)*" for valuating lands acquired pursuant to the government's agrarian reform program. In cases where not all three factors of CNI, CS and MV are present, relevant and applicable, the same regulation provides three alternate formulae that can be used to compute for just compensation.

In the present case, we deem all three factors of CNI, CS and MV "relevant and applicable" for, as the CA observed, they substantially complied with the prescribed formula. In disregarding the computation proposed by the LBP, the CA found inapplicable the data necessary to compute the CNI because they pertained to different locations and calendar years. Nevertheless, in offering the second alternative which used the prescribed basic formula, the CA essentially pointed out that the data necessary for determining the CS were equally inapplicable as they did not comply with the requirements of Items II.C.2.b and II.C.2.c of DAR A.O. No. 05-98. If we were to strictly apply the formula laid down in DAR A.O. No. 05-98 and disregard both the CNI and CS factors to be equally flawed, then the only present, relevant and applicable factor left is MV, which, when used following the third alternate formula "*LV = MV x 2,*" will significantly reduce the just

compensation to an absurd amount. Clearly, we cannot support this, as our agrarian reform laws never intended to deprive landowners of their property without just compensation. Just compensation refers to the full and fair equivalent of the property taken from the owner.[30] In several cases,[31] we emphasized that **to be "just," the compensation must be real, substantial, full and ample.**

Applying, therefore, the values used by the LBP for the factors CNI (₱23.31) and MV (₱18.20455) and the value used by the respondents for the factor CS (₱100, ₱75 and ₱50), we compute the just compensation (with emphasis on the figures that differed from those found in the CA's computation) as follows:

Lot A = consisting of 60.7331 hectares with a selling price of ₱100.00/sqm

LV = (₱23.31 x 0.6) + (₱100 x 0.3) + **(₱18.20455** x 0.1)
= ₱13.986 + ₱30.00 + ₱1.820455
= **₱45.806455** x 607,331 sqm
LV = **₱27,819,680.121605**

Lot B = consisting of 49.4807 hectares with a selling price of ₱75.00/sqm

LV = (₱23.31 x 0.6) + (₱75 x 0.3) + **(₱18.20455** x 0.1)
= ₱13.986 + ₱22.5 + ₱1.820455
= **₱38.306455** x 494,807 sqm
LV = **₱18,954,302.079185**

Lot C = consisting of 11.8744 hectares with a selling price of ₱50.00/sqm

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[30] *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777, 812 (1989); and *Apo Fruits Corporation v. Land Bank of the Philippines,* G.R. No. 164195, April 5, 2011, 647 SCRA 207, 218.

[31] *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform, supra,* at 812, citing *City of Manila v. Estrada,* 25 Phil. 208 (1913); and *Land Bank of the Philippines v. Hon. Natividad,* 497 Phil. 738, 747 (2005).

LV = (₱23.31 x 0.6) + (₱50 x 0.3) + **(₱18.20455** x 0.1)
= ₱13.986 + ₱15.00 + ₱1.820455
= **₱30.806455** x 118,744 sqm
LV = **₱3,658,081.69252**

Total LV = ₱27,819,680.121605 + ₱18,954,302.079185 + ₱3,658,081.69252

Total LV = **₱50,432,063.89331**

Considering that as of May 26, 2010, the respondents had already received a total of Twenty-Nine Million, Five Hundred Thirty-Eight Thousand, Eight Hundred Twenty Pesos and 38/100 (₱29,538,820.38) as partial payment,[32] they should now receive the balance of Twenty Million, Eight Hundred Ninety-Three Thousand, Two Hundred Forty-Three Pesos and 51/100 (₱20,893,243.51) which represents the difference between the just compensation of ₱50,432,063.89 and the amount they have received.

The respondents are entitled to an award of 12% per annum on the amount of just compensation for the LBP's delay in payment

As a final note, we observe that the CA did not make any finding or recommendation with regard to the interests to which the respondents may be entitled to receive in addition to the just compensation. In their various pleadings before the lower courts, the respondents prayed for the payment of interests in addition to the proper determination of the just compensation due them. We cannot disregard the significance of their prayer for the records and the surrounding circumstances of this case

[32] The respondents on various dates received the following amounts: ₱1,179,027.00 per the RTC-SAC Order dated May 13, 2002 (Records, Folder 1, Vol. 1, p. 95); ₱2,000,000.00 per the CA Resolution dated November 5, 2004 (CA *rollo,* pp. 216-217, and CA decision dated September 29, 2005, *supra* note 2); and ₱26,359,793.38 per the May 26, 2010 letter of the respondents' counsel (*rollo,* p. 881; and this Court's resolution dated October 4, 2010, *rollo,* p. 887).

sufficiently convince us that a delay in the payment occurred chargeable to the LBP.

The records show that the government had taken the respondents' property in 1972 pursuant to its agrarian reform program. More than four decades and three generations of the Gallegos after,[33] the respondents have yet to receive the full and fair equivalent of the property taken from them. All of the farmer-beneficiaries of their property had benefited and continues to benefit from the portions respectively received by each of them, and, in fact, several of them had either sold or converted their respective portions to non-agricultural ventures, contrary to the intents of our agrarian reform laws. The respondents, all the while however, had been permanently deprived of any income from their property.

We also observed that the LBP initially valued the respondents' property at ₱12,110.11/h (totaling ₱1,289,674.27 for 106.4957h)[34] which is roughly 97% lower than the RTC-SAC's valuation of ₱425,000.00/h (totaling ₱52,209,720.00 for 122.8464h).[35] As we held in *Apo Fruits Corporation v. Land Bank of the Philippines*,[36] this staggering difference in the valuation of the respondents' property "betrays the lack of good faith on the part of the government in dealing with the landowners."[37] The sheer inadequacy of this amount prompted the respondents to initiate this action. Twenty years passed and long after the title

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[33] The property was originally owned by Manuel V. Gallego, Sr. who died prior to the filing of the petition before the RTC-SAC. He was succeeded by his children, Julius Caesar O. Gallego and respondent Manuel O. Gallego, Jr. Julius Caesar O. Gallego died in 1989; he was survived by his sons, respondents Christopher L. Gallego and Joseph L. Gallego. Christopher L. Gallego died in 1999 while the case was pending before the RTC-SAC. (Respondents' Comment to the Petition dated January 25, 2007; *rollo*, succeeding pages after page 230).

[34] *Id.* at 119.

[35] *Id.* at 114.

[36] *Supra* note 30.

[37] *Id.* at 221-222.

to the respondents' property had been transferred to the various farmer-beneficiaries,[38] the respondents have only been paid a total of ₱29,538,820.38 (the bulk of which – ₱26,359,793.38 — was paid only in 2010) or roughly half of the actual value of their property as finally determined by this Court.

These circumstances – the gross inadequacy of the LBP's valuation of the respondents' property and the loss of income suffered by the respondents — taken together undeniably confirm the unconscionable delay in the payment of just compensation. **Just compensation does not only refer to the full and fair equivalent of the property taken; it also means**, equally if not more than anything, **payment in full without delay**.[39] Consequently, we deem it proper to award the respondents 12% interest per annum from the time of taking until full payment. In several cases,[40] this Court has awarded, by way of damages, 12% interest on the amount of just compensation, which, in effect, makes the obligation on the part of the government one of forbearance.[41] "This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades."[42]

WHEREFORE, in view of these considerations, we collectively hereby award respondents Manuel O. Gallego, Jr., Joseph L. Gallego, and Christopher L. Gallego the sum of Fifty-Two Million,

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[38] The emancipation patents had been distributed to the various farmer-beneficiaries from 1988-2000; Records, Folder 1, Vol. 1, pp. 59-73.

[39] *Apo Fruits Corporation v. Land Bank of the Philippines, supra* note 30, at 222.

[40] *Land Bank of the Philippines v. Esther Anson Rivera, et al.,* G.R. No. 182431, February 27, 2013; and *Land Bank of the Philippines v. Wycoco,* 464 Phil. 83 (2004). See also *Apo Fruits Corporation v. Land Bank of the Philippines, supra* note 30; and *Land Bank of the Philippines v. Honeycomb Farms Corporation,* G.R. No. 169903, February 29, 2012, 667 SCRA 255.

[41] *Land Bank of the Philippines v. Esther Anson Rivera, et al., supra;* and *Land Bank of the Philippines v. Wycoco, supra,* at 100.

[42] *Land Bank of the Philippines v. Esther Anson Rivera, et al., supra* note 40.

Four Hundred Thirty-Two Thousand, Sixty-Three Pesos and 89/100 (₱52,432,063.89) as just compensation for the property covered by G.R. No. 173226, *Land Bank of the Philippines v. Manuel O. Gallego, Jr., et al.*, with interests at twelve percent (12%) on the outstanding principal. In light of the initial payments of ₱1,179,027.00 (per the May 13, 2002 Regional Trial Court-Special Agrarian Court order), ₱2,000,000.00 (per the November 5, 2004 Court of Appeals resolution), and ₱26,359,793.38 (per the May 26, 2010 letter of the respondents' counsel), corresponding deductions should be made from the total principal due in reckoning the interests and the total amount still due as final payment under this Resolution. No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 173373. July 29, 2013]

H. TAMBUNTING PAWNSHOP, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX DEDUCTIONS; STRICTLY CONSTRUED.— The rule that tax deductions, being in the nature of tax exemptions, are to be construed in *strictissimi juris* against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he

is entitled to the deduction which the law allows. An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible. A mere averment that the taxpayer has incurred a loss does not automatically warrant a deduction from its gross income. x x x Tambunting did not discharge its burden of substantiating its claim for deduction due to the inadequacy of its documentary support of its claim. Its reliance on withholding tax returns, cash vouchers, lessor's certifications, and the contracts of lease was futile because such documents had scant probative value. As the CTA *En Banc* succinctly put it, the law required Tambunting to support its claim for deductions with the corresponding official receipts issued by the service providers concerned.

2. ID.; ID.; BUSINESS EXPENSES; REQUISITES.— The requisites for the deductibility of ordinary and necessary trade or business expenses, like those paid for security and janitorial services, management and professional fees, and rental expenses, are that: (*a*) the expenses must be ordinary and necessary; (*b*) they must have been paid or incurred during the taxable year; (*c*) they must have been paid or incurred in carrying on the trade or business of the taxpayer; and (*d*) they must be supported by receipts, records or other pertinent papers.

3. ID.; ID.; REVENUE REGULATIONS 12-77; TAX DEDUCTIONS DUE TO LOSSES FROM FIRE AND THEFT REQUIRES MANDATED SWORN DECLARATION OF LOSS.— In the context of the foregoing rules, the CTA *En Banc* aptly rejected Tambunting's claim for deductions due to losses from fire and theft. The documents it had submitted to support the claim, namely: (*a*) the certification from the Bureau of Fire Protection in Malolos; (*b*) the certification from the Police Station in Malolos; (*c*) the accounting entry for the losses; and (*d*) the list of properties lost, were not enough. What were required were for Tambunting to submit the sworn declaration of loss mandated by Revenue Regulations 12-77. Its failure to do so was prejudicial to the claim because the sworn declaration of loss was necessary to forewarn the BIR that it had suffered a loss whose extent it would be claiming as a deduction of its tax liability, and thus enable the BIR to conduct its own investigation of the incident leading to the loss. Indeed, the documents Tambunting submitted to the BIR

could not serve the purpose of their submission without the sworn declaration of loss.

APPEARANCES OF COUNSEL

Siguion Reyna, Monticillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.

Antecedents

H. Tambunting Pawnshop, Inc. (petitioner), a domestic corporation duly licensed and authorized to engage in the pawnshop business, appeals the adverse decision promulgated on April 24, 2006,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) affirmed the decision of the CTA First Division ordering it to pay deficiency income taxes in the amount of ₱4,536,687.15 for taxable year 1997, plus 20% delinquency interest computed from August 29, 2000 until full payment, but cancelling the compromise penalties for lack of basis.

On June 26, 2000, the Bureau of Internal Revenue (BIR), through then Acting Regional Director Lucien E. Sayuno of Revenue Region No. 6 in Manila, issued assessment notices and demand letters, all numbered 32-1-97, assessing Tambunting for deficiency percentage tax, income tax and compromise penalties for taxable year 1997,[2] as follows:

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[1] *Rollo*, pp. 70-88; penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova (on leave), and Associate Justice Olga Palanca-Enriquez.

[2] *Id.* at 9-10.

Deficiency Percentage Tax

Taxable Sales/Receipts		₱12,749,135.25
Percentage Tax due (5%)		₱ 637,456.76
Add: 20% Interest up to 7-26-00		320,513.24
Total Percentage Tax Due		₱ 957,970.00

Deficiency Income Tax

Taxable Net Income per Return		₱ 54,107.36
Adjustments per investigation Section 28		
Overstatement of gain/loss on auction sales		
Gain/Loss per F/S	₱ 4,914,967.50	
Gain/Loss per Audit	133,057.40	4,781,910.00
Unsupported Security/Janitorial Expenses		
Per F/S	2,183,573.02	
Per Audit	358,800.00	1,824,773.02
Unsupported Rent Expenses		
Per F/S	2,293,631.13	
Per Audit	434,406.77	1,859,224.35
Unsupported Interest Expenses		1,155,154.28
Unsupported Management & Professional Fees		96,761.00
Unsupported Repairs & Maintenance		348,074.68
Unsupported 13th Month Pay & Bonus		317,730.73
Disallowed Loss on Fire & Theft		906,560.00
Taxable Net Income per Investigation		₱ 11,344,295.43
Income Tax Due (35%)		₱ 3,970,503.40
Less Income Tax Paid		18,937.57

Deficiency Income Tax	3,951,565.83
Add: 20% Interest to 7-26-00	1,799,938.23
Total Income Tax Due	5,751,504.06

Compromise Penalties

Late Payment of Income Tax	25,000.00
Late Payment of Percentage Tax	20,000.00
Failure to Pay Withholding Tax Return for the Months of April and May	24,000.00
	69,000.00

On July 26, 2000, Tambunting instituted an administrative protest against the assessment notices and demand letters with the Commissioner of Internal Revenue.[3]

On February 21, 2001, Tambunting brought a petition for review in the CTA, pursuant to Section 228 of the *National Internal Revenue Code of 1997*,[4] citing the inaction of the Commissioner of Internal Revenue on its protest within the 180-day period prescribed by law.

On October 8, 2004, the CTA First Division rendered a decision, the pertinent portion of which is hereunder quoted, to wit:

In view of all the foregoing verification, petitioner's allowable deductions are summarized below:

Particulars	Per Petitioner's Financial Statement	Per BIR's Examination	Per Court's Verification
Loss on Auction Sale	₱ 4,914,967.50	₱ 133,057.40	₱ 133,057.40

[3] *Id.* at 10.

[4] *Id.*

Security & Janitorial Services	2,183,573.02	358,800.00	736,044.26
Rent Expense	2,293,631.13	434,406.77	642,619.10
Interest Expense	1,155,154.28	-	1,155,154.28
Professional & Management Fees	96,761.00	-	-
Repairs & Maintenance	348,074.68	-	329,399.18
13th Month pay & Bonuses	317,730.73	-	317,730.73
Loss on Fire	906,560.00	-	-
Total	₱ 12,216,452.34	₱ 926,264.17	₱ 3,314,004.95

Apparently, petitioner is still liable for deficiency income tax in the reduced amount of ₱4,536,687.15, computed as follows:

Net Income Per Return		₱ 54,107.36
Add: Overstatement of Gain/Loss on Auction Sales		
Gain/Loss on Auction Sales per F/S	₱4,914,967.50	
Gain/Loss on Auction Sales per Court's Verification	133,057.40	4,781,910.00
Unsupported Security/Janitorial Services		
Security, Janitorial Services per F/S	₱2,183,573.02	
Security, Janitorial Services per Court's Verification	736,044.26	1,447,528.76
Unsupported Rent Expenses		
Rent Expenses per F/S	₱2,293,631.13	
Rent Expenses per Court's Verification	642,619.10	1,651,012.03
Unsupported Management & Professional Fees		96,761.00
Unsupported Repairs & Maintenance (₱348,074.68 - ₱329,399.18)		18,675.50

Disallowed Loss on Fire & Theft	906,560.00
Net Income	₱ 8,956,554.65
Income Tax Due Thereon	₱ 3,134,794.13
Less: Amount Paid	18,937.57
Balance	₱ 3,115,856.56
Add: 20% Interest until 7-26-00	1,420,830.59
TOTAL INCOME TAX DUE	₱ 4,536,687.15

WHEREFORE, petitioner is ORDERED to PAY the respondent the amount of ₱4,536,687.15 representing deficiency income tax for the year 1997, plus 20% delinquency interest computed from August 29, 2000 until full payment thereof pursuant to Section 249 (C) of the National Internal Revenue Code. However, the compromise penalties in the sum of ₱49,000.00 is hereby CANCELLED for lack of legal basis.

SO ORDERED.[5]

After its motion for reconsideration was denied for lack of merit on February 18, 2005,[6] Tambunting filed a petition for review in the CTA *En Banc*, arguing that the First Division erred in disallowing its deductions on the ground that it had not substantiated them by sufficient evidence.

On April 24, 2006, the CTA *En Banc* denied Tambunting's petition for review,[7] disposing:

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision and Resolution promulgated on October 8, 2004 and February 11, 2005, respectively, the instant Petition for Review is hereby DISMISSED. Accordingly,

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

[6] *Id.* at 12.

[7] *Supra* note 1.

the aforesaid Decision and Resolution are hereby AFFIRMED *in toto*.

SO ORDERED.

On June 29, 2006, the CTA *En Banc* also denied Tambunting's motion for reconsideration for its lack of merit.[8]

Issues

Hence, this appeal by petition for review on *certiorari*.

Tambunting argues that the CTA should have allowed its deductions because it had been able to point out the provisions of law authorizing the deductions; that it proved its entitlement to the deductions through all the documentary and testimonial evidence presented in court;[9] that the provisions of Section 34 (A)(1)(b) of the 1997 *National Internal Revenue Code*, governing the types of evidence to prove a claim for deduction of expenses, were applicable because the law took effect during the pendency of the case in the CTA;[10] that the CTA had allowed deductions for ordinary and necessary expenses on the basis of cash vouchers issued by the taxpayer or certifications issued by the payees evidencing receipt of interest on loans as well as agreements relating to the imposition of interest;[11] that it had thus shown beyond doubt that it had incurred the losses in its auction sales;[12] and that it substantially complied with the requirements of Revenue Regulations No. 12-77 on the deductibility of its losses.[13]

On December 5, 2006, the Commissioner of Internal Revenue filed a comment,[14] stating that the conclusions of the CTA were

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[8] *Rollo*, pp. 27-30.

[9] *Id.* at 41.

[10] *Id.* at 42.

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

[12] *Id.* at 51.

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

[14] *Id.* at 116-128.

entitled to respect,[15] due to its being a highly specialized body specifically created for the purpose of reviewing tax cases;[16] and that the petition involved factual and evidentiary matters not reviewable by the Court in an appeal by *certiorari*.[17]

On March 22, 2007, Tambunting reiterated its arguments in its reply.[18]

Ruling

The petition has no merit.

At the outset, the Court agrees with the CTA *En Banc* that because this case involved assessments relating to transactions incurred by Tambunting prior to the effectivity of Republic Act No. 8424 (*National Internal Revenue Code of 1997*, or NIRC of 1997), the provisions governing the propriety of the deductions was Presidential Decree 1158 (NIRC of 1977). In that regard, the pertinent provisions of Section 29 (d) (2) & (3)of the NIRC of 1977 state:

x x x x x x x x x

(2) By corporation. — In the case of a corporation, all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise.

(3) Proof of loss. — In the case of a non-resident alien individual or foreign corporation, the losses deductible are those actually sustained during the year incurred in business or trade conducted within the Philippines, and losses actually sustained during the year in transactions entered into for profit in the Philippines although not connected with their business or trade, when such losses are not compensated for by insurance or otherwise. The Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, is hereby authorized to promulgate rules and regulations

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[15] *Id.* at 120.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 131-145.

prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft, or embezzlement during the taxable year: Provided, That the time to be so prescribed in the regulations shall not be less than 30 days nor more than 90 days from the date of the occurrence of the casualty or robbery, theft, or embezzlement giving rise to the loss.

The CTA *En Banc* ruled thusly:

To prove the loss on auction sale, petitioner submitted in evidence its "*Rematado*" and "*Subasta*" books and the "Schedule of Losses on Auction Sale". The "*Rematado*" book contained a record of items foreclosed by the pawnshop while the "*Subasta*" book contained a record of the auction sale of pawned items foreclosed.

However, as elucidated by the petitioner, the gain or loss on auction sale represents the difference between the capital (the amount loaned to the pawnee, the unpaid interest and other expenses incurred in connection with such loan) and the price for which the pawned articles were sold, as reflected in the "*Subasta*" Book. Furthermore, it explained that the amounts appearing in the "*Rematado*" book do not reflect the total capital of petitioner as it merely reflected the amounts loaned to the pawnee. Likewise, the amounts appearing in the "*Subasta*" book, are not representative of the amount of sale made during the "*subastas*" since not all articles are eventually sold and disposed of by petitioner.

Petitioner submits that based on the evidence presented, it was able to show beyond doubt that it incurred the amount of losses on auction sale claimed as deduction from its gross income for the taxable year 1997. And that the documents/records submitted in evidence as well as the facts contained therein were neither contested nor controverted by the respondent, hence, admitted.

x x x x x x x x x

In this case, petitioner's reliance on the entries made in the "*Subasta*" book were not sufficient to substantiate the claimed deduction of loss on auction sale. As admitted by the petitioner, the contents in the "*Rematado*" and "*Subasta*" books do not reflect the true amounts of the total capital and the auction sale, respectively. Be that as it may, petitioner still failed to adduce evidence to

substantiate the other expenses alleged to have been incurred in connection with the sale of pawned items.

As correctly held by the Court's Division in the assailed decision, and We quote:

> x x x The remaining evidence is neither conclusive to sustain its claim of loss on auction sale in the aggregate amount of ₱4,915,967.50. While it appears that the basis of respondent is not strong, petitioner, nevertheless, should not rely on the weakness of such evidence but on the strength of its own documents. The facts essential for the proper disposition of the said controversy were available to the petitioner. Petitioner should have endeavored to make the facts clear to this court. Sad to say, it failed to dispute the same with clear and convincing proof. x x x[19]

We affirm the aforequoted ruling of the CTA *En Banc*.

The rule that tax deductions, being in the nature of tax exemptions, are to be construed *in strictissimi juris* against the taxpayer is well settled.[20] Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows.[21] An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible.[22] A mere averment that the taxpayer has incurred a loss does not automatically warrant a deduction from its gross income.

As the CTA *En Banc* held, Tambunting did not properly prove that it had incurred losses. The *subasta* books it presented

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[19] *Id.* at 16-18.

[20] *Commissioner of Internal Revenue v. General Foods, (Phils.) Inc.*, G.R. No. 143672, April 24, 2003, 401 SCRA 545, 550.

[21] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* No. L-26911, January 27, 1981, 102 SCRA 246, 253.

[22] *Id.*

were not the proper evidence of such losses from the auctions because they did not reflect the true amounts of the proceeds of the auctions due to certain items having been left unsold after the auctions. The *rematado* books did not also prove the amounts of capital because the figures reflected therein were only the amounts given to the pawnees. It is interesting to note, too, that the amounts received by the pawnees were not the actual values of the pawned articles but were only fractions of the real values.

As to business expenses, Section 29 (a) (1) (A) of the NIRC of 1977 provides:

> (a) Expenses. — (1) Business expenses.— (A) In general. — All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses while away from home in the pursuit of a trade, profession or business, rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

The requisites for the deductibility of ordinary and necessary trade or business expenses, like those paid for security and janitorial services, management and professional fees, and rental expenses, are that: (*a*) the expenses must be ordinary and necessary; (*b*) they must have been paid or incurred during the taxable year; (*c*) they must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) they must be supported by receipts, records or other pertinent papers.[23]

In denying Tambunting's claim for deduction of its security and janitorial expenses, management and professional fees, and its rental expenses, the CTA *En Banc* explained:

> Contrary to petitioner's contention, the security/janitorial expenses paid to Pathfinder Investigation were not duly substantiated. The

[23] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007, 515 SCRA 556, 563.

certification issued by Mr. Balisado was not the proper document required by law to substantiate its expenses. Petitioner should have presented the official receipts or invoices to prove its claim as provided for under Section 238 of the National Internal Revenue Code of 1977, as amended, to wit:

> "SEC. 238. Issuance of receipts or sales or commercial invoices. — All persons subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at ₱25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; *Provided*, That in the case of sales, receipts or transfers in the amount of ₱100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipts is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. The original of each receipt or invoice shall be issued to the purchases, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of 3 years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

With regard to the misclassified items of expenses, petitioner's statements were self-serving, likewise it failed to substantiate its allegations by clear and convincing evidence as provided under the foregoing provision of law.

Bearing in mind the principle in taxation that deductions from gross income partake the nature of tax exemptions which are construed *in strictissimi juris* against the taxpayer, the Court *en banc* is not inclined to believe the self-serving statements of petitioner regarding the misclassified items of office supplies, advertising and rent expenses.

Among the expenses allegedly incurred, courts may consider only those supported by credible evidence and which appear to have been

genuinely incurred in connection with the trade or business of the taxpayer.[24]

x x x x x x x x x

As previously discussed, the proper substantiation requirement for an expense to be allowed is the official receipt or invoice. While the rental payments were subjected to the applicable expanded withholding taxes, such returns are not the documents required by law to substantiate the rental expense. Petitioner should have submitted official receipts to support its claim.

Moreover, the issue on the submission of cash vouchers as evidence to prove expenses incurred has been addressed by this Court in the assailed Resolution, to wit:

> "The trend then was to allow deductions based on cash vouchers which are signed by the payees. It bears to note that the cases cited by petitioner are pronouncements by this Court in 1980, 1982 and 1989.
>
> However, latest jurisprudence has deviated from such interpretation of the law. Thus, this Court held in the case of *Pilmico-Mauri Foods Corporation vs. Commissioner of Internal Revenue* C.T.A. Case No. 6151, December 15, 2004;
>
> [P]etitioner's contention that the NIRC of 1977 did not impose substantiation requirements on deductions from gross income is bereft of merit. Section 238 of the 1977 Tax Code [now Section 237] provides:
>
> x x x x x x x x x
>
> From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which the invoice or receipt was issued. The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct

[24] *Rollo*, pp. 20-21.

> of its business. So that when their books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions. Hence, petitioner's claim that the NIRC of 1977 did not require substantiation requirements is erroneous."

In order that the cash vouchers may be given probative value, these must be validated with official receipts.[25]

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Petitioner's management and professional fees were disallowed as these were supported merely by cash vouchers, which the Court's Division correctly found to have little probative value.[26]

Again, we affirm the foregoing holding of the CTA *En Banc* for the reasons therein stated. To reiterate, deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[27] Tambunting did not discharge its burden of substantiating its claim for deductions due to the inadequacy of its documentary support of its claim. Its reliance on withholding tax returns, cash vouchers, lessor's certifications, and the contracts of lease was futile because such documents had scant probative value. As the CTA *En Banc* succinctly put it, the law required Tambunting to support its claim for deductions with the corresponding official receipts issued by the service providers concerned.

Regarding proof of loss due to fire, the text of Section 29(d)(2) & (3) of P.D. 1158 (NIRC of 1977) then in effect, is clear enough, to wit:

> (2) By corporation. — In the case of a corporation, all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise.

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

[26] *Id.* at 23.

[27] *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 148187, April 16, 2008, 551 SCRA 428, 445.

(3) Proof of loss. — In the case of a non-resident alien individual or foreign corporation, the losses deductible are those actually sustained during the year incurred in business or trade conducted within the Philippines, and losses actually sustained during the year in transactions entered into for profit in the Philippines although not connected with their business or trade, when such losses are not compensated for by insurance or otherwise. The Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft, or embezzlement during the taxable year: Provided, That the time to be so prescribed in the regulations shall not be less than 30 days nor more than 90 days from the date of the occurrence of the casualty or robbery, theft, or embezzlement giving rise to the loss.

The implementing rules for deductible losses are found in Revenue Regulations No. 12-77, as follows:

SECTION 1. **Nature of deductible losses**.— Any loss arising from fires, storms or other casualty, and from robbery, theft or embezzlement, is allowable as a deduction under Section 30 (d) for the taxable year in which the loss is sustained. The term "casualty" is the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected, or unusual nature. It denotes accident, some sudden invasion by hostile agency, and excludes progressive deterioration through steadily operating cause. Generally, theft is the criminal appropriation of another's property for the use of the taker. Embezzlement is the fraudulent appropriation of another's property by a person to whom it has been entrusted or into whose hands it has lawfully come.

SECTION 2. **Requirements of substantiation**. — The taxpayer bears the burden of proving and substantiating his claim for deduction for losses allowed under Section 30 (d) and should comply with the following substantiation requirements:

(a) A declaration of loss which must be filed with the Commissioner of Internal Revenue or his deputies within a certain period prescribed in these regulations after the occurrence of the casualty, robbery, theft or embezzlement.

(b) Proof of the elements of the loss claimed, such as the actual nature and occurrence of the event and amount of the loss.

SECTION 3. **Declaration of loss**. — Within forty-five days after the date of the occurrence of casualty or robbery, theft or embezzlement, a taxpayer who sustained loss therefrom and who intends to claim the loss as a deduction for the taxable year in which the loss was sustained **shall file a sworn declaration of loss with the nearest Revenue District Officer.** The sworn declaration of loss shall contain, among other things, the following information:

(a) The nature of the event giving rise to the loss and the time of its occurrence;

(b) A description of the damaged property and its location;

(c) The items needed to compute the loss such as cost or other basis of the property; depreciation allowed or allowable if any; value of property before and after the event; cost of repair;

(d) Amount of insurance or other compensation received or receivable.

Evidence to support these items should be furnished, if available. Examples are purchase contracts and deeds, receipted bills for improvements, and pictures and competent appraisals of the property before and after the casualty.

SECTION 4. Proof of loss.— (a) In general. — The declaration of loss, being one of the essential requirements of substantiation of a claim for a loss deduction, is subject to verification and does not constitute sufficient proof of the loss that will justify its deductibility for income tax purposes. Therefore, the mere filing of a declaration of loss does not automatically entitle the taxpayer to deduct the alleged loss from gross income. **The failure, however, to submit the said declaration of loss within the period prescribed in these regulations will result in the disallowance of the casualty loss claimed in the taxpayer's income tax return. The taxpayer should therefore file a declaration of loss and should be prepared to support and substantiate the information reported in the said declaration with evidence which he should gather immediately or as soon as possible after the occurrence of the casualty or event causing the loss.**

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(b) Casualty loss. — Photographs of the property as it existed before it was damaged will be helpful in showing the condition and value of the property prior to the casualty. Photographs taken after the casualty which show the extent of damage will be helpful in establishing the condition and value of the property after it was damaged. Photographs showing the condition and value of the property after it was repaired, restored or replaced may also be helpful.

Furthermore, since the valuation of the property is of extreme importance in determining the amount of loss sustained, the taxpayer should be prepared to come forward with documentary proofs, such as cancelled checks, vouchers, receipts and other evidence of cost.

The foregoing evidence should be kept by the taxpayer as part of his tax records and be made available to a revenue examiner, upon audit of his income tax return and the declaration of loss.

(c) Robbery, theft or embezzlement losses. — To support the deduction for losses arising from robbery, theft or embezzlement, the taxpayer must prove by credible evidence all the elements of the loss, the amount of the loss, and the proper year of the deduction. The taxpayer bears the burden of proof, and no deduction will be allowed unless he shows the property was stolen, rather than misplaced or lost. A mere disappearance of property is not enough, nor is a mere error or shortage in accounts.

Failure to report theft or robbery to the police may be a factor against the taxpayer. On the other hand, a mere report of alleged theft or robbery to the police authorities is not a conclusive proof of the loss arising therefrom. (Bold underscoring supplied for emphasis)

In the context of the foregoing rules, the CTA *En Banc* aptly rejected Tambunting's claim for deductions due to losses from fire and theft. The documents it had submitted to support the claim, namely: (*a*) the certification from the Bureau of Fire Protection in Malolos; (*b*) the certification from the Police Station in Malolos; (*c*) the accounting entry for the losses; and (*d*) the list of properties lost, were not enough. What were required were for Tambunting to submit the sworn declaration of loss mandated by Revenue Regulations 12-77. Its failure to do so was prejudicial to the claim because the sworn declaration of loss was necessary to forewarn the BIR that it had suffered a

loss whose extent it would be claiming as a deduction of its tax liability, and thus enable the BIR to conduct its own investigation of the incident leading to the loss. Indeed, the documents Tambunting submitted to the BIR could not serve the purpose of their submission without the sworn declaration of loss.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 24, 2006; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175666. July 29, 2013]

MANILA BANKERS LIFE INSURANCE CORPORATION, *petitioner, vs.* **CRESENCIA P. ABAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDING OF FACT OF BOTH THE TRIAL AND APPELLATE COURTS BINDS THE SUPREME COURT.— The Court will not depart from the trial and appellate courts' finding that it was Sotero who obtained the insurance for herself, designating respondent as her beneficiary. Both courts are in accord in this respect, and the Court is loath to disturb this. While petitioner insists that its independent investigation on the claim reveals that it was respondent, posing as Sotero, who obtained the insurance, this claim is no longer feasible in the wake of the courts' finding that it was Sotero who obtained the insurance for herself. This finding of fact binds the Court.

2. COMMERCIAL LAW; INSURANCE; ABSENT PROOF OF FRAUDULENT INTENT ON THE PART OF THE INSURED, THE INSURER IS NOT ENTITLED TO RESCIND THE CONTRACT.— With the x x x crucial finding of fact – that it was Sotero who obtained the insurance for herself – petitioner's case is severely weakened, if not totally disproved. Allegations of fraud, which are predicated on respondent's alleged posing as Sotero and forgery of her signature in the insurance application, are at once belied by the trial and appellate courts' finding that Sotero herself took out the insurance for herself. "[F]raudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract." In the absence of proof of such fraudulent intent, no right to rescind arises.

3. ID.; ID.; INSURANCE CODE, SECTION 48 THEREOF; INCONTESTABILITY CLAUSE; AN INSURER IS GIVEN TWO YEARS — FROM THE EFFECTIVITY OF A LIFE INSURANCE CONTRACT AND WHILE THE INSURED IS ALIVE — TO DISCOVER OR PROVE THAT THE POLICY IS VOID *AB INITIO* OR IS RESCINDIBLE BY REASON OF THE FRAUDULENT CONCEALMENT OR MISREPRESENTATION OF THE INSURED OR HIS AGENT; AFTER THE TWO –YEAR PERIOD LAPSES, OR WHEN THE INSURED DIES WITHIN THE PERIOD, THE INSURER MUST MAKE GOOD ON THE POLICY, EVEN THOUGH THE POLICY WAS OBTAINED BY FRAUD, CONCEALMENT, OR MISREPRESENTATION; RATIONALE.— Section 48 serves a noble purpose, as it regulates the actions of both the insurer and the insured. Under the provision, an insurer is given two years – from the effectivity of a life insurance contract and while the insured is alive – to discover or prove that the policy is void *ab initio* or is rescindible by reason of the fraudulent concealment or misrepresentation of the insured or his agent. After the two-year period lapses, or when the insured dies within the period, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation. This is not to say that insurance fraud must be rewarded, but that insurers who recklessly and indiscriminately solicit and obtain business must be penalized, for such recklessness and lack of discrimination ultimately work to the detriment of *bona*

fide takers of insurance and the public in general. Section 48 regulates both the actions of the insurers and prospective takers of life insurance. It gives insurers enough time to inquire whether the policy was obtained by fraud, concealment, or misrepresentation; on the other hand, it forewarns scheming individuals that their attempts at insurance fraud would be timely uncovered – thus deterring them from venturing into such nefarious enterprise. At the same time, legitimate policy holders are absolutely protected from unwarranted denial of their claims or delay in the collection of insurance proceeds occasioned by allegations of fraud, concealment, or misrepresentation by insurers, claims which may no longer be set up after the two-year period expires as ordained under the law.

4. ID.; ID.; ID.; APPLIED TO CASE AT BAR; INSURANCE POLICIES THAT PASS THE STATUTORY TWO-YEAR PERIOD ARE TREATED AS LEGITIMATE AND BEYOND QUESTION, AND THE INDIVIDUALS WHO WIELD THEM ARE MADE SECURE THAT THEY WILL BE PAID UPON CLAIM.— [T]he self-regulating feature of Section 48 lies in the fact that both the insurer and the insured are given the assurance that any dishonest scheme to obtain life insurance would be exposed, and attempts at unduly denying a claim would be struck down. Life insurance policies that pass the statutory two-year period are essentially treated as legitimate and beyond question, and the individuals who wield them are made secure by the thought that they will be paid promptly upon claim. In this manner, Section 48 contributes to the stability of the insurance industry. Section 48 prevents a situation where the insurer knowingly continues to accept annual premium payments on life insurance, only to later on deny a claim on the policy on specious claims of fraudulent concealment and misrepresentation, such as what obtains in the instant case. Thus, instead of conducting at the first instance an investigation into the circumstances surrounding the issuance of Insurance Policy No. 747411 which would have timely exposed the supposed flaws and irregularities attending it as it now professes, petitioner appears to have turned a blind eye and opted instead to continue collecting the premiums on the policy. For nearly three years, petitioner collected the premiums and devoted the same to its own profit. It cannot now deny the claim when

it is called to account. Section 48 must be applied to it with full force and effect.

5. ID.; ID.; INSURERS CANNOT BE ALLOWED TO COLLECT PREMIUMS ON INSURANCE POLICIES, USE THESE AMOUNTS COLLECTED AND INVEST THE SAME THROUGH THE YEARS, GENERATING PROFITS AND RETURNS THEREFROM FOR THEIR OWN BENEFIT, AND THEREAFTER CONVENIENTLY DENY INSURANCE CLAIMS BY QUESTIONING THE AUTHORITY OR INTEGRITY OF THEIR OWN AGENTS OR THE INSURANCE POLICIES THEY ISSUED TO THEIR PREMIUM-PAYING CLIENTS.— Petitioner claims that its insurance agent, who solicited the Sotero account, happens to be the cousin of respondent's husband, and thus insinuates that both connived to commit insurance fraud. If this were truly the case, then petitioner would have discovered the scheme earlier if it had in earnest conducted an investigation into the circumstances surrounding the Sotero policy. But because it did not and it investigated the Sotero account only after a claim was filed thereon more than two years later, naturally it was unable to detect the scheme. For its negligence and inaction, the Court cannot sympathize with its plight. Instead, its case precisely provides the strong argument for requiring insurers to diligently conduct investigations on each policy they issue within the two-year period mandated under Section 48, and not after claims for insurance proceeds are filed with them. [I]f insurers cannot vouch for the integrity and honesty of their insurance agents/salesmen and the insurance policies they issue, then they should cease doing business. If they could not properly screen their agents or salesmen before taking them in to market their products, or if they do not thoroughly investigate the insurance contracts they enter into with their clients, then they have only themselves to blame. Otherwise said, insurers cannot be allowed to collect premiums on insurance policies, use these amounts collected and invest the same through the years, generating profits and returns therefrom for their own benefit, and thereafter conveniently deny insurance claims by questioning the authority or integrity of their own agents or the insurance policies they issued to their premium-paying clients. This is exactly one of the schemes which Section 48 aims to prevent.

6. ID.; ID.; AN INSURANCE CONTRACT IS A CONTRACT OF ADHESION WHICH MUST BE CONSTRUED LIBERALLY IN FAVOR OF THE INSURED AND STRICTLY AGAINST THE INSURER IN ORDER TO SAFEGUARD THE INSURED'S INTEREST.— Insurers may not be allowed to delay the payment of claims by filing frivolous cases in court, hoping that the inevitable may be put off for years – or even decades – by the pendency of these unnecessary court cases. In the meantime, they benefit from collecting the interest and/or returns on both the premiums previously paid by the insured and the insurance proceeds which should otherwise go to their beneficiaries. The business of insurance is a highly regulated commercial activity in the country, and is imbued with public interest. "[A]n insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the [former's] interest."

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The ultimate aim of Section 48 of the Insurance Code is to compel insurers to solicit business from or provide insurance coverage only to legitimate and *bona fide* clients, by requiring them to thoroughly investigate those they insure within two years from effectivity of the policy and while the insured is still alive. If they do not, they will be obligated to honor claims on the policies they issue, regardless of fraud, concealment or misrepresentation. The law assumes that they will do just that and not sit on their laurels, indiscriminately soliciting and accepting insurance business from any Tom, Dick and Harry.

Assailed in this Petition for Review on *Certiorari*[1] are the September 28, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 62286 and its November 9, 2006 Resolution[3] denying the petitioner's Motion for Reconsideration.[4]

Factual Antecedents

On July 3, 1993, Delia Sotero (Sotero) took out a life insurance policy from Manila Bankers Life Insurance Corporation (Bankers Life), designating respondent Cresencia P. Aban (Aban), her niece,[5] as her beneficiary.

Petitioner issued Insurance Policy No. 747411 (the policy), with a face value of ₱100,000.00, in Sotero's favor on August 30, 1993, after the requisite medical examination and payment of the insurance premium.[6]

On April 10, 1996,[7] when the insurance policy had been in force for more than two years and seven months, Sotero died. Respondent filed a claim for the insurance proceeds on July 9, 1996. Petitioner conducted an investigation into the claim,[8] and came out with the following findings:

1. Sotero did not personally apply for insurance coverage, as she was illiterate;
2. Sotero was sickly since 1990;

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[1] *Rollo,* pp. 3-14.

[2] CA *rollo*, pp. 38-47; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Danilo B. Pine and Vicente S.E. Veloso.

[3] *Id.* at 59-60; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Regalado E. Maambong and Vicente S.E. Veloso.

[4] *Id.* at 48-56.

[5] *Rollo,* p. 6.

[6] *Id.* at 6-7, 71.

[7] Records, p. 23.

[8] *Rollo,* p. 7.

3. Sotero did not have the financial capability to pay the insurance premiums on Insurance Policy No. 747411;

4. Sotero did not sign the July 3, 1993 application for insurance;[9] [and]

5. Respondent was the one who filed the insurance application, and x x x designated herself as the beneficiary.[10]

For the above reasons, petitioner denied respondent's claim on April 16, 1997 and refunded the premiums paid on the policy.[11]

On April 24, 1997, petitioner filed a civil case for rescission and/or annulment of the policy, which was docketed as Civil Case No. 97-867 and assigned to Branch 134 of the Makati Regional Trial Court. The main thesis of the Complaint was that the policy was obtained by fraud, concealment and/or misrepresentation under the Insurance Code,[12] which thus renders it voidable under Article 1390[13] of the Civil Code.

Respondent filed a Motion to Dismiss[14] claiming that petitioner's cause of action was barred by prescription pursuant to Section 48 of the Insurance Code, which provides as follows:

Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract.

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[9] *Id.* at 7, 16.

[10] Records, p. 2.

[11] *Id*.

[12] Presidential Decree No. 612.

[13] Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[14] Records, pp. 19-22.

After a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void *ab initio* or is rescindible by reason of the fraudulent concealment or misrepresentation of the insured or his agent.

During the proceedings on the Motion to Dismiss, petitioner's investigator testified in court, stating among others that the insurance underwriter who solicited the insurance is a cousin of respondent's husband, Dindo Aban,[15] and that it was the respondent who paid the annual premiums on the policy.[16]

Ruling of the Regional Trial Court

On December 9, 1997, the trial court issued an Order[17] granting respondent's Motion to Dismiss, thus:

WHEREFORE, defendant CRESENCIA P. ABAN's Motion to Dismiss is hereby granted. Civil Case No. 97-867 is hereby dismissed.

SO ORDERED.[18]

In dismissing the case, the trial court found that Sotero, and not respondent, was the one who procured the insurance; thus, Sotero could legally take out insurance on her own life and validly designate – as she did – respondent as the beneficiary. It held further that under Section 48, petitioner had only two years from the effectivity of the policy to question the same; since the policy had been in force for more than two years, petitioner is now barred from contesting the same or seeking a rescission or annulment thereof.

Petitioner moved for reconsideration, but in another Order[19] dated October 20, 1998, the trial court stood its ground.

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[15] TSN, May 5, 1998, pp. 12-13; records, pp. 95-96.

[16] *Id.* at 15; *id.* at 98.

[17] Records, pp. 55-56; penned by Judge Ignacio M. Capulong.

[18] *Id.* at 56.

[19] *Id.* at 116-119.

Petitioner interposed an appeal with the CA, docketed as CA-G.R. CV No. 62286. Petitioner questioned the dismissal of Civil Case No. 97-867, arguing that the trial court erred in applying Section 48 and declaring that prescription has set in. It contended that since it was respondent – and not Sotero – who obtained the insurance, the policy issued was rendered void *ab initio* for want of insurable interest.

Ruling of the Court of Appeals

On September 28, 2005, the CA issued the assailed Decision, which contained the following decretal portion:

> **WHEREFORE**, in the light of all the foregoing, the instant appeal is **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[20]

The CA thus sustained the trial court. Applying Section 48 to petitioner's case, the CA held that petitioner may no longer prove that the subject policy was void *ab initio* or rescindible by reason of fraudulent concealment or misrepresentation after the lapse of more than two years from its issuance. It ratiocinated that petitioner was equipped with ample means to determine, within the first two years of the policy, whether fraud, concealment or misrepresentation was present when the insurance coverage was obtained. If it failed to do so within the statutory two-year period, then the insured must be protected and allowed to claim upon the policy.

Petitioner moved for reconsideration,[21] but the CA denied the same in its November 9, 2006 Resolution.[22] Hence, the present Petition.

Issues

Petitioner raises the following issues for resolution:

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[20] CA *rollo*, p. 46.

[21] *Id.* at 48-56.

[22] *Id.* at 59-60.

I

[WHETHER] THE COURT OF APPEALS ERRED IN SUSTAINING THE ORDER OF THE TRIAL COURT DISMISSING THE COMPLAINT ON THE GROUND OF PRESCRIPTION IN CONTRAVENTION (OF) PERTINENT LAWS AND APPLICABLE JURISPRUDENCE.

II

[WHETHER] THE COURT OF APPEALS ERRED IN SUSTAINING THE APPLICATION OF THE INCONTESTABILITY PROVISION IN THE INSURANCE CODE BY THE TRIAL COURT.

III

[WHETHER] THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[23]

Petitioner's Arguments

In praying that the CA Decision be reversed and that the case be remanded to the trial court for the conduct of further proceedings, petitioner argues in its Petition and Reply[24] that Section 48 cannot apply to a case where the beneficiary under the insurance contract posed as the insured and obtained the policy under fraudulent circumstances. It adds that respondent, who was merely Sotero's niece, had no insurable interest in the life of her aunt.

Relying on the results of the investigation that it conducted after the claim for the insurance proceeds was filed, petitioner insists that respondent's claim was spurious, as it appeared that Sotero did not actually apply for insurance coverage, was unlettered, sickly, and had no visible source of income to pay for the insurance premiums; and that respondent was an impostor, posing as Sotero and fraudulently obtaining insurance in the latter's name without her knowledge and consent.

Petitioner adds that Insurance Policy No. 747411 was void *ab initio* and could not have given rise to rights and obligations;

[23] *Rollo*, p. 9.

[24] *Id.* at 69-75.

as such, the action for the declaration of its nullity or inexistence does not prescribe.[25]

Respondent's Arguments

Respondent, on the other hand, essentially argues in her Comment[26] that the CA is correct in applying Section 48. She adds that petitioner's new allegation in its Petition that the policy is void *ab initio* merits no attention, having failed to raise the same below, as it had claimed originally that the policy was merely voidable.

On the issue of insurable interest, respondent echoes the CA's pronouncement that since it was Sotero who obtained the insurance, insurable interest was present. Under Section 10 of the Insurance Code, Sotero had insurable interest in her own life, and could validly designate anyone as her beneficiary. Respondent submits that the CA's findings of fact leading to such conclusion should be respected.

Our Ruling

The Court denies the Petition.

The Court will not depart from the trial and appellate courts' finding that it was Sotero who obtained the insurance for herself, designating respondent as her beneficiary. Both courts are in accord in this respect, and the Court is loath to disturb this. While petitioner insists that its independent investigation on the claim reveals that it was respondent, posing as Sotero, who obtained the insurance, this claim is no longer feasible in the wake of the courts' finding that it was Sotero who obtained the insurance for herself. This finding of fact binds the Court.

With the above crucial finding of fact – that it was Sotero who obtained the insurance for herself – petitioner's case is

[25] Citing Article 1410 of the Civil Code:

Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[26] *Rollo*, pp. 57-67.

severely weakened, if not totally disproved. Allegations of fraud, which are predicated on respondent's alleged posing as Sotero and forgery of her signature in the insurance application, are at once belied by the trial and appellate courts' finding that Sotero herself took out the insurance for herself. "[F]raudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract."[27] In the absence of proof of such fraudulent intent, no right to rescind arises.

Moreover, the results and conclusions arrived at during the investigation conducted unilaterally by petitioner after the claim was filed may simply be dismissed as self-serving and may not form the basis of a cause of action given the existence and application of Section 48, as will be discussed at length below.

Section 48 serves a noble purpose, as it regulates the actions of both the insurer and the insured. Under the provision, an insurer is given two years – from the effectivity of a life insurance contract and while the insured is alive – to discover or prove that the policy is void *ab initio* or is rescindible by reason of the fraudulent concealment or misrepresentation of the insured or his agent. After the two-year period lapses, or when the insured dies within the period, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation. This is not to say that insurance fraud must be rewarded, but that insurers who recklessly and indiscriminately solicit and obtain business must be penalized, for such recklessness and lack of discrimination ultimately work to the detriment of *bona fide* takers of insurance and the public in general.

Section 48 regulates both the actions of the insurers and prospective takers of life insurance. It gives insurers enough time to inquire whether the policy was obtained by fraud, concealment, or misrepresentation; on the other hand, it forewarns scheming individuals that their attempts at insurance fraud would be timely uncovered – thus deterring them from venturing into

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[27] *Great Pacific Life Assurance Corporation v. Court of Appeals*, 375 Phil. 142, 152 (1999).

such nefarious enterprise. At the same time, legitimate policy holders are absolutely protected from unwarranted denial of their claims or delay in the collection of insurance proceeds occasioned by allegations of fraud, concealment, or misrepresentation by insurers, claims which may no longer be set up after the two-year period expires as ordained under the law.

Thus, the self-regulating feature of Section 48 lies in the fact that both the insurer and the insured are given the assurance that any dishonest scheme to obtain life insurance would be exposed, and attempts at unduly denying a claim would be struck down. Life insurance policies that pass the statutory two-year period are essentially treated as legitimate and beyond question, and the individuals who wield them are made secure by the thought that they will be paid promptly upon claim. In this manner, Section 48 contributes to the stability of the insurance industry.

Section 48 prevents a situation where the insurer knowingly continues to accept annual premium payments on life insurance, only to later on deny a claim on the policy on specious claims of fraudulent concealment and misrepresentation, such as what obtains in the instant case. Thus, instead of conducting at the first instance an investigation into the circumstances surrounding the issuance of Insurance Policy No. 747411 which would have timely exposed the supposed flaws and irregularities attending it as it now professes, petitioner appears to have turned a blind eye and opted instead to continue collecting the premiums on the policy. For nearly three years, petitioner collected the premiums and devoted the same to its own profit. It cannot now deny the claim when it is called to account. Section 48 must be applied to it with full force and effect.

The Court therefore agrees fully with the appellate court's pronouncement that –

> [t]he "incontestability clause" is a provision in law that after a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a

period of two (2) years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void *ab initio* or is rescindible by reason of fraudulent concealment or misrepresentation of the insured or his agent.

The purpose of the law is to give protection to the insured or his beneficiary by limiting the rescinding of the contract of insurance on the ground of fraudulent concealment or misrepresentation to a period of only two (2) years from the issuance of the policy or its last reinstatement.

The insurer is deemed to have the necessary facilities to discover such fraudulent concealment or misrepresentation within a period of two (2) years. It is not fair for the insurer to collect the premiums as long as the insured is still alive, only to raise the issue of fraudulent concealment or misrepresentation when the insured dies in order to defeat the right of the beneficiary to recover under the policy.

At least two (2) years from the issuance of the policy or its last reinstatement, the beneficiary is given the stability to recover under the policy when the insured dies. The provision also makes clear when the two-year period should commence in case the policy should lapse and is reinstated, that is, from the date of the last reinstatement.

After two years, the defenses of concealment or misrepresentation, no matter how patent or well-founded, will no longer lie.

Congress felt this was a sufficient answer to the various tactics employed by insurance companies to avoid liability.

The so-called "incontestability clause" precludes the insurer from raising the defenses of false representations or concealment of material facts insofar as health and previous diseases are concerned if the insurance has been in force for at least two years during the insured's lifetime. The phrase "during the lifetime" found in Section 48 simply means that the policy is no longer considered in force after the insured has died. The key phrase in the second paragraph of Section 48 is "for a period of two years."

As borne by the records, the policy was issued on August 30, 1993, the insured died on April 10, 1996, and the claim was denied on April 16, 1997. The insurance policy was thus in force for a period of 3 years, 7 months, and 24 days. Considering that the insured died after the two-year period, the plaintiff-appellant is, therefore, barred from proving that the policy is void *ab initio* by reason of

the insured's fraudulent concealment or misrepresentation or want of insurable interest on the part of the beneficiary, herein defendant-appellee.

Well-settled is the rule that it is the plaintiff-appellant's burden to show that the factual findings of the trial court are not based on substantial evidence or that its conclusions are contrary to applicable law and jurisprudence. The plaintiff-appellant failed to discharge that burden.[28]

Petitioner claims that its insurance agent, who solicited the Sotero account, happens to be the cousin of respondent's husband, and thus insinuates that both connived to commit insurance fraud. If this were truly the case, then petitioner would have discovered the scheme earlier if it had in earnest conducted an investigation into the circumstances surrounding the Sotero policy. But because it did not and it investigated the Sotero account only after a claim was filed thereon more than two years later, naturally it was unable to detect the scheme. For its negligence and inaction, the Court cannot sympathize with its plight. Instead, its case precisely provides the strong argument for requiring insurers to diligently conduct investigations on each policy they issue within the two-year period mandated under Section 48, and not after claims for insurance proceeds are filed with them.

Besides, if insurers cannot vouch for the integrity and honesty of their insurance agents/salesmen and the insurance policies they issue, then they should cease doing business. If they could not properly screen their agents or salesmen before taking them in to market their products, or if they do not thoroughly investigate the insurance contracts they enter into with their clients, then they have only themselves to blame. Otherwise said, insurers cannot be allowed to collect premiums on insurance policies, use these amounts collected and invest the same through the years, generating profits and returns therefrom for their own benefit, and thereafter conveniently deny insurance claims by questioning the authority or integrity of their own agents or the insurance policies they issued to their premium-paying clients.

[28] CA *rollo*, pp. 44-46.

This is exactly one of the schemes which Section 48 aims to prevent.

Insurers may not be allowed to delay the payment of claims by filing frivolous cases in court, hoping that the inevitable may be put off for years – or even decades – by the pendency of these unnecessary court cases. In the meantime, they benefit from collecting the interest and/or returns on both the premiums previously paid by the insured and the insurance proceeds which should otherwise go to their beneficiaries. The business of insurance is a highly regulated commercial activity in the country,[29] and is imbued with public interest.[30] "[A]n insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the [former's] interest."[31]

WHEREFORE, the Petition is **DENIED**. The assailed September 28, 2005 Decision and the November 9, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 62286 are **AFFIRMED**.

SO ORDERED.

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

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[29] *Tongko v. The Manufacturers Life Insurance Company (Phils.), Inc.*, G.R. No. 167622, June 29, 2010, 622 SCRA 58, 75.

[30] *Republic v. Del Monte Motors, Inc.*, 535 Phil. 53, 60 (2006); *White Gold Marine Services, Inc. v. Pioneer Insurance & Surety Corporation*, 502 Phil. 692, 700 (2005).

[31] *Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company*, G.R. No. 166245, April 9, 2008, 551 SCRA 1, 13.

SECOND DIVISION

[G.R. No. 175844. July 29, 2013]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SARABIA MANOR HOTEL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE NOT REVIEWABLE AND CANNOT BE PASSED UPON BY THE COURT; EXCEPTIONS, NOT PRESENT; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED.— It is fundamental that a petition for review on *certiorari* filed under Rule 45 of the Rules of Court covers only questions of law. In this relation, questions of fact are not reviewable and cannot be passed upon by the Court unless, the following exceptions are found to exist: (a) when the findings are grounded entirely on speculations, surmises, or conjectures; (b) when the inference made is manifestly mistaken, absurd, or impossible; (c) when there is a grave abuse of discretion; (d) when the judgment is based on misappreciation of facts; (e) when the findings of fact are conflicting; (f) when in making its findings, the same are contrary to the admissions of both parties; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) 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; and (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The distinction between questions of law and questions of fact is well- defined. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts. This being so, the findings of fact of the CA are final and conclusive and the Court will not review them on appeal. In view of the foregoing, the Court finds BPI's petition to be improper — and hence,

dismissible – as the issues raised therein involve questions of fact which are beyond the ambit of a Rule 45 petition for review.

2. **ID.; ID.; ID.; THE FACTUAL FINDINGS OF THE COURTS *A QUO* ARE ENTITLED TO GREAT WEIGHT AND RESPECT, AND EVEN ACCORDED FINALITY ESPECIALLY IN CORPORATE REHABILITATION PROCEEDINGS WHEREIN CERTAIN COMMERCIAL COURTS HAVE BEEN DESIGNATED ON ACCOUNT OF THEIR EXPERTISE AND SPECIALIZED KNOWLEDGE ON THE SUBJECT MATTER.—** [T]he determination of whether or not due regard was given to the interests of BPI as a secured creditor in the approved rehabilitation plan partakes of a question of fact since it will require a review of the sufficiency and weight of evidence presented by the parties – among others, the various financial documents and data showing Sarabia's capacity to pay and BPI's perceived cost of money – and not merely an application of law. Therefore, given the complexion of the issues which BPI presents, and finding none of the above-mentioned exceptions to exist, the Court is constrained to dismiss its petition, and prudently uphold the factual findings of the courts *a quo* which are entitled to great weight and respect, and even accorded with finality. This especially obtains in corporate rehabilitation proceedings wherein certain commercial courts have been designated on account of their expertise and specialized knowledge on the subject matter, as in this case.

3. **COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CORPORATE REHABILITATION, EXPOUNDED; "CRAM-DOWN" CLAUSE; REHABILITATION, PLAN MAY BE APPROVED EVEN OVER THE OPPOSITION OF THE CREDITORS HOLDING A MAJORITY OF THE CORPORATION'S TOTAL LIABILITIES IF THERE IS A SHOWING THAT REHABILITATION IS FEASIBLE AND THE OPPOSITION OF THE CREDITORS IS MANIFESTLY UNREASONABLE.—** Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders,

may it be the corporation's stockholders, its creditors and even the general public. In this light, case law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated. Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) states that ***a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable***. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery. It is within the parameters of the aforesaid provision that the Court examines the approval of Sarabia's rehabilitation.

4. ID.; ID.; ID.; PROPOSED REHABILITATION PLAN, WHEN CONSIDERED FEASIBLE; GUIDELINES; RESPONDENT CORPORATION'S REHABILITATION PLAN, FOUND FEASIBLE.— In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made

and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation. As further guidance on the matter, the Court's pronouncement in *Wonder Book Corporation v. Philippine Bank of Communications* proves instructive: Rehabilitation is x x x available to a corporation [which], while illiquid, has assets that can generate more cash if used in its daily operations than sold. **Its liquidity issues can be addressed by a practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals**. **This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated.** Keeping with these principles, the court thus observes that: First, Sarabia has the financial capability to undergo rehabilitation. x x x. **Second**, Sarabia has the ability to have sustainable profits over a long period of time. x x x. **Third**, the interests of Sarabia's creditors are well-protected. x x x. Therefore, based on the above-stated reasons, the Court finds Sarabia's rehabilitation to be feasible.

5. ID.; ID.; ID.; THE OPPOSITION OF A DISTRESSED CORPORATION'S MAJORITY CREDITOR IS MANIFESTLY UNREASONABLE IF IT COUNTER-

PROPOSES UNREALISTIC PAYMENT TERMS AND CONDITIONS WHICH WOULD, MORE LIKELY THAN NOT, IMPEDE RATHER THAN AID ITS REHABILITATION.— Although undefined in the Interim Rules, it may be said that the opposition of a distressed corporation's majority creditor is manifestly unreasonable if it counter-proposes unrealistic payment terms and conditions which would, more likely than not, impede rather than aid its rehabilitation. The unreasonableness becomes further manifest if the rehabilitation plan, in fact, provides for adequate safeguards to fulfill the majority creditor's claims, and yet the latter persists on speculative or unfounded assumptions that his credit would remain unfulfilled.

6. **ID.; ID.; ID.; IF A CREDITOR, WHOSE INTERESTS REMAIN WELL-PRESERVED UNDER THE EXISTING REHABILITATION PLAN, STILL DECLINES TO ACCEPT INTERESTS PEGGED AT REASONABLE RATES DURING THE PERIOD OF REHABILITATION, AND, IN TURN, PROPOSES RATES WHICH ARE LARGELY COUNTER-PRODUCTIVE TO THE REHABILITATION, THEN IT MAY BE SAID THAT THE CREDITOR'S OPPOSITION IS MANIFESTLY UNREASONABLE.—** It must be pointed out that oppositions which push for high interests rates are generally frowned upon in rehabilitation proceedings given that the inherent purpose of a rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period. It is the objective of a rehabilitation proceeding to provide the best possible framework for the corporation to gradually regain or achieve a sustainable operating form. Hence, if a creditor, whose interests remain well-preserved under the existing rehabilitation plan, still declines to accept interests pegged at reasonable rates during the period of rehabilitation, and, in turn, proposes rates which are largely counter-productive to the rehabilitation, then it may be said that the creditor's opposition is manifestly unreasonable. In this case, the Court finds BPI's opposition on the approved interest rate to be manifestly unreasonable considering that: (a) the 6.75% p.a. interest rate already constitutes a reasonable rate of interest which is concordant with Sarabia's projected rehabilitation; and (b) on the contrary, BPI's proposed escalating interest rates remain hinged on the theoretical assumption of

future fluctuations in the market, this notwithstanding the fact that its interests as a secured creditor remain well-preserved.

7. REMEDIAL LAW; APPEALS; BARE ALLEGATIONS OF FACT SHOULD NOT BE ENTERTAINED AS THEY ARE BEREFT OF ANY PROBATIVE VALUE.— [B]PI claims that Sarabia's projections were "too optimistic," its management was "extremely incompetenf" and that it was even forced to pay a pre-termination penalty due to its previous loan with the Landbank of the Philippines. Suffice it to state that bare allegations of fact should not be entertained as they are bereft of any probative value. In any event, even if it is assumed that the said allegations are substantiated by clear and convincing evidence, the Court, absent any cogent basis to proceed otherwise, remains steadfast in its preclusion to thresh out matters of fact on a Rule 45 petition, as in this case.

APPEARANCES OF COUNSEL

Benedicto Verzosa Gealogo and Burkley for petitioner.
Puno and Puno 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 Decision[2] dated April 24, 2006 and Resolution[3] dated December 6, 2006 of the Court of Appeals, Cebu City (CA) in CA-G.R. CV. No. 81596 which affirmed with modification the rehabilitation plan of respondent Sarabia Manor Hotel Corporation (Sarabia) as approved by the Regional Trial Court of Iloilo City, Branch 39 (RTC) through its Order[4] dated August 7, 2003.

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[1] *Rollo*, pp. 28-46.

[2] *Id.* at 49-64. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring.

[3] *Id.* at 66-67. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Pampio A. Abarintos and Romeo F. Barza, concurring.

[4] *Id.* at 189-213. Penned by Acting Presiding Judge Alfonso V. Combong, Jr.

The Facts

Sarabia is a corporation duly organized and existing under Philippine laws, with principal place of business at 101 General Luna Street, Iloilo City.[5] It was incorporated on February 22, 1982, with an authorized capital stock of ₱10,000,000.00, fully subscribed and paid-up, for the primary purpose of owning, leasing, managing and/or operating hotels, restaurants, barber shops, beauty parlors, sauna and steam baths, massage parlors and such other businesses incident to or necessary in the management or operation of hotels.[6]

In 1997, Sarabia obtained a ₱150,000,000.00 special loan package from Far East Bank and Trust Company (FEBTC) in order to finance the construction of a five-storey hotel building (New Building) for the purpose of expanding its hotel business. An additional ₱20,000,000.00 stand-by credit line was approved by FEBTC in the same year.[7]

The foregoing debts were secured by real estate mortgages over several parcels of land[8] owned by Sarabia and a comprehensive surety agreement dated September 1, 1997 signed by its stockholders.[9] By virtue of a merger, Bank of the Philippine Islands (BPI) assumed all of FEBTC's rights against Sarabia.[10]

Sarabia started to pay interests on its loans as soon as the funds were released in October 1997. However, largely because of the delayed completion of the New Building, Sarabia incurred various cash flow problems. Thus, despite the fact that it had

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[5] *Id.* at 192.

[6] *Id.*

[7] *Id.* at 10.

[8] *Id.* at 70. Including parcels of land covered by Transfer Certificates of Title Nos. T-116065 to T-116088.

[9] *Id.* Referring to Sps. Salvador Sr. and Amparo Sarabia, Salvador Sarabia, Jr., Suzanne Javelosa, Sandra S. Gomez, Gina S. Espinosa, Rosalie S. Treñas, Melvin D. Sarabia, and John Paul Sarabia.

[10] *Id.* at 10.

more assets than liabilities at that time.[11] it, nevertheless, filed, on July 26, 2002, a Petition[12] for corporate rehabilitation (rehabilitation petition) with prayer for the issuance of a stay order before the RTC as it foresaw the impossibility to meet its maturing obligations to its creditors when they fall due.

In the said petition, Sarabia claimed that its cash position suffered when it was forced to take-over the construction of the New Building due to the recurring default of its contractor, Santa Ana – AJ Construction Corporation (contractor),[13] and its subsequent abandonment of the said project.[14] Accordingly, the New Building was completed only in the latter part of 2000, or two years past the original target date of August 1998, thereby skewing Sarabia's projected revenues. In addition, it was compelled to divert some of its funds in order to cover cost overruns. The situation became even more difficult when the grace period for the payment of the principal loan amounts ended in 2000 which resulted in higher amortizations. Moreover, external events adversely affecting the hotel industry, *i.e.*, the September 11, 2001 terrorist attacks and the Abu Sayyaf issue, also contributed to Sarabia's financial difficulties.[15] Owing to these circumstances, Sarabia failed to generate enough cash flow to service its maturing obligations to its creditors, namely: (*a*) BPI (in the amount of ₱191,476,421.42); (*b*) Rural Bank of Pavia (in the amount of ₱2,500,000.00); (*c*) Vic Imperial Appliance Corp. (Imperial Appliance) (in the amount of ₱5,000,000.00); (*d*) its various suppliers (in the amount of₱7,690,668.04); (*e*) the government (for minimum corporate income tax in the amount of ₱547,161.18); and (*f*) its stockholders (in the amount of ₱18,748,306.35).[16]

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[11] *Id.* at 69. Sarabia had total assets in the amount of ₱481,586,031.21 with total liabilities amounting to ₱225,962,556.99.

[12] *Id.* at 68-95. Docketed as Civil Case No. 02-27252.

[13] *Id.* at 70.

[14] *Id.* at 72-73.

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

[16] *Id.* at 80.

In its proposed rehabilitation plan,[17] Sarabia sought for the restructuring of all its outstanding loans, submitting that the interest payments on the same be pegged at a uniform escalating rate of: (*a*) 7% per annum (p.a.) for the years 2002 to 2005; (*b*) 8% p.a. for the years 2006 to 2010; (*c*) 10% p.a. for the years 2011 to 2013; (*d*) 12% p.a. for the years 2014 to 2015; and (*e*) 14% p.a. for the year 2018. Likewise, Sarabia sought to make annual payments on the principal loans starting in 2004, also in escalating amounts depending on cash flow. Further, it proposed that it should pay off its outstanding obligations to the government and its suppliers on their respective due dates, for the sake of its day to day operations.

Finding Sarabia's rehabilitation petition sufficient in form and substance, the RTC issued a Stay Order[18] on August 2, 2002. It also appointed Liberty B. Valderrama as Sarabia's rehabilitation receiver (Receiver). Thereafter, BPI filed its Opposition.[19]

After several hearings, the RTC gave due course to the rehabilitation petition and referred Sarabia's proposed rehabilitation plan to the Receiver for evaluation.[20]

In a Recommendation[21] dated July 10, 2003 (Receiver's Report), the Receiver found that Sarabia may be rehabilitated and thus, made the following recommendations:

(1) Restructure the loans with Sarabia's creditors, namely, BPI, Imperial Appliance, Rural Bank of Pavia, and Barcelo Gestion Hotelera, S.L. (Barcelo), under the following terms and conditions: (*a*) the total outstanding balance as of December 31, 2002 shall be recomputed, with the interest for the years 2001 and 2002 capitalized and treated as part of the principal; (*b*) waive all penalties; (*c*) extend the payment period to seventeen

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[17] Records pp. 269-285.

[18] *Rollo*, pp. 98-100.

[19] *Id.* at 101-122.

[20] *Id.* at 191.

[21] *Id.* at 162-175.

(17) years, *i.e.*, from 2003 to 2019, with a two-year grace period in principal payment; (*d*) fix the interest rate at 6.75% p.a. plus 10% value added tax on interest for the entire term of the restructured loans;[22] (*e*) the interest and principal based on the amortization schedule shall be payable annually at the last banking day of each year; and (*f*) any deficiency shall be paid personally by Sarabia's stockholders in the event it fails to generate enough cash flow; on the other hand, any excess funds generated at the end of the year shall be paid to the creditors to accelerate the debt servicing;[23]

(2) Pay Sarabia's outstanding payables with its suppliers and the government so as not to disrupt hotel operations;[24]

(3) Convert the Advances from stockholders amounting to ₱18,748,306.00 to stockholder's equity and other advances amounting to ₱42,688,734.00 as of the December 31, 2002 tentative financial statements to Deferred Credits; the said conversion should increase stockholders' equity to ₱268,545,731.00 and bring the debt to equity ratio to 0.85:1;[25]

(4) Require Sarabia's stockholders to pay its payables to the hotel recorded as Accounts Receivable – Trade, amounting to ₱285,612.17 as of December 31, 2001, and its remaining receivables after such date;[26]

(5) No compensation or cash dividends shall be paid to the stockholders during the rehabilitation period, except those who are directly employed by the hotel as a full time officer, employee or consultant covered by a valid contract and for a reasonable fee;[27]

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[22] *Id.* at 171.

[23] *Id.* at 172.

[24] *Id.* at 173.

[25] *Id.*

[26] *Id.*

[27] *Id.*

(6) All capital expenditures which are over and above what is provided in the case flow of the rehabilitation plan which will materially affect Sarabia's cash position but which are deemed necessary in order to maintain the hotel's competitiveness in the industry shall be subject to the RTC's approval prior to its implementation;[28]

(7) Terminate the management contract with Barcelo, thereby saving an estimated ₱25,830,997.00 in management fees, over and above the salaries and benefits of certain managerial employees;[29]

(8) Appoint a new management team which would be required to submit a comprehensive business plan to support the generation of the target revenue as reported in the rehabilitation plan;[30]

(9) Open a debt servicing account and transfer all excess funds thereto, which in no case should be less than ₱500,000.00 at the end of the month; the funds will be drawn payable to the creditors only based on the amortization schedule;[31] and

(10) Release the surety obligations of Sarabia's stockholders, considering the adequate collaterals and securities covered by the rehabilitation plan and the continuing mortgages over Sarabia's properties.[32]

The RTC Ruling

In an Order[33] dated August 7, 2003, the RTC approved Sarabia's rehabilitation plan as recommended by the Receiver, finding the same to be feasible. In this accord, it observed that the rehabilitation plan was realistic since, based on Sarabia's financial

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[28] *Id.*

[29] *Id.* at 173-174.

[30] *Id.* at 174.

[31] *Id.* at 175.

[32] *Id.*

[33] *Id.* at 189-213.

history, it was shown that it has the inherent capacity to generate funds to pay its loan obligations given the proper perspective.[34] The recommended rehabilitation plan was also practical in terms of the interest rate pegged at 6.75% p.a. since it is based on Sarabia's ability to pay and the creditors' perceived cost of money.[35] It was likewise found to be viable since, based on the extrapolations made by the Receiver, Sarabia's revenue projections, albeit projected to slow down, remained to have a positive business/profit outlook altogether.[36]

The RTC further noted that while it may be true that Sarabia has been unable to comply with its existing terms with BPI, it has nonetheless complied with its obligations to its employees and suppliers and pay its taxes to both local and national government without disrupting the day-to-day operations of its business as an on-going concern.[37]

More significantly, the RTC did not give credence to BPI's opposition to the Receiver's recommended rehabilitation plan as neither BPI nor the Receiver was able to substantiate the claim that BPI's cost of funds was at the 10% p.a. threshold. In this regard, the RTC gave more credence to the Receiver's determination of fixing the interest rate at 6.75% p.a., taking into consideration not only Sarabia's ability to pay based on its proposed interest rates, *i.e.*, 7% to 14% p.a., but also BPI's perceived cost of money based on its own published interest rates for deposits, *i.e.*, 1% to 4.75% p.a., as well as the rates for treasury bills, *i.e.*, 5.498% p.a. and CB overnight borrowings, *i.e.*, 7.094%. p.a.[38]

The CA Ruling

In a Decision[39] dated April 24, 2006, the CA affirmed the RTC's ruling with the modification of reinstating the surety

[34] *Id.* at 204.

[35] *Id.*

[36] *Id.* at 205.

[37] *Id.* at 204.

[38] *Id.* at 207-208.

[39] *Id.* at 49-64.

obligations of Sarabia's stockholders to BPI as an additional safeguard for the effective implementation of the approved rehabilitation plan.[40] It held that the RTC's conclusions as to the feasibility of Sarabia's rehabilitation was well- supported by the company's financial statements, both internal and independent, which were properly analyzed and examined by the Receiver.[41] It also upheld the 6.75%. p.a. interest rate on Sarabia's loans, finding the said rate to be reasonable given that BPI's interests as a creditor were properly accounted for. As published, BPI's time deposit rate for an amount of ₱5,000,000.00 (with a term of 360-364 days) is at 5.5% p.a.; while the benchmark ninety one-day commercial paper, which banks used to price their loan averages to 6.4% p.a. in 2005, has a three-year average rate of 6.57% p.a.[42] As such, the 6.75% p.a. interest rate would be higher than the current market interest rates for time deposits and benchmark commercial papers. Moreover, the CA pointed out that should the prevailing market interest rates change as feared by BPI, the latter may still move for the modification of the approved rehabilitation plan.[43]

Aggrieved, BPI moved for reconsideration which was, however, denied in a Resolution[44] dated December 6, 2006.

Hence, this petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the CA correctly affirmed Sarabia's rehabilitation plan as approved by the RTC, with the modification on the reinstatement of the surety obligations of Sarabia's stockholders.

BPI mainly argues that the approved rehabilitation plan did not give due regard to its interests as a secured creditor in view

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

[41] *Id.* at 59.

[42] *Id.* at 60.

[43] *Id.*

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

of the imposition of a fixed interest rate of 6.75% p.a. and the extended loan repayment period.[45] It likewise avers that Sarabia's misrepresentations in its rehabilitation petition remain unresolved.[46]

On the contrary, Sarabia essentially maintains that: (*a*) the present petition improperly raises questions of fact;[47] (*b*) the approved rehabilitation plan takes into consideration all the interests of the parties and the terms and conditions stated therein are more reasonable than what BPI proposes;[48] and *c*) BPI's allegations of misrepresentation are mere desperation moves to convince the Court to overturn the rulings of the courts *a quo*.[49]

The Court's Ruling

The petition has no merit.

A. Propriety of BPI's petition; procedural considerations.

It is fundamental that a petition for review on *certiorari* filed under Rule 45 of the Rules of Court covers only questions of law. In this relation, questions of fact are not reviewable and cannot be passed upon by the Court unless, the following exceptions are found to exist: (*a*) when the findings are grounded entirely on speculations, surmises, or conjectures; (*b*) when the inference made is manifestly mistaken, absurd, or impossible; (*c*) when there is a grave abuse of discretion; (*d*) when the judgment is based on misappreciation of facts; (*e*) when the findings of fact are conflicting; (*f*) when in making its findings, the same are contrary to the admissions of both parties; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific

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[45] *Id.* at 37-42.

[46] *Id.* at 42-44.

[47] *Id.* at 473-479.

[48] *Id.* at 480-489.

[49] *Id.* at 491-500.

evidence on which they are based; (*i*) 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; and *j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[50]

The distinction between questions of law and questions of fact is well-defined. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged fat. This being so, the findings of fact of the CA are final and conclusive and the Court will not review them on appeal.[51]

In view of the foregoing, the Court finds BPI's petition to be improper– and hence, dismissible[52] – as the issues raised therein involve questions of fact which are beyond the ambit of a Rule 45 petition for review.

To elucidate, the determination of whether or not due regard was given to the interests of BPI as a secured creditor in the approved rehabilitation plan partakes of a question of fact since it will require a review of the sufficiency and weight of evidence presented by the parties – among others, the various financial documents and data showing Sarabia's capacity to pay and BPI's perceived cost of money – and not merely an application of law. Therefore, given the complexion of the issues which BPI presents, and finding none of the above-mentioned exceptions to exist, the Court is constrained to dismiss its petition, and prudently uphold the factual findings of the courts *a quo* which

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[50] *Westmont Investment Corporation v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 797. (Citations omitted)

[51] *Id*.

[52] Section 5 (g), Rule 56 of the Rules of Court states:

SEC. 5. Grounds for dismissal of appeal. — The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

(g) The fact that the case is not appealable to the Supreme Court.

are entitled to great weight and respect, and even accorded with finality. This especially obtains in corporate rehabilitation proceedings wherein certain commercial courts have been designated on account of their expertise and specialized knowledge on the subject matter, as in this case.

In any event, even discounting the above-discussed procedural considerations, the Courts still finds BPI's petition lacking in merit.

B. Approval of Sarabia's rehabilitation plan; substantive considerations.

Records show that Sarabia has been in the hotel business for over thirty years, tracing its operations back to 1972. Its hotel building has been even considered a landmark in Iloilo, being one of its kind in the province and having helped bring progress to the community.[53] Since then, its expansion was continuous which led to its decision to commence with the construction of a new hotel building. Unfortunately, its contractor defaulted which impelled Sarabia to take-over the same. This significantly skewed its projected revenues and led to various cash flow difficulties, resulting in its incapacity to meet its maturing obligations.

Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors and even the general public. In this light, case law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former

[53] *Rollo,* p. 169.

position of successful operation and liquidity. Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid heir claims from its earnings.[54] Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.[55]

Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation[56] (Interim Rules) states that ***a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable***. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA,[57] is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.

It is within the parameters of the aforesaid provision that the Court examines the approval of Sarabia's rehabilitation.

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[54] See *Express Investments III Private Ltd. v. Bayan Telecommunications, Inc.*, G.R. Nos. 174457-59, December 5, 2012, 687 SCRA 50, 86-87.

[55] *Id.* at 87.

[56] A.M. No. 00-8-10-SC dated November 21, 2000. The Court deems it proper to assess Sarabia's rehabilitation within the parameters of the Interim Rules since these were the rules applicable at the time the rehabilitation plan was approved. Republic Act No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), which is the current law on the matter, took effect only on August 31, 2010. Its rules of procedure have yet to be promulgated as of date.

[57] See Section 64 of the FRIA.

i. Feasibility of Sarabia's rehabilitation.

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into onefor liquidation.[58] As further guidance on the matter, the Court's pronouncement in *Wonder Book Corporation v. Philippine Bank of Communications*[59] proves instructive:

Rehabilitation is x x x available to a corporation [which], while illiquid, has assets that can generate more cash if used in its daily operations than sold. **Its liquidity issues can be addressed by a**

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[58] Section 25 of the FRIA provides:

SEC. 25. *Giving Due Course to or Dismissal of Petition, or Conversion of Proceedings.* — Within ten (10) days from receipt of the report of the rehabilitation receiver mentioned in Section 24 hereof the court may:

x x x x x x x x x

(c) convert the proceedings into one for the liquidation of the debtor upon a finding that:

(1) the debtor is insolvent; and

(2) there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the rules to be promulgated by the Supreme Court.

[59] G.R. No. 187316, July 16, 2012, 676 SCRA 489.

practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals. **This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (*a*) the absence of a sound and workable business plan; (*b*) baseless and unexplained assumptions, targets and goals; (*c*) speculative capital infusion or complete lack thereof for the execution of the business plan; (*d*) cash flow cannot sustain daily operations; and (*e*) negative net worth and the assets are near full depreciation or fully depreciated**.[60] (Emphasis and underscoring supplied)

Keeping with these principles, the Court thus observes that:

First, Sarabia has the financial capability to undergo rehabilitation.

Based on the Receiver's Report, Sarabia's financial history shows that it has the inherent capacity to generate funds to repay its loan obligations if applied through the proper financial framework. The Receiver's examination and analysis of Sarabia's financial data reveals that the latter's business is not only an on-going but also a growing concern. Despite its financial constraints, Sarabia likewise continues to be profitable with its hotelier business as its operations have not been disrupted.[61] Hence, given its current fiscal position, the prospect of substantial and continuous revenue generation is a realistic goal.

Second, Sarabia has the ability to have sustainable profits over a long period of time.

As concluded by the Receiver, Sarabia's projected revenues shall have a steady year-on-year growth from the time that it applied for rehabilitation until the end of its rehabilitation plan in 2018, albeit with decreasing growth rates (growth rate is at

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[60] *Id.* at 501.

[61] *Rollo*, p. 204.

26% in 2003, 5% in 2004-2007, 3% in 2008-2018).[62] Should such projections come through, Sarabia would have the ability not just to pay off its existing debts but also to carry on with its intended expansion. The projected sustainability of its business, as mapped out in the approved rehabilitation plan, makes Sarabia's rehabilitation a more viable ption to satisfy the interests of its stakeholders in the long run as compared to its immediate liquidation.

Third, the interests of Sarabia's creditors are well-protected.

As correctly perceived by the CA, adequate safeguards are found under the approved rehabilitation plan, namely: (*a*) any deficiency in the required minimum payments to creditors based on the presented amortization schedule shall be paid personally by Sarabia's stockholders;[63] (*b*) the conversion of the advances from stockholders amounting to ₱18,748,306.00 and deferred credits amounting to ₱42,688,734 as of the December 31, 2002 tentative audited financial statements to stockholder's equity was granted;[64] *(c*) all capital expenditures which are over and above what is provided in the cash flow of the approved rehabilitation plan which will materially affect the cash position of the hotel but which are deemed necessary in order to maintain the hotel's competitiveness in the industry shall be subject to the approval by the Court prior to implementation;[65] (*d*) the formation of Sarabia's new management team and the requirement that the latter shall be required to submit a comprehensive business plan to support the generation of revenues as reported in the Rehabilitation Plan, both short term and long term;[66] (*e*) the maintenance of all Sarabia's existing real estate mortgages over hotel properties as collaterals and securities in favor of BPI until the former's full and final liquidation of its outstanding

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[62] *Id.* at 205.

[63] *Id.* at 8.

[64] *Id.* at 9.

[65] *Id.*

[66] *Id.*

loan obligations with the latter;[67] and (*f*) the reinstatement of the comprehensive surety agreement of Sarabia's stockholders regarding the former's debt to BPI.[68] With these terms and conditions[69] in place, the subsisting obligations of Sarabia to its creditors would, more likely than not, be satisfied.

Therefore, based on the above-stated reasons, the Court finds Sarabia's rehabilitation to be feasible.

ii. Manifest unreasonableness of BPI's opposition.

Although undefined in the Interim Rules, it may be said that the opposition of a distressed corporation's majority creditor is manifestly unreasonable if it counter-proposes unrealistic payment terms and conditions which would, more likely than not, impede rather than aid its rehabilitation. The unreasonableness becomes further manifest if the rehabilitation plan, in fact, provides for adequate safeguards to fulfill the majority creditor's claims, and yet the latter persists on speculative or unfounded assumptions that his credit would remain unfulfilled.

While Section 23, Rule 4 of the Interim Rules states that the rehabilitation court shall consider certain incidents in determining whether the opposition is manifestly unreasonable,[70] BPI neither

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[67] *Id.* at 10.

[68] *Id.* at 20.

[69] *Id.* at 18-19, 21.

[70] Section 23, Rule 4 of the Interim Rules partly provides:

SEC. 23. Approval of the Rehabilitation Plan. — x x x.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period;

b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

c. The Rehabilitation Receiver has recommended approval of the plan.

x x x x x x x x x

proposes Sarabia's liquidation over its rehabilitation nor questions the controlling interest of Sarabia's shareholders or owners. It only takes exception to: (*a*) the imposition of the fixed interest rate of 6.75% p.a. as recommended by the Receiver and as approved by the courts *a quo*, proposing that the original escalating interest rates of 7%, 8%, 10%, 12%, and 14%, over seventeen years be applied instead;[71] and (*b*) the fact that Sarabia's misrepresentations in the rehabilitation petition, *i.e.*, that it physically acquired additional property whereas in fact the increase was mainly due to the recognition of Revaluation Increment and because of capital expenditures, were not taken into consideration by the courts *a quo*.[72]

Anent the first matter, it must be pointed out that oppositions which push for high interests rates are generally frowned upon in rehabilitation proceedings given that the inherent purpose of a rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period. It is the objective of a rehabilitation proceeding to provide the best possible framework for the corporation to gradually regain or achieve a sustainable operating form. Hence, if a creditor, whose interests remain well-preserved under the existing rehabilitation plan, still declines to accept interests pegged at reasonable rates during the period of rehabilitation, and, in turn, proposes rates which are largely counter-productive to the rehabilitation, then it may be said that the creditor's opposition is manifestly unreasonable.

In this case, the Court finds BPI's opposition on the approved interest rate to be manifestly unreasonable considering that: (*a*) the 6.75% p.a. interest rate already constitutes a reasonable rate of interest which is concordant with Sarabia's projected rehabilitation; and (*b*) on the contrary, BPI's proposed escalating interest rates remain hinged on the theoretical assumption of future fluctuations in the market, this notwithstanding the fact that its interests as a secured creditor remain well-preserved.

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[71] *Rollo*, p. 37.

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

The following observations impel the foregoing conclusion: ***first***, the 6.75% p.a. interest rate is actually higher than BPI's perceived cost of money as evidenced by its published time deposit rate (for an amount of ₱5,000,000.00, with a term of 360-364 days) which is only set at 5.5% p.a.; ***second***, the 6.75% p.a. is also higher than the benchmark ninety one-day commercial paper, which is used by banks to price their loan averages to 6.4% p.a. in 2005, and has a three-year average rate of 6.57% p.a.; and ***third***, BPI's interests as a secured creditor are adequately protected by the maintenance of all Sarabia's existing real estate mortgages over its hotel properties as collateral as well as by the reinstatement of the comprehensive surety agreement of Sarabia's stockholders, among other terms in the approved rehabilitation plan.

As to the matter of Sarabia's alleged misrepresentations, records disclose that Sarabia already clarified its initial statements in its rehabilitation petition by submitting, on its own accord, a supplemental affidavit dated October 24, 2002[73] that explains that the increase in its properties and assets was indeed by recognition of revaluation increment.[74] Proceeding from this fact, the CA observed that BPI actually failed to establish its claimed defects in light of Sarabia's assertive and forceful explanation that the alleged inaccuracies do not warrant the dismissal of its petition.[75] Thus, absent any compelling reason to disturb the CA's finding on this score, the Court deems it proper to dismiss BPI's allegations of misrepresentation against Sarabia.

As a final point, BPI claims that Sarabia's projections were "too optimistic," its management was "extremely incompetent"[76] and that it was even forced to pay a pre-termination penalty due to its previous loan with the Landbank of the Philippines.[77]

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[73] *Id.* at 123-141.

[74] *Id.* at 127 and 495.

[75] *Id.* at 61 and 495.

[76] *Id.* at 43.

[77] *Id.* at 40.

Suffice it to state that bare allegations of fact should not be entertained as they are bereft of any probative value.[78] In any event, even if it is assumed that the said allegations are substantiated by clear and convincing evidence, the Court, absent any cogent basis to proceed otherwise, remains steadfast in its preclusion to thresh out matters of fact on a Rule 45 petition, as in this case.

All told, Sarabia's rehabilitation plan, as approved and modified by the CA, is hereby sustained. In view of the foregoing pronouncements, the Court finds it unnecessary to delve on the other ancillary issues as herein raised.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated April 24, 2006 and Resolution dated December 6, 2006 of the Court of Appeals, Cebu City in CA-G.R. CV. No. 81596 are hereby **AFFIRMED**.

SO ORDERED.

Brion, Bersamin,[*] *del Castillo,* and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 182280. July 29, 2013]

TERESA C. AGUILAR, CESAR D. RAAGAS, VILLAMOR VILLEGAS, and THE REGISTER OF DEEDS FOR THE CITY OF MAKATI,[*] *petitioners, vs.* **MICHAEL J. O'PALLICK,** *respondent.*

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[78] "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence." (*Real v. Belo*, 542 Phil. 109, 122 [2007].) (Citations omitted)

[*] Designated Additional Member per Raffle dated July 29, 2013.

[*] See Amended Complaint, records, Vol. II, pp. 341-349; Petition for Review on *Certiorari*, *rollo*, pp. 5-23 at 6.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; THE CAUSE OF ACTION IN A COMPLAINT IS NOT DETERMINED BY THE DESIGNATION GIVEN TO IT BY THE PARTIES; THE ALLEGATIONS IN THE BODY OF THE COMPLAINT DEFINE OR DESCRIBE IT AND THE DESIGNATION OR CAPTION IS NOT CONTROLLING MORE THAN THE ALLEGATIONS IN THE COMPLAINT.— It is true, as O'Pallick claims, that in G.R. No. 157801 the Court did not foreclose the possibility that a separate action questioning Aguilar's title may be instituted, either by PPGI or anyone claiming a right to the subject condominium unit. x x x [C]ontrary to petitioners' claim, this Court's pronouncement in G.R. No. 157801 can in no way constitute a final determination of O'Pallick's claim. In his Amended Complaint, O'Pallick averred that Aguilar obtained her title through unlawful means. More particularly, he prayed for the nullification of Aguilar's CCT No. 74777. Clearly, therefore, although captioned as one for Quieting of Title, O'Pallick's suit is actually a suit for annulment of title. Basic is the rule that "[t]he cause of action in a [C]omplaint is not determined by the designation given to it by the parties. The allegations in the body of the [C]omplaint define or describe it. The designation or caption is not controlling more than the allegations in the [C]omplaint. It is not even an indispensable part of the [C]omplaint."

2. ID.; JUDGMENTS; A PERSON CANNOT BE PREJUDICED BY A RULING RENDERED IN AN ACTION OR PROCEEDING IN WHICH HE WAS NOT MADE A PARTY.— "The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional guarantee of due process of law." Thus, we agree with the CA's pronouncement that since respondent was not impleaded in the HLURB case, he could not be bound by the decision rendered therein. Because he was not impleaded in said case; he was not given the opportunity to present his case therein. But, more than the fact that O'Pallick was not impleaded in the HLURB case, he had the right to vindicate his claim in a separate action,

as in this case. As a prior purchaser of the very same condominium unit, he had the right to be heard on his claim.

APPEARANCES OF COUNSEL

Magno Aguilar Corpuz Solis Litonjua & Alabanza Law Offices for petitioners.

Dimayuga Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional guarantee of due process of law."[1]

This Petition for Review on *Certiorari*[2] assails the October 25, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 83027 which set aside the December 8, 2003 Order[4] of the Regional Trial Court, Makati City, Branch 61, in Civil Case No. 01-572, as well as the CA Resolution[5] dated March 12, 2008 denying petitioners' Motion for Reconsideration.[6]

Factual Antecedents

On March 20, 1995, a Contract To Sell[7] was executed between Primetown Property Group, Inc. (PPGI) on the one hand, and

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[1] *Green Acres Holdings, Inc. v. Cabral*, G.R. No. 175542, June 5, 2013. Citation omitted.

[2] *Rollo*, pp. 5-23.

[3] CA *rollo*, pp. 111-127; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Edgardo F. Sundiam.

[4] Records, Vol. II, pp. 671-672; penned by Judge Romeo F. Barza.

[5] CA *rollo*, pp. 172-173.

[6] *Id.* at 129-141.

[7] Records, Vol. II, pp. 350-353.

Reynaldo Poblete and Tomas Villanueva (Poblete and Villanueva) on the other, over Unit 3301 of the Makati Prime Citadel Condominium in Makati City (the unit), and covered by Condominium Certificate of Title No. 25156 (CCT No. 25156).[8] Poblete and Villanueva in turn executed in favor of herein respondent Michael J. O'Pallick (O'Pallick) a Deed of Assignment[9] covering the unit. In October 1995, PPGI issued a Deed of Sale[10] in favor of O'Pallick after the latter paid the purchase price in full.

Although O'Pallick took possession of the unit, the Deed of Sale in his favor was never registered nor annotated on CCT No. 25156.

Meanwhile, in a case between PPGI and herein petitioner Teresa C. Aguilar (Aguilar) filed in the Housing and Land Use Regulatory Board (HLURB),[11] Aguilar was able to obtain a final and executory Decision[12] in her favor, and as a result, Sheriff Cesar D. Raagas (Raagas) of the Regional Trial Court (RTC) of Makati City, caused several properties of PPGI to be levied, including the herein subject condominium unit. The sale at public auction was scheduled to be held on March 30, 2000.[13] Raagas issued a Sheriff's Notice of Sale dated February 17, 2000, posted it, and sent a copy thereof to PPGI.[14] The notice was likewise published.[15] But before the scheduled auction sale,

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[8] Records, Vol. I, pp. 105-107.

[9] Records, Vol. II, pp. 354-355.

[10] *Id.* at 356-357.

[11] Case No. REM-0207-0326198, entitled "*Teresa C. Aguilar v. Primetown Property Group, Inc.*", is a case for rescission and refund of payments filed by Aguilar stemming from PPGI's failure to complete a condominium development in Lapu-lapu City. Aguilar is a buyer of a condominium unit(s) in the apparently botched development.

[12] Records, Vol. I, pp. 159-161.

[13] CA *rollo*, p. 85.

[14] *Id.*

[15] *Id.* at 86.

or on March 21, 2000, O'Pallick filed an Affidavit of Third-Party Claim.[16] Raagas conducted the public auction sale on March 30, 2000,[17] where Aguilar was declared the highest bidder for the subject unit. A certificate of sale was issued in her favor.

Because PPGI failed to redeem the property, a final Deed of Sale[18] was issued in favor of Aguilar on April 20, 2001. CCT No. 25156 was cancelled, and CCT No. 74777 was issued in her name.[19] Aguilar moved for the issuance of a Writ of Possession,[20] and in a December 21, 2001 Order, the HLURB granted the motion.[21]

On April 6, 2001, O'Pallick instituted Civil Case No. 01-572 with the RTC Makati[22] for quieting of title and to set aside the levy on execution of the subject unit, to annul the certificate of sale issued in favor of Aguilar, as well as to recover the unit. In his Complaint[23] against Aguilar and Raagas, O'Pallick claimed that when PPGI executed a Deed of Sale in his favor, all rights and interests over the unit were transferred to him, and the subsequent levy and sale thereof to Aguilar created a cloud on his title. In addition, O'Pallick prayed for moral damages, attorney's fees and costs of litigation.

Petitioners sought the dismissal of the case, arguing essentially that when the levy and sale on execution were conducted, PPGI remained the registered owner of the unit, and the title covering the same remained clean and free of annotations indicating claims by third persons, including O'Pallick; and that O'Pallick's unregistered Deed of Sale cannot bind and prejudice third parties, including Aguilar.

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[16] Records, Vol. III, pp. 757-758.

[17] CA *rollo*, p. 86

[18] Records, Vol. I, pp. 167-168.

[19] CA *rollo*, p. 86.

[20] *Id.* at 86-87.

[21] *Id.* at 87.

[22] Raffled to Branch 136.

[23] Records, Vol. I, pp. 29-34.

Eventually, the case was re-raffled to Branch 61 of the RTC Makati. O'Pallick likewise filed an Amended Complaint,[24] impleading Villamor Villegas[25] (Villegas) and the Office of the Makati Register of Deeds, and alleging further that at the time of the levy, Aguilar knew that PPGI no longer owned the unit, as she had been informed of such fact by PPGI during the proceedings in the HLURB case; that Aguilar obtained her title through unlawful means; that his eviction from the premises was illegal; that he suffered actual damages in the amount of ₱4,953,410.00;[26] that as a result of the eviction of his tenant, he suffered unrealized monthly rental income in the amount of ₱30,000.00;[27] and that he should be awarded exemplary damages.[28] O'Pallick also prayed for the cancellation of Aguilar's CCT No. 74777.

During the proceedings, petitioners filed a Motion to Dismiss[29] on the ground that the trial court had no jurisdiction over the subject matter of the case; and that since the subject matter was a condominium unit, the HLURB possessed exclusive jurisdiction over the dispute. A Motion for Preliminary Hearing on the Affirmative Defenses[30] was likewise filed. Despite Opposition,[31] the motion was granted, and a hearing thereon was conducted.

Ruling of the Regional Trial Court

On December 8, 2003, the trial court issued the assailed Order[32] dismissing Civil Case No. 01-572. The trial court held

[24] Records, Vol. II, pp. 341-349.

[25] *Ex officio* Sheriff of the Makati RTC.

[26] Records, Vol. II, p. 344.

[27] *Id.* at 345.

[28] *Id.* at 347.

[29] Records, Vol. I, pp. 115-124.

[30] Records, Vol. II, pp. 615-617.

[31] *Id.* at 636-644.

[32] *Id.* at 671-672.

that it had no jurisdiction to annul the levy and sale on execution ordered by the HLURB, an agency under the Office of the President. The trial court concluded that because the Office of the President is a co-equal body, it had no power to interfere with the latter's decisions nor could it issue injunctive relief to enjoin the execution of decisions of any of its administrative agencies; the case for quieting of title or reconveyance constitutes such prohibited interference. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the court finds for the defendants and hereby DISMISSES the case.
>
> SO ORDERED.[33]

O'Pallick's Motion for Reconsideration[34] was denied,[35] thus he interposed an appeal with the CA.

Ruling of the Court of Appeals

In CA-G.R. CV No. 83027, the CA sustained O'Pallick's argument that since he was not a party to the HLURB case, he could not be bound by its disposition as well as the incidents and actions taken therein; thus, he had the right to file a separate action to protect and vindicate his claim. It held that since the execution sale proceeded despite O'Pallick's third-party claim, the latter had no other recourse but to file an independent vindicatory action to prove his claim. Citing the Court's pronouncement in *The Consolidated Bank & Trust Corporation (Solidbank) v. Court of Appeals*,[36] the appellate court held that "the issue as to whether or not there was illegal levy on properties on execution can be threshed out in [a] separate action." The appellate court likewise echoed *Spouses Estonina v. Court of Appeals*,[37] stating that the filing of an independent action with

[33] *Id.* at 672.

[34] *Id.* at 676-677.

[35] See Order dated April 5, 2004, *id.* at 729.

[36] 271 Phil. 160, 175 (1991).

[37] 334 Phil. 577, 587-588 (1997).

a court other than that which issued the Writ of Execution may be allowed where the plaintiff in the independent action is a stranger to the case where the Writ of Execution was issued. The CA thus ordered the remand of the case to the RTC, *viz*:

> WHEREFORE, the appealed Order of Branch 61, Regional Trial Court of Makati City dated 8 December 2003, is hereby SET ASIDE. ACCORDINGLY, the instant case is REMANDED to said court for trial on the merits.
>
> SO ORDERED.[38]

Unable to obtain a reconsideration of the appellate court's Decision, petitioners filed the present Petition.

Issues

Petitioners argue that the CA erred in ruling that:

RESPONDENT WAS NOT A PARTY TO THE PROCEEDINGS BETWEEN AGUILAR AND PPGI.

THE AFFIDAVIT OF THIRD-PARTY CLAIM WAS SERVED BY RESPONDENT ON PETITIONER AGUILAR.

THERE WAS ILLEGAL LEVY ON THE PROPERTY UNDER EXECUTION, THUS THE SAME [MAY BE] THRESHED OUT IN A SEPARATE ACTION.

THE ESTONINA CASE APPLIES TO THE PRESENT CASE.

THE CASE SHOULD BE REMANDED TO BRANCH 61, RTC MAKATI FOR TRIAL ON THE MERITS.[39]

Petitioners' Arguments

Petitioners argue that Aguilar's title had been the subject of final determination in G.R. No. 157801,[40] where this Court

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[38] CA *rollo*, p. 126.

[39] *Rollo*, p. 15.

[40] Entitled "*Primetown Property Group, Inc. v. Hon. Juntilla*," 498 Phil. 721 (2005).

held that Aguilar is the absolute owner of the unit, and is entitled to a writ of possession over the same.

Petitioners add that contrary to O'Pallick's claim, Aguilar was never served a copy of his third-party claim, and came to know of it only on October 11, 2001 while following up on the consolidation of her title.

Petitioners also argue that because PPGI remained the registered owner of the unit and title was never transferred to O'Pallick, there was no irregularity in the conduct of the levy and execution sale thereof, as well as the registration thereof and the subsequent cancellation of CCT No. 25156 and issuance of CCT No. 74777 in Aguilar's name.

Petitioners further contend that a remand of the case is unnecessary on account of the ruling of this Court in G.R. No. 157801, which declared Aguilar as the absolute owner of the subject unit; thus, remanding the case for further proceedings would only render the final and executory Decision in G.R. No. 157801 nugatory. Besides, the trial court has no power over the HLURB because the latter is a quasi-judicial agency co-equal with the former.

Finally, petitioners claim that O'Pallick's proper recourse, if there be any, is to go after PPGI, presumably to sue for damages.

Petitioners thus pray that the CA Decision be reversed, and that the December 8, 2003 Order of the Makati RTC be accordingly reinstated.

Respondent's Arguments

Respondent, on the other hand, insists that petitioners committed procedural lapses with regard to the Petition, which lacks an affidavit of proof of service and a certification against non-forum shopping, which warrant dismissal.

Respondent further supports the ruling of the CA that the case for quieting of title must subsist and he must be given the opportunity to be heard, since he was not impleaded in the

HLURB case where his claim over the subject unit could have been litigated.

As regards the disposition of this Court in G.R. No. 157801, respondent cites the Court's pronouncement therein that the issue of whether title or ownership had been wrongfully vested in Aguilar as a result of her purchase of the subject unit at the execution sale may be raised in a separate proceeding; that is, that Aguilar's title may be questioned precisely in a proceeding such as one for quieting of title.

Respondent further argues that Aguilar's claim that she was not served a copy of his third-party claim, and came to know about it only on October 11, 2001 while following up on the consolidation of her title, is a matter best resolved after trial on the merits in Civil Case No. 01-572.

Finally, respondent insists that Aguilar is not a buyer in good faith.

Our Ruling

The Petition must be denied.

The Court finds it unnecessary to address the procedural issues raised by the respondent, considering its resolve to deny the Petition for lack of merit. For this case, we shall afford the party litigants the amplest opportunity for the proper and just determination of their cause, free from the constraints of technicalities.

It is true, as O'Pallick claims, that in G.R. No. 157801 the Court did not foreclose the possibility that a separate action questioning Aguilar's title may be instituted, either by PPGI or anyone claiming a right to the subject condominium unit. Thus, we held:

> Fourth. The buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. The issuance of the writ of possession had become ministerial x x x on the part of HLURB since the respondent [Aguilar] had sufficiently shown

her proof of title over the subject condominium. Being the registered owner of the condominium unit, she is entitled to its possession. The case at bar is akin to foreclosure proceedings where the issuance of a writ of possession becomes a ministerial act of the court after title [to] the property has been consolidated in the mortgage.

It must be stressed that the Register of Deeds had already cancelled CCT No. 25156 and issued CCT No. 74777 in the name of the respondent. **Thus, the argument of the petitioner [PPGI] that the title or ownership had been wrongfully vested with the respondent is a collateral attack on the latter's title which is more appropriate in a direct proceeding**.[41] (Emphasis and words in parentheses supplied)

Thus, contrary to petitioners' claim, this Court's pronouncement in G.R. No. 157801 can in no way constitute a final determination of O'Pallick's claim. In his Amended Complaint, O'Pallick averred that Aguilar obtained her title through unlawful means. More particularly, he prayed for the nullification of Aguilar's CCT No. 74777. Clearly, therefore, although captioned as one for Quieting of Title, O'Pallick's suit is actually a suit for annulment of title. Basic is the rule that "[t]he cause of action in a [C]omplaint is not determined by the designation given to it by the parties. The allegations in the body of the [C]omplaint define or describe it. The designation or caption is not controlling more than the allegations in the [C]omplaint. It is not even an indispensable part of the [C]omplaint."[42]

"The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional guarantee of due process of law."[43] Thus, we agree with the CA's pronouncement that since respondent was not impleaded in the HLURB case, he could not be bound by the decision rendered therein. Because

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[41] *Id.* at 732.

[42] *Munsalud v. National Housing Authority*, G.R. No. 167181, December 23, 2008, 575 SCRA 144, 158.

[43] *Green Acres Holdings, Inc. v. Cabral, supra* note 1.

he was not impleaded in said case; he was not given the opportunity to present his case therein. But, more than the fact that O'Pallick was not impleaded in the HLURB case, he had the right to vindicate his claim in a separate action, as in this case. As a prior purchaser of the very same condominium unit, he had the right to be heard on his claim.

Finally, the CA's application of the *Consolidated Bank & Trust Corporation*[44] and *Spouses Estonina*[45] cases are likewise well-taken, and may be viewed in light of the fact that what O'Pallick instituted was a case for annulment of title, which could remain pending independently of the proceedings in the HLURB.

WHEREFORE, premises considered, the Petition is **DENIED**. The assailed October 25, 2007 Decision and the March 12, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 83027 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186509. July 29, 2013]

PHILMAN MARINE AGENCY, INC. (now DOHLE-PHILMAN MANNING AGENCY, INC.) and/or DOHLE (IOM) LIMITED, *petitioners, vs.* **ARMANDO S. CABANBAN,** *respondent.*

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[44] *Supra* note 36.

[45] *Supra* note 37.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO RESOLVING MATTERS PERTAINING TO PERCEIVED LEGAL ERRORS THAT THE COURT OF APPEALS MAY HAVE COMMITTED IN ISSUING THE ASSAILED DECISION, IN CONTRAST WITH THE REVIEW FOR JURISDICTIONAL ERRORS THAT THE COURT UNDERTAKES IN AN ORIGINAL *CERTIORARI* ACTION; EXCEPTIONS; PRESENT.— [W]e emphasize the settled rule that only questions of law are allowed in a petition for review on *certiorari.* This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision, in contrast with the review for jurisdictional errors that we undertake in an original *certiorari* action. In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65 of the Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of a grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. Viewed in this light, we do not re-examine the factual findings of the NLRC nor do we substitute our own judgment for theirs as findings of fact of labor tribunals are generally conclusive on this Court. As presented by the petitioners, the issues raised before us require the re-evaluation of the evidence on record and consideration of the applicable law. The question of Armando's entitlement to disability benefits and attorney's fees, while essentially a question of law appropriate for a Rule 45 review, nevertheless hinges for their resolution on a factual issue – the question whether the CAD, hypertension, hyperlipidemia, obesity and alcoholism afflicting Armando are work-related or work-aggravated. Based on these Rule 45 parameters, we generally cannot touch factual questions. Nevertheless, in the exercise of our discretionary appellate jurisdiction, we allow certain exceptions, all in the interest of giving substance and meaning to the justice we are sworn to uphold and give primacy to. The conflicting ruling of the LA and the NLRC, on the one hand,

and of the CA, on the other, in the present petition is one such exception to the above general rule. A re-examination of the record for purposes of determining the presence or absence of grave abuse of discretion committed by the CA is justified when this situation is present.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; THE LABOR CODE, THE POEA-SEC AND THE MEDICAL FINDINGS GOVERN THE ENTITLEMENT OF A SEAFARER TO DISABILITY BENEFITS; TOTAL AND PERMANENT DISABILITY, DEFINED.— The entitlement of a seafarer on overseas employment to disability benefits is governed by the medical findings, by law and by the parties' contract. By law, the governing provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the provisions of the POEA-SEC incorporating Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA-SEC) govern. Since the present controversy centers on Armando's claim for total permanent disability, we find it necessary to define total and permanent disability as provided under Article 192(3)(1) of the Labor Code (3) The following disabilities shall be deemed total and permanent: (1) Temporary total disability **lasting continuously for more than one hundred twenty days,** except as otherwise provided for in the Rules[.] In relation to this Labor Code provision, we also refer to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. SEC. 2. Period of entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it **shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability **in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability** as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

3. ID.; ID.; ID.; TO CLAIM DISABILITY BENEFITS, THE SEAFARER MUST ESTABLISH THAT THE INJURY OR ILLNESS IS WORK-RELATED AND THAT IT OCCURRED DURING THE TERM OF THE CONTRACT; ASSESSMENT OF THE SEAFARER'S DISABILITY, PROCEDURE TO BE FOLLOWED.— By contract, pertinent to the issue of compensability in the event of the seafarer's illness or disability is Section 20-B of the POEA-SEC. x x x. Section 20-B of the POEA-SEC, in plain terms, laid out two primary conditions which the seafarer must meet in order for him to claim disability benefits – that **the injury or illness is work-related** and that **it occurred during the term of the contract**. It also spelled out the procedure to be followed in assessing the seafarer's disability — whether total or partial and whether temporary or permanent — resulting from either injury or illness during the term of the contract, in addition to specifying the employer's liabilities on account of such injury or illness. When read together with Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code and Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, and following our various pronouncements, Section 20-B of the POEA-SEC evidently shows that it is the company-designated physician who primarily assesses the degree of the seafarer's disability. Upon the seafarer's repatriation for medical treatment, and during the course of such treatment, the seafarer is under total temporary disability and receives medical allowance until the company-designated physician declares his fitness to work resumption or determines the degree of the seafarer's permanent disability — either total or partial. The company-designated physician should, however, make the declaration or determination within 120 days, otherwise, the law considers the seafarer's disability as total and permanent and the latter shall be entitled to disability benefits. Should the seafarer still require medical treatment for more than 120 days, the period granted to the company-designated physician to make the declaration of the fitness to work or determination of the permanent disability may be extended, but not to exceed 240 days. At anytime during this latter period, the company-designated physician may make the declaration or determination: either the seafarer will no longer be entitled to any sickness allowance as he is already declared fit to work, or he shall be entitled to receive disability benefits depending on the degree

of his permanent disability. The seafarer is not, of course, irretrievably bound by the findings of the company-designated physician as the above provisions allow him to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's appointed physician, **the parties shall jointly agree to refer the matter to a third doctor whose findings shall be final and binding on both**. In the present petition, the petitioners' designated physician – Dr. Alegre – declared Armando fit for sea service on May 12, 2003 or 92 days from the time he disembarked or signed off from the vessel on February 10, 2003. As defined under Article 192(c)(1) of the Labor Code, total and permanent disability means total temporary disability lasting for more than 120 days (unless the seafarer is still under treatment up to a maximum period of 240 days as the Court held in *Vergara v. Hammonia Maritime Services, Inc.*). While Armando was initially under temporary total disability, Dr. Alegre declared him fit to work well within the 120-day mark. Viewed in this light, we find the LA and the NLRC legally correct when they refused to recognize any disability on Armando's part as the petitioners' designated physician had already declared his fitness to resume work. Consequently, absent any disability after his temporary disability was dealt with, he is therefore not entitled to compensation benefits under Section 20 of the POEA-SEC.

4. ID.; ID.; ID.; ID.; WHOEVER CLAIMS ENTITLEMENT TO DISABILITY BENEFITS MUST PROVE SUCH ENTITLEMENT BY SUBSTANTIAL EVIDENCE; MEDICAL CERTIFICATIONS OF PRIVATE PHYSICIANS WHICH WERE BASED MERELY ON VAGUE DIAGNOSIS AND GENERAL IMPRESSIONS CANNOT BE GIVEN PROBATIVE WEIGHT.— In several cases, we held that **the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability**. In *Coastal Safeway Marine Services, Inc. v. Esguerra*, the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency*,

Inc., et al., the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x [outlining] the alleged findings and medical history x x x obtained after x x x [one examination]." Thus, in the absence of adequate diagnostic tests and procedures and reasonable findings to support the assessments of the four private physicians, their certifications on Armando's alleged disability simply cannot be taken at face value, particularly in light of the overwhelming evidence supporting the findings of Dr. Alegre. The rule is still that whoever claims entitlement to disability benefits must prove such entitlement by substantial evidence. The burden of proof rested on Armando to establish, by substantial evidence, the causal link between his work as a 2nd mate and his alleged disability to serve as basis for the grant of relief. Unfortunately, he failed to discharge this burden. Consequently, the CA erroneously imputed grave abuse of discretion on the part of the NLRC in giving greater evidentiary weight to the medical certificate issued by Dr. Alegre over those issued by Armando's physicians.

5. ID.; ID.; ID.; THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) IS NOT EXPLORATORY IN NATURE; HENCE, ITS FAILURE TO REVEAL OR UNCOVER THE PRE-EXISTING MEDICAL CONDITION WITH WHICH THE SEAFARER IS SUFFERING CANNOT SHIELD THE LATTER FROM THE CONSEQUENCES OF HIS WILLFUL CONCEALMENT OF THIS INFORMATION AND PRECLUDE THE EMPLOYER FROM DENYING HIS CLAIM ON GROUND OF CONCEALMENT.— Contrary to Armando's contention, the PEME is not sufficiently exhaustive so as to excuse his non-disclosure of his pre-existing hypertension. The PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition and is just enough for the employer to determine his fitness for the nature of the

work for which he is to be employed. In *Escarcha v. Leonis Navigation Co., Inc.*, we brushed aside the seafarer's claim that he acquired his illness during his employment simply because he passed the PEME. There, we held that "a PEME x x x is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. x x x [I]t does not reveal the real state of health of an applicant" In this case, considering that the PEME is not exploratory, its failure to reveal or uncover Armando's hypertension cannot therefore shield him from the consequences of his willful concealment of this information and preclude the petitioners from denying his claim on the ground of concealment.

6. ID.; ID.; ID.; ID.; TO BE ENTITLED TO DISABILITY BENEFITS, THE SEAFARER HAS TO PROVE THAT HIS ILLNESS IS WORK-RELATED AND THAT IT OCCURRED DURING THE TERM OF THE EMPLOYMENT.— [I]f indeed Armando had been suffering from obesity, hyperlipidemia and alcoholism as found by Dr. Ranjan's final diagnosis, he was suffering from infirmities that are not listed as occupational diseases under Section 32-A of the POEA-SEC and for which disability may be awarded. While we are aware of the provisions of Section 20-B, paragraph 4 which presumes any other illness not included under Section 32-A as work-related, still Armando has to prove that his illnesses are work-related and that they occurred during the term of the employment. He cannot simply argue that the petitioners bear the burden of rebutting the presumption.

7. ID.; ID.; ID.; WHILE THE COURT ADHERES TO THE PRINCIPLE OF LIBERALITY IN FAVOR OF THE SEAFARER IN CONSTRUING THE POEA-SEC, IT CANNOT ALLOW CLAIMS FOR COMPENSATION BASED ON SURMISES; DENIAL OF CLAIM FOR DISABILITY BENEFITS, AFFIRMED.— The petitioners question the CA's computation of the balance of Armando's sickness allowance at 120 days. We find that the CA seriously erred in arriving at this computation. To recall, the company-designated physician declared Armando fit to work on May 12, 2003. Armando disembarked or signed/off from the vessel on February 10, 2003. Thus, following our discussion x x x and pursuant to Section 20-B, paragraph 3 of the POEA-SEC, Armando's sickness allowance should be counted only at 92

> days, that is from February 10, 2003 when he disembarked form the vessel, until May 12, 2003 when Dr. Alegre declared him fit to work. [W]e hold that the CA seriously erred in finding that the NLRC committed grave abuse of discretion in denying Armando's claim for disability benefits. [W]hile the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on surmises. Liberal construction is not a license to disregard the evidence on record or to misapply our laws.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Dante Acorda for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the December 10, 2008 decision[2] and the February 18, 2009[3] resolution of the Court of Appeals *(CA)* in CA-G.R. SP No. 105079 setting aside the February 29, 2008 decision[4] and the June 10, 2008 resolution[5] of the National Labor Relations Commission *(NLRC)* in NLRC NCR Case No. OFW (M) 03-07-1666-00, NLRC NCR CA No. 043223-05. The reversed NLRC decision affirmed the December 29, 2004 decision[6] of the Labor Arbiter *(LA)* dismissing the complaint filed by

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 44-92.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Mario L. Guariña III and Sesinando E. Villon; *id.* at 99-126.

[3] *Id.* at 162-163.

[4] Penned by Presiding Commissioner Gerardo C. Nograles; *id.* at 164-170.

[5] *Id.* at 172-173.

[6] Penned by Labor Arbiter Fedriel S. Panganiban.

respondent Armando S. Cabanban against Philippine Transmarine Carriers, Inc. *(PTCI)*, later on substituted by petitioner Philman Marine Agency, Inc. *(Philman)*, Carlos Salinas and petitioner DOHLE (IOM) Limited *(DOHLE)*.

The Factual Antecedents

On September 15, 2002, Armando entered into a nine-month contract of employment[7] with DOHLE, through its local agent PTCI. He was assigned to work as a 2nd mate on board the vessel "INGA-S." His basic monthly salary was US$966.00 on a 48-hour workweek, with a fixed overtime pay of US$581.00 a month and vacation leave pay of US$161.00 for five days per month.

On September 9, 2002, Armando underwent the requisite pre-employment medical examination *(PEME)* at PTCI's accredited medical clinic,[8] which found him fit for sea service.[9] During his medical examination, he declared that he had no history of high blood pressure and heart trouble, and had not previously consulted any doctor relative to any disease.[10] Armando was deployed on October 14, 2002.

On February 9, 2003, while on board the vessel "INGA-S," Armando felt dizzy and complained of chest pain. He was immediately brought to the Fujairah Port Clinic, UAE, and was admitted to the Coronary Care Unit after an initial diagnosis of "Unstable Angina."[11] On February 13, 2003, Armando was discharged from the hospital but was re-admitted four days after due to recurrent angina at rest. On February 21, 2003, Dr. Mohamed Dipti Ranjan, the Chief Medical Officer of Fujairah Port Clinic, UAE, stated in Armando's medical report that "[h]e is a known case of HT, on atenolol 50 mg od [for five years]."[12]

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[7] *Rollo*, p. 200.

[8] *Id.* at 235-237 and 242-244.

[9] Angelus Medical Clinic, Inc.; *id.* at 238.

[10] *Id.* at 239-241.

[11] Medical Report; *id.* at 202.

[12] *Id.* at 207.

On February 22, 2003, Armando underwent Cardiac Catheterisation and Angiography to check for damages to his coronary arteries. The result of the angiography indicated "[e]ssentially normal coronary arteries with good left ventricular function."[13] The final diagnosis of Armando's illness, issued on February 23, 2003, stated "Microvascular Unstable Angina Class III B established on medical treatment, Type II-A Hyperlipidemia, HT, Obesity, Alcoholism." Dr. Ranjan gave the following treatment and advice:[14]

1. Medications as advised.
2. Unfit for duty for 4 weeks from today.
3. FIT FOR AIR TRAVEL.
4. REPATRIATION on Medical ground.
5. Risk stratification after 3 weeks by TMT/Stress Thallium 201/Technetium 99/sestambi scan.

Following Dr. Ranjan's recommendation, the petitioners repatriated Armando on medical ground. Armando arrived in the Philippines on February 23, 2003 and upon instruction, he proceeded to PTCI's company-designated physician, Dr. Natalio Alegre II, at the St. Luke's Medical Center. Dr. Alegre treated Armando and monitored his condition for three months. During the course of the treatment, Armando underwent several laboratory tests,[15] which included an ECG, CR-M, Troponin, spirometry and cardiac imaging. After the three-month close monitoring, treatment and consultation with the attending cardiologist, Dr. Marietta Crisostomo, Dr. Alegre declared Armando "fit to work" on May 12, 2003.[16]

Despite the certification of Dr. Alegre as to Armando's fitness to resume work, Armando nevertheless claimed otherwise. In a letter[17] dated June 25, 2003, Armando demanded from PTCI

[13] Angiography Report of Dr. Rajesh Raipancholia; *id.* at 250.

[14] *Id.* at 254.

[15] *Id.* at 210-213.

[16] Affidavit of Dr. Alegre executed on August 29, 2003; *id.* at 208-209.

[17] *Id.* at 260.

payment of permanent disability benefits under the Philippine Overseas Employment Agency Standard Employment Contract *(POEA-SEC)*.

The petitioners did not heed Armando's demand, prompting Armando to file, on July 4, 2003, a complaint[18] against the petitioners for injury/illness compensation benefit under a disability grade of 7, according to the POEA-SEC, in the amount of US$20,900.00. In the complaint, he indicated "Coronary Artery Disease" *(CAD)* as the ground for his claim for disability benefits. Armando also sought payment of the balance of his sickness allowance equivalent to two months, unpaid/underpaid salary amounting to US$966.00, vacation leave pay, sick leave pay, moral and exemplary damages, and attorney's fees. On September 9, 2003, Armando amended his complaint[19] to include "hypertension, hyperlipidemia, obesity and alcoholism" as grounds for his disability benefits claim.

On August 11, 2003, Armando went to the UST Hospital and consulted Dr. Patrick Gerard L. Moral (Internal Medicine, Pulmonary Disease and Sleep Breathing Disorders). Dr. Moral issued a medical certificate[20] diagnosing Armando with "Coronary Heart Disease, Hypertension and Dyslipidemia," and gave him a disability grade of "7" based on the POEA disability grading schedule under the POEA-SEC.

On August 27 and 29, 2003, Armando visited the Philippine General Hospital and consulted Dr. Antonio L. Dans (Internal Medicine and Cardiology). Dr. Dans diagnosed Armando with "Gastroesophageal reflux, Hypertension and Dyslipidemia."[21] On September 4, 2003, Armando visited Dr. Cayetano Reyes, Jr. (General Surgeon, Obstetrician and Gynecologist) at the Reyes Medical Maternity Center who diagnosed him with "essential hypertension and coronary heart disease."[22] On September 26,

[18] *Id.* at 261-262. Amended Complaint; *id.* at 263.

[19] *Id.* at 263 and 328.

[20] *Id.* at 258.

[21] *Id.* at 259.

[22] *Id.* at 323-324.

2003, a fourth personal physician, Dr. Renato Matawaran (Internal Medicine) of the Holy Rosary Medical Specialty Clinic, concurred with the hypertension and coronary heart disease diagnosis and similarly gave Armando a disability grade of "7."[23] Armando subsequently presented these medical certificates before the LA.

In their position paper[24] and amended position paper,[25] the petitioners denied any liability to Armando for disability benefits under the POEA-SEC. They pointed out that Dr. Alegre has already declared him fit to work following the "normal" results of his laboratory tests.

The petitioners also disagreed with Armando's computation of his sickness allowance at 120 days. The petitioners argued that since Dr. Alegre had already declared Armando fit to work on May 12, 2003, following the provisions of the POEA-SEC, Armando's sickness allowance should be counted at only ninety-two (92) days, that is, beginning February 10, 2003 when Armando disembarked/signed off from the vessel, until May 12, 2003. As they had already paid Armando's final wages up to February 9, 2003 and his sickness allowance for the period covering February 10, 2003 until April 1, 2003, Armando is thus entitled to receive only ₱68,560.30, representing the balance of his sickness allowance covering the period of April 2, 2003 until May 12, 2003.

Per its Manifestation and Motion filed on September 25, 2003, Philman substituted PTCI.[26]

In a decision dated December 29, 2004,[27] the LA dismissed Armando's claims except for the balance of the latter's sickness

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[23] *Id.* at 325-326.

[24] *Id.* at 175-196.

[25] *Id.* at 330-360.

[26] *Id.* at 332.

[27] Stated as December 24, 2004 in the NLRC's February 29, 2008 decision; *id.* at 164.

allowance in the amount of ₱68,560.30. In ruling for the petitioners, the LA declared that the petitioners had fully complied with their liabilities to Armando for the work-related injury/illness suffered by the latter during the term of the contract, pursuant to the POEA-SEC. The LA noted that the petitioners' company-designated physician declared Armando fit to work after three months of monitoring and treatment, in contrast with Armando's chosen physicians who arrived at their diagnosis after only one day of consultation. The findings and declaration of Dr. Alegre, which Armando did not question, therefore binds the latter and bars his claim for disability benefits. Armando appealed the decision with the NLRC.[28]

The Ruling of the NLRC

In its February 29, 2008 decision,[29] the NLRC dismissed Armando's appeal for lack of merit. As the LA did, the NLRC upheld the certification of fitness to work issued by Dr. Alegre over the various medical certificates Armando presented. The NLRC noted that the diagnosis of the several private doctors consulted by Armando was based merely on a review of Armando's medical history and not the result of a thorough examination, treatment and monitoring similar to that undertaken by Dr. Alegre. The NLRC concluded that absent proof that the certification of fitness to work was irregularly issued or did not reflect his actual condition, Armando's claim for disability benefits under the POEA-SEC is without merit.

When the NLRC denied, in its June 10, 2008 resolution,[30] his motion for reconsideration,[31] Armando filed with the CA a petition for *certiorari*[32] under Rule 65 of the Rules of Court.

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[28] Memorandum of Appeal dated January 28, 2005; *id.* at 443-468.

[29] *Supra* note 4.

[30] *Supra* note 5.

[31] Motion for Reconsideration with Motion to Admit Medical Certificate dated April 2, 2008; *rollo*, pp. 493-520.

[32] Dated September 1, 2008; *id.* at 540-574.

The Ruling of the CA

In its December 10, 2008 decision,[33] the CA reversed the NLRC's decision and ordered the petitioners to pay Armando the following: (1) total and permanent disability benefits in the amount of US$20,900.00 at its peso equivalent at the time of actual payment; (2) the balance of the sickness allowance in the amount of US$2,189.60 at its peso equivalent at the time of actual payment; and (3) attorney's fees.

In granting Armando's claims, the CA declared that all of the conditions laid out under Section 32-A of the POEA-SEC for an occupational disease to be compensable had been satisfied, namely: that Armando's disability resulted from CAD and essential hypertension, both of which arose during the period of the contract; that both CAD and hypertension are work-related; and that both are compensable illnesses pursuant to Section 32-A of the POEA-SEC. The CA made the following observations: (1) Armando was declared fit for sea service in his PEME result which sufficiently proves that his work-related illness occurred during the term of his contract; (2) the petitioners failed to rebut the disputable presumption laid out under Section 20-B of the POEA-SEC that though not listed as an occupational disease, Armando's CAD is presumed work-related; and (3) the findings of the company-designated physician are not conclusive, do not bind Armando, the labor tribunals and even the courts, and do not prevent Armando from seeking a second opinion.

The CA added that while Armando may have concealed his five-year history of hypertension, this alone was not sufficient to disqualify Armando from claiming disability benefits under the POEA-SEC. Moreover, the law does not require absolute or direct causal connection between the illness and the work; that the work contributed even to a small degree to the development of the disease is enough to warrant compensation.

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[33] *Supra* note 2.

Finally, the CA ruled that the term "disability" in claims for compensation and disability benefits should be understood as mere loss of earning capacity. The law does not require that the illness be incurable or that the employee be absolutely disabled or paralyzed for the disability to be considered total and permanent, but only that the employee was unable to perform the usual work and earn from it for more than 120 days.

The CA's denial of the petitioners' motion for reconsideration[34] in its February 18, 2009 resolution[35] prompted the present petition.

The Petition

In their present petition, the petitioners argue that the CA committed grave abuse of discretion in: (1) disregarding the factual findings of the LA and of the NLRC; (2) upholding the findings of the private doctors over those of the company-designated physician; and (3) awarding Armando attorney's fees.

Directly addressing the CA's ruling, the petitioners argue that the disability benefits under the POEA-SEC are not automatically granted. To be entitled, the seafarer must show that the illness or injury occurred during the term of the contract and that it is work-related. To the petitioners, Armando failed to prove these requirements, as his medical records during and soon after his employment did not show that he ever suffered from CAD during the term of the contract.

The petitioners added that since Dr. Alegre has declared Armando fit to work, Armando was bound by such declaration, pursuant to Section 20-B, paragraphs 2 and 3 of the POEA-SEC. Citing the Court's declarations, the petitioners argue that the doctor most qualified to assess Armando's disability grade is the doctor who regularly monitored and treated his health, which, in this case, was the company-designated physician – Dr. Alegre.

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[34] Dated December 19, 2008; *rollo*, pp. 127-158.

[35] *Supra* note 3.

Further, the petitioners contend that "hypertension, hyperlipidemia, obesity and alcoholism," which Armando added as grounds for his claim for disability benefits, were the direct result of his willful acts and wrong lifestyle choice for which he alone should be held responsible. As these are not work-related, they are not compensable under the POEA-SEC.

The petitioners also posit that Armando's hypertension was not even acquired during the term of the latter's contract but was a pre-existing condition which he did not disclose during his PEME. And while hypertension is listed as an occupational disease under Section 32-A, paragraph 20, Armando's willful concealment of this information in his PEME disqualifies him from claiming benefits under the POEA-SEC, pursuant to its Section 20-E. Assuming that this concealment does not disqualify Armando from claiming benefits, he still failed to present, by laboratory test results, that his hypertension impaired the functions of his body organs, as required by Section 32-A.

Finally, the petitioners take exception to the CA's award of sickness allowance counted at 120 days instead of 92 days. They argue that Dr. Alegre declared Armando fit to work on May 12, 2003; hence, the sickness allowance should be counted only until this date, or a total of 92 days counted from February 10, 2003 when he disembarked from the vessel. They also question the award of attorney's fees for Armando's failure to prove bad faith on their part.

The Case for the Respondents

Relying on the ruling of the CA, Armando contends[36] that a seafarer's entitlement to disability benefits automatically accrues by reason of death or illness. He argues that in claims for disability benefits under the POEA-SEC, the presumption of compensability and aggravation of the illness exists as long as the illness occurred during the term of the contract. The employer has the burden to rebut these presumptions which, in this case, the petitioners

[36] *Rollo,* pp. 588-619.

failed to do. For Armando, his various medical records more than adequately proved that his illness arose during the term of his contract, that such illness is work-related, and that the nature of his work and the risk factors with which he was exposed to during such employment aggravated his illness. Armando points out that the factors that contributed to his permanent disability are all related to his work and the primary and antecedent causes of his illness are listed as occupational diseases under Section 32-A of the POEA-SEC.

Further, Armando contends that since the PEME is exploratory, his clean bill of health after undergoing the PEME and prior to his employment proves that his illness occurred during, and was aggravated by, his employment. Lastly, Armando insists that the petitioners are liable for attorney's fees for their bad faith in refusing to pay his duly proved claim for disability benefits.

The Court's Ruling

We resolve to **GRANT** the petition.

Preliminary Considerations

At the outset, we emphasize the settled rule that only questions of law are allowed in a petition for review on *certiorari*.[37] This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision,[38] in contrast with the review for jurisdictional errors that we undertake in an original *certiorari* action.[39] In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65 of the

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[37] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 669; and *Loadstar International Shipping, Inc. v. The Heirs of the late Enrique C. Calawigan*, G.R. No. 187337, December 5, 2012.

[38] See *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al.*, G.R. No. 194758, October 24, 2012; and *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342.

[39] *Montoya v. Transmed Manila Corporation, supra*, at 342-343.

Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of a grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct.[40] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[41]

Viewed in this light, we do not re-examine the factual findings of the NLRC nor do we substitute our own judgment for theirs[42] as findings of fact of labor tribunals are generally conclusive on this Court. As presented by the petitioners, the issues raised before us require the re-evaluation of the evidence on record and consideration of the applicable law. The question of Armando's entitlement to disability benefits and attorney's fees, while essentially a question of law appropriate for a Rule 45 review, nevertheless hinges for their resolution on a factual issue – the question whether the CAD, hypertension, hyperlipidemia, obesity and alcoholism afflicting Armando are work-related or work-aggravated.

Based on these Rule 45 parameters, we generally cannot touch factual questions. Nevertheless, in the exercise of our discretionary appellate jurisdiction, we allow certain exceptions, all in the interest of giving substance and meaning to the justice we are sworn to uphold and give primacy to. The conflicting ruling of the LA and the NLRC, on the one hand, and of the CA, on the other,[43] in the present petition is one such exception to the above general rule. A re-examination of the record for

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[40] *Ibid. Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna,* G.R. No. 172086, December 3, 2012.

[41] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna, supra,* citing *Montoya v. Transmed Manila Corporation, supra,* at 342-343.

[42] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna, supra*.

[43] *Antiquina v. Magsaysay Maritime Corporation, supra* note 37, at 669; and *Loadstar International Shipping, Inc. v. The Heirs of the late Enrique C. Calawigan, supra* note 37.

purposes of determining the presence or absence of grave abuse of discretion committed by the CA is justified when this situation is present.

Armando is not entitled to total and permanent disability benefits

The core issue for our resolution is whether Armando is entitled to disability benefits on account of his medical condition. The results of our consideration of the records compel us to rule in the negative.

The entitlement of a seafarer on overseas employment to disability benefits is governed by the medical findings, by law and by the parties' contract.[44] By law, the governing provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the provisions of the POEA-SEC incorporating Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA-SEC) govern.[45]

Since the present controversy centers on Armando's claim for total permanent disability, we find it necessary to define total and permanent disability as provided under Article 192(3)(1) of the Labor Code:

> (3) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability **lasting continuously for more than one hundred twenty days**, except as otherwise provided for in the Rules[.] [emphasis ours]

In relation to this Labor Code provision, we also refer to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code:

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[44] *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 309; *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 676; and *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

[45] *Vergara v. Hammonia Maritime Services, Inc.*, *supra*, at 623.

SEC. 2. Period of entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it **shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability **in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability** as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [emphases ours]

By contract, pertinent to the issue of compensability in the event of the seafarer's illness or disability is Section 20-B of the POEA-SEC. It reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer **when the seafarer suffers work-related injury or illness during the term of his contract** are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage **until he is declared fit to work** or the degree of permanent disability has been assessed **by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.**

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** [emphases ours]

Section 20-B of the POEA-SEC, in plain terms, laid out two primary conditions which the seafarer must meet in order for him to claim disability benefits – that **the injury or illness is work-related** and that **it occurred during the term of the contract**. It also spelled out the procedure to be followed in assessing the seafarer's disability — whether total or partial and whether temporary or permanent — resulting from either injury or illness during the term of the contract, in addition to specifying the employer's liabilities on account of such injury or illness.

When read together with Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code and Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, and following our various pronouncements, Section 20-B of the POEA-SEC evidently shows that it is the company-designated physician who primarily assesses the degree of the seafarer's disability. Upon the seafarer's repatriation for medical treatment, and during the course of such treatment, the seafarer is under total temporary disability and receives medical allowance until the company-designated physician declares his fitness to work resumption or determines the degree of the seafarer's permanent disability — either total or partial. The company-designated physician should, however, make the declaration or determination within 120 days, otherwise, the law considers the seafarer's disability as total and permanent and the latter shall be entitled to disability benefits. Should the seafarer still require medical treatment for more than 120 days, the period granted to the company-designated physician to make the declaration of the fitness to work or determination of the permanent disability may be extended, but not to exceed 240 days. At anytime during this latter period, the company-designated physician may make the declaration or determination: either the seafarer will no longer be entitled to any sickness allowance

as he is already declared fit to work, or he shall be entitled to receive disability benefits depending on the degree of his permanent disability.

The seafarer is not, of course, irretrievably bound by the findings of the company-designated physician as the above provisions allow him to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's appointed physician, **the parties shall jointly agree to refer the matter to a third doctor whose findings shall be final and binding on both**.

In the present petition, the petitioners' designated physician – Dr. Alegre – declared Armando fit for sea service on May 12, 2003 or 92 days from the time he disembarked or signed off from the vessel on February 10, 2003. As defined under Article 192(c)(1) of the Labor Code, total and permanent disability means total temporary disability lasting for more than 120 days (unless the seafarer is still under treatment up to a maximum period of 240 days as the Court held in *Vergara v. Hammonia Maritime Services, Inc.*).[46] While Armando was initially under temporary total disability, Dr. Alegre declared him fit to work well within the 120-day mark. Viewed in this light, we find the LA and the NLRC legally correct when they refused to recognize any disability on Armando's part as the petitioners' designated physician had already declared his fitness to resume work. Consequently, absent any disability after his temporary disability was dealt with, he is therefore not entitled to compensation benefits under Section 20 of the POEA-SEC.

Armando, acting well within his rights, disagreed with the assessment of the company-designated physician and sought the opinion of four private physicians who arrived at a contrary finding. We note, however, that ***he did so only after he had already filed his complaint with the LA***. Thus, Armando, in fact, had ***no ground for a disability claim at the time he filed***

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[46] *Supra,* at 628.

his complaint, as he did not have any sufficient evidentiary basis to support his claim.

More than this, the disagreement between the findings of the company-designated physician and Armando's chosen physicians was never referred to a third doctor chosen by both the petitioners and Armando, following the procedure outlined in Section 20-B, paragraph 3 of the POEA-SEC. Had this been done, Armando's medical condition could have been easily clarified and finally determined.

Considering the absence of findings coming from a third doctor, we sustain the findings of the NLRC and hold that the certification of the company-designated physician should prevail. We do so for the following reasons: *first,* the records show that the medical certifications issued by Armando's chosen physician were not supported by such laboratory tests and/or procedures that would sufficiently controvert the "normal" results of those administered to Armando at the St. Luke's Medical Center. And *second,* majority of these medical certificates were issued after Armando consulted these private physicians only once.

In contrast, the medical certificate of the petitioners' designated physician was issued after three months of closely monitoring Armando's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to Armando while in consultation with Dr. Crisostomo, a cardiologist. The extensive medical attention that Dr. Alegre gave to Armando enabled him to acquire a more accurate diagnosis of Armando's medical condition and fitness for work resumption compared to Armando's chosen physicians who were not privy to his case from the beginning.

In several cases, we held that **the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability**.[47] In *Coastal Safeway Marine Services,*

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[47] *Vergara v. Hammonia Maritime Services, Inc., supra,* at 630.

Inc. v. Esguerra,[48] the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al.*,[49] the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x [outlining] the alleged findings and medical history x x x obtained after x x x [one examination]."[50]

Thus, in the absence of adequate diagnostic tests and procedures and reasonable findings to support the assessments of the four private physicians, their certifications on Armando's alleged disability simply cannot be taken at face value, particularly in light of the overwhelming evidence supporting the findings of Dr. Alegre. The rule is still that whoever claims entitlement to disability benefits must prove such entitlement by substantial evidence.[51] The burden of proof rested on Armando to establish, by substantial evidence, the causal link between his work as a 2nd mate and his alleged disability to serve as basis for the grant of relief.[52] Unfortunately, he failed to discharge this burden.

Consequently, the CA erroneously imputed grave abuse of discretion on the part of the NLRC in giving greater evidentiary

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[48] G.R. No. 185352, August 10, 2011, 655 SCRA 300.

[49] *Supra* note 38.

[50] *Ibid*.

[51] *Ibid. Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 269.

[52] See *Quizora v. Denholm Crew Management (Philippines), Inc.*, G.R. No. 185412, November 16, 2011, 660 SCRA 309, 319-320; *Francisco v. Bahia Shipping Services, Inc.*, G.R. No. 190545, November 22, 2010, 635 SCRA 660, 666; *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, G.R. No. 188637, December 15, 2010, 638 SCRA 770, 780; and *Wallem Maritime Services, Inc. v. Tanawan, supra*, at 269.

weight to the medical certificate issued by Dr. Alegre over those issued by Armando's physicians.

In this light, we find it unnecessary to discuss whether Armando's alleged CAD, hypertension, hyperlipidemia, obesity and alcoholism were work-related and arose during the term of his contract so as to entitle him to disability benefits.

Even if we were to address the matter, our consideration of the records will lead us to the same conclusion that Armando is not entitled to disability benefits. Primarily, other than his bare assertions, Armando did not specifically describe in detail the nature of his work, the working conditions, the risks attendant to the nature of his work with which he was allegedly exposed to, as well as how and to what degree the nature of his work caused or contributed to his alleged medical conditions. To recall, all of the diagnostic tests and procedures administered on Armando yielded "normal" results for which the company-designated physician declared him fit to work.

We arrive at this conclusion based on the following reasons: *first*, while CAD, which is subsumed under cardio-vascular disease,[53] and hypertension are listed as occupational diseases under Section 32-A, paragraphs 11 and 20 of the POEA-SEC, certain specified conditions[54] must first be satisfied for these

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[53] http://www.who.int/topics/cardiovascular_diseases/en/ (visited on May 14, 2013). See also http://www.bhf.org.uk/heart-health/conditions/cardiovascular-disease.aspx (visited on May 14, 2013).

[54] 11. Cardio-Vascular Diseases. Any of [the] following conditions must be met:

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

(b) The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute casual relationship.

(c) If a person who was apparently a symptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a casual relationship.

diseases and the resulting disability to be considered compensable. Contrary to the CA's conclusion, we find that Armando failed to show, by satisfactory evidence, that these specified conditions have been met. Moreover, both the findings at the Fujairah Port Clinic while Armando was confined following the incident at the vessel, and at the St. Luke's Medical Center while he was undergoing treatment, did not reveal that he ever suffered from CAD.

Second, although Dr. Ranjan of the Fujairah Port Clinic diagnosed Armando with hypertension, Armando did not reveal in his PEME that he had been suffering from this condition and had been taking anti-hypertensive medications for five years. As the petitioners correctly argued, Armando's concealment of this vital information in his PEME disqualifies him from claiming disability benefits pursuant to Section 20-E of the POEA-SEC. It reads:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x x x x x x
>
> E. **A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits.** This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions. [emphasis ours]

We need not belabor this point as a plain reading of the above provision shows that the seafarer's concealment of a pre-existing medical condition disqualifies him from claiming disability benefits. We note that Dr. Ranjan of the Fujairah Port Clinic stated in his report that Armando was a "known

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20. Essential Hypertension.

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.

case of HT, on atenolol 50 mg OD [for five years]." ***The import of this statement cannot be disregarded as it directly points to Armando's willful concealment; it also shows that Armando did not acquire hypertension during his employment and is therefore not work-related.***

Contrary to Armando's contention, the PEME is not sufficiently exhaustive so as to excuse his non-disclosure of his pre-existing hypertension. The PEME is not exploratory[55] and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition and is just enough for the employer to determine his fitness for the nature of the work for which he is to be employed.[56]

In *Escarcha v. Leonis Navigation Co., Inc.*,[57] we brushed aside the seafarer's claim that he acquired his illness during his employment simply because he passed the PEME. There, we held that "a PEME x x x is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. x x x [I]t does not reveal the real state of health of an applicant"[58] In this case, considering that the PEME is not exploratory, its failure to reveal or uncover Armando's hypertension cannot therefore shield him from the consequences of his willful concealment of this information and preclude the petitioners from denying his claim on the ground of concealment.

Finally, if indeed Armando had been suffering from obesity, hyperlipidemia and alcoholism as found by Dr. Ranjan's final

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[55] *Francisco v. Bahia Shipping Services, Inc., supra* note 52, at 666; and *Quizora v. Denholm Crew Management (Philippines), Inc., supra* note 52, at 321-322.

[56] See *Francisco v. Bahia Shipping Services, Inc., supra,* at 666.

[57] G.R. No. 182740, July 5, 2010, 623 SCRA 423.

[58] *Id.* at 442; underscores ours. See also *Francisco v. Bahia Shipping Services, Inc., supra* note 52, at 666.

diagnosis, he was suffering from infirmities that are not listed as occupational diseases under Section 32-A of the POEA-SEC and for which disability may be awarded. While we are aware of the provisions of Section 20-B, paragraph 4 which presumes any other illness not included under Section 32-A as work-related, still Armando has to prove that his illnesses are work-related and that they occurred during the term of the employment.[59] He cannot simply argue that the petitioners bear the burden of rebutting the presumption.

More than all these, plain logic dictates that mere work in a ship, in Armando's case as 2nd mate, does not necessarily lead to the imputed medical conditions. Obesity is "excess body weight, defined as a body mass index (BMI) of $\geq$ 30 kg/m2,"[60] ultimately resulting from a long-standing imbalance between energy intake and energy expenditure.[61] On the other hand, hyperlipidemia or dyslipidemia is the "elevation of plasma cholesterol, triglycerides (TGs), or both, or a low high-density lipoprotein level that contributes to the development of atherosclerosis."[62] The causes may be primary (genetic) or secondary, the most important of which is a sedentary lifestyle with excessive dietary intake of

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[59] *Quizora v. Denholm Crew Management (Philippines), Inc., supra* note 52, at 319.

[60] http://www.merckmanuals.com/professional/nutritional_disorders/obesity_and_the_metabolic_syndrome/obesity.html (visited on May 14, 2013). See also http://www.who.int/mediacentre/factsheets/fs311/en/ and *Merriam-Webster's Medical Dictionary*, 2006 edition, p. 511, which defines obesity as a condition that is characterized by excessive accumulation and storage of fat in the body and that in an adult is typically indicated by a body mass index of 30 or greater.

[61] http://www.merckmanuals.com/professional/nutritional_disorders/obesity_and_the_metabolic_syndrome/obesity.html (visited on May 14, 2013).

[62] http://www.merckmanuals.com/professional/endocrine and metabolic disorders/lipid disorders/ dyslipidemia.html?qt=hyperlipidemia&alt=sh (visited on May 14, 2013). See also http://www.healthcentral.com/encyclopedia/408/366.html and *Merriam-Webster's Medical Dictionary*, 2006 edition, p. 333, which defines hyperlipidemia as the presence of excess fat or lipids in the blood.

saturated fat, cholesterol, and trans fats.[63] Alcoholism, also known as alcohol dependence, refers to frequent consumption of large amounts of alcohol.[64]

These definitions of the imputed medical conditions plainly do not indicate work-relatedness; by their nature, they are more the result of poor lifestyle choices and health habits for which disability benefits are improper. Under Section 20-D of the POEA-SEC, no compensation and benefits are due in respect of any disability resulting from the seafarer's willful act.[65]

Armando is entitled to sickness allowance only until the company-designated physician declared him fit to work

The petitioners question the CA's computation of the balance of Armando's sickness allowance at 120 days. We find that the CA seriously erred in arriving at this computation.

To recall, the company-designated physician declared Armando fit to work on May 12, 2003. Armando disembarked or signed/off from the vessel on February 10, 2003. Thus, following our discussion above and pursuant to Section 20-B, paragraph 3 of

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[63] http://www.merckmanuals.com/professional/endocrine and metabolic disorders/lipid disorders/ dyslipidemia.html?qt=hyperlipidemia&alt=sh (visited on May 14, 2013).

[64] http://www.merckmanuals.com/professional/special subjects/drug use and dependence/alcohol. html (visited on May 14, 2013). See also http://www.mayoclinic.com/health/alcoholism/DS00340 and *Merriam-Webster's Medical Dictionary*, 2006 edition, p. 19.

[65] The entire Section 20-D reads:

"Section 20. COMPENSATION AND BENEFITS

x x x x x x x x x

D. **No compensation and benefits shall be payable in respect of any** injury, incapacity, **disability** or death **of the seafarer resulting from his willful** or criminal **act** or intentional breach of duties, provided however, the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." [emphasis ours]

the POEA-SEC, Armando's sickness allowance should be counted only at 92 days, that is from February 10, 2003 when he disembarked form the vessel, until May 12, 2003 when Dr. Alegre declared him fit to work.

In sum, we hold that the CA seriously erred in finding that the NLRC committed grave abuse of discretion in denying Armando's claim for disability benefits.

As a final note, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on surmises.[66] Liberal construction is not a license to disregard the evidence on record or to misapply our laws.[67]

WHEREFORE, premises considered, we hereby **GRANT** the petition and accordingly **REVERSE and SET ASIDE** the decision dated December 10, 2008 and the resolution dated February 18, 2009 of the Court of Appeals in CA-G.R. SP No. 105079, and **REINSTATE** the decision dated February 29, 2008 of the NLRC affirming the December 29, 2004 decision of Labor Arbiter Fedriel S. Panganiban.

SO ORDERED.

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

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[66] *Francisco v. Bahia Shipping Services, Inc., supra* note 52, at 667. See also *Coastal Safeway Marine Services, Inc. v. Esguerra, supra* note 48, at 311; and *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al., supra* note 38.

[67] *Escarcha v. Leonis Navigation Co., Inc., supra* note 57, at 443.

THIRD DIVISION

[G.R. No. 186610. July 29, 2013]

POLICE SENIOR SUPERINTENDENT DIMAPINTO MACAWADIB, *petitioner, vs.* **THE PHILIPPINE NATIONAL POLICE DIRECTORATE FOR PERSONNEL AND RECORDS MANAGEMENT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY; A DECISION VALID ON ITS FACE CANNOT ATTAIN REAL FINALITY WHERE THERE IS WANT OF INDISPENSABLE PARTY; THE BURDEN OF PROCURING THE PRESENCE OF ALL INDISPENSABLE PARTIES IS ON THE PLAINTIFF.— [P]etitioner contends that respondent is not an indispensable party. The Court is not persuaded. On the contrary, the Court agrees with the ruling of the CA that it is the integrity and correctness of the public records in the custody of the PNP, National Police Commission (NAPOLCOM) and Civil Service Commission (CSC) which are involved and which would be affected by any decision rendered in the petition for correction filed by herein petitioner. The aforementioned government agencies are, thus, required to be made parties to the proceeding. They are indispensable parties, without whom no final determination of the case can be had. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. In the fairly recent case of *Go v. Distinction Properties Development and Construction, Inc.*, the Court had the occasion to reiterate the principle that: Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. **It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence**

of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties. x x x The burden of procuring the presence of all indispensable parties is on the plaintiff.

2. **ID.; ID.; ID.; ID.; THE ABSENCE OF AN INDISPENSABLE PARTY RENDERS ALL SUBSEQUENT ACTIONS OF THE COURT NULL AND VOID FOR WANT OF AUTHORITY TO ACT, NOT ONLY AS TO THE ABSENT PARTIES BUT EVEN TO THOSE PRESENT; THE DECISION OF THE TRIAL COURT GRANTING THE PETITIONER'S PRAYER FOR THE CORRECTION OF ENTRIES IN HIS SERVICE RECORDS IS VOID FOR FAILURE TO IMPLEAD THE PHILIPPINE NATIONAL POLICE (PNP), THE NAPOLCOM AND THE CIVIL SERVICE COMMISSION, WHO ARE ALL INDISPENSABLE PARTIES TO THE PETITION.—** [T]here is a necessity to implead the PNP, NAPOLCOM and CSC because they stand to be adversely affected by petitioner's petition which involves substantial and controversial alterations in petitioner's service records. Moreover, as correctly pointed out by the Office of the Solicitor General (OSG), if petitioner's service is extended by ten years, the government, through the PNP, shall be burdened by the additional salary and benefits that would have to be given to petitioner during such extension. Thus, aside from the OSG, all other agencies which may be affected by the change should be notified or represented as the truth is best ascertained under an adversary system of justice. As the above-mentioned agencies were not impleaded in this case much less given notice of the proceedings, the decision of the trial court granting petitioner's prayer for the correction of entries in his service records, is void. As mentioned above, the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

3. ID.; ESTOPPEL; THE ABSENCE OF OPPOSITION FROM GOVERNMENT AGENCIES IS OF NO CONTROLLING SIGNIFICANCE, BECAUSE THE STATE CANNOT BE ESTOPPED BY THE OMISSION, MISTAKE, OR ERROR OF ITS OFFICIALS OR AGENTS. NOR IS THE REPUBLIC BARRED FROM ASSAILING THE DECISION GRANTING THE PETITION FOR CORRECTION OF ENTRIES IF, ON THE BASIS OF THE LAW AND THE EVIDENCE ON RECORD, SUCH PETITION HAS NO MERIT.— On the question of whether or not respondent is estopped from assailing the decision of the RTC for failure of the OSG, as government representative, to participate in the proceedings before the trial court or to file an opposition to petitioner's petition for correction of entries in his service records, this Court rules that such an apparent oversight has no bearing on the validity of the appeal which the petitioner filed before the CA. Neither can the State, as represented by the government, be considered in estoppel due to the petitioner's seeming acquiescence to the judgment of the RTC when it initially made corrections to some of petitioner's records with the PNP. This Court has reiterated time and again that the absence of opposition from government agencies is of no controlling significance, because the State cannot be estopped by the omission, mistake or error of its officials or agents. Nor is the Republic barred from assailing the decision granting the petition for correction of entries if, on the basis of the law and the evidence on record, such petition has no merit.

4. ID.; JUDGMENTS; A VOID JUDGMENT CANNOT ATTAIN FINALITY AND ITS EXECUTION HAS NO BASIS IN LAW.— As to the second and last assigned errors, suffice it to say that considering that the assailed decision of the RTC is null and void, the same could not have attained finality. Settled is the rule that a void judgment cannot attain finality and its execution has no basis in law.

5. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; THE CORRECTION OR CHANGE OF INFORMATION IN THE CIVIL SERVICE COMMISSION BASED ON BELATEDLY REGISTERED BIRTH CERTIFICATE NO LONGER REQUIRES A COURT ORDER, BUT THE PERSON REQUESTING THE CORRECTION OR CHANGE OF INFORMATION MUST

SUBMIT, ASIDE FROM THE SAID BIRTH CERTIFICATE, OTHER AUTHENTICATED SUPPORTING DOCUMENTS, WHICH WOULD SUPPORT THE ENTRY REFLECTED IN THE DELAYED REGISTERED BIRTH CERTIFICATE AND WHICH ENTRY IS REQUESTED TO BE REFLECTED IN THE RECORDS OF THE COMMISSION AS THE TRUE AND CORRECT ENTRY.— It can be argued that petitioner's belatedly registered certificate of live birth, as a public document, enjoys the presumption of validity. However, petitioner merely relied on such presumption without presenting any other convincing or credible evidence to prove that he was really born in 1956. On the contrary, the specific facts attendant in the case at bar, as well as the totality of the evidence presented during the hearing of the case in the court *a quo*, sufficiently negate the presumption of regularity accorded to petitioner's belatedly registered birth certificate. In this regard, it is also apropos to mention that, in cases of correction or change of information based on belatedly registered birth certificates, the CSC no longer requires a court order to warrant such correction or change of information in its records. However, in an apparent move to safeguard its records, the CSC imposes the submission of additional evidence that would prove the veracity of the entries in a belatedly registered birth certificate. Thus, the CSC, in its Memorandum Circular No. 31, dated November 20, 2001, demands that, aside from the said birth certificate, the person requesting the correction or change of information must submit other authenticated supporting documents, such as baptismal certificate, affidavits of two disinterested witnesses, and "[o]ther employment, [p]ersonal or [s]chool [r]ecords which would support the entry reflected in the delayed registered birth certificate and which entry is requested to be reflected in the records of the Commission as the true and correct entry." In the instant case, petitioner was only able to submit affidavits of two witnesses, who were not really proven to be disinterested and whose testimonies were not even tested in the crucible of cross-examination. On the contrary, the other pieces of documentary evidence on record, such as his marriage certificate, and his school and service records, contradict his claims and show that he was, in fact, born in 1946.

APPEARANCES OF COUNSEL

Dimapuno Ramos Datu for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated December 17, 2008 and February 25, 2009, respectively, in CA-G.R. SP No. 02120-MIN. The assailed CA judgment nullified the December 4, 2001 Decision[3] of the Regional Trial Court (RTC) of Marawi City, Branch 8, in Spl. Proc. No. 782-01, while the questioned CA Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Petitioner was a police officer with the rank of Police Senior Superintendent. On July 30, 2001, pursuant to the provisions of Section 39 of Republic Act 6975, otherwise known as the "Department of the Interior and Local Government Act of 1990," the Chief of Directorial Staff of the Philippine National Police (PNP) issued General Order No. 1168, enumerating the names of commissioned officers who were subject to compulsory retirement on various dates in the month of January 2002 by virtue of their attainment of the compulsory retirement age of 56. Among the names included in the said Order was that of

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring; Annex "A" to petition, *rollo*, pp. 61-74.

[2] Annex "B" to petition, *id.* at 75-76.

[3] Penned by Judge Santos B. Adiong, Annex "K" to petition, *id.* at 98-100.

petitioner, who was supposed to retire on January 11, 2002, as the files of the PNP Records Management Division indicate that he was born on January 11, 1946.

On September 3, 2001, petitioner filed an application for late registration of his birth with the Municipal Civil Registrar's Office of Mulondo, Lanao del Sur. In the said application, petitioner swore under oath that he was born on January 11, 1956. The application was, subsequently, approved.

On October 15, 2001, petitioner filed with the RTC of Marawi City, Branch 8, a *Petition for Correction of Entry in the Public Service Records Regarding the Birth Date*. Pertinent portions of his allegations are as follows:

x x x x x x x x x

1. That herein petitioner is 45 years old, married, Filipino citizen, PNP (Police Superintendent) by occupation and resident of Camp Bagong Amai, Pakpak, Marawi City. x x x;

2. That on January 11, 1956, herein petitioner was born in Mulondo, Lanao del Sur, x x x, copy of his live birth certificate is attached and marked as Annex "A", for ready reference;

3. That when petitioner herein joined with (sic) the government service, particularly the local police force and later on the Integrated National Police, he honestly entered his birth date as January 11, 1946, while in his (sic) Government Service Insurance System (GSIS, in short) and National Police Commission, he erroneously entered his birth date as January 11, 1946, which entry are honestly based on estimation, as Muslim (sic) in the south do not register their marriages and births before;

4. That herein petitioner has correctly entered his true and correct birth date, January 11, 1956, in his Service Record at the National Headquarters, Philippine National Police, Directorate for Personnel and Records Management, Camp Crame, Quezon City, copy of which is attached and marked as Annex "B", x x x;

5. That herein petitioner is submitting Joint Affidavit of two (2) disinterested person (sic) x x x;

6. That this petition is not intended to defraud anybody but to establish the true and correct birth date of herein petitioner.

x x x x x x x x x[4]

The petition was docketed as Spl. Proc. No. 782-01.

On December 4, 2001, the RTC rendered its Decision, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of petitioner DIMAPINTO BABAI MACAWADIB, to wit:

1. Ordering the Chief, Records Management, PNP NHQ, Camp Crame, Quezon City, to make a correction upon the birth date of herein petitioner to January 11, 1956;

2. Ordering the Director, Personnel and Records Management Service, NAPOLCOM, Makati City, to make correction upon the birth date of herein petitioner from January 11, 1946 to January 11, 1956; and

3. Ordering the Chief[,] Records of the Civil Service Commission, Manila and all other offices concern (sic), to make the necessary correction in the Public Records of herein petitioner to January 11, 1956.

SO ORDERED.[5]

Subsequently, the RTC issued an Entry of Final Judgment[6] indicating therein that its December 4, 2001 Decision in Spl. Proc. No. 782-01 has become final and executory on March 13, 2002.

On January 8, 2008, herein respondent filed a Petition for Annulment of Judgment with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with the CA, seeking to nullify the above-mentioned Decision of the RTC on the ground that the trial court failed to

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[4] Records, pp. 1-2.

[5] *Id.* at 66.

[6] *Id.* at 75.

acquire jurisdiction over the PNP, "an unimpleaded indispensable party."[7]

On December 17, 2008, the CA promulgated its assailed Decision with the following dispositive portion:

> WHEREFORE, finding the instant petition impressed with merit, the same is hereby GRANTED. The assailed Decision dated December 4, 2001 of the respondent court in Spl. Proc. No. 782-01 is NULLIFIED and SET ASIDE. Also, so as to prevent further damage upon the PNP, let a permanent injunction issue in the meantime, barring the private respondent Dimapinto Babai Macawadib from continuing and prolonging his tenure with the PNP beyond the mandatory retirement age of fifty-six (56) years.
>
> SO ORDERED.[8]

Petitioner filed a Motion for Reconsideration,[9] but the CA denied it in its Resolution[10] dated February 25, 2009.

Hence, the instant petition with the following Assignment of Errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PNP-[DPRM] IS AN INDISPENSABLE PARTY IN SPECIAL PROCEEDING NO. 782-01 AND THAT THE RTC HAVE (sic) NOT ACQUIRED JURISDICTION OVER THE PERSON OF THE PNP-DPRM.

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING CA-G.R. SP NO. 02120-MIN DESPITE THE FACT THAT THE ASSAILED RTC DECISION DATED DECEMBER 4, 2001 IN SPECIAL PROCEEDING NO. 782-01 HAS LONG BECOME FINAL AND EXECUTORY AND WAS IN FACT FULLY AND COMPLETELY EXECUTED AFTER THE PNP-DPRM CORRECTED THE DATE OF BIRTH OF THE PETITIONER FROM JANUARY 11, 1946 TO JANUARY 11, 1956.

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[7] CA *rollo*, pp. 2-15.

[8] *Id.* at 196.

[9] *Id.* at 198-211.

[10] *Id.* at 214-215.

3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PNP-DPRM IS NOT ESTOPPED FROM ASSAILING THE VALIDITY OF THE RTC DECISION IN SPECIAL PROCEEDING NO. 782-01.

4. THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING CA-G.R. SP NO. 02120-[MIN] FOR BEING INSUFFICIENT IN FORM AND SUBSTANCE.[11]

In his first assigned error, petitioner contends that respondent is not an indispensable party. The Court is not persuaded. On the contrary, the Court agrees with the ruling of the CA that it is the integrity and correctness of the public records in the custody of the PNP, National Police Commission (NAPOLCOM) and Civil Service Commission (CSC) which are involved and which would be affected by any decision rendered in the petition for correction filed by herein petitioner. The aforementioned government agencies are, thus, required to be made parties to the proceeding. They are indispensable parties, without whom no final determination of the case can be had. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest.[12] In the fairly recent case of *Go v. Distinction Properties Development and Construction, Inc.*,[13] the Court had the occasion to reiterate the principle that:

> Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. **It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only**

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[11] *Rollo*, pp. 40-41.

[12] *Simny G. Guy v. Gilbert G. Guy*, G.R. No. 189486 and 189699, September 5, 2012.

[13] G.R. No. 194024, April 25, 2012, 671 SCRA 461.

as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.[14]

Citing previous authorities, the Court also held in the *Go* case that:

> The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* of the exercise of judicial power. (*Borlasa v. Polistico, 47 Phil. 345, 348*) For this reason, our Supreme Court has held that when it appears of record that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. (*Pobre, et al. v. Blanco, 17 Phil. 156*). x x x Where the petition failed to join as party defendant the person interested in sustaining the proceeding in the court, the same should be dismissed. x x x **When an indispensable party is not before the court, the action should be dismissed**.[15]

The burden of procuring the presence of all indispensable parties is on the plaintiff.[16]

In the instant case, there is a necessity to implead the PNP, NAPOLCOM and CSC because they stand to be adversely affected by petitioner's petition which involves substantial and controversial alterations in petitioner's service records. Moreover, as correctly pointed out by the Office of the Solicitor General (OSG), if petitioner's service is extended by ten years, the government, through the PNP, shall be burdened by the additional

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[14] *Id.* at 476, citing *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, G.R. No. 171115, August 9, 2010, 627 SCRA 179, 186-187. (Emphasis in the original)

[15] *Id.* at 476-477, citing *Plasabas v. Court of Appeals*, G.R. No. 166519, March 31, 2009, 582 SCRA 686, 690. (Emphasis in the original)

[16] *Church of Christ v. Vallespin*, 247 Phil. 296, 303 (1988).

salary and benefits that would have to be given to petitioner during such extension. Thus, aside from the OSG, all other agencies which may be affected by the change should be notified or represented as the truth is best ascertained under an adversary system of justice.

As the above-mentioned agencies were not impleaded in this case much less given notice of the proceedings, the decision of the trial court granting petitioner's prayer for the correction of entries in his service records, is void. As mentioned above, the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[17]

On the question of whether or not respondent is estopped from assailing the decision of the RTC for failure of the OSG, as government representative, to participate in the proceedings before the trial court or to file an opposition to petitioner's petition for correction of entries in his service records, this Court rules that such an apparent oversight has no bearing on the validity of the appeal which the petitioner filed before the CA. Neither can the State, as represented by the government, be considered in estoppel due to the petitioner's seeming acquiescence to the judgment of the RTC when it initially made corrections to some of petitioner's records with the PNP. This Court has reiterated time and again that the absence of opposition from government agencies is of no controlling significance, because the State cannot be estopped by the omission, mistake or error of its officials or agents.[18] Nor is the Republic barred from assailing the decision granting the petition for correction of entries if, on the basis of the law and the evidence on record, such petition has no merit.[19]

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[17] *Pascual v. Robles*, G.R. No. 182645, December 15, 2010, 638 SCRA 712, 719, citing *Lotte Phil. Co., Inc. v. Dela Cruz*, G.R. No. 166302, July 28, 2005, 464 SCRA 591, 596.

[18] *Republic v. Manimtim*, G.R. No. 169599, March 16, 2011, 645 SCRA 520, 537.

[19] *Republic v. Tuastumban*, G.R. No. 173210, April 24, 2009, 586 SCRA 600, 619.

As to the second and last assigned errors, suffice it to say that considering that the assailed decision of the RTC is null and void, the same could not have attained finality. Settled is the rule that a void judgment cannot attain finality and its execution has no basis in law.[20]

At this juncture, it may not be amiss to point out that, like the CA, this Court cannot help but entertain serious doubts on the veracity of petitioner's claim that he was indeed born in 1956. The late registration of petitioner's certificate of live birth on September 3, 2001 was made forty-five (45) years after his supposed birth and a mere 34 days after the PNP's issuance of its Order for his compulsory retirement. He had all the time to make such registration but why did he do it only when he was about to retire?

The Court, likewise, agrees with the observation of the OSG that, if petitioner was indeed born in 1956, he would have been merely 14 years old in 1970 when he was appointed as Chief of Police of Mulondo, Lanao del Sur. This would not have been legally tenable, considering that Section 9 of RA 4864, otherwise known as the Police Act of 1966, provides, among others, that a person shall not be appointed to a local police agency if he is less than twenty-three years of age. Moreover, realistically speaking, it would be difficult to believe that a 14-year old minor would serve as a police officer, much less a chief of police.

The Court also gives credence to the pronouncement made by the CA which took judicial notice that in the several hearings of the petition before the appellate court where the petitioner was present, the CA observed that "in the several hearings of this petition before Us where the private respondent was present, he does not really appear to be 52 years old but his old age of 62."[21]

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[20] *Heirs of Francisca Medrano v. De Vera,* G.R. No. 165770, August 9, 2010, 627 SCRA 108, 123.

[21] See CA Decision, *rollo*, pp. 72-73.

It can be argued that petitioner's belatedly registered certificate of live birth, as a public document, enjoys the presumption of validity. However, petitioner merely relied on such presumption without presenting any other convincing or credible evidence to prove that he was really born in 1956. On the contrary, the specific facts attendant in the case at bar, as well as the totality of the evidence presented during the hearing of the case in the court *a quo*, sufficiently negate the presumption of regularity accorded to petitioner's belatedly registered birth certificate.

In this regard, it is also apropos to mention that, in cases of correction or change of information based on belatedly registered birth certificates, the CSC no longer requires a court order to warrant such correction or change of information in its records. However, in an apparent move to safeguard its records, the CSC imposes the submission of additional evidence that would prove the veracity of the entries in a belatedly registered birth certificate. Thus, the CSC, in its Memorandum Circular No. 31, dated November 20, 2001, demands that, aside from the said birth certificate, the person requesting the correction or change of information must submit other authenticated supporting documents, such as baptismal certificate, affidavits of two disinterested witnesses, and "[o]ther employment, [p]ersonal or [s]chool [r]ecords which would support the entry reflected in the delayed registered birth certificate and which entry is requested to be reflected in the records of the Commission as the true and correct entry." In the instant case, petitioner was only able to submit affidavits of two witnesses, who were not really proven to be disinterested and whose testimonies were not even tested in the crucible of cross-examination. On the contrary, the other pieces of documentary evidence on record, such as his marriage certificate, and his school and service records, contradict his claims and show that he was, in fact, born in 1946.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated December 17, 2008 and the Resolution dated February 25, 2009 of the Court of Appeals, in CA-G.R. SP No. 02120-MIN, are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 203585. July 29, 2013]

MILA CABOVERDE TANTANO and ROSELLER CABOVERDE, *petitioners, vs.* **DOMINALDA ESPINA-CABOVERDE, EVE CABOVERDE-YU, FE CABOVERDE-LABRADOR, and JOSEPHINE E. CABOVERDE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; RECEIVERSHIP; THE POWER TO APPOINT A RECEIVER SHOULD NOT BE EXERCISED WHEN IT IS LIKELY TO PRODUCE IRREPARABLE INJUSTICE OR INJURY TO PRIVATE RIGHTS OR THE FACTS DEMONSTRATE THAT THE APPOINTMENT WILL INJURE THE INTERESTS OF OTHERS WHOSE RIGHTS ARE ENTITLED TO AS MUCH CONSIDERATION FROM THE COURT AS THOSE OF THE PERSON REQUESTING FOR RECEIVERSHIP.— We have repeatedly held that receivership is a harsh remedy to be granted with utmost circumspection and only in extreme situations. The doctrinal pronouncement in *Velasco & Co. v. Gochico & Co* is instructive: The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court

should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant.

2. **ID.; ID.; ID.; RECEIVERSHIP MAYBE GRANTED ONLY WHEN THE CIRCUMSTANCES SO DEMAND, EITHER BECAUSE THE PROPERTY SOUGHT TO BE PLACED IN THE HANDS OF A RECEIVER IS IN DANGER OF BEING LOST OR BECAUSE THEY RUN THE RISK OF BEING IMPAIRED, AND THAT BEING A DRASTIC AND HARSH REMEDY, RECEIVERSHIP MUST BE GRANTED ONLY WHEN THERE IS A CLEAR SHOWING OF NECESSITY FOR IT IN ORDER TO SAVE THE PLAINTIFF FROM GRAVE AND IMMEDIATE LOSS OR DAMAGE.—** Indeed, Sec. 1(d) [of the Rules of Court] is couched in general terms and broad in scope, encompassing instances not covered by the other grounds enumerated under the said section. However, in granting applications for receivership on the basis of this section, courts must remain mindful of the basic principle that receivership may be granted only when the circumstances so demand, either because the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired, and that being a drastic and harsh remedy, receivership must be granted only when there is a clear showing of necessity for it in order to save the plaintiff from grave and immediate loss or damage.

3. **ID.; ID.; ID.; WHERE THE EFFECT OF THE APPOINTMENT OF A RECEIVER IS TO TAKE REAL ESTATE OUT OF THE POSSESSION OF THE DEFENDANT BEFORE FINAL ADJUDICATION OF THE RIGHTS OF THE PARTIES, THE APPOINTMENT SHOULD BE MADE ONLY IN EXTREME CASES.—** Before appointing a receiver, courts should consider: (1) whether or not the injury resulting from such appointment would probably be greater than the injury ensuing if the status quo is left undisturbed; and (2) whether or not the appointment will imperil the interest of others whose rights deserve as much a consideration from the court as those of the person requesting for receivership. Moreover, this Court has consistently ruled that where the effect of the appointment of a receiver is to

take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases. After carefully considering the foregoing principles and the facts and circumstances of this case, We find that the grant of Dominalda's Application for Receivership has no leg to stand on.

4. **ID.; ID.; ID.; FINANCIAL SUPPORT AND MEDICATION IS NOT A VALID JUSTIFICATION FOR THE APPROVAL OF AN APPLICATION FOR THE APPOINTMENT OF A RECEIVER.—** [D]ominalda's alleged need for income to defray her medical expenses and support is not a valid justification for the appointment of a receiver. The approval of an application for receivership merely on this ground is not only unwarranted but also an arbitrary exercise of discretion because financial need and like reasons are not found in Sec. 1 of Rule 59 which prescribes specific grounds or reasons for granting receivership. The RTC's insistence that the approval of the receivership is justified under Sec. 1(d) of Rule 59, which seems to be a catch-all provision, is far from convincing. To be clear, even in cases falling under such provision, it is essential that there is a clear showing that there is imminent danger that the properties sought to be placed under receivership will be lost, wasted or injured.

5. **ID.; ID.; ID.; THE APPOINTMENT OF A RECEIVER IS NOT PROPER WHEN THE RIGHTS OF THE PARTIES, ONE OF WHOM IS IN POSSESSION OF THE PROPERTY, DEPEND ON THE DETERMINATION OF THEIR RESPECTIVE CLAIMS TO THE TITLE OF SUCH PROPERTY UNLESS SUCH PROPERTY IS IN DANGER OF BEING MATERIALLY INJURED OR LOST, AS BY THE PROSPECTIVE FORECLOSURE OF A MORTGAGE ON IT OR ITS PORTIONS ARE BEING OCCUPIED BY THIRD PERSONS CLAIMING ADVERSE TITLE.—** [I]t must be noted that the defendants in Civil Case No. S-760 are the registered owners of the disputed properties that were in their possession. In cases such as this, it is settled jurisprudence that the appointment should be made only in extreme cases and on a clear showing of necessity in order to save the plaintiff from grave and irremediable loss or damage. This Court has held that a receiver should not be appointed to deprive a party who is in possession of the property in litigation, just as a

writ of preliminary injunction should not be issued to transfer property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership in himself, except in a very clear case of evident usurpation. Furthermore, this Court has declared that the appointment of a receiver is not proper when the rights of the parties, one of whom is in possession of the property, depend on the determination of their respective claims to the title of such property unless such property is in danger of being materially injured or lost, as by the prospective foreclosure of a mortgage on it or its portions are being occupied by third persons claiming adverse title. It must be underscored that in this case, Dominalda's claim to the disputed properties and her share in the properties' income and produce is at best speculative precisely because the ownership of the disputed properties is yet to be determined in Civil Case No. S-760. Also, except for Dominalda's claim that she has an interest in the disputed properties, Dominalda has no relation to their produce or income.

6. ID.; ID.; ID.; THE FILING OF AN APPLICANT'S BOND EXECUTED TO THE PARTY AGAINST WHOM THE APPLICATION FOR RECEIVERSHIP IS PRESENTED IS MANDATORY AND THE CONSENT OF THE OTHER PARTY IS OF NO MOMENT; ON THE OTHER HAND, THE REQUIREMENT OF A RECEIVER'S BOND RESTS UPON THE DISCRETION OF THE COURT.— Sec. 2 of Rule 59 is very clear in that before issuing the order appointing a receiver the court **shall** require the applicant to file a bond executed to the party against whom the application is presented. The use of the word "shall" denotes its mandatory nature; thus, the consent of the other party, or as in this case, the consent of petitioners, is of no moment. Hence, the filing of an applicant's bond is required at all times. On the other hand, the requirement of a receiver's bond rests upon the discretion of the court. Sec. 2 of Rule 59 clearly states that the court **may**, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

APPEARANCES OF COUNSEL

Jacinto Magtanong Wui Jacinto Esguerra & Uy for petitioners.
Pacatang Law Office for Eve Caboverde-Yu.
Peter Y. Co for Dominalda Espina-Caboverde.
Gudmalin Castillo Vallecer Law Office for Josephine E. Caboverde.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Assailed in this petition for review under Rule 45 are the Decision and Resolution of the Court of Appeals (CA) rendered on June 25, 2012 and September 21, 2012, respectively, in CA-G.R. SP. No. 03834, which effectively affirmed the Resolutions dated February 8, 2010 and July 19, 2010 of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch 11, in Civil Case No. S-760, approving respondent Dominalda Espina-Caboverde's application for receivership and appointing the receivers over the disputed properties.

The Facts

Petitioners Mila Caboverde Tantano (Mila) and Roseller Caboverde (Roseller) are children of respondent Dominalda Espina-Caboverde (Dominalda) and siblings of other respondents in this case, namely: Eve Caboverde-Yu (Eve), Fe Caboverde-Labrador (Fe), and Josephine E. Caboverde (Josephine).

Petitioners and their siblings, Ferdinand, Jeanny and Laluna, are the registered owners and in possession of certain parcels of land, identified as Lots 2, 3 and 4 located at Bantayan, Sindangan and Poblacion, Sindangan in Zamboanga del Norte, having purchased them from their parents, Maximo and Dominalda Caboverde.[1]

[1] *Rollo*, p. 13.

The present controversy started when on March 7, 2005, respondents Eve and Fe filed a complaint before the RTC of Sindangan, Zamboanga del Norte where they prayed for the annulment of the Deed of Sale purportedly transferring Lots 2, 3 and 4 from their parents Maximo and Dominalda in favor of petitioners Mila and Roseller and their other siblings, Jeanny, Laluna and Ferdinand. Docketed as Civil Case No. S-760, the case was raffled to Branch 11 of the court.

In their verified Answer, the defendants therein, including Maximo and Dominalda, posited the validity and due execution of the contested Deed of Sale.

During the pendency of Civil Case No. S-760, Maximo died. On May 30, 2007, Eve and Fe filed an Amended Complaint with Maximo substituted by his eight (8) children and his wife Dominalda. The Amended Complaint reproduced the allegations in the original complaint but added eight (8) more real properties of the Caboverde estate in the original list.

As encouraged by the RTC, the parties executed a Partial Settlement Agreement (PSA) where they fixed the sharing of the uncontroverted properties among themselves, in particular, the adverted additional eight (8) parcels of land including their respective products and improvements. Under the PSA, Dominalda's daughter, Josephine, shall be appointed as Administrator. The PSA provided that Dominalda shall be entitled to receive a share of one-half (1/2) of the net income derived from the uncontroverted properties. The PSA also provided that Josephine shall have special authority, among others, to provide for the medicine of her mother.

The parties submitted the PSA to the court on or about March 10, 2008 for approval.[2]

Before the RTC could act on the PSA, Dominalda, who, despite being impleaded in the case as defendant, filed a Motion to Intervene separately in the case. Mainly, she claimed that the verified Answer which she filed with her co-defendants

[2] *Id.* at 93.

contained several material averments which were not representative of the true events and facts of the case. This document, she added, was never explained to her or even read to her when it was presented to her for her signature.

On May 12, 2008, Dominalda filed a Motion for Leave to Admit Amended Answer, attaching her Amended Answer where she contradicted the contents of the aforesaid verified Answer by declaring that there never was a sale of the three (3) contested parcels of land in favor of Ferdinand, Mila, Laluna, Jeanny and Roseller and that she and her husband never received any consideration from them. She made it clear that they intended to divide all their properties equally among all their children without favor. In sum, Dominalda prayed that the reliefs asked for in the Amended Complaint be granted with the modification that her conjugal share and share as intestate heir of Maximo over the contested properties be recognized.[3]

The RTC would later issue a Resolution granting the Motion to Admit Amended Answer.[4]

On May 13, 2008, the court approved the PSA, leaving three (3) contested properties, Lots 2, 3, and 4, for further proceedings in the main case.

Fearing that the contested properties would be squandered, Dominalda filed with the RTC on July 15, 2008 a Verified Urgent Petition/Application to place the controverted Lots 2, 3 and 4 under receivership. Mainly, she claimed that while she had a legal interest in the controverted properties and their produce, she could not enjoy them, since the income derived was solely

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[3] *Id.* at 35.

[4] The RTC Resolution granting the Motion to Admit Answer which was challenged by the petitioners before the CA via a special civil action for *certiorari* under Rule 65 in a case docketed as CA-G.R. SP No. 02544. After receiving the unfavorable Decision of the CA dismissing their petition, petitioners went to this Court on a petition for review on *certiorari* docketed as G.R. No. 199561. However, the petition was likewise dismissed on February 15, 2012, and this resolution has become final and executory last October 23, 2012. Comment of Dominalda Espina-Caboverde, pp. 5-6.

appropriated by petitioner Mila in connivance with her selected kin. She alleged that she immediately needs her legal share in the income of these properties for her daily sustenance and medical expenses. Also, she insisted that unless a receiver is appointed by the court, the income or produce from these properties is in grave danger of being totally dissipated, lost and entirely spent solely by Mila and some of her selected kin. Paragraphs 5, 6, 7, and 8 of the Verified Urgent Petition/ Application for Receivership[5] (Application for Receivership) capture Dominalda's angst and apprehensions:

> 5. That all the income of Lot Nos. 2, 3 and 4 are collected by Mila Tantano, thru her collector Melinda Bajalla, and solely appropriated by Mila Tantano and her selected kins, presumably with Roseller E. Caboverde, Ferdinand E. Caboverde, Jeanny Caboverde and Laluna Caboverde, for their personal use and benefit;
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> 6. That defendant Dominalda Espina Caboverde, who is now sickly, in dire need of constant medication or medical attention, not to mention the check-ups, vitamins and other basic needs for daily sustenance, yet despite the fact that she is the conjugal owner of the said land, could not even enjoy the proceeds or income as these are all appropriated solely by Mila Tantano in connivance with some of her selected kins;
>
> 7. That unless a receiver is appointed by the court, the income or produce from these lands, are in grave danger of being totally dissipated, lost and entirely spent solely by Mila Tantano in connivance with some of her selected kins, to the great damage and prejudice of defendant Dominalda Espina Caboverde, hence, there is no other most feasible, convenient, practicable and easy way to get, collect, preserve, administer and dispose of the legal share or interest of defendant Dominalda Espina Caboverde except the appointment of a receiver x x x;
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> x x x x x x x x x
>
> 9. That insofar as the defendant Dominalda Espina Caboverde is concerned, time is of the utmost essence. She immediately needs her legal share and legal interest over the income and produce of these lands so that she can provide and pay for her vitamins, medicines,

[5] Annex "7", Comment of Dominalda Espina-Caboverde.

constant regular medical check-up and daily sustenance in life. To grant her share and interest after she may have passed away would render everything that she had worked for to naught and waste, akin to the saying "*aanhin pa ang damo kung patay na ang kabayo*."

On August 27, 2009, the court heard the Application for Receivership and persuaded the parties to discuss among themselves and agree on how to address the immediate needs of their mother.[6]

On October 9, 2009, petitioners and their siblings filed a Manifestation formally expressing their concurrence to the proposal for receivership on the condition, *inter alia*, that Mila be appointed the receiver, and that, after getting the 2/10 share of Dominalda from the income of the three (3) parcels of land, the remainder shall be divided only by and among Mila, Roseller, Ferdinand, Laluna and Jeanny. The court, however, expressed its aversion to a party to the action acting as receiver and accordingly asked the parties to nominate neutral persons.[7]

On February 8, 2010, the trial court issued a Resolution granting Dominalda's application for receivership over Lot Nos. 2, 3 and 4. The Resolution reads:

As regards the second motion, the Court notes the urgency of placing Lot 2 situated at Bantayan, covered by TCT No. 46307; Lot 3 situated at Poblacion, covered by TCT No. T-8140 and Lot 4 also situated at Poblacion covered by TCT No. T-8140, all of Sindangan, Zamboanga del Norte under receivership as defendant Dominalda Espina Caboverde (the old and sickly mother of the rest of the parties) who claims to be the owner of the one-half portion of the properties under litigation as her conjugal share and a portion of the estate of her deceased husband Maximo, is in dire need for her medication and daily sustenance. As agreed by the parties, Dominalda Espina Caboverde shall be given 2/10 shares of the net monthly income and products of the said properties.[8]

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[6] *Rollo*, p. 98.

[7] Comment of Dominalda Espina-Caboverde, p. 7.

[8] *Rollo*, p. 43-a. Penned by Judge Designate Hipolito P. Bael, Jr.

In the same Resolution, the trial court again noted that Mila, the nominee of petitioners, could not discharge the duties of a receiver, she being a party in the case.[9] Thus, Dominalda nominated her husband's relative, Annabelle Saldia, while Eve nominated a former *barangay kagawad*, Jesus Tan.[10]

Petitioners thereafter moved for reconsideration raising the arguments that the concerns raised by Dominalda in her Application for Receivership are not grounds for placing the properties in the hands of a receiver and that she failed to prove her claim that the income she has been receiving is insufficient to support her medication and medical needs. By Resolution[11] of July 19, 2010, the trial court denied the motion for reconsideration and at the same time appointed Annabelle Saldia as the receiver for Dominalda and Jesus Tan as the receiver for Eve. The trial court stated:

> As to the issue of receivership, the Court stands by its ruling in granting the same, there being no cogent reason to overturn it. As intimated by the movant-defendant Dominalda Caboverde, Lots 2, 3 and 4 sought to be under receivership are not among those lots covered by the adverted Partial Amicable Settlement. To the mind of the Court, the fulfilment or non-fulfilment of the terms and conditions laid therein nonetheless have no bearing on these three lots. Further, as correctly pointed out by her, there is possibility that these Lots 2, 3, and 4, of which the applicant has interest, but are in possession of other defendants who are the ones enjoying the natural and civil fruits thereof which might be in the danger of being lost, removed or materially injured. Under this precarious condition, they must be under receivership, pursuant to Sec. 1 (a) of Rule 59. Also, the purpose of the receivership is to procure money from the proceeds of these properties to spend for medicines and other needs of the movant defendant Dominalda Caboverde who is old and sickly. This circumstance falls within the purview of Sec. 1(d), that is, "*Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.*"

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[9] *Id.* at 43.

[10] Comment of Dominalda Espina-Caboverde, p. 7.

[11] Annex "9", Comment of Dominalda Espina-Caboverde.

Both Annabelle Saldia and Jesus Tan then took their respective oaths of office and filed a motion to fix and approve bond which was approved by the trial court over petitioners' opposition.

Undaunted, petitioners filed an Urgent Precautionary Motion to Stay Assumption of Receivers dated August 9, 2010 reiterating what they stated in their motion for reconsideration and expressing the view that the grant of receivership is not warranted under the circumstances and is not consistent with applicable rules and jurisprudence. The RTC, on the postulate that the motion partakes of the nature of a second motion for reconsideration, thus, a prohibited pleading, denied it via a Resolution dated October 7, 2011 where it likewise fixed the receiver's bond at PhP 100,000 each. The RTC stated:

> [1] The appointed receivers, JESUS A. TAN and ANNABELLE DIAMANTE-SALDIA, are considered duly appointed by this Court, not only because their appointments were made upon their proper nomination from the parties in this case, but because their appointments have been duly upheld by the Court of Appeals in its *Resolution* dated 24 May 2011 denying the herein defendants' (petitioners therein) application for a writ of preliminary injunction against the 8 February 2010 *Resolution* of this Court placing the properties (Lots 2, 3 and 4) under receivership by the said JESUS A. TAN and ANNABELLE DIAMANTE-SALDIA, and *Resolution* dated 29 July 2011 denying the herein defendants' (petitioners therein) motion for reconsideration of the 24 May 2011 *Resolution*, both, for lack of merit. In its latter *Resolution*, the Court of Appeals states:
>
> > A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. But before a writ of preliminary injunction may be issued, there must be a clear showing that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right and will cause irreparable injury.
> >
> > Unfortunately, petitioners failed to show that the acts of the receivers in this case are inimical to their rights as owners of the property. They also failed to show that the non-issuance

of the writ of injunction will cause them irreparable injury. The court-appointed receivers merely performed their duties as administrators of the disputed lots. It must be stressed that the trial court specifically appointed these receivers to preserve the properties and its proceeds to avoid any prejudice to the parties until the main case is resolved, Hence, there is no urgent need to issue the injunction.

ACCORDINGLY, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.

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WHEREFORE, premises considered, this Court RESOLVES, as it is hereby RESOLVED, that:

1. The defendants' "Urgent Precautionary Motion to Stay Assumption of Receivers" be DENIED for lack of merit. Accordingly, it being patently a second motion for reconsideration, a prohibited pleading, the same is hereby ordered EXPUNGED from the records;

2. The "Motion to Fix the Bond, Acceptance and Approval of the Oath of Office, and Bond of the Receiver" of defendant Dominalda Espina Caboverde, be GRANTED with the receivers' bond set and fixed at ONE HUNDRED THOUSAND PESOS (PhP100,000.00) each.[12]

It should be stated at this juncture that after filing their Urgent Precautionary Motion to Stay Assumption of Receivers but before the RTC could rule on it, petitioners filed a petition for *certiorari* with the CA dated September 29, 2010 seeking to declare null and void the February 8, 2010 Resolution of the RTC granting the Application for Receivership and its July 19, 2010 Resolution denying the motion for reconsideration filed by petitioners and appointing the receivers nominated by respondents. The petition was anchored on two grounds, namely: (1) non-compliance with the substantial requirements under Section 2, Rule 59 of the 1997 Rules of Civil Procedure because the trial court appointed a receiver without requiring the applicant to file a bond; and (2)

[12] *Rollo*, pp. 157-158, 160.

lack of factual or legal basis to place the properties under receivership because the applicant presented support and medication as grounds in her application which are not valid grounds for receivership under the rules.

On June 25, 2012, the CA rendered the assailed Decision denying the petition on the strength of the following premises and ratiocination:

> Petitioners harp on the fact that the court *a quo* failed to require Dominalda to post a bond prior to the issuance of the order appointing a receiver, in violation of Section 2, Rule 59 of the Rules of court which provides that:
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> > **SEC. 2.** ***Bond on appointment of receiver.***— Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.
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> The Manifestation dated September 30, 2009 filed by petitioners wherein "they formally manifest[ed] their concurrence" to the settlement on the application for receivership estops them from questioning the sufficiency of the cause for the appointment of the receiver since they themselves agreed to have the properties placed under receivership albeit on the condition that the same be placed under the administration of Mila. Thus, the filing of the bond by Dominalda for this purpose becomes unnecessary.
>
> It must be emphasized that the bond filed by the applicant for receivership answers only for all damages that the adverse party may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; it does not answer for damages suffered by reason of the failure of the receiver to discharge his duties faithfully or to obey the orders of the court, inasmuch as such damages are covered by the bond of the receiver.

As to the second ground, petitioners insist that there is no justification for placing the properties under receivership since there was neither allegation nor proof that the said properties, not the fruits thereof, were in danger of being lost or materially injured. They believe that the public respondent went out of line when he granted the application for receivership for the purpose of procuring money for the medications and basic needs of Dominalda despite the income she's supposed to receive under the Partial Settlement Agreement.

The court *a quo* has the discretion to decide whether or not the appointment of a receiver is necessary. In this case, the public respondent took into consideration that the applicant is already an octogenarian who may not live up to the day when this conflict will be finally settled. Thus, We find that he did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when he granted the application for receivership based on Section 1(d) of Rule 59 of the Rules of Court.

A final note, a petition for *certiorari* may be availed of only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. In this case, petitioners may still avail of the remedy provided in Section 3, Rule 59 of the said Rule where they can seek for the discharge of the receiver.

FOR REASONS STATED, the petition for *certiorari* is DENIED.

SO ORDERED.[13]

Petitioners' Motion for Reconsideration was also denied by the CA on September 21, 2012.[14]

Hence, the instant petition, petitioners effectively praying that the approval of respondent Dominalda's application for receivership and necessarily the concomitant appointment of receivers be revoked.

The Issues

Petitioners raise the following issues in their petition:

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[13] *Id.* at 38-40. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Maria Elisa Sempio Diy.

[14] Resolution, *rollo*, pp. 41-42.

(1) Whether or not the CA committed grave abuse of discretion in sustaining the appointment of a receiver despite clear showing that the reasons advanced by the applicant are not any of those enumerated by the rules; and

(2) Whether or not the CA committed grave abuse of discretion in upholding the Resolution of the RTC and ruling that the receivership bond is not required prior to appointment despite clear dictates of the rules.

The Court's Ruling

The petition is impressed with merit.

We have repeatedly held that receivership is a harsh remedy to be granted with utmost circumspection and only in extreme situations. The doctrinal pronouncement in *Velasco & Co. v. Gochico & Co* is instructive:

> The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant.[15]

To recall, the RTC approved the application for receivership on the stated rationale that receivership was the most convenient and feasible means to preserve and administer the disputed properties. As a corollary, the RTC, agreeing with the applicant Dominalda, held that placing the disputed properties under receivership would ensure that she would receive her share in the income which she supposedly needed in order to pay for her vitamins, medicines, her regular check-ups and daily sustenance. Considering that, as the CA put it, the applicant

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[15] 28 Phil. 39, 41 (1914).

was **already an octogenarian who may not live up to the day when the conflict will be finally settled**, the RTC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the application for receivership since it was justified under Sec. 1(d), Rule 59 of the Rules of Court, which states:

> Section 1. Appointment of a receiver. – Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:
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> x x x x x x x x x
>
> **(d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation**. (Emphasis supplied.)

Indeed, Sec. 1(d) above is couched in general terms and broad in scope, encompassing instances not covered by the other grounds enumerated under the said section.[16] However,

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[16] Section 1. Appointment of receiver. – Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

(a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;

(b) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect.

in granting applications for receivership on the basis of this section, courts must remain mindful of the basic principle that receivership may be granted only when the circumstances so demand, either because the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired,[17] and that being a drastic and harsh remedy, receivership must be granted only when there is a clear showing of necessity for it in order to save the plaintiff from grave and immediate loss or damage.[18]

Before appointing a receiver, courts should consider: (1) whether or not the injury resulting from such appointment would probably be greater than the injury ensuing if the status quo is left undisturbed; and (2) whether or not the appointment will imperil the interest of others whose rights deserve as much a consideration from the court as those of the person requesting for receivership.[19]

Moreover, this Court has consistently ruled that where the effect of the appointment of a receiver is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases.[20]

After carefully considering the foregoing principles and the facts and circumstances of this case, We find that the grant of Dominalda's Application for Receivership has no leg to stand on for reasons discussed below.

First, Dominalda's alleged need for income to defray her medical expenses and support is not a valid justification for the appointment of a receiver. The approval of an application for receivership merely on this ground is not only unwarranted but also an arbitrary exercise of discretion because financial need and like reasons are not found in Sec. 1 of Rule 59 which

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[17] *Diaz v. Hon. Nietes*, 110 Phil. 606, 610 (1960).

[18] *Mendoza v. Arellano*, 36 Phil. 59 (1917).

[19] *Ralla v. Alcasid*, No. L-17176, October 30, 1962, 6 SCRA 311, 314.

[20] *Mendoza v. Arellano*, *supra* note 18, at 64.

prescribes specific grounds or reasons for granting receivership. The RTC's insistence that the approval of the receivership is justified under Sec. 1(d) of Rule 59, which seems to be a catch-all provision, is far from convincing. To be clear, even in cases falling under such provision, it is essential that there is a clear showing that there is imminent danger that the properties sought to be placed under receivership will be lost, wasted or injured.

Second, there is no clear showing that the disputed properties are in danger of being lost or materially impaired and that placing them under receivership is most convenient and feasible means to preserve, administer or dispose of them.

Based on the allegations in her application, it appears that Dominalda sought receivership mainly because she considers this the best remedy to ensure that she would receive her share in the income of the disputed properties. Much emphasis has been placed on the fact that she needed this income for her medical expenses and daily sustenance. But it can be gleaned from her application that, aside from her bare assertion that petitioner Mila solely appropriated the fruits and rentals earned from the disputed properties in connivance with some of her siblings, Dominalda has not presented or alleged anything else to prove that the disputed properties were in danger of being wasted or materially injured and that the appointment of a receiver was the most convenient and feasible means to preserve their integrity.

Further, there is nothing in the RTC's February 8 and July 19, 2010 Resolutions that says why the disputed properties might be in danger of being lost, removed or materially injured while in the hands of the defendants *a quo*. Neither did the RTC explain the reasons which compelled it to have them placed under receivership. The RTC simply declared that placing the disputed properties under receivership was urgent and merely anchored its approval on the fact that Dominalda was an elderly in need of funds for her medication and sustenance. The RTC plainly concluded that since **the purpose of the receivership is to procure money from the proceeds of these properties to spend for medicines and other needs of the Dominalda,**

who is old and sickly, this circumstance falls within the purview of Sec. 1(d), that is, "Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."

Verily, the RTC's purported determination that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the properties is nothing but a hollow conclusion drawn from inexistent factual considerations.

Third, placing the disputed properties under receivership is not necessary to save Dominalda from grave and immediate loss or irremediable damage. Contrary to her assertions, Dominalda is assured of receiving income under the PSA approved by the RTC providing that she was entitled to receive a share of one-half (1/2) of the net income derived from the uncontroverted properties. Pursuant to the PSA, Josephine, the daughter of Dominalda, was appointed by the court as administrator of the eight (8) uncontested lots with special authority to provide for the medicine of her mother. Thus, it was patently erroneous for the RTC to grant the Application for Receivership in order to ensure Dominalda of income to support herself because precisely, the PSA already provided for that. It cannot be over-emphasized that the parties in Civil Case No. S-760 were willing to make arrangements to ensure that Dominalda was provided with sufficient income. In fact, the RTC, in its February 8, 2010 Resolution granting the Application for Receivership, noted the agreement of the parties that "**Dominalda Espina Caboverde shall be given 2/10 shares of the net monthly income and products of said properties**."[21]

Finally, it must be noted that the defendants in Civil Case No. S-760 are the registered owners of the disputed properties that were in their possession. In cases such as this, it is settled jurisprudence that the appointment should be made only in extreme

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[21] *Rollo*, p. 43-a.

cases and on a clear showing of necessity in order to save the plaintiff from grave and irremediable loss or damage.[22]

This Court has held that a receiver should not be appointed to deprive a party who is in possession of the property in litigation, just as a writ of preliminary injunction should not be issued to transfer property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership in himself, except in a very clear case of evident usurpation.[23]

Furthermore, this Court has declared that the appointment of a receiver is not proper when the rights of the parties, one of whom is in possession of the property, depend on the determination of their respective claims to the title of such property[24] unless such property is in danger of being materially injured or lost, as by the prospective foreclosure of a mortgage on it or its portions are being occupied by third persons claiming adverse title.[25]

It must be underscored that in this case, Dominalda's claim to the disputed properties and her share in the properties' income and produce is at best speculative precisely because the ownership of the disputed properties is yet to be determined in Civil Case No. S-760. Also, except for Dominalda's claim that she has an interest in the disputed properties, Dominalda has no relation to their produce or income.

By placing the disputed properties and their income under receivership, it is as if the applicant has obtained indirectly what she could not obtain directly, which is to deprive the other parties of the possession of the property until the controversy between them in the main case is finally settled.[26] This Court cannot countenance this arrangement.

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[22] *Mendoza v. Arellano, supra* note 18.

[23] See *Municipality of Camiling v. de Aquino*, 103 Phil. 128 (1958).

[24] *Calo, et al. v. Roldan*, 76 Phil. 445 (1946).

[25] *Motoomull v. Arrieta*, No. L-15972, May 31, 1963, 8 SCRA 172, 176-178.

[26] *De los Reyes v. Hon. Bayona*, 107 Phil. 49 (1960).

To reiterate, the RTC's approval of the application for receivership and the deprivation of petitioners of possession over the disputed properties would be justified only if compelling reasons exist. Unfortunately, no such reasons were alleged, much less proved in this case.

In any event, Dominalda's rights may be amply protected during the pendency of Civil Case No. S-760 by causing her adverse claim to be annotated on the certificates of title covering the disputed properties.[27]

As regards the issue of whether or not the CA was correct in ruling that a bond was not required prior to the appointment of the receivers in this case, We rule in the negative.

Respondents Eve and Fe claim that there are sufficient grounds for the appointment of receivers in this case and that in fact, petitioners agreed with them on the existence of these grounds when they acquiesced to Dominalda's Application for Receivership. Thus, respondents insist that where there is sufficient cause to appoint a receiver, there is no need for an applicant's bond because under Sec. 2 of Rule 59, the very purpose of the bond is to answer for all damages that may be sustained by a party by reason of the appointment of a receiver in case the applicant shall have procured such appointment **without sufficient cause**. Thus, they further argue that what is needed is the receiver's bond which was already fixed and approved by the RTC.[28] Also, the CA found that there was no need for Dominalda to file a bond considering that petitioners filed a Manifestation where they formally consented to the receivership. Hence, it was as if petitioners agreed that there was sufficient cause to place the disputed properties under receivership; thus, the CA declared that petitioners were estopped from challenging the sufficiency of such cause.

The foregoing arguments are misplaced. Sec. 2 of Rule 59 is very clear in that before issuing the order appointing a receiver

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[27] *Descallar v. Court of Appeals*, G.R. No. 106473, July 12, 1993, 224 SCRA 566, 570.

[28] *Rollo*, p. 107.

the court **shall** require the applicant to file a bond executed to the party against whom the application is presented. The use of the word "shall" denotes its mandatory nature; thus, the consent of the other party, or as in this case, the consent of petitioners, is of no moment. Hence, the filing of an applicant's bond is required at all times. On the other hand, the requirement of a receiver's bond rests upon the discretion of the court. Sec. 2 of Rule 59 clearly states that the court **may**, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

WHEREFORE, upon the foregoing considerations, this petition is **GRANTED**. The assailed CA June 25, 2012 Decision and September 21, 2012 Resolution in CA-G.R. SP No. 03834 are hereby **REVERSED** and **SET ASIDE**. The Resolutions dated February 8, 2010 and July 19, 2010 of the RTC, Branch 11 in Sindangan, Zamboanga del Norte, in Civil Case No. S-760, approving respondent Dominalda Espina-Caboverde's application for receivership and appointing the receivers over the disputed properties are likewise **SET ASIDE**.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

EN BANC

[A.M. No. 11-10-03-O. July 30, 2013]

RE: LETTER DATED APRIL 18, 2011 OF CHIEF PUBLIC ATTORNEY PERSIDA RUEDA-ACOSTA REQUESTING EXEMPTION FROM THE PAYMENT OF SHERIFF'S EXPENSES

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 9406 (REORGANIZING AND STRENGTHENING THE PUBLIC ATTORNEY'S OFFICE [PAO]); EXEMPTION OF PAO'S CLIENTS FROM PAYMENT OF FEES DOES NOT INCLUDE SHERIFF'S EXPENSES; RATIONALE.— That Section 6 of R.A. No. 9406 exempts PAO's clients from the payment of "docket and other fees incidental to instituting an action in court and other quasi-judicial bodies" is beyond cavil. However, contrary to Atty. Acosta's claim, a plain reading of the said provision clearly shows that the exemption granted to PAO's clients cannot be extended to the payment of sheriff's expenses; the exemption is specifically limited to the payment of fees, *i.e.*, docket and other fees incidental to instituting an action. The term "fees" is defined as a charge fixed by law or by an institution for certain privileges or services. Viewed from this context, the phrase "docket and other fees incidental to instituting an action" refers to the totality of the legal fees imposed under Rule 141 of the Rules of Court. In particular, it includes filing or docket fees, appeal fees, fees for issuance of provisional remedies, mediation fees, sheriff's fees, stenographer's fees and commissioner's fees. These are the fees that are exacted for the services rendered by the court in connection with the action instituted before it. Sheriff's expenses, however, cannot be classified as a "fee" within the purview of the exemption granted to PAO's clients under Section 6 of R.A. No. 9406. Sheriff's expenses are provided for under Section 10, Rule 141 of the Rules of Court. x x x Sheriff's expenses are not exacted for any service rendered by the court; they are the amount deposited to the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. It is not the same as sheriff's fees under Section 10, Rule 141 of the Rules of Court, which refers to those imposed by the court for services rendered to a party incident to the proceedings before it. Thus, in *In Re: Exemption of Cooperatives from Payment of Court and Sheriff's Fees Payable to the Government in Actions Brought Under R.A. 6938*, the Court

clarified that sheriff's expenses are not considered as legal fees [.]

2. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREE ACCESS TO THE COURTS AND ADEQUATE LEGAL ASSISTANCE; AUTHORITY TO SERVE SUMMONS, SUBPOENA AND OTHER COURT PROCESSES, WHICH SHALL BE LIMITED ONLY TO CASES INVOLVING THEIR CLIENTS, IS GIVEN TO PAO (PUBLIC ATTORNEY'S OFFICE) OFFICIALS AND EMPLOYEES; SUSTAINED.— Free access to the courts and adequate legal assistance are among the fundamental rights which the Constitution extends to the less privileged. Thus, Section 11, Article III of the 1987 Constitution mandates that "[f]ree access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty." The Constitution affords litigants—moneyed or poor—equal access to the courts; moreover, it specifically provides that poverty shall not bar any person from having access to the courts. Accordingly, laws and rules must be formulated, interpreted, and implemented pursuant to the intent and spirit of this constitutional provision. Access to justice by all, especially by the poor, is not simply an ideal in our society. Its existence is essential in a democracy and in the rule of law. Without doubt, one of the most precious rights which must be shielded and secured is the unhampered access to the justice system by the poor, the underprivileged and the marginalized. Having the foregoing principles in mind, the Court, heeding the constitutional mandate of ensuring free access to the courts and adequate legal assistance to the marginalized and less privileged, hereby authorizes the officials and employees of PAO to serve summons, subpoena and other court processes pursuant to Section 3, Rule 14 of the Rules of Court. The authority given herein by the Court to the officials and employees of PAO shall be limited only to cases involving their client. Authorizing the officials and employees of PAO to serve the summons, subpoenas and other court processes in behalf of their clients would relieve the latter from the burden of paying for the sheriff's expenses despite their non-exemption from the payment thereof under Section 6 of R.A. No. 9406. The amount to be defrayed in the service of summons, subpoena and other court processes in behalf of its clients would consequently have to be taken from the operating expenses of

PAO. In turn, the amount advanced by PAO as actual travel expenses may be taken from the amount recovered from the adversaries of PAO's clients as costs of suit, attorney's fees or contingent fees prior to the deposit thereof in the National Treasury.

R E S O L U T I O N

REYES, *J.*:

This case stemmed from the February 7, 2011 letter[1] of Attorney Persida V. Rueda-Acosta (Atty. Acosta), Chief Public Attorney of the Public Attorney's Office (PAO), to the Office of the Court Administrator (OCA). In the said letter, Atty. Acosta sought a clarification as to the exemption of PAO's clients from the payment of sheriff's expenses, alleging that PAO's clients in its Regional Office in Region VII are being charged with the payment of sheriff's expenses in the amount of ₱1,000.00 upon the filing of a civil action in court. She claimed that sheriff's expenses should not be exacted from PAO's clients since Section 6 of Republic Act No. 9406[2] (R.A. No. 9406) specifically exempts them from the payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies.

In its letter[3] dated March 23, 2011 to Atty. Acosta, the OCA clarified that PAO's clients, notwithstanding their exemption under Section 6 of R.A. No. 9406 from payment of "docket and other fees incidental to instituting an action in court," are not exempted from the payment of sheriff's expenses. The OCA explained that sheriff's expenses, strictly speaking, are not

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[1] *Rollo*, pp. 5-6.

[2] AN ACT REORGANIZING AND STRENGTHENING THE PUBLIC ATTORNEY'S OFFICE (PAO), AMENDING FOR THE PURPOSE THE PERTINENT PROVISIONS OF EXECUTIVE ORDER NO. 292, OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987," AS AMENDED, GRANTING SPECIAL ALLOWANCE TO PAO OFFICIALS AND LAWYERS, AND PROVIDING FUNDS THEREFOR.

[3] *Rollo*, pp. 15-16.

considered as "legal fees" under Rule 141 of the Rules of Court since they are not payable to the government; they are payable to the sheriff/process server to defray his travel expenses in serving court processes in relation to the litigant's case.

In her letter[4] dated April 18, 2011 to the OCA, Atty. Acosta maintained that, while sheriff's expenses may not be strictly considered as a legal fee, they are nevertheless considered as a fee which is incidental to the filing of an action in court and, hence, should not be exacted from PAO's clients. She pointed out that the imposition of sheriff's expenses on PAO's clients would render the latter's exemption from payment of docket and other fees under Section 6 of R.A. No. 9406 nugatory. Considering that the matter involves an interpretation of R.A. No. 9406, Atty. Acosta requested that the same be referred to the Court *en banc* for resolution.

In its report and recommendation[5] dated September 14, 2011, the OCA maintained its position that PAO's clients are not exempted from the payment of sheriff's expenses; it stressed that the ₱1,000.00 sheriff's expenses are not the same as the sheriff's fee fixed by Section 10, Rule 141 of the Rules of Court and, hence, not covered by the exemption granted to PAO's clients under R.A. No. 9406. The OCA further alleged that the grant of exemption to PAO's clients from the payment of sheriff's expenses amounts to disbursement of public funds for the protection of private interests. Accordingly, the OCA recommended that Atty. Acosta's request for exemption of PAO's clients from payment of sheriff's expenses be denied.

Adopting the recommendation of the OCA, the Court *en banc* issued Resolution[6] dated November 22, 2011 which denied Atty. Acosta's request for exemption from the payment of sheriff's expenses.

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[4] *Id.* at 19-21.

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

[6] *Id.* at 24.

On January 2, 2012, Atty. Acosta sought a reconsideration[7] of the Court's Resolution dated November 22, 2011, which the Court *en banc* referred to the OCA for appropriate action. In its report and recommendation[8] dated March 22, 2012, the OCA averred that the exemption of PAO's clients from payment of legal fees is not an absolute rule and that the Court is not precluded from providing limitations thereto. Thus, the OCA recommended the denial of Atty. Acosta's motion for reconsideration.

On April 24, 2012, the Court *en banc* issued a Resolution[9] which denied the Motion for Reconsideration filed by Atty. Acosta.

Unperturbed, Atty. Acosta filed a motion for leave to file a second motion for reconsideration[10] and a Second Motion for Reconsideration[11] of the Court's Resolution dated April 24, 2012, alleging that the imposition of sheriff's expenses on PAO's clients is contrary to the language, intent and spirit of Section 6 of R.A. No. 9406 since sheriff's expenses are considered as fees "incidental to instituting an action in court." Further, she claimed that the said imposition on PAO's clients would hinder their access to the courts contrary to the mandate of Section 11, Article III of the Constitution.

After a conscientious review of the contrasting legal disquisitions set forth in this case, the Court still finds the instant petition devoid of merit.

At the outset, it bears stressing that this is already the third attempt of Atty. Acosta to obtain from this Court a declaration exempting PAO's clients from the payment of sheriff's fees – the initial request therefor and the subsequent motion for reconsideration having been denied by this Court. As a rule, a

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[7] *Id.* at 25-43.

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

[9] *Id.* at 88.

[10] *Id.* at 89-98.

[11] *Id.* at 99-123.

second motion for reconsideration is a prohibited pleading.[12] This rule, however, is not cast in stone. A second motion for reconsideration may be allowed if there are extraordinarily persuasive reasons therefor, and upon express leave of court first obtained.[13]

Ordinarily, the Court would have dismissed outright Atty. Acosta's second motion for reconsideration. However, for reasons to be discussed at length later, there is a need to give due course to the instant petition in order to reassess and clarify the Court's pronouncement in our Resolutions dated November 22, 2011 and April 24, 2012.

In any case, it bears stressing that what is involved in this case is the Court's administrative power to determine its policy *vis-à-vis* the exaction of legal fees from the litigants. The Court's policy determination respecting administrative matters must not be unnecessarily bound by procedural considerations. Surely, a rule of procedure may not debilitate the Court and render inutile its power of administration and supervision over court procedures.

At the core of this case is the proper interpretation of Section 6 of R.A. No. 9406 which, in part, reads:

> Sec. 6. New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, to read as follows:
>
> x x x x x x x x x
>
> Sec. 16-D. Exemption from Fees and Costs of the Suit – The clients of PAO shall be exempt from payment of docket **and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal**.
>
> The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful

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[12] Section 2, Rule 52 in relation to Section 4, Rule 56 of the RULES OF COURT.

[13] See *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, 324 Phil. 483, 489 (1996).

> litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO. (Emphasis ours)

The OCA maintains that sheriff's expenses are not covered by the exemption granted to PAO's clients under R.A. No. 9406 since the same are not considered as a legal fee under Rule 141 of the Rules of Court. Stated differently, the OCA asserts that the exemption provided for under R.A. No. 9406 only covers the legal fees enumerated under Rule 141 of the Rules of Court.

The court agrees.

It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers–who are, ordinarily, untrained philologists and lexicographers–to use statutory phraseology in such a manner is always presumed.[14]

That Section 6 of R.A. No. 9406 exempts PAO's clients from the payment of "docket and other fees incidental to instituting an action in court and other quasi-judicial bodies" is beyond cavil. However, contrary to Atty. Acosta's claim, a plain reading of the said provision clearly shows that the exemption granted to PAO's clients cannot be extended to the payment of sheriff's expenses; the exemption is specifically limited to the payment of fees, *i.e.*, docket and other fees incidental to instituting an action.

The term "fees" is defined as a charge fixed by law or by an institution for certain privileges or services.[15] Viewed from this context, the phrase "docket and other fees incidental to instituting an action" refers to the totality of the legal fees imposed under Rule 141[16] of the Rules of Court. In particular, it includes filing

[14] *People v. Sandiganbayan (Third Division)*, G.R. No. 167304, August 25, 2009, 597 SCRA 49, 65.

[15] *Webster's Third New International Dictionary*, p. 833.

[16] As amended by A.M. No. 04-2-04-SC which took effect on August 16, 2004.

or docket fees, appeal fees, fees for issuance of provisional remedies, mediation fees, sheriff's fees, stenographer's fees and commissioner's fees.[17] These are the fees that are exacted for the services rendered by the court in connection with the action instituted before it.

Sheriff's expenses, however, cannot be classified as a "fee" within the purview of the exemption granted to PAO's clients under Section 6 of R.A. No. 9406. Sheriff's expenses are provided for under Section 10, Rule 141 of the Rules of Court, *viz*:

> Sec. 10. Sheriffs, PROCESS SERVERS and other persons serving processes.–
>
> x x x x x x x x x
>
> In addition to the fees hereinabove fixed, the amount of ONE THOUSAND (₱1,000.00) PESOS shall be deposited with the Clerk of Court upon filing of the complaint **to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case**. In case the initial deposit of ONE THOUSAND (₱1,000.00) PESOS is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.
>
> x x x x x x x x x (Emphasis ours)

Sheriff's expenses are not exacted for any service rendered by the court; they are the amount deposited to the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized

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[17] *Re: Request of National Committee on Legal Aid to Exempt Legal Aid Clients from Paying Filing, Docket and Other Fees*, A.M. No. 08-11-7-SC, August 28, 2009, 597 SCRA 350.

persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. It is not the same as sheriff's fees under Section 10,[18] Rule 141

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[18] Section 10. Sheriffs, PROCESS SERVERS and other persons serving processes. –

(a) For serving summons and copy of complaint, for each defendant, TWO HUNDRED (₱200.00) PESOS;

(b) For serving subpoenas in civil action or OTHER proceedings, for each witness to be served, ONE HUNDRED (₱100.00) PESOS;

c) For executing a writ of attachment against the property of defendant, FIVE HUNDRED (₱500.00) PESOS per defendant;

(d) For serving and implementing a temporary restraining order, or writ of injunction, preliminary or final, of any court, THREE HUNDRED (₱300.00) PESOS per defendant;

(e) For executing a writ of replevin, FIVE HUNDRED (₱500.00) PESOS;

(f) For filing bonds or other instruments of indemnity or security in provisional remedies, for each bond or instrument, ONE HUNDRED (₱100.00) PESOS;

(g) For executing a writ or process to place a party in possession of real PROPERTY OR estates, THREE HUNDRED (₱300.00) PESOS per property;

(h) For SERVICES RELATING TO THE POSTING AND PUBLICATION REQUIREMENTS UNDER RULE 39 (EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS) AND IN EXTRAJUDICIAL FORECLOSURE OF MORTGAGE BY SHERIFF OR NOTARY PUBLIC besides the cost of publication, ONE HUNDRED AND FIFTY (₱150.00) PESOS;

(i) For taking inventory of goods levied upon when the inventory is ordered by the court, THREE HUNDRED (₱300.00) PESOS per day or actual inventory;

(j) For levying on execution on personal or real property, THREE HUNDRED (₱300.00) PESOS;

(k) For issuing a notice of garnishment, for each notice, ONE HUNDRED (₱100.00) PESOS;

(l) For money collected by him ACTUAL OR CONSTRUCTIVE (WHEN HIGHEST BIDDER IS THE MORTGAGEE AND THERE IS NO ACTUAL COLLECTION OF MONEY) by order, execution, attachment, or any other process, judicial or extrajudicial which shall immediately be turned over to the Clerk of Court, the following sums shall be paid to the clerk of court to wit:

(1) On the first FOUR THOUSAND (₱4,000.00) PESOS, FIVE AND A HALF (5.5%) *per centum*;

(2) On all sums in excess of FOUR THOUSAND (₱4,000.00) PESOS, THREE (3%) *per centum*;

x x x x x x x x x

of the Rules of Court, which refers to those imposed by the court for services rendered to a party incident to the proceedings before it.

Thus, in *In Re: Exemption of Cooperatives from Payment of Court and Sheriff's Fees Payable to the Government in Actions Brought Under R.A. 6938*,[19] the Court clarified that sheriff's expenses are not considered as legal fees, ratiocinating that:

> The difference in the treatment between the sheriff's fees and the sheriff's expenses in relation with the exemption enjoyed by cooperatives is further demonstrated by the wording of Section 10, Rule 141, which uses "fees" in delineating the enumeration in the first paragraph, and "expenses" in qualifying the subsequent paragraphs of this provision. The intention to make a distinction between the two charges is clear; otherwise, the Rules would not have used different designations. Likewise, the difference between the two terms is highlighted by a consideration of the phraseology in the first sentence of the second paragraph of Section 10, Rule 141, which uses the clause "*in addition to the fees hereinabove fixed*," thereby unequivocally indicating that sheriff's expenses are separate charges *on top* of the sheriff's fees. (Italics supplied)

The Court, however, is not unmindful of the predicament of PAO's clients. In exempting PAO's clients from paying docket and other legal fees, R.A. No. 9406 intended to ensure that the indigents and the less privileged, who do not have the means to pay the said fees, would not be denied access to courts by reason of poverty. Indeed, requiring PAO's clients to pay sheriff's expenses, despite their exemption from the payment of docket and other legal fees, would effectly fetter their free access to the courts thereby negating the laudable intent of Congress in enacting R.A. No. 9406.

Free access to the courts and adequate legal assistance are among the fundamental rights which the Constitution extends to the less privileged. Thus, Section 11, Article III of the 1987 Constitution mandates that "[f]ree access to the courts and quasi-

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[19] A.M. No. 03-4-01-0 dated September 1, 2009.

judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty." The Constitution affords litigants—moneyed or poor—equal access to the courts; moreover, it specifically provides that poverty shall not bar any person from having access to the courts. Accordingly, laws and rules must be formulated, interpreted, and implemented pursuant to the intent and spirit of this constitutional provision.[20]

Access to justice by all, especially by the poor, is not simply an ideal in our society. Its existence is essential in a democracy and in the rule of law.[21] Without doubt, one of the most precious rights which must be shielded and secured is the unhampered access to the justice system by the poor, the underprivileged and the marginalized.[22]

Having the foregoing principles in mind, the Court, heeding the constitutional mandate of ensuring free access to the courts and adequate legal assistance to the marginalized and less privileged, hereby authorizes the officials and employees of PAO to serve summons, subpoena and other court processes pursuant to Section 3,[23] Rule 14 of the Rules of Court. The authority given herein by the Court to the officials and employees of PAO shall be limited only to cases involving their client.

Authorizing the officials and employees of PAO to serve the summons, subpoenas and other court processes in behalf of their clients would relieve the latter from the burden of paying for the sheriff's expenses despite their non-exemption from the payment thereof under Section 6 of R.A. No. 9406. The amount to be defrayed in the service of summons, subpoena and other court processes in behalf of its clients would consequently have

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[20] *Spouses Algura v. Local Government Unit of the City of Naga*, 536 Phil. 819 (2006).

[21] *Supra* note 17, at 356.

[22] *Supra* note 20.

[23] Sec. 3. *By whom served*. — The summons may be served by the sheriff, his deputy, or other proper court officer, or for justifiable reasons by any suitable person authorized by the court issuing the summons.

to be taken from the operating expenses of PAO. In turn, the amount advanced by PAO as actual travel expenses may be taken from the amount recovered from the adversaries of PAO's clients as costs of suit, attorney's fees or contingent fees prior to the deposit thereof in the National Treasury.

WHEREFORE, in consideration of the foregoing disquisitions, the Second Motion for Reconsideration filed by Atty. Persida V. Rueda-Acosta is **DENIED**. The Court's Resolutions dated November 22, 2011 and April 24, 2012 are hereby **AFFIRMED**. The request of Atty. Persida V. Rueda-Acosta for the exemption of the clients of the Public Attorney's Office from the payment of sheriff's expenses is **DENIED**.

Nevertheless, the officials and employees of the Public Attorney's Office are hereby **AUTHORIZED** to serve summons, subpoenas and other court processes in behalf of their clients pursuant to Section 3, Rule 14 of the Rules of Court, in coordination with the concerned court. The amount to be defrayed in serving the summons, subpoenas and other court processes could be taken from the operating expenses of the Public Attorney's Office which, in turn, may be taken from the amount recovered by it from the adversaries of PAO's clients as costs of suit, attorney's fees or contingent fees prior to the deposit thereof in the National Treasury, or damages that said clients may be decreed as entitled to in case of the success of PAO's indigent clients.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 7686. July 31, 2013]

JAIME JOVEN and REYNALDO C. RASING, *complainants, vs.* **ATTYS. PABLO R. CRUZ and FRANKIE O. MAGSALIN III,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF ATTORNEYS; BURDER OF PROOF IN DISBARMENT AND SUSPENSION PROCEEDINGS RESTS ON THE SHOULDERS OF COMPLAINANT; RATIONALE.— The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by *clearly preponderant evidence* that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath.

2. ID.; ID.; ID.; CLAIMS ANCHORED ON MERE SPECULATION AND CONJECTURE IS NOT ALLOWED; PRESENT IN CASE AT BAR.— In this case, complainants failed to discharge their burden of proving respondents' administrative liability. Granting that the certification of the QCCPO of the actual date of receipt of the subject NLRC decision has *prima facie* credence, this Court finds it is not sufficient to hold respondents administratively liable as contended by complainants. While there is incongruity between said certification and the records of respondents' law firm as to when the subject NLRC decision was actually received by the latter, there is no clear and convincing evidence presented by complainants that respondents maliciously made it appear that they received the decision on a date ten days later than what is reflected on the records of the QCCPO. Complainants would like to convince this Court that the only logical explanation as to the discrepancy is that Calucag, a secretary

under the employ of respondents, was ordered by respondents to stamp a much later date instead of the actual date of receipt for the purpose of extending by ten-day period within which to file a Motion for Reconsideration under the NLRC Rules of Procedure. Clearly, such claim is merely anchored on speculation and conjecture and not backed by any clear preponderant evidence necessary to justify the imposition of administrative penalty on a member of the Bar.

APPEARANCES OF COUNSEL

Solon R. Garcia for complainants.

R E S O L U T I O N

VILLARAMA, JR, *J.*:

Before this Court is an administrative complaint[1] for disbarment filed by Jaime Joven and Reynaldo C. Rasing against Attys. Pablo R. Cruz and Frankie O. Magsalin III for deceit, malpractice, gross misconduct and falsification of public documents.

The disbarment complaint stemmed from NLRC NCR CA No. 039270-04, a labor case filed by complainant Jaime Joven against Phil. Hoteliers, Inc. and/or Dusit Hotel Nikko, a client of respondents' law firm, P.R. Cruz Law Offices.

On July 16, 2007, the National Labor Relations Commission (NLRC) rendered a decision in NLRC NCR CA No. 039270-04. Joven's counsel, Atty. Solon R. Garcia, received their copy of the decision on August 14, 2007. As to respondents, they received a copy of the decision on August 24, 2007 based on the Registry Return Receipt[2] that was sent back to the NLRC. Stamped thereon was "RECEIVED AUG 24 2007" and signed by "tess."

On September 5, 2007, Atty. Garcia received by registered mail at his law office located in Quezon City the Partial Motion

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

[2] *Id.* at 14.

for Reconsideration[3] of Phil. Hoteliers, Inc. and/or Dusit Hotel Nikko. The motion was dated August 29, 2007 and signed by respondents in behalf of their client. The opening statement on page 1 of the Motion reads:

> Respondents-Appellants, through counsel, unto this Honorable Commission, by way of their Partial Motion for Reconsideration assailing the Decision dated 18 (sic) July 2007 in the above-entitled case, **copy of which was received on August 24, 2007**, most respectfully submit:[4]
>
> x x x (Emphasis in the original; underscoring supplied.)

As Atty. Garcia found it unusual for the postman to belatedly deliver a copy of the NLRC decision to respondents (whose law office is also located in Quezon City) on August 24, 2007 or 10 days after he received his copy on August 14, 2007, he requested Larry Javier, Vice-President of National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter, to secure a post office certification of the actual date respondents received a copy of said decision. Through a letter-request of Angelito V. Vives, NLRC Board Secretary IV, Javier was able to secure the following Quezon City Central Post Office (QCCPO) Certification dated September 17, 2007:

> CERTIFICATION
>
> Reference
>
> To Whom It May Concern:
>
> This is to certify that per records of this Office, **Registered Letter No. 6452 as per record 6463** address[ed] to Atty. Frankie O. Magsalin III Unit 2A & RD, [Genesis] Condo., #26 E. Rodriguez Sr. Avenue, Q.C. and which was posted at NLRC PO on Aug. 6, 2007
>
> { / } was delivered by Postman/Window Delivery Clerk/Lock Box In-Charge Rosendo Pecante and **duly received** by Henry Agillon on **Aug. 14, 2007**.

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

[4] *Id.* at 9.

{ } was return to sender on _____ for reason _____ despite due notices issued 1st on _____ 2nd on _____ last notice on _____.

This certification is issued this 17th day of Sept. 2007 upon request of Mr. Angelito V. Vives for whatever legal purpose it may serve.

Mr. LLEWELYN F. FALLARME (Sgd.)
x x x Chief, Records Section[5] (Emphasis supplied.)

The above certification was supposedly based on the logbook of Postman Rosendo Pecante.

Based on the certification of the QCCPO, complainants lodged the instant disbarment complaint against respondents. They allege that Teresita "Tess" Calucag, secretary of respondents' law firm, altered the true date of receipt of the NLRC decision when she signed and stamped on the Registry Return Receipt the date August 24, 2007 to make it appear and to mislead the NLRC and the opposing party that the decision was received on such later date and not on August 14, 2007. They conclude that respondents caused the alteration of the true date of their actual receipt with the intention of extending by ten days the period within which to file a motion for reconsideration. Complainants submit that the alteration of the true date of receipt done on the registry return card (a public document), the use of the altered date and the making of untruthful statements in a narration of facts in the Partial Motion for Reconsideration (also a public document) constitute falsification of public document on several counts, deception and gross professional misconduct.

On February 6, 2008, this Court issued a Resolution[6] requiring respondents to comment on the disbarment complaint.

In their Comment with Motion to Dismiss,[7] respondents denied complainants' allegations and alleged that the subject NLRC decision was received under the following circumstances:

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[5] *Id.* at 13.

[6] *Id.* at 17.

[7] *Id.* at 20-56.

On August 14, 2007, P.R. Cruz Law Offices received four registered mails through one of its office staff, Henry A. Agellon. Agellon received Registered Mail Nos. 938, 005, 061 and 13497. As evidence of receipt of the four registered mails, Agellon signed the Postman's Logbook. On a page on the Postman's Logbook corresponding to August 14, 2007, a bracket enclosed the lines corresponding to the four registered mails. As evidence of receipt of said mails, Agellon signed after the bracket and stamped thereon "AUG 14 2007." The next line after Registered Mail No. 13497 corresponds to Registered Mail No. 6463, which is addressed to "F. Magsalin" and supposedly pertains to the subject NLRC decision.

According to respondents, Agellon receives the mails when the firm secretary, Tess Calucag, is busy or is out of the office. According to Agellon, he makes sure that he writes the correct date of receipt on the Registry Return Cards attached to the registered mails he receives. He then stamps "Received" and the actual date of receipt on the mails and turns them over to Calucag so she can record them in her logbook before she distributes them to the lawyers.

On August 24, 2007, P.R. Cruz Law Offices received another batch of registered mails. Based on the Postman's Logbook, nine registered mails were for delivery to the firm. On said date, it was Calucag who received the registered mails based on the signature beside the bracket enclosing the lines corresponding to the nine registered mails. She then stamped "RECEIVED AUG 24 2007" and signed all the Registry Return Cards in front of the postman who in turn checked the same. It appears, however, that the subject NLRC decision was among the registered mails delivered on August 24, 2007 and its Registry Return Card was among those stamped and signed by Calucag, even if it was not among the nine registered mails listed in the postman's logbook. After receiving all the registered mails, Calucag recorded them in her logbook. A copy of the page pertaining to August 24, 2007 of Calucag's logbook shows that the subject NLRC decision was among those received on even date.

On the other hand, records would show that the Registry Return Card pertaining to the subject NLRC decision signed and stamped with the date August 24, 2007 was duly returned to the NLRC as sender.

Respondents, relying on the date August 24, 2007 as the actual date of receipt of the subject NLRC decision as indicated by their secretary, stated said date in their Partial Motion for Reconsideration of said decision.

Respondents submit that complainants did not present any clear, convincing or satisfactory proof that they induced or ordered their secretary to alter the true date of receipt and such allegation was merely based on pure assumption and self-serving conjectures. They further argue that their reliance on their secretary's actual receipt of the subject NLRC decision as corroborated by the entries of the law office's logbook and stamped date on the upper right side of the law firm's copy of the decision does not constitute malpractice, deceit, gross misconduct and falsification of public documents. They also presented the two Certifications[8] from the NLRC Post Office (NLRC PO) which they claim destroys any evidentiary weight that the QCCPO certification may have. The first certifies that there is no Registered Letter No. 6452 dispatched by NLRC PO to QCCPO addressed to Atty. Frankie O. Magsalin III in connection with NLRC CA No. 039270-04/ NCR-00-05-05406-03 entitled *Jaime Joven v. Philippine Hoteliers, Inc.* The second one certifies that Registered Letter No. 6463 addressed to Atty. Frankie O. Magsalin III was mailed at NLRC PO and was dispatched and sent to QCCPO on August 10, 2007.

By Resolution[9] dated June 2, 2008, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In his Report and Recommendation[10] dated February 18, 2009, IBP Commissioner Salvador B. Hababag recommended

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

[9] *Id.* at 128-129.

[10] *Id.* at 282-286.

that the administrative complaint be dismissed for lack of merit. He ruled that complainants have not only failed to show sufficient proof in support of their claim, but respondents also rebutted their accusation. Commissioner Hababag held that *vis-à-vis* certifications issued by the NLRC PO and the certification issued by the QCCPO, the former is controlling as it was the post office where the copies of the subject decision were actually mailed.

On March 25, 2009, the IBP Board of Governors adopted and approved Commissioner Hababag's report and recommendation. In its Resolution No. XVIII-2009-112 the IBP Board of Governors stated:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED[,] the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacks merit, the same is hereby DISMISSED.[11]

On July 29, 2009, complainants filed a Motion for Reconsideration[12] of the Resolution of the IBP Board of Governors. They argued that the IBP erred in holding that they failed to show sufficient proof in support of the complaint. They contended that the QCCPO certification clearly and convincingly established that the actual and true date of receipt of respondents of the NLRC decision is August 14, 2007 and not August 24, 2007 as they stated in their Partial Motion for Reconsideration. Complainants further argued it is only the QCCPO which can certify when the registered letter was delivered to and received by respondents and not the NLRC PO as the issue in this case is not where the decision was mailed but when the decision was received by respondents. They likewise submit that the IBP failed to explain how the certifications from the NLRC PO

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[11] *Id.* at 281.

[12] *Id.* at 287-297.

could have rebutted the QCCPO certification, postman's affidavit and delivery book.

Following the denial of their motion by the IBP, complainants filed the present petition for review before this Court.

The appeal should be dismissed for lack of merit. The IBP Board of Governors correctly resolved to dismiss the complaint.

The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by *clearly preponderant evidence* that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath.[13]

In this case, complainants failed to discharge their burden of proving respondents' administrative liability. Granting that the certification of the QCCPO of the actual date of receipt of the subject NLRC decision has *prima facie* credence, this Court finds it is not sufficient to hold respondents administratively liable as contended by complainants.

While there is incongruity between said certification and the records of respondents' law firm as to when the subject NLRC decision was actually received by the latter, there is no clear and convincing evidence presented by complainants that respondents maliciously made it appear that they received the decision on a date ten days later than what is reflected on the records of the QCCPO. Complainants would like to convince this Court that the only logical explanation as to the discrepancy is that Calucag, a secretary under the employ of respondents, was ordered by respondents to stamp a much later date instead

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[13] *Arma v. Montevilla*, A.C.No. 4829, July 21, 2008, 559 SCRA 1, 8; see also *Acosta v. Serrano*, Adm. Case No. 1246, February 28,1977, 75 SCRA 253, 257 and *Maderazo v. Del Rosario*, Adm. Case No. 1267, October 29, 1976, 73 SCRA 540, 542-543.

of the actual date of receipt for the purpose of extending by ten-day period within which to file a Motion for Reconsideration under the NLRC Rules of Procedure. Clearly, such claim is merely anchored on speculation and conjecture and not backed by any clear preponderant evidence necessary to justify the imposition of administrative penalty on a member of the Bar.

It is likewise worthy to note that the registry return card which the QCCPO itself returned to the NLRC corroborates respondents' claim that to their knowledge, their law firm actually received the subject NLRC decision on August 24, 2007, after relying on the date of receipt relayed to them by their secretary and as stamped by the latter on their copy of the subject NLRC decision. We find merit in respondents' argument that had Calucag stamped the wrong date on the Registry Return Card, the postman who had full view of the receiving and stamping, would have called Calucag's attention to correct the same or he would just have refused to receive the same altogether considering that it was erroneous. Having accepted the Registry Return Card with the date August 24, 2007 stamped on it as the date of receipt can only mean that the postman considered it as correct.

Also, the registered mails delivered on August 14, 2007 were received by Agellon which explains his signature appearing on the postman's logbook for said date. The fact that the Registry Return Card was signed by Calucag, and not by Agellon, buttresses respondents' contention that the subject NLRC decision may not have been among the registered mails received on August 14, 2007 by Agellon. Otherwise, it should be Agellon's signature that would appear on the Registry Return Card and not Calucag's.

WHEREFORE, the instant administrative complaint against respondents Attys. Pablo R. Cruz and Frankie O. Magsalin III is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-10-2789. July 31, 2013]
(formerly A.M. OCA IPI No. 09-3181-P)

DEVELOPMENT BANK OF THE PHILIPPINES, represented by ATTY. BENILDA A. TEJADA, *complainant, vs.* **DAVMIN V. FAMERO, Sheriff IV, Regional Trial Court, Branch 43, Roxas, Oriental Mindoro,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; RETURN OF THE WRIT OF EXECUTION; IT IS MANDATORY FOR A SHERIFF TO MAKE A RETURN OF THE WRIT OF EXECUTION TO THE CLERK OR JUDGE ISSUING IT; EFFECT OF THE SHERIFF'S FAILURE TO COMPLY, EXPLAINED.— "It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it." Section 14, Rule 39 of the Rules of Court explicitly provides the manner for the return of a writ of execution to the court and the requisite reports to be made by the Sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied; every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the enforcement of the writ. x x x [T]he respondent clearly failed to comply with the requirements of Section 14, Rule 39 of the Rules of Court when he failed to submit a return of service every thirty (30) days on the proceedings taken on the writ he was to implement. The long intervals of time between service of the writ on the occupants, to be sure, were not a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment. x x x The submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions.

A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties; it is conduct prejudicial to the best interest of the service.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY.—** For the respondent's lapses in the procedures in the implementation of the writ of execution, we find him guilty of simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

3. **ID.; ID.; ID.; IN THE IMPOSITION OF APPROPRIATE PENALTY, THE DISCIPLINING AUTHORITY IS ALLOWED TO CONSIDER MITIGATING CIRCUMSTANCES; IMPOSABLE PENALTY IN CASE AT BAR.—** In the imposition of the appropriate penalty, Section 53 of the same Rules allows the disciplining authority to consider mitigating circumstances in favor of the respondent. We consider in this regard length of service in the Judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty. In the present case, we find the respondent to be entitled to the following mitigating circumstances: (1) his more than 24 years of service in the Judiciary; (2) a clear record other than for the present infraction which is his first offense, (3) the resistance of the informal settlers to leave the property; (4) fear for his life; and (5) his well-grounded recognition that he could not undertake any demolition without the appropriate court order. After considering the attendant facts and the mitigating circumstances, we consider too that the efficiency of court operations may ensue if the respondent's work were to be left unattended by reason of his suspension. Thus, we deem it wise to impose the penalty of fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.

D E C I S I O N

BRION, *J.:*

In a letter complaint[1] dated June 11, 2009, the Development Bank of the Philippines (*DBP*), through its Office of the Legal Counsel, charged Sheriff IV Davmin V. Famero (*respondent*), Regional Trial Court (*RTC*), Roxas, Oriental Mindoro, Branch 43, with Gross Neglect of Duty amounting to Gross Misconduct. In support of its charges, the DBP submitted a Joint Affidavit[2] executed by Atty. Michael Vernon R. De Gorio and Mr. Rommel P. San Diego, Regional Counsel and Branch Head, respectively, of the DBP's Calapan, Mindoro Branch.

The complaint stemmed from the respondent's alleged failure/refusal to implement the Writ of Execution issued in Civil Case No. C-475, entitled *"Development Bank of the Philippines, Calapan Branch v. Damayang Buklurang Pangkabuhayan Roxas,Represented by Romeo Tejada"* (for Forcible Entry with Preliminary Mandatory Injunction and Damages). The case involved a 5,776 square meter parcel of land located at Poblacion, Roxas, Oriental Mindoro, acquired by the DBP in a public auction sale. It is now registered in its name under Transfer Certificate of Title No. T-103245 of the Register of Deeds of Oriental Mindoro.

The complaint shows that in a decision dated August 24, 2004, the RTC directed the defendant *Damayang Buklurang Pangkabuhayan Roxas* (*association*), or any person acting in its behalf or deriving any right from it, to vacate and deliver possession of the property to the plaintiff, now complainant DBP. On July 13, 2005, on the DBP's motion, the RTC issued a writ of execution[3] directing the respondent to implement the judgment. Despite repeated demands, however, the respondent

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[1] *Rollo*, pp. 1-4.

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

[3] *Id.* at 10-11.

allegedly failed to implement the writ. After almost four (4) years from its issuance, the writ remains to be implemented.

In its 1st Indorsement[4] dated June 29, 2009, the Office of the Court Administrator (*OCA*) required the respondent to comment on the charges against him. In his Comment[5] dated August 12, 2009, the respondent claimed that he is aware that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Thus, upon receipt of the writ, he immediately went to the property to enforce it. He did his task without asking for any centavo from the DBP or any of its representatives in going to and from the property. He even exposed himself to danger as he had been informed that some of the settlers in the property were relatives of insurgents. There were times when he received death threats in connection with his duty as a sheriff. To prove his point, he submitted a copy of a letter[6] in the vernacular from one "Ka Ikong" of the Bagong Hukbong Bayan-Lucio de Guzman Command Mindoro, asking him to stop the execution of a demolition order and threatening that, *"Ganon paman binibigyan ka namin ng isang pagkakataon para iwasto at pansamantalang itigil ang isinasagawang demolesyon sa Cagulong at isaalang-alang ang kalagayan ng abang magsasaka na walang masilungang lungga sa ginagawa ninyong karahasan hinihiling naming na inyong matugunan sa kagyat na panahon."*

He reported that several of the occupants readily left the place when he told them to vacate the property, but returned again and constructed their shanties thereon after the association filed on November 20, 2009 an urgent motion for the quashal/lifting of the writ of execution. This development contributed to the delay in the implementation of the writ.

The respondent further stated that, in his desire to help the DBP to fully implement the writ, he suggested that it secure a

[4] *Id.* at 28.

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

[6] *Id.* at 56.

writ of demolition so that he could proceed with the demolition of the structures and improvements on the property. He believed that "on his own, he cannot just demolish the improvements without first securing a special order from the court."[7] He insisted that he has never been negligent in the performance of his duty. He has been in the judicial service for more than 24 years with an unblemished record that "he intends to keep till the last drop of his blood."[8]

The DBP filed a Reply-Affidavit[9] dated September 17, 2009, reiterating its allegations of gross neglect of duty against the respondent.

In a Resolution[10] dated March 24, 2010, the Court, on the OCA's recommendation, directed the re-docketing of the complaint as a regular administrative case, and required the parties to manifest to the Court within ten (10) days from notice whether they were submitting the matter for resolution based on the pleadings filed and the records submitted.

In its manifestation[11] dated May 14, 2010, the DBP responded that it was submitting the complaint on the basis of the pleadings filed and the submitted records. The respondent, on the other hand, requested in his Manifestation[12] dated July 1, 2010 that an investigation be conducted.

In accordance with the respondent's request, the complaint was referred to the Executive Judge of the RTC of Roxas, Oriental Mindoro, for investigation, report and recommendation.[13]

The DBP filed a partial motion for reconsideration of the referral,[14] alleging that it would result in undue advantage to

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[7] *Id.* at 33.

[8] *Ibid*.

[9] *Id.* at 57-68.

[10] *Id.* at 81.

[11] *Id.* at 84-85.

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

[13] Resolution dated August 16, 2010, *id.* at 93.

[14] *Id.* at 97-100.

the respondent and deprive the bank of an impartial investigation of the case since the referral was to a judge with jurisdiction over the area where the respondent was assigned.

The Court, in a Resolution[15] dated January 17, 2011, denied the DBP's partial motion for reconsideration for lack of merit.

Executive Judge Pastor A. de Castro heard the parties on May 19, 2011.[16] On May 31, 2011, he submitted his report,[17] finding –

> All having been told already, the court was convinced that the respondent sheriff had not totally ignored the implementation of the said Writ of Execution, per honest to goodness evaluation of the respective claim of the parties on this matter. Made as basis for this observation are the respondent's alleged implementation of the subject Writ of Execution for three (3) times in a row. One was as early as July 15, 2005 or just only two (2) days after the said writ was issued by the court on July 13, 2005, per return of service dated July 24, 2007 or more than two (2) years after its alleged service dated February 12, 2008; and third, was on January 23, 2009, per return of service dated February 3, 2009. these series of services though made under the long interval of time as shown by said returns, the court found no contradicting document in the records and/or introduced during the proceedings telling that those services did not indeed take place. Unfortunately, however, the respondent failed to successfully evict the occupants from the subject property despite those services thereby frustrating the said respondent to place the complaint bank in possession of the property involved. Be that as it may the respondent is still optimistic that he could ultimately turn over the property into the possession of the owner complainant-bank if given another chance to do it through Writ of Demolition. On this score, he said *"If given another chance I would like the DBP people to give a Writ of demolition which is much easier to enforce.* Per honest understanding of the court, the respondent would like to convey that he found it hard for himself in enforcing successfully the said Writ of Execution, but if the writ to be

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[15] *Id.* at 104.

[16] *Id.* at 111.

[17] *Id.* at 114-128.

implemented is for demolition, he could be able to enforce it easier or without much ado.

"It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it."[18] Section 14, Rule 39 of the Rules of Court explicitly provides the manner for the return of a writ of execution to the court and the requisite reports to be made by the Sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied; every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the enforcement of the writ.[19] Specifically, it provides –

> Section 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. [italics supplied]

In the present case, the writ of execution was issued by the RTC on July 13, 2005. Two days thereafter, or on July 15, 2005, the respondent went to the property to personally serve the writ on Romeo Tejada, then the president of the association, but Tejada was no longer connected with the association and had already left the place. Thus, on August 25, 2005, the respondent should have submitted a report to the RTC on the reason why the judgment had not been satisfied in full; this

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[18] *Arevalo v. Loria*, 450 Phil. 48, 58 (2003); and *Areola v. Patag*, A.M. No. P-06-2207, December 16, 2008, 574 SCRA 10, 13.

[19] *Calo v. Dizon*, A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 527.

report must have been made every thirty (30) days thereafter until the judgment was satisfied in full or until its effectivity expires.

The record shows that the respondent filed his Sheriff's Return of Service only on July 24, 2007,[20] or after the lapse of two (2) years. He again sought to implement the writ on January 10, 2008, and submitted a Sheriff's Return of Service on February 12, 2008.[21] He reported that he informed the occupants of the property that they had only up to January 31, 2008 to remove their shanties and vacate the place. However, he was told by the occupants that they would not vacate the property because it was a declared timberland and that they had filed a case against the DBP for Declaratory Reliefs, Declaration of Nullity of Titles and Documents and/or Reversion with Preliminary Injunction and Restraining Order.

On January 23, 2009, he again went to the property and told Romulo Diaz, the new association president, to remove their shanties, vacate the place and deliver possession to DBP within one week or up to January 30, 2009. He returned to the place on February 2, 2009 but the structures were still there.[22]

Under these facts, the respondent clearly failed to comply with the requirements of rule 14, Rule 39 of the Rules of Court when he failed to submit a return of service every thirty (30) days on the proceedings taken on the writ he was to implement. The long intervals of time between service of the writ on the occupants, to be sure, were not a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment.

However, we cannot entirely blame the respondent for his failure to fully implement the writ. He could not fulfill his task solely by verbally telling the occupants to vacate the property as he encountered resistance from the informal settlers on the property who had built permanent structures thereon and refused

[20] *Id.* at 36.

[21] *Id.* at 37.

[22] Sheriff's Return of Service, *id.* at 38.

to leave. The respondent was correct in repeatedly suggesting to the DBP to file with the RTC a motion for the issuance of a writ of demolition as the property subject of the execution contained improvements constructed or planted by the occupants.

On this point, we find merit on the respondents' statement during the hearing of the case, that "*whatever is the result of this investigation, I am willing to accept the consequences but if given another chance I would like the DBP people to give me a Writ of Demolition which is much easier to enforce.*"[23] Without a special order of the court, the respondent may not destroy, demolish or remove improvements built by the occupants of the property subject of the writ of execution. Section 10(d), Rule 39 of the Rules of Court provides:

> (d) *Removal of Improvements on property subject of execution* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment oblige after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. [underscore ours; italics supplied]

The respondent, however, cannot fully be excused for his failure to make periodic reports in the proceedings taken on the writ, as mandated by Section 14, Rule 39 of the Rules of Court. The submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions. A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties; it is conduct prejudicial to the best interest of the service.[24]

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[23] *Id.* at 149.

[24] *Katipunan ng Tinig sa Adhikain, Inc. v. Maceren*, A.M. No. MTJ-07-1680, November 28, 2008, 572 SCRA 354, 359-360.

For the respondent's lapses in the procedures in the implementation of the writ of execution, we find him guilty of simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him.[25] Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. In the imposition of the appropriate penalty, Section 53 of the same Rules allows the disciplining authority to consider mitigating circumstances in favor of the respondent. We consider in this regard length of service in the Judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty.[26]

In the present case, we find the respondent to be entitled to the following mitigating circumstances: (1) his more than 24 years of service in the Judiciary; (2) a clear record other than for the present infraction which is his first offense, (3) the resistance of the informal settlers to leave the property; (4) fear for his life; and (5) his well-grounded recognition that he could not undertake any demolition without the appropriate court order.

After considering the attendant facts and the mitigating circumstances, we consider too that the efficiency of court operations may ensue if the respondent's work were to be left unattended by reason of his suspension. Thus, we deem it wise to impose the penalty of fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.[27]

WHEREFORE, for Simple Neglect of Duty, respondent Davmin V. Famero, Sheriff IV of the Regional Trial Court of

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[25] *Pesongco v. Estoya*, 519 Phil. 226, 242-243 (2006).

[26] *Beltran v. Monteroso*, A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1, 7.

[27] *Juario v. Labis*, A.M. No. P-07-2388, June 30, 2008, 556 SCRA 540, 544-545.

Roxas, Oriental Mindoro, Branch 43, is FINED in the amount of Two Thousand Pesos (₱2,000.00), with the **WARNING** that any repetition of this offense or of similar acts shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 147257. July 31, 2013]

SPOUSES JESUS DYCOCO and JOELA E. DYCOCO, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, NELLY SIAPNO-SANCHEZ and INOCENCIO BERMA,**[1] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45; THE EXISTENCE AND AVAILABILITY OF THE RIGHT OF APPEAL PROHIBITS THE RESORT

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[1] Petitioner-spouses named seven private respondents in their petition, namely, Eusebio Siapno, Rogelio Siapno, Nelly Siapno-Sanchez, Felix Sepato, Sr., Leonora Talagtag, Pablo Bonde, Sr. and Inocencio Berma. A reading of the petition, however, shows that the petition is against Nelly Siapno-Sanchez and Inocencio Berma. In particular, only Nelly Siapno-Sanchez and Inocencio Berma were the appellants in DARAB Case No. 5573, which is the subject of the Court of Appeals case involved in this petition. Also, petitioner-spouses state that Eusebio Siapno has fully paid his obligation on June 27, 1996 (Exhibit "S" of petition, *rollo*, p. 104). On the other hand, in a Manifestation dated September 23, 2004 (*rollo*, pp. 256-257), petitioner-spouses have dropped Felix Sepato, Sr. and Leonora Talagtag as respondents in this case.

TO *CERTIORARI* UNDER RULE 65 BECAUSE ONE OF THE REQUIREMENTS FOR THE LATTER IS THE UNAVAILABILITY OF APPEAL; APPLICATION IN CASE AT BAR.— A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. Contrary to the claim of petitioner-spouses in the opening paragraph of their petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition, the right recourse was to appeal to this Court in the form of a petition for review on *certiorari* under Rule 45 of the Rules of Court. x x x [T]he Resolution dated June 2, 2000 denied due course to the petition and dismissed it, while the Resolution dated January 1, 2001 denied the motion for reconsideration of the former Resolution. The said Resolutions disposed of the appeal of petitioner-spouses in a manner that left nothing more to be done by the Court of Appeals in respect to the said appeal. Thus, petitioner-spouses should have filed an appeal by petition for review on *certiorari* under Rule 45, not a petition for *certiorari* under Rule 65, in this Court. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal. The failure of petitioner-spouses to file an appeal by *certiorari* under Rule 45 of the Rules of Court cannot be remedied by the mere expedient of conjuring grave abuse of discretion to avail of a petition for *certiorari* under Rule 65. x x x *Certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN GRAVE ABUSE OF DISCRETION IS THE GROUND, THE PETITIONER SHOULD ESTABLISH THAT THE COURT OR TRIBUNAL ACTED IN CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER IN THE EXERCISE

OF JURISDICTION AS TO BE EQUIVALENT TO LACK OF JURISDICTION; NOT ESTABLISHED IN CASE AT BAR.— Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. x x x In this case, nowhere in the petition did petitioner-spouses show that the issuance of the Resolutions dated June 2, 2000 and January 1, 2001 was patent and gross that would warrant striking them down through a petition for *certiorari* under Rule 65 of the Rules of Court. x x x They have not advanced any argument to show that the Court of Appeals exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Thus, they failed in their duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for *certiorari* under Rule 65 of the Rules of Court.

3. ID.; APPEALS; APPEALS TO THE COURT OF APPEALS; THE ISSUE OF NON PAYMENT OF JUST COMPENSATION IS WITHIN THE PRIMARY, ORIGINAL AND EXCLUSIVE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) WHICH CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— There is no question that petitioner-spouses are entitled under the law to receive just compensation for the property taken from them and transferred to private respondents by virtue of Presidential Decree No. 27. Due process guarantees that taking of private property by the State for public use should be with payment of just compensation. Unfortunately, petitioner-spouses themselves did not consider the issue of just compensation as compelling enough because they did not raise it in the complaint or in the position paper which they filed in the Office of the Provincial Adjudicator. They only claimed just compensation for the first time on appeal, that is, when they filed their petition for review with the Court of Appeals. The settled rule that issues not raised in the proceedings below cannot be raised for the first time on appeal

bursts the bubble that is the alleged compelling nature of petitioner-spouses' claim. Petitioner spouses ask for due process, but fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal. On jurisdictional grounds, petitioner-spouses could not validly present for the first time the issue of nonpayment of just compensation in the Court of Appeals. Under the law, the DARAB has primary, original and exclusive jurisdiction over cases involving payments for lands awarded under Presidential Decree No. 27. In any event, the right of petitioner-spouses to payment of just compensation does not include reacquisition of ownership and possession of the property transferred to private respondents pursuant to Presidential Decree No. 27. Lands acquired under Presidential Decree No. 27 do not revert to the landowner.

4. ID.; RULES OF COURT; LIBERAL CONSTRUCTION RULE; RULES MAY BE RELAXED ONLY FOR THE MOST PERSUASIVE REASON; NOT PRESENT IN CASE AT BAR.— Petitioner-spouses primarily anchor this petition on an invocation of the rule on liberality in the construction of procedural rules. However, the "liberal construction rule" is not a license to disregard procedural requirements. Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure. Petitioner-spouses caused their own predicament when they decided to change horses in midstream and engaged the services of their present counsel on April 10, 2000 or just a week before the expiration of the period to appeal in the Court of Appeals, discharging the services of their former counsel who handled the case from the level of the Provincial Adjudicator to the DARAB. They cannot escape the consequences of a belated appeal caused by the need of their new counsel for more time to study voluminous records and familiarize himself with the case. Moreover, as shown above, petitioner-spouses not only failed to show any persuasive reason why they should be exempted from strictly abiding by the rules when they filed their petition for review in the Court of Appeals beyond the prescribed period. They again disregarded

the rules in various ways absent any compelling reason when they filed this petition.

APPEARANCES OF COUNSEL

Baranda Busalla & Badiola Law Office for petitioners.
Expedito P. Nebres for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court questions, for having been rendered with grave abuse of discretion, the Resolution[2] dated June 2, 2000 of the Court of Appeals dismissing the appeal of petitioner-spouses Jesus and Joela Dycoco in CA-G.R. SP No. 58504, and the Resolution[3] dated January 10, 2001 denying reconsideration.

On November 23, 1994, petitioner-spouses filed a complaint for ejectment, cancellation of certificates of land transfer, damages and injunction against private respondents Nelly Siapno-Sanchez and Inocencio Berma in the Office of the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB) in Albay. Eusebio Siapno, Rogelio Siapno, Felix Sepato, Sr., Leonora Talagtag and Pablo Bonde, Sr. were also named respondents in the complaint.[4]

In their complaint, petitioner-spouses alleged that they are the absolute and registered owners of Lot No. 216, a 38,157 sq.m.-parcel of land situated at Bonbon, Libon, Albay, covered by Original Certificate of Title (OCT) No. VH-5187 of the Register of Deeds of Albay. According to them, the respondents named

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[2] *Rollo*, pp. 27-28; penned by Associate Justice Teodoro P. Regino with Associate Justices Conchita Carpio-Morales (subsequently, a member of this Court, now Ombudsman) and Mercedes Gozo-Dadole, concurring.

[3] *Id.* at 30-31.

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

in the complaint took advantage of the liberality of petitioner-spouses, entered the subject property, successfully registered themselves as tenants for agrarian reform purposes, and occupied and cultivated the property to the prejudice of petitioner-spouses. Said respondents deprived petitioner-spouses of the enjoyment and possession of the property without paying petitioner-spouses or the Land Bank the rentals due thereon. Moreover, in violation of agrarian reform laws, said respondents subleased their respective landholdings to other persons.[5]

Petitioner-spouses reiterated these matters in their position paper.[6]

All seven respondents named in the complaint were summoned but only Bonde and Rogelio submitted their answer and position paper.[7] Bonde and Rogelio showed that they already own their portions of the property through Operation Land Transfer under Presidential Decree No. 27. Pursuant to the said law, petitioner-spouses executed deeds of transfer in their favor which resulted in the issuance to them of emancipation patents and, subsequently, OCT No. E-2333 and OCT No. E-2334, respectively.[8]

Thereafter, the Provincial Adjudicator rendered a decision dated June 27, 1995 finding private respondents "not worthy to become beneficiaries" under Presidential Decree No. 27.[9] The dispositive portion of the decision reads:

> WHEREFORE, finding for the complainants, respondents Nelly Siapno-Sanchez, Leonora Talagtag and Inocencio Berma are hereby adjudged not worthy to become beneficiaries under PD 27[;] hence[,] judgment is hereby issued:

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[5] *Id.* at 153.

[6] *Id.* at 72-74.

[7] *Id.*

[8] *Id.* at 68-71; Answer, Annex "C" of Petition; *id.* at 75-84, Position Paper, Annex "E" of Petition.

[9] *Id.* at 85-87; Decision of Provincial Adjudicator Isabel Florin, Annex "F" of Petition.

1. Ordering the ejectment of Nelly Siapno-Sanchez, Leonora Talagtag, and Inocencio Berma from their respective tillage;
2. Ordering Rogelio Siapno and Pablo Bonde, Sr. to comply with their obligation under the Deed[s] of Transfer in their favor;
3. Ordering the dismissal of the case against Eusebio Siapno, for lack of evidence; and
4. Ordering the respondents under paragraph 1 to pay complainants jointly and severally nominal damages in the amount of ₱10,000.00 and attorney's fee[s] in the amount of ₱10,000.00.[10]

On motion of petitioner-spouses, the Provincial Adjudicator issued a writ of execution dated November 22, 1995 ordering, among others, the ejectment of private respondents from their respective tillage.[11] Subsequently, petitioner-spouses filed a Motion for Issuance of *Alias* Writ of Execution and to Cite Respondents in Contempt, claiming that private respondents returned to the subject property although they have already been ordered ejected.[12] Private respondents filed a Motion to Quash or Suspend Implementation of the Writ of Execution. They explained that they are already the owners of their respective portions of the property in question by virtue of the Operation Land Transfer under Presidential Decree No. 27. According to private respondents, petitioner-spouses executed deeds of transfer in their favor which resulted to the issuance to them of emancipation patents and, afterwards, OCT No. E-2332 in the name of private respondent Siapno-Sanchez and OCT Nos. E-2335 and E-2336 in the name of private respondent Berma. Private respondents further asserted that the decision ordering their ejectment from their tillage is not yet executory as they have filed a notice of appeal on August 29, 1996.[13]

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[10] *Id.* 87.

[11] *Id.* at 90-91, Annex "I" of Petition.

[12] *Id.* at 98; Motion for Issuance of *Alias* Writ of Execution and to Cite Respondents in Contempt, Annex "O" of Petition.

[13] *Id.* at 106-107; Motion to Quash or Suspend Implementation of the Writ of Execution, Annex "U" of Petition.

Petitioner-spouses submitted their Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated September 16, 1996 and Supplemental Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated October 3, 1996 where they countered private respondents' motion by arguing that both the motion to quash and the notice of appeal were filed beyond the prescribed period.[14]

In an order dated October 16, 1996, the Provincial Adjudicator found that the copy of the decision dated June 27, 1995 was sent by registered mail to and, on July 10, 1995, received by Crispina Berma Penaranda, daughter of private respondent Berma, who resided in a different *barangay*. Still, the Provincial Adjudicator ruled that private respondent Berma was bound by his daughter's receipt and the decision is already final and executory as against him. Thus, with respect to him, the notice of appeal was filed out of time. On the other hand, there was no showing that private respondent Siapno-Sanchez has been served a copy of the decision before she procured a copy of it from the Office of the Provincial Adjudicator on August 26, 1996. Hence, as regards her, the notice of appeal was filed on time. Therefore, the Provincial Adjudicator denied the Motion to Quash or Suspend Implementation of the Writ of Execution with respect to private respondent Berma, and approved and granted the same motion with respect to private respondent Siapno-Sanchez.[15]

Private respondent Berma moved for reconsideration but his motion was denied.[16] Nevertheless, he joined the appeal

[14] Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents and Supplemental Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents, Annexes "W" and "Y" of Petition, *id.* at 110-111 and 114-116, respectively.

[15] *Id.* at 124-126; Provincial Adjudicator's Order dated October 16, 1996, Annex "AA" of Petition.

[16] *Id.* at 130-131; Provincial Adjudicator's Order dated November 6, 1996, Annex "CC" of Petition.

memorandum filed by private respondent Siapno-Sanchez in the DARAB.[17] On the other hand, petitioner-spouses filed a Counter-Memorandum With Motion to Dismiss Appeal dated February 9, 1997, reiterating that private respondents' appeal was filed out of time.[18]

In a decision dated March 20, 2000,[19] the DARAB found that both private respondents were beneficiaries of Presidential Decree No. 27 and that they are no longer tenants but owners of their respective portions of the property as evidenced by OCT No. E-2332 in the name of private respondent Siapno-Sanchez and OCT Nos. E-2335 and E-2336 in the name of private respondent Berma. Ejectment would therefore not lie as against them as landholdings covered by the Operation Land Transfer under Presidential Decree No. 27 do not revert to the original owner. Thus, the DARAB reversed and set aside the decision dated June 27, 1995 in so far as private respondents were concerned. The immediate reinstatement of private respondents to their respective landholdings was ordered, as well as their restoration to their original status as owner-beneficiaries of the landholdings awarded to them pursuant to Presidential Decree No. 27.[20]

Petitioner-spouses received a copy of the DARAB decision on April 3, 2000 and had until April 18, 2000 to file an appeal. They filed a motion in the Court of Appeals praying for an extension of 30 days within which to file their intended petition.[21] The Court of Appeals granted them an extension of 15 days, with warning that no further extension will be given.[22] Thus, petitioner-spouses had until May 3, 2000 to file their petition.

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[17] *Id.* at 132-147; Appeal Memorandum for Nelly Siapno-Sanchez and Inocencio Berma dated November 13, 1996, Annex "DD" of Petition.

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

[19] *Id.* at 152-159.

[20] *Id.*

[21] *Id.* at 160-164; Notice of Appearance with Motion for Extension of Time to File Petition, Annex "GG" of Petition.

[22] *Id.* at 33-34.

Petitioner-spouses filed the petition by registered mail on May 8, 2000. The petition was denied due course and dismissed by the Court of Appeals in a Resolution dated June 2, 2000. In its entirety, the said resolution reads:

> The petition (for review), filed under Rule 43 of the 1997 Rules of Civil Procedure is **DENIED DUE COURSE** and, as a consequence, **DISMISSED**, for late filing, as the petition was filed beyond the extended period of fifteen (15) days granted under Resolution dated May 5, 2000, which resolution was issued pursuant to Section 4 of Rule 43, as follows:
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> x x x x x x x x x
>
> "Sec. 4. *Period of appeal*. – The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days" x x x.[23]

Petitioner-spouses moved for reconsideration but it was denied in a resolution dated January 10, 2001.

Hence, this petition.

Petitioner-spouses invoke the rule of liberality in the construction of the provisions of the Rules of Court. The petition was filed after the period granted by the Court of Appeals because, on April 10, 2000, they secured the services of a new counsel who still had to study the voluminous records. They claim that the petition they filed with the Court of Appeals is supported by compelling reasons. According to petitioner-spouses, they were deprived of their property without just compensation either from

[23] *Id.* at 27-28.

the tenant-beneficiaries or from the government. They were also deprived of due process when the DARAB took cognizance of private respondents' appeal although it was filed more than one year after the decision of the Provincial Adjudicator had become final and executory. In view of the said reasons, the Court of Appeals should have given their petition due course although it was filed five days after the lapse of the extended period.

Petitioner-spouses are wrong.

Firstly, petitioner-spouses are before this Court with a petition for *certiorari* under Rule 65 of the Rules of Court which is a wrong remedy.

A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[24] Contrary to the claim of petitioner-spouses in the opening paragraph of their petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition, the right recourse was to appeal to this Court in the form of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

> Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, 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 may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

The Resolutions dated June 2, 2000 and January 1, 2001 of the Court of Appeals were final and appealable judgments. In

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[24] Rules of Court, Rule 65, Section 1.

particular, the Resolution dated June 2, 2000 denied due course to the petition and dismissed it, while the Resolution dated January 1, 2001 denied the motion for reconsideration of the former Resolution. The said Resolutions disposed of the appeal of petitioner-spouses in a manner that left nothing more to be done by the Court of Appeals in respect to the said appeal. Thus, petitioner-spouses should have filed an appeal by petition for review on *certiorari* under Rule 45, not a petition for *certiorari* under Rule 65, in this Court.

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal.[25]

The failure of petitioner-spouses to file an appeal by *certiorari* under Rule 45 of the Rules of Court cannot be remedied by the mere expedient of conjuring grave abuse of discretion to avail of a petition for *certiorari* under Rule 65. In *Balayan v. Acorda*[26] the Court ruled:

> It bears emphasis that the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. x x x. (Citations omitted.)

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[25] *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005).

[26] 523 Phil. 305, 309 (2006).

Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. In this case, petitioner-spouses received the Resolution dated January 1, 2001 on January 19, 2001[27] and, under the rules,[28] had until February 5, 2001 to file an appeal by way of a petition for review on *certiorari* in this Court. Petitioner-spouses allowed this period to lapse without filing an appeal and, instead, filed this petition for *certiorari* on March 16, 2001.[29]

Secondly, petitioner-spouses claim that the Court of Appeals committed grave abuse of discretion in dismissing their appeal on the ground of late filing. This is also wrong.

The Court of Appeals granted petitioner-spouses a 15-day extension, within which to file their intended petition. The action of the Court of Appeals was in accordance with Section 4, Rule 43 of the Rules of Court. Thus, as the original deadline of petitioner-spouses was April 18, 2000, they had until May 3, 2000 to file their intended petition. Petitioner-spouses, however, filed the petition on May 8, 2000. Petitioner-spouses even admit that their petition in the Court of Appeals was filed five days

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[27] *Rollo*, pp. 3-4.

[28] Rules of Court, Rule 45, Section 2 provides:

Section 2. *Time for filing*; *extension*. – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

The 15th day after petitioner's receipt of the Decision dated January 1, 2001 was February 3, 2001, a Saturday. Under Section 1, Rule 22, if the last day of the period "falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day." Hence, petitioner had until February 5, 2001, a Monday, to file the petition for review in this Court.

[29] *Rollo*, p. 3.

after the extended period.[30] It is therefore clear that the Court of Appeals simply applied the rules, while petitioner-spouses concededly failed to observe the very same rules. As such, the Court of Appeals' dismissal of the petition of petitioner-spouses was discretion duly exercised, not misused or abused.

Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[31] This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*[32] is instructive:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to 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." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x. (Citations omitted.)

In this case, nowhere in the petition did petitioner-spouses show that the issuance of the Resolutions dated June 2, 2000 and January 1, 2001 was patent and gross that would warrant

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[30] *Id.* at 15. Petition, p. 13.

[31] *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007)

[32] G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

striking them down through a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner-spouses simply framed the issue in this case as follows:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING DUE COURSE TO THE PETITION FOR REVIEW FILED BY PETITIONERS AND SUBSEQUENTLY DENYING PETITIONERS' MOTION FOR RECONSIDERATION.[33]

They did not, however, address the issue. It is noteworthy that aside from a cursory claim in the opening paragraph and paragraph 25 of the petition that the Resolutions dated June 2, 2000 and January 1, 2001 of the Court of Appeals were "unjust and arbitrary" and "issued in grave abuse of judicial discretion amounting to lack or excess of jurisdiction,"[34] petitioner-spouses failed to establish grave abuse of discretion on the part of the Court of Appeals. They have not advanced any argument to show that the Court of Appeals exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Thus, they failed in their duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for *certiorari* under Rule 65 of the Rules of Court.

Thirdly, petitioner-spouses make it appear that there are compelling reasons to support their petition — deprivation of property without just compensation and denial of due process. The petitioner-spouses, however, belatedly raised these issues and failed to substantiate the same.

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[33] *Rollo*, p. 334. This is how the issue, as framed by petitioner-spouses, is worded in their Memorandum. In their petition, the issue reads:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING DUE COURSE THE PETITION FOR REVIEW FILED BY PETITION FOR REVIEW AND SUBSEQUENTLY DENYING PETITIONERS' MOTION FOR RECONSIDERATION. (*Id.* at 15.)

[34] *Id*. at 4.

There is no question that petitioner-spouses are entitled under the law to receive just compensation for the property taken from them and transferred to private respondents by virtue of Presidential Decree No. 27.[35] Due process guarantees that taking of private property by the State for public use should be with payment of just compensation.[36] Unfortunately, petitioner-spouses themselves did not consider the issue of just compensation as compelling enough because they did not raise it in the complaint or in the position paper which they filed in the Office of the Provincial Adjudicator.[37] They only claimed just compensation for the first time on appeal, that is, when they filed their petition for review with the Court of Appeals. The settled rule that issues not raised in the proceedings below cannot be raised for the first time on appeal bursts the bubble that is the alleged compelling nature of petitioner-spouses' claim. Petitioner-spouses ask for due process, but fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.[38]

On jurisdictional grounds, petitioner-spouses could not validly present for the first time the issue of nonpayment of just compensation in the Court of Appeals. Under the law, the DARAB has primary, original and exclusive jurisdiction over cases involving payments for lands awarded under Presidential Decree No. 27.[39]

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[35] *See Dr. Zurbano v. Hon. Estrella*, 221 Phil. 696, 702-703 (1985), where it was explained that Presidential Decree No. 27 itself requires that just compensation be paid to the landowner whose property was placed under the operation of that law.

[36] Section 1, Article III of the 1987 Constitution provides: "No person shall be deprived of life, liberty or property without due process of law x x x." Section 9, Article III of the 1987 Constitution further provides: "Private property shall not be taken for public use without just compensation."

[37] What petitioner-spouses alleged in their complaint and position paper was nonpayment of rentals due from private respondents as tenants. *Rollo*, pp. 53-55 (Complaint) and 72-74 (Position Paper).

[38] *Tan v. Commission on Elections*, 537 Phil. 510, 533 (2006).

[39] Paragraph (h), Section 1, Rule II, 2009 DARAB Rules of Procedure. This was also the rule under Paragraph (b), Section 1, Rule II of the 1994

In any event, the right of petitioner-spouses to payment of just compensation does not include reacquisition of ownership and possession of the property transferred to private respondents pursuant to Presidential Decree No. 27. Lands acquired under Presidential Decree No. 27 do not revert to the landowner.[40]

The due process claim of petitioner-spouses has no leg to stand on. They have had ample opportunity to defend their interests in due course.[41] Stripped to its basic concept, due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[42] Petitioner-spouses were given the chance to sufficiently state their case concerning the timeliness of the notice of appeal filed by private respondents. In particular, they submitted to the Office of the Provincial Adjudicator their Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated September 16, 1996 and Supplemental Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated October 3, 1996 where they argued that both the motion to quash and the notice of appeal of private respondents were filed beyond the prescribed period.[43] In the

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DARAB New Rules of Procedure, the prevailing rule at the time petitioner-spouses filed their complaint on November 23, 1994. The DARAB rules of procedure have been issued pursuant to Section 49 and 50 of Republic Act No. 6657 as amended, and Section 34 of Executive Order No. 129-A in relation to Section 13 thereof.

[40] *Heirs of Lorenzo Buensuceso v. Perez*, G.R. No. 173926, March 6, 2013; *De la Cruz v. Quiazon*, G.R. No. 171961, November 28, 2008, 572 SCRA 681, 693.

[41] As long as a party was given the opportunity to defend his interests in due course, he was not denied due process (*Cayago v. Lina*, 489 Phil. 735, 751 [2005]).

[42] *Samalio v. Court of Appeals*, 494 Phil. 456, 466 (2005).

[43] Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents and Supplemental

DARAB level, petitioner-spouses filed a Counter-Memorandum With Motion to Dismiss Appeal dated February 9, 1997 where they again pointed out that the appeal of private respondents was filed out of time.[44] Thus, petitioner-spouses cannot correctly claim that they were not heard on the matter.

More importantly, it has already been found that the notice of appeal was filed on time, particularly with respect to private respondent Siapno-Sanchez.[45] To question such finding is to raise a question of fact. However, it is settled that questions of fact cannot be raised in an original action for *certiorari*.[46] Only established or admitted facts can be considered.[47] In this connection, it has been established that the copy of the Provincial Adjudicator's decision dated June 27, 1995 was sent by registered mail to and received by private respondent Berma's daughter who lived in another *barangay*.[48] Such receipt by Berma's daughter cannot be validly considered as service of the Provincial Adjudicator's decision on Berma. Sections 4 and 9, Rule V of the DARAB New Rules of Procedure, which became effective on June 22, 1994, provides:

SECTION 4. *Service of Pleadings, Notices and Resolutions*. – a) The party filing the pleading shall serve the opposing party with a copy thereof in the manner provided for in these Rules and proof of such service shall be filed with the records of the case; and

b) **Summons, notices and copies of resolutions, orders or decisions shall be served personally as far as practicable, or**

Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents, Annexes "W" and "Y" of Petition, *rollo*, pp. 110-111 and 114-116, respectively.

[44] *Rollo*, pp. 148-149.

[45] *Id.* at 124-126; Provincial Adjudicator's Order dated October 16, 1996, Annex "AA" of Petition.

[46] *Korea Technologies Co., Ltd. v. Lerma*, 566 Phil. 1, 35 (2008).

[47] *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006).

[48] Provincial Adjudicator's Order dated September 25, 1996, *rollo*, pp. 112-113; Provincial Adjudicator's Order dated October 16, 1996, *id.* at 124-126; DARAB Decision dated March 20, 2000, *id.* at 152-159.

by registered mail upon the party himself, his counsel, or his duly authorized representative. However, notice to the counsel is notice to the party himself whether he be a complainant or petitioner, or a defendant or respondent.

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SECTION 9. *Proof of Completeness of Service*. – The return is a *prima facie* proof of the facts indicated therein. **Service by registered mail is completed upon receipt by the addressee, his counsel, or by the duly authorized representative or agent**. (Emphases supplied.)

At that time, private respondent Berma had neither counsel nor duly authorized representative. Therefore, the copy of the Provincial Adjudicator's decision should have been served on Berma personally or by registered mail. As it was sent by registered mail to private respondent Berma as the addressee, service thereof could only have been completed upon receipt by Berma. As it was not received by private respondent Berma but by his daughter who resided in another *barangay*, there was no proper and completed service of the Provincial Adjudicator's decision on Berma. Thus, with respect to him, the notice of appeal was also filed on time.

Petitioner-spouses primarily anchor this petition on an invocation of the rule on liberality in the construction of procedural rules. However, the "liberal construction rule" is not a license to disregard procedural requirements. Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.[49] Petitioner-spouses caused their own predicament when they decided to change horses in midstream and engaged the services of their present counsel on April 10, 2000 or just a week before the expiration of the period to appeal in the Court of Appeals, discharging the services of their former counsel who handled the case from the

[49] *Republic v. Kenrick Development Corporation*, 529 Phil. 876, 885-886 (2006).

level of the Provincial Adjudicator to the DARAB. They cannot escape the consequences of a belated appeal caused by the need of their new counsel for more time to study voluminous records and familiarize himself with the case. Moreover, as shown above, petitioner-spouses not only failed to show any persuasive reason why they should be exempted from strictly abiding by the rules when they filed their petition for review in the Court of Appeals beyond the prescribed period. They again disregarded the rules in various ways absent any compelling reason when they filed this petition.

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

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165014. July 31, 2013]

HEIRS OF ALEJANDRA DELFIN, namely: LEOPOLDO DELFIN (deceased), represented by his spouse, LUZ C. DELFIN, and children, LELANE C. DELFIN and ANASTACIA C. DELFIN, MARCELITO[1] DELFIN, FRANCISCO[2] DELFIN, APOLLO DELFIN, ABRILES DELFIN, LYDIA D. DACULAN, OLIVIA D. CABALLERO, ALEJANDRO DELFIN, JULITO DELFIN, and CANDIDO DELFIN, JR., *petitioners, vs.* **AVELINA RABADON, PACIANO PANOGALING,[3]**

[1] "Marlito" or "Manuelito" in some parts of the records.

[2] "Francisca" in some parts of the records.

[3] "Panugaling" in some parts of the records.

HILARIA RABADON, PABLO BOQUILLA, CATALINA RABADON, PACIANO RABAYA, FE RABADON, GONZALO DABON, and ROBERTO RABADON, *respondents.*

SYLLABUS

CIVIL LAW; PROPERTY; OWNERSHIP; DECREE OF REGISTRATION BARS ALL CLAIMS AND RIGHTS WHICH AROSE OR MAY HAVE EXISTED PRIOR TO THE DECREE OF REGISTRATION; ORIGINAL CERTIFICATE OF TITLE ISSUED BASED ON THE DECREE OF REGISTRATION SHOULD BE ACCORDED GREATER WEIGHT AS AGAINST THE TAX DECLARATION AND TAX RECEIPTS PRESENTED; CASE AT BAR.— The probative value of petitioners' evidence, which consist of tax declarations and tax receipts, pales in comparison to that of respondents' evidence which consists of a decree of ownership, *i.e.*, Decree No. 98992, under the name of their predecessor-in-interest, Emiliana. While the actual copy of the said decree was lost, the existence of the said decree was actually proven by the LRA certification and the daybook entry. Likewise, the RTC itself observed that it is undisputable that the subject property has been issued Decree No. 98992, for which an original certificate of title was issued to Emiliana. It is an elemental rule that a decree of registration bars all claims and rights which arose or may have existed prior to the decree of registration. By the issuance of the decree, the land is bound and title thereto quieted, subject only to certain exceptions under the property registration decree. In the case of *Ferrer-Lopez v. CA*, the Court ruled that as against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, an original certificate of title, which indicates true and legal ownership by the registered owners over the disputed premises, must prevail. Accordingly, respondents' Decree No. 98992 for which an original certificate of title was issued should be accorded greater weight as against the tax declarations and tax receipts presented by petitioners in this case. Besides, tax declarations and tax receipts may only become the basis of a claim for ownership when they are coupled with proof of actual possession of the property. In

this case, records are bereft of any showing that petitioners, or any of their predecessors-in-interest, have been in actual possession of the subject property prior to 1989 as they claim.

APPEARANCES OF COUNSEL

Cabrera Sipalay Enriquez Mayol Tabon & Felicitas Law Offices for petitioners.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[4] are the Decision[5] dated February 28, 2001 and Resolution[6] dated August 2, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 57723 which reversed and set aside the Decision[7] dated June 27, 1997 of the Regional Trial Court of Cebu City, Branch 58 (RTC) in Civil Case No. CEB-14801, ordering petitioners to surrender the ownership and possession of Lot No. 8217, a 4,452 square meter parcel of land situated in Inawayan, Pardo, Cebu City (subject property), in favor of respondents and to render an accounting of the fruits received.

The Facts

On October 19, 1993, respondents filed before the RTC an action to recover the ownership and possession of the subject property from petitioners, seeking as well the payment of damages. Based on their complaint and the testimonies of their witnesses during trial, respondents alleged that: (*a*) the subject property

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[4] *Rollo,* pp. 5-24.

[5] *Id.* at 41-48. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Romeo A. Brawner and Juan Q. Enriquez, Jr., concurring.

[6] *Id.* at 49-51. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Edgardo P. Cruz and Juan Q. Enriquez, Jr., concurring.

[7] *Id.* at 25-40. Penned by Judge Jose P. Serrano, Jr.

was owned by their predecessor-in-interest,[8] Emiliana Bacalso (Emiliana), pursuant to Decree No. 98992;[9] (*b*) while the foregoing decree was lost during the last World War, its existence could still be shown by a certification (LRA certification) issued by the Land Registration Authority (LRA), and a certified copy from page 19 of the daybook of cadastral lots issued by the Register of Deeds (RD) of Cebu City (daybook entry);[10] (*c*) after Emiliana's death, Genaro Rabadon took over the possession of the subject property and upon his death, his children, herein respondents, took over its possession until 1988;[11] (*d*) in 1989, they discovered that the said property was already in the possession of petitioner Alejandra Delfin (Alejandra) and some of her children and their families already constructed their houses thereon;[12] and (*e*) when they confronted Alejandra, she claimed that petitioners' predecessor-in-interest, Remegio Navares (Remegio) previously bought the said property; however, when they asked to see a copy of the deed of sale, she could not produce the same.[13]

For their part, petitioners countered that: (*a*) they inherited the subject property from their predecessor-in-interest, Remegio, who bought the foregoing even before the second World War; (*b*) the subject property was issued a certificate of title in the name of Remegio, however, the said title was lost;[14] (*c*) Alejandra

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[8] *Id.* at 27. During trial, respondents presented, as their witness, respondent Paciano Panogaling who testified, *inter alia*, that the husband of Emiliana was Dionisio Rabadon and one of the children of the said couple was Genaro Rabadon who, in turn, was the father of Paciano's wife, respondent Avelina Rabadon, as well as of the other respondents Fe, Catalina, Hilaria and Roberto, all surnamed Rabadon.

[9] *Id.* at 27, 30, 46 and 184. The proper entry appears to be Decree No. 98992 and not 988933 as shown in other parts of the records.

[10] *Id.* at 25.

[11] *Id.* at 28.

[12] *Id.*

[13] *Id.* at 25 and 28.

[14] *Id.* at 31-32. During trial, respondents presented, as their witnesses, Jovito and Celestino Navares who both testified, *inter alia*, that Remegio

inherited the subject property by virtue of an extra-judicial settlement and after its execution, she and her children, petitioners Leopoldo, Francisco and Marcelito Delfin, took over the possession of the same;[15] and (*d*) the subject property had been declared by them for taxation purposes and they paid the corresponding realty taxes due thereon.[16] By way of affirmative defense, petitioners further contended, *inter alia*, that respondents' demands were already barred by *laches*, given that they took about 55 years to file their complaint.[17]

The RTC Ruling

In a Decision[18] dated June 27, 1997, the RTC ruled that petitioners had the better right to the ownership and possession of the subject property. It based its conclusion on the fact that the subject property was declared by petitioners for taxation purposes and that they paid the realty taxes due thereon. It held that while tax declarations and tax receipts are not incontrovertible evidence of ownership, they become proof of ownership when accompanied by proof of actual possession such as petitioners' continuous declaration of the subject property for taxation purposes, their payments of the corresponding taxes, and the construction of their respective houses thereon. It also noted that Alejandra filed a petition for the reconstitution of Remegio's title, *i.e.*, Transfer Certificate of Title (TCT) No. 20910 in LRC No. 9469 before the Regional Trial Court of Cebu City, Branch 16.[19]

On the other hand, the RTC observed that while it is undisputed that the subject property has been issued Decree No. 98992

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bought the subject property and a certificate of title was issued in the latter's favor.

[15] *Id.* at 26-27.

[16] *Id.* at 26 and 31-32.

[17] *Id.* at 27.

[18] *Id.* at 25-40

[19] *Id.* at 39 and 45.

and for which an original certificate of title was issued to Emiliana, respondents have not shown any efforts to locate the said title nor to reconstitute the same. Neither have they attempted to declare the subject property for taxation purposes nor have they shown any proof that they paid the realty taxes due thereon, thereby negating their claim of ownership.[20] Moreover, the RTC pronounced that respondents were guilty of *laches*.[21] Aggrieved, respondents elevated the matter on appeal.

The CA Ruling

In a Decision[22] dated February 28, 2001, the CA reversed the RTC's pronouncement, holding that respondents had the better right of ownership and possession over the subject property. It observed that, apart from the self-serving testimonies of some of the petitioners, the only evidence adduced by them in support of their claim are mere copies of tax declarations and tax receipts over the subject property and a Report dated July 14, 1993 of one Director Silverio G. Perez of the Department of Registration of the LRA (LRA Report) to the effect that the property in question is covered by TCT No. 20910. The CA stressed that tax declarations and tax receipts are not conclusive evidence of ownership or of the right to possess the land when not supported by other evidence of actual possession which remained wanting in this case. In this relation, it found that the LRA Report could not qualify as proof of possession since the report failed to mention that the subject property actually belongs to petitioners' predecessor-in-interest. In fact, the LRA Report even affirmed that the subject property was covered by a decree issued to Emiliana and her husband, Dionisio Rabadon. Further, when TCT No. 20910 was sought to be reconstituted by Alejandra, one Juanito Montenegro (RD representative) of the Cebu City RD testified that the said title does not cover the subject property and that the Cebu City RD has no record available for Lot

[20] *Id*.

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

[22] *Id.* at 41-48.

No. 8217. These findings led to the dismissal of Alejandra's petition for reconstitution and considering these circumstances, the CA stated that the LRA Report is inferior to the testimony of the RD representative.[23]

Also, the CA observed that petitioners offered no credible explanation as to why the subject property was declared in the name of their predecessor-in-interest, Remegio, and that the tax declarations were only allowed on the supposition that the subject property was covered by TCT No. 20910 in the name of Remegio, which entry was, as earlier mentioned, shown to be erroneous.[24] Anent the issue of prescription, the CA pronounced that petitioners were unable to prove that they have been in possession of the subject property since 1938. Neither are respondents guilty of *laches* since there is no evidence on record which would show that they omitted to assert their claim over the subject property.[25] Respondents were, however, ordered to reimburse petitioners of the taxes paid by them during the period of their possession, including legal interest. Dissatisfied, petitioners moved for reconsideration which was denied in a Resolution[26] dated August 2, 2004. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not respondents have the better right to the ownership and possession of the subject property.

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears noting that the Court may proceed to evaluate the evidence on record even on a Rule 45 petition for

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

[24] *Id.* at 45.

[25] *Id.* at 46-47.

[26] *Id.* at 49-51.

review in the event that the findings of the CA are contrary to that of the RTC,[27] as in this case.

After such evaluation, the Court finds that the respondents have shown a better right to the ownership and possession of the subject property.

As may be gleaned from the records, the probative value of petitioners' evidence, which consist of tax declarations and tax receipts, pales in comparison to that of respondents' evidence which consists of a decree of ownership, *i.e.*, Decree No. 98992, under the name of their predecessor-in-interest, Emiliana. While the actual copy of the said decree was lost, the existence of the said decree was actually proven by the LRA certification and the daybook entry. Likewise, the RTC itself observed that it is undisputable that the subject property has been issued Decree No. 98992, for which an original certificate of title was issued to Emiliana.[28] It is an elemental rule that a decree of registration bars all claims and rights which arose or may have existed prior to the decree of registration. By the issuance of the decree, the land is bound and title thereto quieted, subject only to certain exceptions[29] under the property registration decree.[30] In the case of *Ferrer-Lopez v. CA*,[31] the Court ruled that as against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, an original certificate of title, which indicates true and legal ownership by the registered owners over the disputed premises, must prevail. Accordingly, respondents'

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[27] See *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, G.R. No. 171209, June 27, 2012, 675 SCRA 145, 160-161.

[28] *Rollo*, p. 39.

[29] See Section 39 of Act 496, now Section 44 of Presidential Decree No. (PD) 1529, as cited in *Cureg v. Intermediate Appellate Court (4th Civil Cases Div.)*, 258 Phil. 104. See also Section 31of PD 1529.

[30] *Cureg v. Intermediate Appellate Court, id.* at 111.

[31] 234 Phil. 388, 396-397 (1987), cited in *Cureg v. Intermediate Appellate Court, id.* at 110-111.

Decree No. 98992 for which an original certificate of title was issued should be accorded greater weight as against the tax declarations and tax receipts presented by petitioners in this case.

Besides, tax declarations and tax receipts may only become the basis of a claim for ownership when they are coupled with proof of actual possession of the property.[32] In this case, records are bereft of any showing that petitioners, or any of their predecessors-in-interest, have been in actual possession of the subject property prior to 1989 as they claim. The tax declarations and tax receipts are insufficient to prove their proffered theory that their predecessor-in-interest, Remegio, was the lawful possessor and owner of the foregoing property even before the last World War. In fact, petitioners altogether failed to prove the legitimacy of Remegio's possession and ownership since they failed to present the pertinent deed of sale or any other evidence of the latter's title. On the contrary, aside from the LRA certification and daybook entry which prove the existence of Decree No. 98992, respondents' possession of the subject property prior to petitioners' entry in 1989 was attested to by one Marcelina Tabora[33] who, as the CA notes, appears to be an unbiased witness.[34] All told, by sheer preponderance of evidence, respondents have shown a better right to the ownership and possession of the subject property and hence, must be awarded the same.

As to the issue of *laches*, suffice it to state that petitioners were not able to adduce any sufficient evidence to demonstrate

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[32] See *Cequeña v. Bolante*, G.R. No. 137944, April 6, 2000, 330 SCRA 216, 226-227.

[33] *Rollo*, p. 29-30. During trial, Marcelina Tabora testified, *inter alia*, that: (*a*) during the lifetime of Emiliana, she was the one who bought the fruits of the coconut trees on the subject property; (*b*) since the time she was buying the products of the subject property, Emiliana was in possession of the same; (*c*) after Emiliana's death, the latter was succeeded by Genaro Rabadon and later his children, who sold to her the fruits until 1985; and (*d*) during the time when she was gathering the fruits, no one ever objected to what she was doing.

[34] *Id.* at 46.

that respondents unduly slept on their rights for an unreasonable length of time. Quite the contrary, records reveal that respondents and their predecessors-in-interest have been in possession of the subject property since the 1950's and that they filed their complaint on October 19, 1993, which is only four years removed from the time petitioners entered the property in 1989.[35] As such, *laches* does not exist.

In view of the pronouncements made herein, the Court deems it unnecessary to delve on the other ancillary issues in this case.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated February 28, 2001 and Resolution dated August 2, 2004 of the Court of Appeals in CA-G.R. CV No. 57723 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 170677. July 31, 2013]

VSD REALTY & DEVELOPMENT CORPORATION, *petitioner, vs.* **UNIWIDE SALES, INC. and DOLORES BAELLO TEJADA,** *respondents.*

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[35] Jurisprudence dictates that "[*l*]*aches* is the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it." (*Velez, Sr. v. Demetrio,* G.R. No. 128576, August 13, 2002, 387 SCRA 232.)

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; ACTION TO RECOVER OWNERSHIP OF REAL PROPERTY; THE PERSON WHO CLAIMS A BETTER RIGHT MUST PROVE THE IDENTITY OF THE LAND CLAIMED AND HIS TITLE THERETO; CASE AT BAR.— The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his. Article 434 of the Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*, the identity of the land claimed, and; *second*, his title thereto. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

2. ID.; ID.; ID.; IN THE INTEREST OF JUSTICE AND TO SAFEGUARD THE CORRECT TITLING OF PROPERTIES, REMAND OF THE CASE TO THE COURT OF APPEALS IS PROPER; SUSTAINED IN CASE AT BAR.— The Court recognizes the importance of protecting the country's Torrens system from fake land titles and deeds. Considering that there is an issue on the validity of the title of petitioner VSD, which title is alleged to be traceable to **OCT No. 994 registered on April 19, 1917**, which mother title was held to be inexistent in ***Manotok Realty, Inc. v. CLT Realty Development Corporation***, in the interest of justice, and to safeguard the correct titling of properties, a remand is proper to determine which of the parties derived valid title from the legitimate **OCT No. 994 registered on May 3, 1917.** Since this Court is not a trier of facts and not capacitated to appreciate evidence of the first instance, the Court may remand this case to the Court of Appeals for further proceedings, as it has been similarly tasked in ***Manotok Realty, Inc. v. CLT Realty Development Corporation***. x x x Accordingly, the Court hereby remands this case to the Court of Appeals. The Court of Appeals is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this

Resolution. In determining which of the conflicting claims of title should prevail, the Court of Appeals is directed to establish, based on the evidence already on record and other evidence that will be presented in the proceedings before it.

APPEARANCES OF COUNSEL

Law Firm of Donato Faylona for petitioner.
Angara Abello Concepcion Regala & Cruz for Dolores Baello-Tejada.

R E S O L U T I O N

PERALTA, *J.*:

This is a motion for reconsideration of the Decision[1] dated October 24, 2012, the dispositive portion of which reads:

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated May 30, 2005 and its Resolution dated December 6, 2005 in CA-G.R. CV No. 69824 are **REVERSED** and **SET ASIDE.** The Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933 is **REINSTATED** with **MODIFICATION** as follows:

(1) Paragraph 1 of the dispositive portion of the Decision dated October 2, 2000 of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933, is deleted;

(2) Respondent Dolores Baello and all persons/ entities claiming title under her, including respondent Uniwide Sales, Inc., are ordered to convey and to return the property or the lot covered by TCT No. T-285312 to petitioner VSD Realty and Development Corporation upon finality of this Decision;

(3) Respondent Dolores Baello is ordered to pay just and reasonable compensation for the occupancy and use of the land of petitioner VSD Realty and Development Corporation

[1] *Rollo*, pp. 947-969.

in the amount of ₱58,333.30 per month from September 12, 1994 until the Decision is final and executory, with legal interest of six percent (6%) *per annum* reckoned from the filing of the Complaint on June 8, 1995 until the finality of this Decision. Thereafter, respondent Uniwide Sales, Inc. is jointly and severally liable with Dolores Baello for the payment to petitioner VSD Realty and Development Corporation of monthly rental in the amount of ₱58,333.30 from the finality of this Decision until the land is actually vacated, with twelve percent (12%) interest *per annum*.

(4) The award of attorney's fees is deleted.

No costs.

SO ORDERED.[2]

We recapitulate the facts. On June 8, 1995, petitioner VSD Realty and Development Corporation (VSD) filed a Complaint for annulment of title and recovery of possession of property against respondents Uniwide Sales, Inc. (Uniwide) and Dolores Baello[3] with the Regional Trial Court (RTC) of Caloocan City, Branch 126 (trial court). Petitioner sought the nullification of Transfer Certificate of Title (TCT) No. (35788) 12754 in the name of Dolores Baello and the recovery of possession of property that is being occupied by Uniwide by virtue of a contract of lease with Dolores Baello.

Petitioner VSD alleged that it is the registered owner of a parcel of land in Caloocan City, with an area of 2,835.30 square meters, more or less, and covered by TCT No. T-285312[4] of the Register of Deeds of Caloocan City. VSD bought the said property from Felisa D. Bonifacio, whose title thereto, TCT No. 265777, was registered by virtue of an Order[5] dated October 8, 1992 authorizing the segregation of the same in Land

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[2] *Id.* at 967-968. (Emphasis in the original)

[3] Referred to as respondent Dolores Baello Tejada in the title of G.R. No. 170677.

[4] Annex "A", records, vol. I, p. 9.

[5] Records, Vol. II, pp. 585-586.

Registration Commission (LRC) Case No. C-3288. Petitioner also alleged that its right to the subject property and the validity and correctness of the technical description and location of the property are duly established in LRC Case No. C-3288.[6] Petitioner alleged that its title, TCT No. 285312, is the correct, valid and legal document that covers the subject property, since it is the result of land registration proceedings in accordance with law.

Petitioner alleged that respondent Baello's title, TCT No. 35788, covering the same property, is spurious and can only be the result of falsification and illegal machinations, and has no legal basis to establish any right over the subject property. Moreover, the technical description of Baello's title is so general that it is impossible to determine with certainty the exact location of the property covered by it. Petitioner further alleged that the technical description has no legal basis per the records of the Lands Management Bureau and the Bureau of Lands. It added that Baello's title described the property to be Lot 3-A of subdivision plan Psd 706, but an examination of Psd 706 shows that there is no Lot 3-A in plan Psd 706. Petitioner contends that in view of the foregoing reasons, Baello has no legal basis to claim the subject property, and Baello's title, TCT No. 35788, is spurious and illegal and should be annulled. Thus, petitioner sought recovery of possession of the subject property and the payment of rent from respondents.

Respondent Baello filed a Motion to Dismiss on the grounds that the complaint stated no cause of action, and that the demand for annulment of title and/or conveyance, whether grounded upon the commission of fraud or upon a constructive trust, has prescribed, and is barred by laches. The trial court denied Baello's motion to dismiss as well as Baello's subsequent motion for reconsideration for lack of merit.

Thereafter, respondent Baello filed an Answer, alleging that the subject property was bequeathed to her through a will by

[6] Entitled *In the Matter of Petition for Authority to Segregate an Area of 5,680.1 Square Meters from Lot 23-A-4-B-2-A-3-B, PSD 706 (PSU-2345) of Maysilo Estate and Issuance of Separate Certificate of Title in the name of Felisa D. Bonifacio*, filed by Felisa D. Bonifacio.

her adoptive mother, Jacoba Galauran. She alleged that during the lifetime of Jacoba Galauran, the subject property was originally surveyed on January 24-26, 1923[7] and, thereafter, on December 29, 1924.[8] Baello alleged that after Jacoba Galauran died in 1952, her will was duly approved by the probate court, the Court of First Instance, Pasig, Rizal. Baello stated that she registered the subject property in her name, and TCT No. (35788) 12754[9] was issued in her favor on September 6, 1954. In 1959, she had the subject property surveyed. On July 15, 1988, she entered into a Contract of Lease[10] with respondent Uniwide, which erected in full public view the building it presently occupies. Baello stated that she has been religiously paying realty taxes for the subject property,[11] and that the Complaint should be dismissed as she enjoys a superior right over the subject property because the registration of her title predates the registration of petitioner's title by at least 40 years.

The deposition of respondent Baello, which was taken on October 1, 1998 at the Philippine Consular Office in San Francisco, California, United States of America, affirmed the same facts stated in her Answer.

On October 2, 2000, the trial court rendered a Decision[12] in favor of petitioner. The trial court held that the evidence for petitioner showed that it is the rightful owner of the subject lot covered by TCT No. 285312 of the Register of Deeds of Caloocan City. The lot was purchased by petitioner from Felisa D. Bonifacio, who became the owner thereof by virtue of her petition for segregation of the subject property from Original Certificate of Title (OCT) No. 994 of the Register of Deeds of Rizal in LRC Case No. C-3288. TCT No. 265777 was issued to Felisa Bonifacio

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[7] Records, Vol. I, p. 196.

[8] *Id.* at 195.

[9] Annex "2", *id.* at 197.

[10] Annex "1", *id.* at 65-72.

[11] Annexes "4", to "4-H", *id.* at 201-209.

[12] *Rollo,* pp. 78-96.

pursuant to an Order dated October 8, 1992 by the RTC of Caloocan City in LRC Case No. C-3288. The trial court stated that it cannot question the Order (in LRC Case No. C-3288) issued by a co-equal court in this respect, considering that Regional Trial Courts now have the authority to act not only on applications for original registration, but also over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petitions.

Moreover, the trial court found that the technical description in respondent Baello's title is not the same as the technical description in petitioner's title, and that a mere reading of the technical description in petitioner's title and that in Baello's title would show that they are not one and the same. The trial court averred that the technical description of the subject lot in petitioner's title is recorded with the Register of Deeds of Caloocan City.[13]

The trial court stated that in the face of the documentary and testimonial evidence of competent government witnesses who affirmed petitioner's right to the technical description, it was incumbent on respondent Baello to present credible evidence to overcome the same, but she failed to do so. The trial court held that from the evidence adduced, petitioner is the registered owner of TCT No. 285312, formerly TCT No. 265777 when Felisa D. Bonifacio was the registered owner, while respondent Baello is the registered owner of a parcel of land covered by TCT No. (35788) 12754 and respondent Uniwide is a mere lessee of the land. Baello is the holder of a title over a lot entirely different and not in any way related to petitioner's title and its technical description. Petitioner proved its ownership and the identity of the subject property that it sought to recover, which is an essential requisite in its action for annulment of title and recovery of possession of property. The dispositive portion of the trial court's Decision reads:

WHEREFORE, in the light of the foregoing consideration, judgment is hereby rendered ordering the following:

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[13] Exhibit "F", records, vol. II, p. 588.

1. Declaring TCT No. 35788 [12754] to be null and void;

2. Defendant Baello and all persons/entity claiming title under her, including UNIWIDE, to convey and to return the property to plaintiff VSD on the basis of the latter's full, complete, valid and legal ownership;

3. Defendant Baello and UNIWIDE, jointly and severally, to pay a just and reasonable compensation per month of ₱1,200,000.00 with legal interest for the occupancy and use of plaintiff's land from September 12, 1994, until actually vacated by them;

4. Defendants, jointly and severally, to pay attorney's fees of ₱200,000.00.

SO ORDERED.[14]

Respondents appealed the trial court's decision to the Court of Appeals, which rendered a Decision dated May 30, 2005 in favor of respondents, and reversed and set aside the Decision of the RTC and dismissed petitioner's complaint.

The Court of Appeals stated that the main issue to be resolved was whether or not there was a valid ground to annul respondent Baello's TCT No. (35788) 12754 to warrant the reconveyance of the subject property to petitioner. The Court of Appeals stated that based on existing jurisprudence, a certificate of title may be annulled or cancelled by the court under the following grounds: (1) when the title is void because (a) it was procured through fraud, (b) it was issued for a land already covered by a prior Torrens title, (c) it covers land reserved for military, naval or civil public purposes, and (d) it covers a land which has not been brought under the registration proceeding; (2) when the title is replaced by one issued under a cadastral proceeding; and (3) when the condition for its issuance has been violated by the registered owner.[15] The Court of Appeals averred that while petitioner sought to annul respondent Baello's TCT

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[14] *Rollo*, pp. 95-96.

[15] *Id.* at 54, citing Noblejas & Noblejas, *Registration of Land Titles and Deeds*, 1992 edition, pp. 239-242.

No. 35788 on the ground that the same was spurious, it failed to prove that Baello's title was indeed spurious. The appellate court also noted that the trial court's decision never mentioned that Baello's title was spurious. It further stated that any doubt or uncertainty as to the technical description contained in a certificate of title is not a ground for annulment of title. It held that since there was no legal basis for the annulment of Baello's TCT No. 35788, the trial court erred in declaring the said title null and void. It stated that well settled is the rule that a Torrens title is generally conclusive evidence of ownership of the land referred to therein, and a strong presumption exists that it was regularly issued and valid.[16] Hence, respondent Baello's TCT No. 35788 enjoys the presumption of validity.

Petitioner filed a petition for review on *certiorari* before this Court, raising the following issues: (1) The Court of Appeals erred in ruling that the burden of proof did not shift to respondents, notwithstanding the overwhelming evidence presented by petitioner; (2) the Court of Appeals misconstrued petitioner's allegation that the "issuance of two titles over the same piece of land has not been proved"; (3) the Court of Appeals erred in treating petitioner's complaint as one only for annulment of title when petitioner also sought reconveyance of the lot in question; (4) the Court of Appeals erred in ruling that respondent Baello's title is not spurious; and (5) respondent Uniwide is not a lessee in good faith.[17]

This Court discussed the pertinent issues raised with the main issues: whether or not petitioner is entitled to recover possession of the subject property; and, whether or not the title of respondent Baello may be annulled.

The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is

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[16] *Id.*, citing *Republic v. Orfinada, Sr.*, 485 Phil. 18, 33 (2004).

[17] *Id.* at 11.

his.[18] Article 434[19] of the Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*, the identity of the land claimed, and; *second*, his title thereto.[20] In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.[21]

The Court upheld the decision of the trial court that petitioner was able to establish through documentary and testimonial evidence that the technical description of its Torrens title, embodying the identity of the land claimed, covers the property that is being occupied by respondent Uniwide by virtue of a lease contract with respondent Baello, and that a comparison of the technical description of the land covered by the title of petitioner and the technical description of the land covered by the title of Baello shows that they are not the same. Hence, the Court granted the petition, and reversed and set aside the Decision of the Court of Appeals and its Resolution denying petitioners' motion for reconsideration; and the Decision of the RTC was reinstated with modification. The dispositive portion of the Court's decision has been cited earlier.

Respondent Baello filed a motion for reconsideration[22] of the Court's decision on the following grounds:

1) This honorable Court erred in not holding that petitioner VSD's Title (Transfer Certificate of Title No. T-285312) is null and void and that the same cannot give rise to any claim of ownership

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[18] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. No. 123346, December 14, 2007, 540 SCRA 304.

[19] Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

[20] *Hutchinson v. Buscas*, 498 Phil. 257, 262 (2005).

[21] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, *supra* note 18, at 345.

[22] *Rollo*, pp. 1019-1067.

or possession over the subject property, having been derived from the fake and non-existent Original Certificate of Title (OCT) No. 994 dated 19 April 1917, which purportedly covered the non-existent Maysilo estate.

2) This honorable Court erred, and deprived respondent Baello of due process, when it made a finding that respondent Baello's title ([TCT] No. (35788) 12754) does not cover the subject property considering that:

(a) Whether respondent Baello's title covers the subject property was never the issue in this case. In praying for the annulment of respondent Baello's title, the basic underlying premise and basis of such action is that the two titles, petitioner VSD's title and respondent Baello's title, cover the same property. Even if VSD's action is considered as one for reconveyance, the same hinges on the validity of the title of VSD.

(b) A determination of whether a certificate of title's technical description covers a particular area of land is a matter involving technical expertise, which this Honorable Court does not have. Such a determination can only be resolved through a survey conducted by a licensed and reputable geodetic engineer.

(c) In any case, records of the case show that respondent Baello was able to establish through positive evidence that her title covers the subject property.

3) This honorable Court erred in finding that petitioner VSD was able to prove that it has a better right to the subject property by mere presentation of TCT No. T-28512 registered under its name and by showing that the technical descriptions contained in TCT No. T-28512 correctly described the subject property. On the contrary, the evidence presented by petitioner VSD is insufficient to overcome the presumptive title of respondent Baello, who has been in possession of the subject property for more than fifty years. Thus, this instant action for reconveyance of the subject property initiated by petitioner VSD must fail.

4) This honorable Court erred in not holding that respondent Baello enjoys a superior right to the disputed property because the

registration of her title predated the registration of petitioner VSD's title by at least 40 years.

5) This honorable Court erred in ordering respondent Baello to pay monthly compensation to petitioner VSD considering that respondent Baello merely entered into a contract of lease with Uniwide involving land that is covered by the technical description of her title – which this Honorable Court has held to be valid.[23]

On February 13, 2013, respondent Baello,[24] by counsel, filed a *Motion for Leave and Time to File Judicial Affidavit of Mr. Felino Cortez and Supplemental Motion for Reconsideration (Re: Decision dated 24 October 2012)*. In the said motion, respondent Baello contended that subsequent to the filing of her motion for reconsideration, she discovered new evidence, not available at the time of trial and of the filing of her motion for reconsideration, which established that petitioner VSD's TCT No. T-285312 cannot be traced to the legitimate and authentic TCT No. 994; hence, petitioner's title is null and void. Baello's daughter, Bernadette Flores, requested Mr. Felino Cortez, retired and former Director on Registration of the Land Registration Authority (LRA) to conduct an investigation on petitioner VSD's TCT No. T-285312. Mr. Cortez examined the documents with the LRA and the Register of Deeds of Caloocan, and he allegedly found that the copy of Felisa Bonifacio's TCT No. 265777/T-1325 that was presented to the Register of Deeds of Caloocan, for the purpose of the issuance of petitioner VSD's TCT No. T-285312, was tampered to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917. It is alleged that the original microfilm copy retained by the LRA shows that the same TCT No. 265777/T-1325 did not originate from the legitimate and authentic OCT No. 994 dated May 3, 1917, but was instead derived from a certain OCT No. 994 dated April 19, 1912. In view of this development,

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[23] *Id.* at 1019-1021. (Emphasis omitted)

[24] The Resolution dated January 23, 2013 noted the Notice of Death of respondent Dolores Baello Tejada, who died on June 22, 2013 and who is survived by her heirs, namely, Ma. Bernadette T. Flores, Ma. Cecille T. Novales, and Jose George Tejada.

and in the interest of justice, and to protect respondent Baello's constitutional right to property, and to avoid conflicting ruling of this Court, respondent Baello begged the indulgence of this Court to grant her *Motion for Leave and Time to File Judicial Affidavit of Mr. Felino Cortez and Supplemental Motion for Reconsideration*, which motion was granted by the Court.[25]

On March 14, 2013, respondent Dolores Baello, by counsel, filed a Supplemental Motion for reconsideration of the Decision dated October 24, 2012[26] on the following grounds:

> 1) Felisa Bonifacio's [TCT] No. 265777/T-1325, from which petitioner [VSD] derived its title, is null and void, having been derived from a fake and non-existent OCT No. 994. This new evidence bolsters respondent Baello's position that this honorable Court erred in not holding that petitioner VSD's title (TCT No. T-285312) is null and void and cannot give rise to any claim of ownership or possession over the subject property;
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> 2) This honorable Court seriously erred in finding that respondent Baello's TCT No. (35788) 12754 does not cover the subject property. A careful examination of respondent Baello's TCT No. (35788) 12754 and petitioner VSD's TCT No. T-285312 will show that the technical descriptions of the land referred to in those titles both refer to the same parcel of land;
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> 3) Aside from the manifest irregularities appearing on the face of Felisa Bonifacio's TCT No. 265777/T-1325 (from which petitioner VSD derived its title), Felisa Bonifacio's TCT No. 265777/T-1325 cannot be traced back to the legitimate and authentic OCT No. 994. On the other hand, respondent Baello's TCT No. (35788) 12754 and its predecessor titles can be traced back to the legitimate and authentic OCT No. 994 dated 3 May 1917.[27]

Petitioner VSD was required to file a comment on the motion for reconsideration. In its Comment on the motion for reconsideration and the supplemental motion for reconsideration,

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[25] Resolution dated February 25, 2013, *rollo*, p. 1089-B.

[26] *Rollo*, pp. 1460-1655.

[27] *Id.* at 1462-1463. (Emphasis omitted)

petitioner contends that a valid title can arise even from an allegedly void title if a buyer in good faith, like petitioner, intervenes; that the alleged nullity of its title cannot be raised for the first time on appeal; that additional evidence cannot be presented for the first time on appeal, more so in a motion for reconsideration before this Court; and that respondent Baello failed to prove that her title covers the subject property, among others.

In the main, respondent Baello contends that the Court erred in not declaring petitioner VSD's TCT No. T-285312 as null and void, considering that it is derived from Felisa Bonifacio's TCT No. 265777/T-1325, which, in turn, is derived from the false and fictitious OCT No. 994 dated April 19, 1917. **The records of this case, however, show that Felisa Bonifacio's TCT No. 265777/T-1325 and VSD's TCT No. T-285312 are derived from the legitimate OCT No. 994 registered on May 3, 1917, which date has been held as the correct date of registration of the said OCT in *Manotok Realty, Inc. v. CLT Realty Development Corporation.***[28] In her *Motion for Leave and Time to File Judicial Affidavit of Mr. Felino Cortez and Supplemental Motion for Reconsideration*, which the Court granted, respondent Baello contends that she has additional evidence showing that the copy of Felisa Bonifacio's TCT No. 265777/T-1325 that was presented to the Register of Deeds of Caloocan, for the purpose of the issuance of petitioner VSD's TCT No. T-285312, was tampered with to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917. It is alleged that the original microfilm copy retained by the LRA shows that Felisa Bonifacio's TCT No. 265777/T-1325 did not originate from the legitimate and authentic OCT No. 994 dated May 3, 1917, but was instead derived from OCT No. 994 dated April 19, 1912. Baello cited ***Manotok Realty, Inc. v. CLT Realty Development Corporation***,[29] which allowed the presentation of evidence before a Special

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[28] *Supra* note 18.

[29] *Id.*

Division of the Court of Appeals to ascertain which of the conflicting claims of title should prevail, even though the case had already been decided; and the additional evidence was presented in connection with a motion for reconsideration of this Court's decision.

The Court notes that in ***Manotok Realty, Inc. v. CLT Realty Development Corporation***,[30] the Court pronounced that there is only one OCT No. 994, which is correctly registered on May 3, 1917, and that any title that traces its source to OCT No. 994 dated April 17, 1917 is void, for such mother title is inexistent.

The Court recognizes the importance of protecting the country's Torrens system from fake land titles and deeds. Considering that there is an issue on the validity of the title of petitioner VSD, which title is alleged to be traceable to **OCT No. 994 registered on April 19, 1917**, which mother title was held to be inexistent in ***Manotok Realty, Inc. v. CLT Realty Development Corporation,***[31] in the interest of justice, and to safeguard the correct titling of properties, a remand is proper to determine which of the parties derived valid title from the legitimate **OCT No. 994 registered on May 3, 1917.** Since this Court is not a trier of facts and not capacitated to appreciate evidence of the first instance, the Court may remand this case to the Court of Appeals for further proceedings, as it has been similarly tasked in ***Manotok Realty, Inc. v. CLT Realty Development Corporation***[32] on these bases:

> Under Section 6 of Rule 46, which is applicable to original cases for *certiorari*, the Court may, whenever necessary to resolve factual issues, delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office. The delegate need not be the body that rendered the assailed decision.
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> The Court of Appeals generally has the authority to review findings of fact. Its conclusions as to findings of fact are generally accorded

[30] *Id*.

[31] *Id*.

[32] *Id*.

great respect by this Court. It is a body that is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence.

In fact, the Court had actually resorted to referring a factual matter pending before it to the Court of Appeals. In *Republic v. Court of Appeals*, this Court commissioned the former Thirteenth Division of the Court of Appeals to hear and receive evidence on the controversy, more particularly to determine "the actual area reclaimed by the Republic Real Estate Corporation, and the areas of the Cultural Center Complex which are 'open spaces' and/or 'areas reserved for certain purposes,' determining in the process the validity of such postulates and the respective measurements of the areas referred to." The Court of Appeals therein received the evidence of the parties and rendered a "Commissioner's Report" shortly thereafter. Thus, resort to the Court of Appeals is not a deviant procedure.

The provisions of Rule 32 should also be considered as governing the grant of authority to the Court of Appeals to receive evidence in the present case. Under Section 2, Rule 32 of the Rules of Court, a court may, *motu proprio*, direct a reference to a commissioner when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect. The order of reference can be limited exclusively to receive and report evidence only, and the commissioner may likewise rule upon the admissibility of evidence. The commissioner is likewise mandated to submit a report in writing to the court upon the matters submitted to him by the order of reference. In *Republic*, the commissioner's report formed the basis of the final adjudication by the Court on the matter. The same result can obtain herein.[33]

Accordingly, the Court hereby remands this case to the Court of Appeals. The Court of Appeals is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this Resolution.

In determining which of the conflicting claims of title should prevail, the Court of Appeals is directed to establish, based on the evidence already on record and other evidence that will be presented in the proceedings before it, the following matter:

[33] *Id.* at 351-352.

(1) Whether the title of Felisa D. Bonifacio, TCT No. 265777/ T-1325, and the title of VSD, TCT No. T-285312, can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917;

(2) Whether Eleuteria Rivera Bonifacio, who allegedly assigned the subject property to Felisa D. Bonifacio, had the right and interest over the subject property, and whether Eleuteria Rivera Bonifacio was entitled to assign her alleged rights and interests over the subject property, known as Lot 23-A-4-B-2-A-3-A, Psd 706, covered by OCT No. 994, to Felisa D. Bonifacio;

(3) Whether the copy of Felisa Bonifacio's TCT No. 265777/ T-1325 was tampered with to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917;

(4) Whether respondent Baello's TCT No. (35788) 12754 can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917;

(5) Whether the technical description of the title of Baello covers the subject property; and

(6) Such other matters necessary and proper in determining which of the conflicting claims of title should prevail.

WHEREFORE, this case is **REMANDED** to the Court of Appeals for further proceedings in accordance with the two preceding paragraphs of this Resolution.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172504. July 31, 2013]

DONNA C. NAGTALON, *petitioner, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; REAL ESTATE MORTGAGE LAW (ACT NO. 3135); FORECLOSURE SALE; WHEN THE ISSUANCE OF THE WRIT OF POSSESSION BECOMES A MINISTERIAL FUNCTION OF THE COURTS, EXPLAINED.— We have long recognized the rule that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at anytime. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.

2. ID.; ID.; ID.; ISSUANCE OF WRIT DURING THE ONE-YEAR REDEMPTION PERIOD AND UPON THE LAPSE OF THE REDEMPTION PERIOD, DISTINGUISHED.— The right to the issuance of a writ of possession is outlined in Sections 6 and 7 of Act 3135, as amended by Act 4118. x x x In *Spouses Ruben and Violeta Sagun v. Philippine Bank of Communications and Court of Appeals*, the Court laid down the established rule on the issuance of a writ of possession, pursuant to Act 3135, as amended. The Court said that a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond. During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special

proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession. On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion.

3. ID.; ID.; ID.; A PENDING ACTION FOR THE ANNULMENT OF MORTGAGE OR FORECLOSURE DOES NOT STAY THE ISSUANCE OF A WRIT OF POSSESSION; EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR.— In the case of *Spouses Montano T. Tolosa and Merlinda Tolosa v. United Coconut Planters Bank*, a case closely similar to the present petition, the Court explained that a pending action for annulment of mortgage or foreclosure (where the nullity of the loan documents and mortgage had been alleged) does not stay the issuance of a writ of possession. It reiterated the well-established rule that as a ministerial function of the court, the judge need not look into the validity of the mortgage or the manner of its foreclosure, as these are the questions that should be properly decided by a court of competent jurisdiction in the pending case filed before it. It added that questions on the regularity and the validity of the mortgage and foreclosure cannot be invoked as justification for opposing the issuance of a writ of possession in favor of the new owner. x x x ***Exceptions to the rule that issuance of a writ of possession is a ministerial function x x x (1) Gross inadequacy of purchase price x x x (2) Third party claiming right adverse to debtor/mortgagor x x x (3) Failure to pay the surplus proceeds of the sale to mortgagor x x x*** In these lights, we hold that the CA correctly ruled that the present case does not

present peculiar circumstances that would merit an exception from the well-entrenched rule on the issuance of the writ. x x x The law does not require that the writ of possession be granted only after the issues raised in a civil case on nullity of the loan and mortgage are resolved and decided with finality. To do so would completely defeat the purpose of an *ex parte* petition under Sections 6 and 7 of Act 3135 that, by its nature, should be summary; we stress that it would render nugatory the right given to a purchaser to acquire possession of the property after the expiration of the redemption period.

APPEARANCES OF COUNSEL

Stephen C. Arceño for petitioner.
Balbin & Associates for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*,[1] filed by Donna C. Nagtalon (*petitioner*), assailing the decision[2] dated September 23, 2005 and the resolution[3] dated April 21, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 82631. The CA reversed and set aside the orders[4] dated November 3, 2003 and December 19, 2003 of the Regional Trial Court (*RTC*), Kalibo, Aklan, Branch 5, in CAD Case No. 2895.

The Factual Antecedents

Roman Nagtalon and the petitioner (*Spouses Nagtalon*) entered into a credit accommodation agreement (*credit agreement*) with respondent United Coconut Planters Bank. In order to secure

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 3-14.

[2] *Id.* at 17-23; penned by Associate Justice Vicente L. Yap, and concurred in by Associate Justices Arsenio J. Magpale and Enrico A. Lanzanas.

[3] *Id.* at 25-26.

[4] *Id.* at 53 and 54; penned by Judge Elmo F. Del Rosario.

the credit agreement, Spouses Nagtalon, together with the Spouses Vicente and Rosita Lao, executed deeds of real estate mortgage over several properties in Kalibo, Aklan. After the Spouses Nagtalon failed to abide and comply with the terms and conditions of the credit agreement and the mortgage, the respondent filed with the *Ex-Officio* Provincial Sheriff a verified petition[5] for extrajudicial foreclosure of the mortgage, pursuant to Act 3135, as amended.[6]

The mortgaged properties were consequently foreclosed and sold at public auction for the sum of ₱3,215,880.30 to the respondent which emerged as the sole and highest bidder. After the issuance of the sheriff's certificate of sale, the respondent caused the entry of the sale in the records of the Registry of Deeds of Kalibo, Aklan and its annotation on the transfer certificates of titles (TCTs) on January 6, 1999.[7] With the lapse of the one year redemption period and the petitioner's failure to exercise her right to redeem the foreclosed properties, the respondent consolidated the ownership over the properties, resulting in the cancellation of the titles in the name of the petitioner and the issuance of TCTs in the name of the respondent, to wit: (a) TCT No. T-29470; (b) TCT No. T-29472; (c) TCT No. T-29471; (d) TCT No. T-29469; (e) TCT No. T-29474; (f) TCT No. T-29475; and (g) TCT No. T-29473.[8] The new TCTs were registered with the Register of Deeds of Kalibo, Aklan on April 28, 2000.[9]

On April 30, 2003, the respondent filed an *ex parte* petition for the issuance of a writ of possession with the RTC, docketed as CAD Case No. 2895. In the petition, the respondent alleged that it had been issued the corresponding TCTs to the properties

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[5] *Id.* at 48.

[6] Act No. 3135 – An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[7] *Rollo*, p. 41.

[8] *Id.* at 49.

[9] *Id.* at 42.

it purchased, and has the right to acquire the possession of the subject properties as the current registered owner of these properties.

The petitioner opposed the petition, citing mainly the pendency of Civil Case No. 6602[10] (for declaration of nullity of foreclosure, fixing of true indebtedness, redemption, damages and injunction with temporary restraining order) still pending with the RTC. In this civil case, the petitioner challenged the alleged nullity of the provisions in the credit agreement, particularly the rate of interest in the promissory notes. She also sought the nullification of the foreclosure and the sale that followed. To the petitioner, the issuance of a writ of possession was no longer a ministerial duty on the part of the court in view of the pendency of the case.

The RTC Ruling

On November 3, 2003, the RTC issued an order,[11] holding in abeyance the issuance of the writ of possession of the properties covered by TCT Nos. T-29470, T-29472, T-29471, T-29469 and T-29474 on the ground of prematurity. The RTC ruled that due to the pendency of Civil Case No. 6602 — where the issue on nullity of the credit agreement and foreclosure have yet to be resolved — the obligation of the court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage property ceases to be ministerial.

The respondent filed a motion for reconsideration, but the RTC denied the motion, citing equitable grounds and substantial justice as reasons.[12]

The respondent then filed a petition for *certiorari*[13] with the CA.

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[10] *Id.* at 29.

[11] *Supra* note 4.

[12] *Ibid.*

[13] *Rollo*, pp. 55-69. Filed under Rule 65 of the Rules of Court.

The CA Ruling

In its September 23, 2005 decision,[14] the CA reversed and set aside the RTC orders, noting that while it is the ministerial duty of the court to issue a writ of possession after the lapse of the one-year period of redemption, the rule admits of exceptions and the present case at bar was not one of them.

The CA held that equitable and peculiar circumstances must first be shown to exist before the issuance of a writ of possession may be deferred. The CA then ruled that the petitioner failed to prove that these equitable circumstances are present in this case, citing for this purpose the ruling in *Vaca v. Court of Appeals*.[15] Based on the *Vaca* ruling, the CA ordered the RTC to issue the corresponding writ of possession.

The Petition

The petitioner submits that the CA erred in its findings; the equitable circumstances present in the case fully justified the RTC's order[16] to hold in abeyance the issuance of the writ of possession. The petitioner contends that the RTC found *prima facie* merit in the allegations in Civil Case No. 6602 that the foreclosure and the mortgage were void. The petitioner adds that the CA's reliance on the *Vaca* case, in support of its decision, is misplaced because no peculiar circumstances were present in this cited case which are applicable to the present case.

The petitioner lastly maintains that the CA decision violated her constitutional right to due process of law, as it deprived her of the possession of her properties without the opportunity of hearing.

The Case for the Respondent

The respondent essentially echoes the pronouncement of this Court in the *Vaca* case that the CA adopted and maintains that:

[14] *Supra* note 2.

[15] G.R. No. 109672, July 14, 1994, 234 SCRA 146.

[16] *Supra* note 4.

(1) the pendency of a civil case challenging the validity of the mortgage cannot bar the issuance of the writ of possession because such issuance is a ministerial act; (2) the peculiar and equitable circumstances, which would justify an exception to the rule, are not present in the present case; and (3) contrary to the allegation of the petitioner, it is the respondent who was deprived of possession of the properties due to the petitioner's persistent efforts to frustrate the respondent's claim.

The Issue

The case presents to us the issue of whether the pendency of a civil case challenging the validity of the credit agreement, the promissory notes and the mortgage can bar the issuance of a writ of possession after the foreclosure and sale of the mortgaged properties and the lapse of the one-year redemption period.

Our Ruling

We see no merit in the petition, and rule that the CA did not commit any reversible error in the assailed decision.

The issuance of a writ of possession is a ministerial function of the court

The issue this Court is mainly called upon to resolve is far from novel; jurisprudence is replete with cases holding that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.

We have long recognized the rule that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at anytime. Its right to possession has then

ripened into the right of a confirmed absolute owner[17] and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.[18] The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.

The right to the issuance of a writ of possession is outlined in Sections 6 and 7 of Act 3135, as amended by Act 4118, to wit:

> Sec. 6. In all cases in which an extrajudicial sale is made x x x, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.
>
> Sec 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ***ex parte*** motion x x x and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. [emphasis and underscore ours]

In *Spouses Ruben and Violeta Sagun v. Philippine Bank of Communications and Court of Appeals*,[19] the Court laid down

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[17] *Spouses Saguan v. Philippine Bank of Communications*, 563 Phil. 696, 706 (2007).

[18] *Spouses Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006).

[19] *Supra* note 17, at 706-707.

the established rule on the issuance of a writ of possession, pursuant to Act 3135, as amended. The Court said that a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.

During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.

On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property.[20] The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This second scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.[21]

The correctness of the issuance of the writ in the second scenario is strengthened by the fact that after the consolidation of ownership and issuance of titles to the purchaser, the latter's right to possession not only finds support in Section 7 of Act 3135, but also on its right to possession as an incident of

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[20] *Sps. Yulienco v. Court of Appeals*, 441 Phil. 397, 406 (2002).

[21] *IFC Service Leasing and Acceptance Corporation v. Nera*, No. L-21720, January 30, 1967, 19 SCRA 181, 184.

ownership.[22] The Court, in *Espinoza v. United Overseas Bank Philippines*,[23] noted that the basis of the right to possession is the purchaser's ownership of the property.

Moreover, if the court has the ministerial power to issue a writ of possession even during the redemption period, upon proper motion and posting of the required bond, as clearly provided by Section 7 of Act 3135, then with more reason should the court issue the writ of possession after the expiration of the redemption period, as the purchaser has already acquired an absolute right to possession on the basis of his ownership of the property.[24] The right to possess a property follows ownership.[25]

Based on these rulings, we find it clear that the law directs in express terms that the court issue a writ of possession without delay to the purchaser after the latter has consolidated ownership and has been issued a new TCT over the property. The law then does not provide any room for discretion as the issuance has become a mere ministerial function of the court.

The petitioner resists the above views with the argument that the nullity of the loan documents due to the unilateral fixing of the interest and her failure to receive the proceeds of the loan, among others, are peculiar circumstances that would necessitate the deferment of the issuance of the writ of possession. These are the same arguments the petitioner propounded in the civil case she filed to question the nullity of the foreclosure.

We do not find the argument convincing.

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[22] CIVIL CODE, Article 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[23] G.R. No. 175380, March 22, 2010, 616 SCRA 353, 367.

[24] *IFC Service Leasing and Acceptance Corporation v. Nera*, *supra* note 21, at 185.

[25] *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 76.

Pendency of a civil case questioning the mortgage and foreclosure not a bar to the issuance of a writ of execution

The petitioner's submitted arguments on the presence of peculiar and equitable circumstances are of no moment. These peculiar circumstances are nothing but mere allegations raised by the petitioner in support of her complaint for annulment of mortgage and foreclosure. We have ruled in the past that any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of execution/writ of possession.[26]

In the case of *Spouses Montano T. Tolosa and Merlinda Tolosa v. United Coconut Planters Bank*,[27] a case closely similar to the present petition, the Court explained that a pending action for annulment of mortgage or foreclosure (where the nullity of the loan documents and mortgage had been alleged) does not stay the issuance of a writ of possession. It reiterated the well-established rule that as a ministerial function of the court, the judge need not look into the validity of the mortgage or the manner of its foreclosure, as these are the questions that should be properly decided by a court of competent jurisdiction in the pending case filed before it. It added that questions on the regularity and the validity of the mortgage and foreclosure cannot be invoked as justification for opposing the issuance of a writ of possession in favor of the new owner.

In the cited case, the petitioner, in opposition to the respondent's *ex parte* application for a writ of possession, likewise pointed to the *prima facie* merit of the allegations in her complaint for annulment of mortgage, foreclosure and sale. She alleged that the apparent nullity of the mortgage obligation and the sale of the properties justify, at the very least, the deferment of the issuance of the writ of possession.

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[26] *Spouses Espiridion v. Court of Appeals, supra* note 18 at 668.

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

We pointedly ruled in this cited case that no reason existed to depart from our previous pronouncements. That the issuance of a writ of possession remains a ministerial duty of the court until the issues raised in the civil case for annulment of mortgage and/or foreclosure are decided by a court of competent jurisdiction[28] has long been settled. While conceding that the general rule on the ministerial duty of the courts to issue a writ of possession is not without exceptions, the Court was quick to add that the *Tolosa* case[29] does not fall under the exceptions.

Exceptions to the rule that issuance of a writ of possession is a ministerial function

A review of the Court's ruling in the *Tolosa* case would reveal a discussion of the few jurisprudential exceptions worth reiterating.

(1) Gross inadequacy of purchase price

In *Cometa v. Intermediate Appellate Court*[30] which involved an execution sale, the court took exception to the general rule in view of the unusually lower price (₱57,396.85 in contrast to its true value of ₱500,000.00) for which the subject property was sold at public auction. The Court perceived that injustice could result in issuing a writ of possession under the given factual scenario and upheld the deferment of the issuance of the writ.

(2) Third party claiming right adverse to debtor/mortgagor

In *Barican v. Intermediate Appellate Court*,[31] consistent with Section 35, Rule 39 of the Rules of Court, the Court held that the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be

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[28] *Ibid.*

[29] *Ibid.*

[30] 235 Phil. 569 (1987).

[31] 245 Phil. 316, 320-321 (1988).

ministerial when a third-party *in possession of the property* claims a right adverse to that of the debtor-mortgagor. In this case, there was a pending civil suit involving the rights of third parties who claimed ownership over the disputed property. The Court found the circumstances to be peculiar, necessitating an exception to the general rule. It thus ruled that where such third party claim and possession exist, the trial court should conduct a hearing to determine the nature of the adverse possession.

(3) Failure to pay the surplus proceeds of the sale to mortgagor

We also deemed it proper to defer the issuance of a writ in *Sulit v. Court of Appeals*[32] in light of the given facts, particularly the mortgagee's failure to return to the mortgagor the surplus from the proceeds of the sale (equivalent to an excess of approximately 40% of the total mortgage debt). We ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair and iniquitous for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt.

We stress that the petitioner's present case is not analogous to any of the above-mentioned exceptions. The facts are not only different from those cited above; the alleged peculiar circumstances pertain to the validity of the mortgage, a matter that may be determined by a competent court after the issuance of the writ of possession.[33]

In these lights, we hold that the CA correctly ruled that the present case does not present peculiar circumstances that would merit an exception from the well-entrenched rule on the issuance of the writ.

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[32] 335 Phil. 914 (1997).

[33] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

Petitioner was accorded due process

The petitioner lastly argues that the issuance of a writ of possession, despite its "*prima-facie* meritorious claim of nullity of loan and mortgage,"[34] constitutes a violation of her constitutional right to due process of law.

The petitioner's contention is unmeritorious. We note that the *ex parte* petition for the issuance of a writ of possession under Sections 6 and 7 of Act 3135 is not, strictly speaking, a "judicial process." As discussed in *Idolor v. Court of Appeals*,[35] it is not an ordinary suit by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."[36] Being *ex parte*, it is a non-litigious proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard.

That the petitioner would or could be denied due process if the writ of possession would be issued before she is given the opportunity to be heard on her *prima facie* defense of nullity of the loan and mortgage is clearly out of the question. The law does not require that the writ of possession be granted only after the issues raised in a civil case on nullity of the loan and mortgage are resolved and decided with finality. To do so would completely defeat the purpose of an *ex parte* petition under Sections 6 and 7 of Act 3135 that, by its nature, should be summary; we stress that it would render nugatory the right given to a purchaser to acquire possession of the property after the expiration of the redemption period.

At any rate, the petitioner is not left without a remedy as the same law provides the mortgagor the right to petition for the

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[34] *Rollo*, p. 14.

[35] *Idolor v. Court of Appeals*, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 404-405.

[36] *Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, G.R. No. 176518, March 2, 2010, 614 SCRA 41, 56.

nullification of the sale and the cancellation of the writ of possession under Section 8 of Act. No. 3135, which remedy the petitioner was aware of. In her petition for review, she averred that "[t]he said Act 3135 x x x does not however prohibit or negate the filing of a separate civil case for the nullification of loan indebtedness x x x or x x x mortgage contract[.]"[37] Thus, she cannot claim that she has been denied of due process merely on the basis of the *ex parte* nature of the respondent's petition.

WHEREFORE, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the decision dated September 23, 2005 and the resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82631 are **AFIRMED *in toto***.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174978. July 31, 2013]

SALLY YOSHIZAKI, *petitioner, vs.* **JOY TRAINING CENTER OF AURORA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; DISPUTES CONCERNING THE APPLICATION OF THE CIVIL CODE ARE PROPERLY COGNIZABLE BY COURTS OF GENERAL JURISDICTION.— Jurisdiction over the subject

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[37] *Rollo,* p. 13.

matter is the power to hear and determine cases of the general class to which the proceedings before a court belong. It is conferred by law. The allegations in the complaint and the status or relationship of the parties determine which court has jurisdiction over the nature of an action. The same test applies in ascertaining whether a case involves an intra-corporate controversy. The CA correctly ruled that the RTC has jurisdiction over the present case. Joy Training seeks to nullify the sale of the real properties on the ground that there was no contract of agency between Joy Training and the spouses Johnson. This was beyond the ambit of the SEC's original and exclusive jurisdiction prior to the enactment of Republic Act No. 8799 which only took effect on August 3, 2000. The determination of the existence of a contract of agency and the validity of a contract of sale requires the application of the relevant provisions of the Civil Code. It is a well-settled rule that "[d]isputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction." Indeed, no special skill requiring the SEC's technical expertise is necessary for the disposition of this issue and of this case.

2. ID.; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT MAY REVIEW QUESTIONS OF FACT WHEN THE FINDINGS OF THE LOWER COURTS ARE CONFLICTING.— As a general rule, a petition for review on *certiorari* precludes this Court from entertaining factual issues; we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the lower courts. However, the present case falls under the recognized exception that a review of the facts is warranted when the findings of the lower courts are conflicting.

3. CIVIL LAW; CONTRACT OF AGENCY; DEFINED.— Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

4. ID.; ID.; CONTRACT OF AGENCY MUST BE WRITTEN FOR THE VALIDITY OF THE SALE OF A PIECE OF LAND

OR ANY INTEREST THEREIN; SPECIAL POWER OF ATTORNEY, REQUIRED.— As a general rule, a contract of agency may be oral. However, it must be written when the law requires a specific form. Specifically, Article 1874 of the Civil Code provides that the contract of agency must be written for the validity of the sale of a piece of land or any interest therein. Otherwise, the sale shall be void. A related provision, Article 1878 of the Civil Code, states that special powers of attorney are necessary to convey real rights over immovable properties. The special power of attorney mandated by law **must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the authorized act.** We unequivocably declared in *Cosmic Lumber Corporation v. Court of Appeals* that a special power of attorney **must express the powers of the agent in clear and unmistakable language** for the principal to confer the right upon an agent to sell real estate**.** When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document. The purpose of the law in requiring a special power of attorney in the disposition of immovable property is to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another and to caution the buyer to assure himself of the specific authorization of the putative agent.

5. **REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; NO EVIDENCE IS ADMISSIBLE OTHER THAN THE ORIGINAL DOCUMENT ITSELF; APPLICATION IN CASE AT BAR.—** The lower courts should not have relied on the resolution and the certification in resolving the case. The spouses Yoshizaki did not produce the original documents during trial. They also failed to show that the production of pieces of secondary evidence falls under the exceptions enumerated in Section 3, Rule 130 of the Rules of Court. Thus, the general rule – that no evidence shall be admissible other than the original document itself when the subject of inquiry is the contents of a document – applies.

6. **CIVIL LAW; SALES; THE ABSENCE OF THE CONTRACT OF AGENCY RENDERS THE CONTRACT OF SALE UNENFORCEABLE; CLAIM AS BUYER IN GOOD FAITH, NOT APPLICABLE; CASE AT BAR.—** Necessarily, the absence of a contract of agency renders the contract of sale unenforceable; Joy Training effectively did not enter into a

valid contract of sale with the spouses Yoshizaki. Sally cannot also claim that she was a buyer in good faith. She misapprehended the rule that persons dealing with a registered land have the legal right to rely on the face of the title and to dispense with the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry. This rule applies when the ownership of a parcel of land is disputed **and not when the fact of agency is contested.** At this point, we reiterate the established principle that persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent. Thus, Sally bought the real properties at her own risk; she bears the risk of injury occasioned by her transaction with the spouses Johnson.

APPEARANCES OF COUNSEL

Ariel Joseph B. Arias for petitioner.
Chu Fajardo Sasing & Ferrer for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Sally Yoshizaki to challenge the February 14, 2006 Decision[2] and the October 3, 2006 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 83773.

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[1] Dated November 20, 2006 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 36-68.

[2] *Id.* at 9-30; penned by Associate Justice Mariano C. del Castillo (now a Member of this Court), and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. de Leon.

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

The Factual Antecedents

Respondent Joy Training Center of Aurora, Inc. *(Joy Training)* is a non-stock, non-profit religious educational institution. It was the registered owner of a parcel of land and the building thereon *(real properties)* located in San Luis Extension, Purok No. 1, Barangay Buhangin, Baler, Aurora. The parcel of land was designated as Lot No. 125-L and was covered by Transfer Certificate of Title (*TCT*) No. T-25334.[4]

On November 10, 1998, the spouses Richard and Linda Johnson sold the real properties, a Wrangler jeep, and other personal properties in favor of the spouses Sally and Yoshio Yoshizaki. On the same date, a Deed of Absolute Sale[5] and a Deed of Sale of Motor Vehicle[6] were executed in favor of the spouses Yoshizaki. The spouses Johnson were members of Joy Training's board of trustees at the time of sale. On December 7, 1998, TCT No. T-25334 was cancelled and TCT No. T-26052[7] was issued in the name of the spouses Yoshizaki.

On December 8, 1998, Joy Training, represented by its Acting Chairperson Reuben V. Rubio, filed an action for the Cancellation of Sales and Damages with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the spouses Yoshizaki and the spouses Johnson before the Regional Trial Court of Baler, Aurora *(RTC)*.[8] On January 4, 1999, Joy Training filed a Motion to Amend Complaint with the attached Amended Complaint. The amended complaint impleaded Cecilia A. Abordo, officer-in-charge of the Register of Deeds of Baler, Aurora, as additional defendant. The RTC granted the motion on the same date.[9]

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[4] *Id.* at 99.

[5] *Id.* at 216.

[6] *Id.* at 101-102.

[7] *Id.* at 104.

[8] *Id.* at 10.

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

In the complaint, Joy Training alleged that the spouses Johnson sold its properties without the requisite authority from the board of directors.[10] It assailed the validity of a **board resolution dated September 1, 1998**[11] which purportedly granted the spouses Johnson the authority to sell its real properties. It averred that only a minority of the board, composed of the spouses Johnson and Alexander Abadayan, authorized the sale through the resolution. It highlighted that the Articles of Incorporation provides that the board of trustees consists of seven members, namely: the spouses Johnson, Reuben, Carmencita Isip, Dominador Isip, Miraflor Bolante, and Abelardo Aquino.[12]

Cecilia and the spouses Johnson were declared in default for their failure to file an Answer within the reglementary period.[13] On the other hand, the spouses Yoshizaki filed their Answer with Compulsory Counterclaims on June 23, 1999. They claimed that Joy Training authorized the spouses Johnson to sell the parcel of land. They asserted that a majority of the board of trustees approved the resolution. They maintained that the actual members of the board of trustees consist of five members, namely: the spouses Johnson, Reuben, Alexander, and Abelardo. Moreover, Connie Dayot, the corporate secretary, issued a **certification dated February 20, 1998**[14] authorizing the spouses Johnson to act on Joy Training's behalf. Furthermore, they highlighted that the Wrangler jeep and other personal properties were registered in the name of the spouses Johnson.[15] Lastly, they assailed the RTC's jurisdiction over the case. They posited that the case is an intra-corporate dispute cognizable by the Securities and Exchange Commission *(SEC)*.[16]

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[10] *Id.* at 12.

[11] *Id.* at 100.

[12] *Id.* at 21.

[13] *Id.* at 18.

[14] *Id.* at 98.

[15] *Id.* at 15-16.

[16] *Supra* note 13.

After the presentation of their testimonial evidence, the spouses Yoshizaki formally offered in evidence photocopies of the resolution and certification, among others.[17] Joy Training objected to the formal offer of the photocopied resolution and certification on the ground that they were not the best evidence of their contents.[18] In an Order[19] dated May 18, 2004, the RTC denied the admission of the offered copies.

The RTC Ruling

The RTC ruled in favor of the spouses Yoshizaki. It found that Joy Training owned the real properties. However, it held that the sale was valid because Joy Training authorized the spouses Johnson to sell the real properties. It recognized that there were only five actual members of the board of trustees; consequently, a majority of the board of trustees validly authorized the sale. It also ruled that the sale of personal properties was valid because they were registered in the spouses Johnson's name.[20]

Joy Training appealed the RTC decision to the CA.

The CA Ruling

The CA upheld the RTC's jurisdiction over the case but reversed its ruling with respect to the sale of real properties. It maintained that the present action is cognizable by the RTC because it involves recovery of ownership from third parties.

It also ruled that the resolution is void because it was not approved by a majority of the board of trustees. It stated that under Section 25 of the Corporation Code, the basis for determining the composition of the board of trustees is the list fixed in the articles of incorporation. Furthermore, Section 23 of the

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[17] *Id.* at 204-208.

[18] *Id.* at 213.

[19] *Id.* at 215.

[20] *Id.* at 119-156.

Corporation Code provides that the board of trustees shall hold office for one year and until their successors are elected and qualified. Seven trustees constitute the board since Joy Training did not hold an election after its incorporation.

The CA did not also give any probative value to the certification. It stated that the certification failed to indicate the date and the names of the trustees present in the meeting. Moreover, the spouses Yoshizaki did not present the minutes that would prove that the certification had been issued pursuant to a board resolution.[21] The CA also denied[22] the spouses Yoshizaki's motion for reconsideration, prompting Sally[23] to file the present petition.

The Petition

Sally avers that the RTC has no jurisdiction over the case. She points out that the complaint was principally for the nullification of a corporate act. The transfer of the SEC's original and exclusive jurisdiction to the RTC[24] does not have any retroactive application because jurisdiction is a substantive matter.

She argues that the spouses Johnson were authorized to sell the parcel of land and that she was a buyer in good faith because she merely relied on **TCT No. T-25334**. The title states that the spouses Johnson are Joy Training's representatives.

She also argues that it is a basic principle that a party dealing with a registered land need not go beyond the certificate of title to determine the condition of the property. In fact, the resolution and the certification are mere reiterations of the spouses Johnson's authority in the title to sell the real properties. She further claims that the resolution and the certification are not even necessary to clothe the spouses Johnson with the authority to sell the

[21] *Supra* note 2.

[22] *Supra* note 3.

[23] Yoshio was not included as a petitioner because he died prior to the filing of the petition for review on *certiorari* before the Supreme Court.

[24] Section 5.2 of Republic Act No. 8799.

disputed properties. Furthermore, the contract of agency was subsisting at the time of sale because Section 108 of Presidential Decree No. (*PD*) 1529 requires that the revocation of authority must be approved by a court of competent jurisdiction and no revocation was reflected in the certificate of title.[25]

The Case for the Respondent

In its *Comment*[26] and *Memorandum*,[27] Joy Training takes the opposite view that the RTC has jurisdiction over the case. It posits that the action is essentially for recovery of property and is therefore a case cognizable by the RTC. Furthermore, Sally is estopped from questioning the RTC's jurisdiction because she seeks to reinstate the RTC ruling in the present case.

Joy Training maintains that it did not authorize the spouses Johnson to sell its real properties. TCT No. T-25334 does not specifically grant the authority to sell the parcel of land to the spouses Johnson. It further asserts that the resolution and the certification should not be given any probative value because they were not admitted in evidence by the RTC. It argues that the resolution is void for failure to comply with the voting requirements under Section 40 of the Corporation Code. It also posits that the certification is void because it lacks material particulars.

The Issues

The case comes to us with the following issues:

1) Whether or not the RTC has jurisdiction over the present case; and

2) Whether or not there was a contract of agency to sell the real properties between Joy Training and the spouses Johnson.

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[25] *Supra* note 1.

[26] *Rollo,* pp. 177-185.

[27] *Id.* at 296-316.

3) As a consequence of the second issue, whether or not there was a valid contract of sale of the real properties between Joy Training and the spouses Yoshizaki.

Our Ruling

We find the petition unmeritorious.

The RTC has jurisdiction over disputes concerning the application of the Civil Code

Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings before a court belong.[28] It is conferred by law. The allegations in the complaint and the status or relationship of the parties determine which court has jurisdiction over the nature of an action.[29] The same test applies in ascertaining whether a case involves an intra-corporate controversy.[30]

The CA correctly ruled that the RTC has jurisdiction over the present case. Joy Training seeks to nullify the sale of the real properties on the ground that there was no contract of agency between Joy Training and the spouses Johnson. This was beyond the ambit of the SEC's original and exclusive jurisdiction prior to the enactment of Republic Act No. 8799 which only took effect on August 3, 2000. The determination of the existence of a contract of agency and the validity of a contract of sale requires the application of the relevant provisions of the Civil Code. It is a well-settled rule that "[d]isputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction."[31] Indeed, no special

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[28] *Reyes v. Diaz,* 73 Phil. 484, 486 (1941).

[29] *Ty v. Court of Appeals,* 408 Phil. 792, 798 (2001); and *Viray v. Court of Appeals,* G.R. No. 92481, November 9, 1990, 191 SCRA 308, 321, citing *Republic v. Sebastian,* No. L-35621, July 30, 1976, 72 SCRA 222.

[30] *Vitaliano N. Aguirre II, et al. v. FQB+7, Inc., et al.,* G.R. No. 170770, January 9, 2013.

[31] *Nautica Canning Corporation v. Yumul,* 510 Phil. 197, 209 (2005).

skill requiring the SEC's technical expertise is necessary for the disposition of this issue and of this case.

The Supreme Court may review questions of fact in a petition for review on certiorari when the findings of fact by the lower courts are conflicting

We are aware that the issues at hand require us to review the pieces of evidence presented by the parties before the lower courts. As a general rule, a petition for review on *certiorari* precludes this Court from entertaining factual issues; we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the lower courts. However, the present case falls under the recognized exception that a review of the facts is warranted when the findings of the lower courts are conflicting.[32] Accordingly, we will examine the relevant pieces of evidence presented to the lower court.

There is no contract of agency between Joy Training and the spouses Johnson to sell the parcel of land with its improvements

Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

As a general rule, a contract of agency may be oral. However, it must be written when the law requires a specific form.[33]

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[32] *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224.

[33] CIVIL CODE, Article 1869.

Specifically, Article 1874 of the Civil Code provides that the contract of agency must be written for the validity of the sale of a piece of land or any interest therein. Otherwise, the sale shall be void. A related provision, Article 1878 of the Civil Code, states that special powers of attorney are necessary to convey real rights over immovable properties.

The special power of attorney mandated by law **must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the authorized act.** We unequivocably declared in *Cosmic Lumber Corporation v. Court of Appeals*[34] that a special power of attorney **must express the powers of the agent in clear and unmistakable language** for the principal to confer the right upon an agent to sell real estate. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document. The purpose of the law in requiring a special power of attorney in the disposition of immovable property is to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another and to caution the buyer to assure himself of the specific authorization of the putative agent.[35]

In the present case, Sally presents three pieces of evidence which allegedly prove that Joy Training specially authorized the spouses Johnson to sell the real properties: **(1) TCT No. T-25334, (2) the resolution, (3) and the certification.** We quote the pertinent portions of these documents for a thorough examination of Sally's claim. TCT No. T-25334, entered in the Registry of Deeds on March 5, 1998, states:

> A parcel of land x x x is registered in accordance with the provisions of the Property Registration Decree in the name of JOY TRAINING CENTER OF AURORA, INC., **Rep. by Sps. RICHARD A. JOHNSON**

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[34] G.R. No. 114311, November 29, 1996, 265 SCRA 168, 176.

[35] *Pahud v. Court of Appeals,* G.R. No. 160346, August 25, 2009, 597 SCRA 13, 22.

and LINDA S. JOHNSON, both of legal age, U.S. Citizen, and residents of P.O. Box 3246, Shawnee, Ks 66203, U.S.A.[36] (emphasis ours)

On the other hand, the fifth paragraph of the certification provides:

Further, Richard A. and Linda J[.] Johnson were given **FULL AUTHORITY for ALL SIGNATORY purposes for the corporation on ANY and all matters and decisions regarding the property and ministry here.** They will follow guidelines set forth according to their appointment and ministerial and missionary training and in that, they will formulate and come up with by-laws which will address and serve as governing papers over the center and corporation. They are to issue monthly and quarterly statements to all members of the corporation.[37] (emphasis ours)

The resolution states:

We, the undersigned Board of Trustees (in majority) **have authorized the sale of land and building owned by spouses Richard A. and Linda J[.] Johnson** (as described in the title SN No. 5102156 filed with the Province of Aurora last 5th day of March, 1998. These proceeds are going to pay outstanding loans against the project and the dissolution of the corporation shall follow the sale. This is a religious, non-profit corporation and no profits or stocks are issued.[38] (emphasis ours)

The above documents do not convince us of the existence of the contract of agency to sell the real properties. TCT No. T-25334 merely states that Joy Training is represented by the spouses Johnson. The title does not explicitly confer to the spouses Johnson the authority to sell the parcel of land and the building thereon. Moreover, the phrase "Rep. by Sps. RICHARD A. JOHNSON and LINDA S. JOHNSON"[39] only means that the spouses Johnson represented Joy Training in land registration.

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[36] *Supra* note 4.

[37] *Supra* note 14.

[38] *Supra* note 11.

[39] *Supra* note 14.

The lower courts should not have relied on the resolution and the certification in resolving the case. The spouses Yoshizaki did not produce the original documents during trial. They also failed to show that the production of pieces of secondary evidence falls under the exceptions enumerated in Section 3, Rule 130 of the Rules of Court.[40] Thus, the general rule – that no evidence shall be admissible other than the original document itself when the subject of inquiry is the contents of a document – applies.[41]

Nonetheless, if only to erase doubts on the issues surrounding this case, we declare that even if we consider the photocopied resolution and certification, this Court will still arrive at the same conclusion.

The resolution which purportedly grants the spouses Johnson a special power of attorney is negated by the phrase "land and building **owned by spouses Richard A. and Linda J[.] Johnson**."[42] Even if we disregard such phrase, the resolution must be given scant consideration. We adhere to the CA's position that the basis for determining the board of trustees' composition is the trustees as fixed in the articles of incorporation and not the actual members of the board. The second paragraph of

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[40] RULES OF COURT, Rule 130, Section 3 provides:

Original document must be produced; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. [italics supplied]

[41] *Ibid*.

[42] *Supra* note 11.

Section 25[43] of the Corporation Code expressly provides that a majority of the number of trustees **as fixed in the articles of incorporation** shall constitute a quorum for the transaction of corporate business.

Moreover, the certification is a mere general power of attorney which comprises all of Joy Training's business.[44] Article 1877 of the Civil Code clearly states that "[a]n agency couched in general terms comprises only acts of administration, **even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management.**"[45]

The contract of sale is unenforceable

Necessarily, the absence of a contract of agency renders the contract of sale unenforceable;[46] Joy Training effectively did not enter into a valid contract of sale with the spouses Yoshizaki. Sally cannot also claim that she was a buyer in good faith. She misapprehended the rule that persons dealing with a registered land have the legal right to rely on the face of the title and to dispense with the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such

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[43] Section 25 of the Corporation Code provides:

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

[44] CIVIL CODE, Article 1876.

[45] CIVIL CODE, Article 1877.

[46] CIVIL CODE, Article 1403.

inquiry.[47] This rule applies when the ownership of a parcel of land is disputed **and not when the fact of agency is contested.**

At this point, we reiterate the established principle that persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority.[48] A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency.[49] The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent.[50] Thus, Sally bought the real properties at her own risk; she bears the risk of injury occasioned by her transaction with the spouses Johnson.

WHEREFORE, premises considered, the assailed Decision dated February 14, 2006 and Resolution dated October 3, 2006 of the Court of Appeals are hereby **AFFIRMED** and the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[*] and *Perlas-Bernabe, JJ.,* concur.

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[47] *Naawan Community Rural Bank, Inc. v. Court of Appeals*, 443 Phil. 56, 65-66 (2003).

[48] *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard*, G.R. No. 166044, June 18, 2012, 673 SCRA 427, 451.

[49] CIVIL CODE, Article 1902.

[50] CIVIL CODE, Article 1403.

[*] In lieu of Associate Justice Mariano C. del Castillo per Raffle dated July 31, 2013.

SECOND DIVISION

[G.R. No. 179326. July 31, 2013]

LUCIANO P. CAÑEDO,* *petitioner, vs.* **KAMPILAN SECURITY AND DETECTIVE AGENCY, INC. and RAMONCITO L. ARQUIZA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE BURDEN OF PROVING THE ALLEGATIONS RESTS UPON THE PARTY ALLEGING AND THE PROOF MUST BE CLEAR, POSITIVE AND CONVINCING; NOT ESTABLISHED IN CASE AT BAR.— In illegal dismissal cases, "[w]hile the employer bears the burden x x x to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service." The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing. Thus, in this case, it is incumbent upon petitioner to prove his claim of dismissal. x x x Here, aside from this single document, petitioner proffered no other evidence showing that he was dismissed from employment. While it is true that he was not allowed to report for work after the period of his suspension expired, the same was due to NPC's request for his replacement as NPC was no longer interested in his services. And as correctly argued by respondents, petitioner from that point onward is not considered dismissed but merely on a floating status. "Such a 'floating status' is lawful and not unusual for security guards employed in security agencies as their assignments primarily depend on the contracts entered into by the agency with third parties." x x x A floating status can ripen into constructive dismissal only when it goes beyond the six-month maximum period allowed by law. In this case, petitioner filed the Complaint for illegal dismissal even before the lapse of the six-month period. Hence, his claim of illegal dismissal lacks basis. Moreover and as aptly observed by the NLRC, it was in fact petitioner who intended to terminate his relationship with

* Also referred to as Luciano P. Canedo in some parts of the records.

respondents through his planned retirement. This is further bolstered by his prayer in his Complaint where he sought for separation pay and not for reinstatement.

2. ID.; ID.; CLAIMS FOR ADDITIONAL BENEFITS; NON-APPELLANT CANNOT, ON APPEAL, SEEK AN AFFIRMATIVE RELIEF.— With respect to the additional benefits prayed for by the petitioner, suffice it to state that this Court cannot grant him such reliefs. "[I]t is settled that a non-appellant cannot, on appeal, seek an affirmative relief." It was held that "a party cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof for in such a case he must appeal."

APPEARANCES OF COUNSEL

Girlie Young for petitioner.
Almirante Almirante and Echavez Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated January 25, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 01530 which denied the Petition for *Certiorari*[3] filed by Luciano P. Cañedo (petitioner) and affirmed the Resolutions dated October 20, 2005[4] and December 15, 2005[5] of the National Labor Relations Commission (NLRC) which

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[1] *Rollo*, pp. 51-102.

[2] CA *rollo*, pp. 494-504; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[3] *Id.* at 4-60

[4] *Id.* at 75-81; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

[5] *Id.* at 82-83.

declared that petitioner was not illegally dismissed by respondents Kampilan Security and Detective Agency, Inc. (respondent agency) and its owner and General Manager, Engr. Ramoncito L. Arquiza (respondent Arquiza). Likewise assailed is the CA's Resolution[6] dated July 25, 2007 which denied petitioner's Motion for Reconsideration.[7]

Factual Antecedents

Respondent agency hired petitioner as security guard on November 20, 1996 and assigned him at the Naga Power Barge 102 of the National Power Corporation (NPC) at Sigpit Load Ends, Lutopan, Toledo City.

For not wearing proper uniform while on duty as per report of Allan Alfafara (Alfafara) of the NPC, petitioner was suspended for a month effective May 8, 2003.[8]

In a letter[9] dated June 2, 2003, NPC informed respondent agency that it was no longer interested in petitioner's services and thus requested for his replacement.

On June 17, 2003, petitioner requested respondent Arquiza to issue a certification in connection with his intended retirement effective that month.[10] Thus, respondent Arquiza issued the Certification[11] dated June 25, 2003 (June 25, 2003 Certification):

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that **Mr. Luciano Paragoso Cañedo** whose address [is] at Lower Bunga, Toledo City was employed by this agency

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[6] *Id.* at 563-564.

[7] *Id.* at 506-525.

[8] See Suspension Order dated May 8, 2003, *id.* at 126.

[9] *Id.* at 125.

[10] *Id.* at 127.

[11] *Id.* at 85. Italics supplied.

from November 20, 1996 up to May 7, 2003 as Security Guard assign[ed] at NPC, Sigpit Substation. *He was terminated from his employment by this agency on May 7, 2003 as per client's request.*

Done this 25th day of June 2003 at Cebu City, Philippines.

(Signed)
RAMONCITO L. ARQUIZA
General Manager
KSDAI

Five days later, petitioner filed before the Labor Arbiter a Complaint for illegal dismissal, illegal suspension and non-payment of monetary benefits against respondents.

Proceedings before the Labor Arbiter

Petitioner alleged that his suspension was without valid ground and effected without due process, hence, illegal. He claimed that Alfafara's report about his non-wearing of uniform was fabricated and ill-motivated because he declined Alfafara's invitation to convert to their religion. In fact, the roving inspector who checked the attendance of guards on duty does not have any report showing his commission of any infraction. Petitioner averred that he was suspended without being given the chance to explain his side.

Petitioner narrated that when he reported back to work after his one-month suspension, he was surprised to find out that he was already terminated from the service effective May 7, 2003 as shown by the June 25, 2003 Certification issued to him by respondent Arquiza. He then claimed to have been underpaid for services rendered and that he is entitled to holiday pay, rest day pay, night shift differential, service incentive leave pay, 13th month pay, retirement benefits, damages and attorney's fees.

Respondents, on the other hand, countered that petitioner was not dismissed from service. In fact, despite petitioner's propensity for not wearing uniform while on duty as shown by the entries[12] in the NPC Sigpit Station logbook and after a series

[12] *Id.* at 386-395.

of infractions, they still opted to retain his services. However, in view of NPC's request for his replacement, respondents had to pull him out from NPC. But instead of waiting for a new posting, petitioner filed a complaint against them. Respondents also denied petitioner's entitlement to his monetary claims and averred that he has an outstanding cash advance of ₱10,000.00 as evidenced by a cash voucher[13] duly executed by him.

Based on the June 25, 2003 Certification, the Labor Arbiter held that petitioner was illegally dismissed from the service. He also found petitioner's prior suspension illegal and granted him all his monetary claims except for underpayment of wages. The dispositive portion of the Labor Arbiter's Decision[14] dated November 11, 2003 reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Kampilan Security and Detective Agency, Inc. to pay complainant Luciano Cañedo as follows:
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> | | | | |
> |---|---|---|---|
> | 1. | Separation pay | - | ₱43,498.00 |
> | 2. | Backwages | - | ₱32,026.00 |
> | 3. | Holiday pay | - | ₱ 7,170.00 |
> | 4. | Service incentive leave pay | - | ₱ 3,585.00 |
> | | Total award | - | ₱86,279.00 |
>
> The other claims and the case against respondent Ramoncito Arquiza are dismissed for lack of merit.
>
> SO ORDERED.[15]

Proceedings before the National Labor Relations Commission

Respondents filed a Memorandum of Appeal[16] before the NLRC arguing that the Labor Arbiter erred in concluding that

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[13] *Id.* at 208.

[14] *Id.* at 61-66; penned by Labor Arbiter Ernesto F. Carreon.

[15] *Id.* at 65.

[16] *Id.* at 210-222.

petitioner was illegally dismissed based solely on the June 25, 2003 Certification. They contended that the said Certification is not sufficient to establish petitioner's dismissal as such fact must be proven by direct evidence of actual dismissal. They also averred that the word "terminated" as used in the said Certification actually meant "pulled-out" and this can be construed from the following phrase "as per client's request." This position is strengthened by petitioner's June 17, 2003 letter requesting for a Certification in connection with his intended retirement. At any rate, respondents explained that the subject Certification was only issued upon petitioner's request in order to facilitate his application for entitlement to retirement benefits with the Social Security System (SSS). And the word "terminated", assuming its literal meaning, was only used in order to serve the purpose of the same, that is, to show SSS that petitioner is no longer in service.

Petitioner in his Appellee's Memorandum[17] regarded respondents' averments as clear afterthoughts and prayed for the modification of the Labor Arbiter's awards to include salary differential, night shift differential, rest day pay, 13th month pay and retirement benefits.

In a Decision[18] dated June 28, 2005, the NLRC initially affirmed with modification the Labor Arbiter's Decision, *viz*:

> **WHEREFORE**, premises considered, the Decision of the Labor Arbiter is hereby **AFFIRMED** with a modification in that complainant[']s outstanding cash advance in the amount of ₱10,000.00 shall be deducted from the monetary award herein.
>
> It is understood that complainant's backwages and separation pay shall be computed until finality of the decision.
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> **SO ORDERED**.[19]

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[17] *Id.* at 223-242.

[18] *Id.* at 67-74; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

[19] *Id.* at 74.

However, in resolving respondents' Motion for Reconsideration,[20] the NLRC reversed itself and set aside its earlier Decision. In a Resolution[21] dated October 20, 2005, it held that the June 25, 2003 Certification should be read in conjunction with the June 2, 2003 letter of NPC requesting for petitioner's relief from his post. The NLRC noted that it is common practice for clients of security agencies to demand replacement of any security guard assigned to them but cannot demand their dismissal from the employ of the security agency. And from the time petitioner was relieved from his NPC posting, he was considered on a floating status which can last for a maximum period of six months. Moreover, the NLRC opined that petitioner's intention to retire as shown by his June 17, 2003 letter negated his claim of termination. Nevertheless, it maintained that petitioner was suspended without being notified of his infraction. Thus, he should be paid his salary during the period of his illegal suspension. The dispositive portion of the said Resolution reads:

WHEREFORE, premises considered, our Decision promulgated on June 28, 2005 is hereby **SET ASIDE.** A NEW DECISION is entered declaring that there was no dismissal whatsoever [of] complainant.

Respondent Kampilan Security and Detective Agency is hereby ordered to pay complainant the following:

1.	Salary 05/08/03-06/07/03 ----------	₱6,035.62
2.	Holiday Pay ----------	7,170.00
3.	Service Incentive Leave Pay ----------	3,585.00
		₱16,790.62
	Less: Complainant's Cash Advance -	10,000.00
	NET AMOUNT	₱ 6,790.62

The grant of backwages and separation pay are hereby **DELETED.**

SO ORDERED.[22]

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[20] *Id.* at 243-262.

[21] *Id.* at 75-81.

[22] *Id.* at 80.

Petitioner filed an Urgent Motion for Reconsideration,[23] which was, however, denied in a Resolution[24] dated December 15, 2005. Hence, he sought recourse to the CA *via* a Petition for *Certiorari*.[25]

Ruling of the Court of Appeals

The CA, in a Decision[26] dated January 25, 2007, denied the Petition after it found no grave abuse of discretion on the part of the NLRC. It noted the following circumstances which, to it, negated petitioner's submission that he was dismissed from the service:

1. Contrary to what is stated in the certification dated June 25, 2003 that petitioner was dismissed on May 8, 2003, private respondent's memorandum of even date merely suspended petitioner for one month.
2. Contrary to what is stated in the certification, NPC did not request that petitioner be dismissed from employment but merely that he be replaced by another security guard.
3. After the expiration of his suspension on June 8, 2003, petitioner could not but labor under the belief that he has not been dismissed otherwise he would no longer declare that he wanted to retire at the end of the month.
4. No dismissal order was issued by private respondent after the end of the suspension period.
5. After receipt of the certification, petitioner could have[,] but did not[, sought] clarification from private respondent as to whether or not he was actually terminated. His omission renders doubtful the validity of his claim.
6. The terms of the certification state merely the length of assignment of petitioner in NPC which is from November

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[23] *Id.* at 273-282.

[24] *Id.* at 82-83.

[25] *Id.* at 4-60.

[26] *Id.* at 594-504.

> 20, 1996 up to May 7, 2003, not the period of his employment with private respondent."[27]

In view of the above, the CA concluded that petitioner was merely placed on temporary "off-detail" which is not equivalent to dismissal. However, like the NLRC, the CA found that petitioner was deprived of due process when he was suspended and thus affirmed his entitlement to his salary during the period of suspension. It also affirmed the awards for holiday pay and service incentive leave pay as well as the deduction therefrom of ₱10,000.00 representing petitioner's cash advance. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, this petition is **DENIED.** The *Resolutions* of the NLRC dated October 20, 2005 and December 15, 2005, respectively, are hereby **AFFIRMED.**
>
> **SO ORDERED**.[28]

As petitioner's Motion for Reconsideration[29] was likewise denied by the CA in its Resolution[30] dated July 25, 2007, he now comes to this Court through this Petition for Review on *Certiorari*.

Issues

Petitioner presents the following grounds for review:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN LAW WHEN IT AFFIRMED THE RESOLUTION OF THE HONORABLE PUBLIC RESPONDENT AND CONFORMED TO THE INTERPRETATION OF THE WORD TERMINATED AS MERE PULL-OUT AND TOTALLY DISREGARDED THE [PIECES OF EVIDENCE] SUBMITTED BY

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[27] *Id.* at 500.

[28] *Id.* at 503-504.

[29] *Id.* at 506-525.

[30] *Id.* at 563-564.

PETITIONER, AS WELL AS THE LAWS AND SETTLED JURISPRUDENCE. SAID FINDINGS OF FACTS HAVE NO BASIS IN FACT AND IN LAW. THUS, THE QUESTIONED DECISION MUST BE NULLIFIED AND SET ASIDE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR OF SUBSTANCE IN AFFIRMING THE RESOLUTION OF THE HONORABLE PUBLIC RESPONDENT BY TOTALLY DISREGARDING THE [PIECES OF EVIDENCE] SUBMITTED BY PETITIONER SHOWING THAT PETITIONER WAS INDEED TERMINATED FROM SERVICE, WHICH [PIECES OF EVIDENCE] ARE NOT REFUTED BY RESPONDENTS AND IN MAKING CONCLUSIONS WHICH ARE NOT SUPPORTED BY ANY EVIDENCE AND CONTRARY TO LAW AND SETTLED JURISPRUDENCE IN DELETING THE AWARD OF BACKWAGES AND SEPARATION PAY. THE SAID FINDINGS OF FACTS NOT BEING SUPPORTED BY AN IOTA OF EVIDENCE IS THEREFORE, DEVOID OF ANY BASIS IN FACT AND LAW.[31]

Petitioner submits that the CA's findings are erroneous and inconsistent with the evidence on record. He insists that the June 25, 2003 Certification issued by respondent Arquiza states in unequivocal language that he was terminated from service. Thus, there is no need to interpret the word "terminated" in the Certification as "pulled out." Besides, any ambiguity in the construction of an instrument should not favor the one who caused it and any obscurity should be resolved in favor of labor. Moreover, he was neither given any new assignment nor called to work after his suspension until the filing of this Petition. He asks for separation pay and backwages for being illegally dismissed without valid cause and due process. He also prays that he be given his salary differentials, rest day pay, night shift differential, 13th month pay and retirement benefits on top of the holiday pay and service incentive leave pay already awarded in the assailed CA Decision and questions the authenticity of the cash voucher showing his outstanding cash advance of ₱10,000.00.

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[31] *Rollo*, p. 72.

Our Ruling

We deny the Petition.

The primordial issue in this Petition is whether petitioner was dismissed from service. At the outset, the Court notes that this is a question of fact which cannot be raised in a Petition for Review on *Certiorari* under Rule 45.[32] However, when there is no uniformity in the factual findings of the tribunals below, as in this case, this Court is resolved to again examine the records as well as the evidence presented to determine which findings conform with the evidentiary facts.[33]

In illegal dismissal cases, "[w]hile the employer bears the burden x x x to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service."[34] The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing.[35] Thus, in this case, it is incumbent upon petitioner to prove his claim of dismissal.

Petitioner relies on the word "terminated" as used in the June 25, 2003 Certification issued him by respondent Arquiza and argues that the same is a clear indication that he was dismissed from service. We are, however, not persuaded. Petitioner cannot simply rely on this piece of document since the fact of dismissal must be evidenced by positive and overt acts of an employer indicating an intention to dismiss.[36] Here, aside from this single

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[32] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

[33] *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 204-205 (2004).

[34] *Montederamos v. Tri-Union International Corporation*, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

[35] *Ledesma, Jr. v. National Labor Relations Commission*, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370 citing *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210 (2006).

[36] *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 88.

document, petitioner proffered no other evidence showing that he was dismissed from employment. While it is true that he was not allowed to report for work after the period of his suspension expired, the same was due to NPC's request for his replacement as NPC was no longer interested in his services. And as correctly argued by respondents, petitioner from that point onward is not considered dismissed but merely on a floating status. "Such a 'floating status' is lawful and not unusual for security guards employed in security agencies as their assignments primarily depend on the contracts entered into by the agency with third parties."[37]

Countering such status, petitioner contends that even at present, he is still not given any new duties. A floating status can ripen into constructive dismissal only when it goes beyond the six-month maximum period allowed by law.[38] In this case, petitioner filed the Complaint for illegal dismissal even before the lapse of the six-month period. Hence, his claim of illegal dismissal lacks basis. Moreover and as aptly observed by the NLRC, it was in fact petitioner who intended to terminate his relationship with respondents through his planned retirement. This is further bolstered by his prayer in his Complaint where he sought for separation pay and not for reinstatement.

At any rate, upon a close reading of the June 25, 2003 Certification, this Court is of the opinion that petitioner was not dismissed from service. The import of the said Certification is that petitioner was assigned in NPC from November 20, 1996 up to May 7, 2003 and that on May 7, 2003, respondents terminated his assignment to NPC upon the latter's request. This is the correct interpretation based on the true intention of the parties as shown by their contemporaneous and subsequent acts and the other evidence on record as discussed above. Section 12 of Rule 130 of the Rules of Court states that in the

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[37] *Agro Commercial Security Services Agency, Inc. v. National Labor Relations Commission*, 256 Phil. 1182, 1189 (1989).

[38] *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 198.

construction and interpretation of a document, the intention of the parties must be pursued. Section 13 of the same Rule further instructs that the circumstances under which a document was made may be shown in order to ascertain the correct interpretation of a document.

To recap, petitioner was suspended effective May 8, 2003. On June 2, 2003, NPC requested for his replacement. He then intimated his desire to retire from service on June 17, 2003. These circumstances negate petitioner's claim that he was terminated on May 7, 2003. Clearly, there is no dismissal to speak of in this case.

With respect to the additional benefits prayed for by the petitioner, suffice it to state that this Court cannot grant him such reliefs. "[I]t is settled that a non-appellant cannot, on appeal, seek an affirmative relief."[39] It was held that "a party cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof for in such a case he must appeal."[40]

WHEREFORE, the Petition is **DENIED**. The Decision dated January 25, 2007 and the Resolution dated July 25, 2007 of the Court of Appeals in CA-G.R. SP No. 01530 are **AFFIRMED**.

SO ORDERED.

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

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[39] *Nessia v. Fermin*, G.R. No. 102918, March 30, 1993, 220 SCRA 615, 623.

[40] *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46.

FIRST DIVISION

[G.R. No. 181119. July 31, 2013]

ARNEL ALICANDO *Y* BRIONES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; QUESTION OF LAW, CONSTRUED.— "Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact."

2. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURTS ARE ACCORDED THE HIGHEST RESPECT AND ARE GENERALLY NOT DISTURBED ON APPEAL; RATIONALE.— "Axiomatic is the rule that factual findings of trial courts are accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted. This rule is founded on the fact that the trial judge has the unique opportunity to personally observe the witnesses and to note their demeanor, conduct and attitude on the witness stand, which are significant factors in evaluating their honesty, sincerity and credibility. Through its direct observations in the entire proceedings, the judge can be expected to reasonably determine whose testimony to accept and which witness to disbelieve. On the other hand, the reviewing magistrate has none of the

advantages peculiar to the trial judge's position, and could rely only on the cold records of the case and on the judge's discretion."

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT TO SUPPORT CONVICTION SO LONG AS SUCH TESTIMONY IS FOUND TO BE CLEAR AND STRAIGHT-FORWARD AND WORTHY OF CREDENCE BY THE TRIAL COURT.— It is an oft-repeated doctrine that the testimony of even "a single eyewitness is sufficient to support a conviction so long as such testimony is found to be clear and straight-forward and worthy of credence by the trial court." Further, discrepancies referring only to minor details and collateral matters do not affect the veracity of the witness' declarations.

APPEARANCES OF COUNSEL

Free Legal Assistance Group for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] from the Decision[2] rendered by the Court of Appeals (CA) on December 14, 2007 in CA-CEB-CR-HC No. 00571 affirming with modifications the conviction by the Regional Trial Court (RTC) of Iloilo City, Branch 23, of Arnel Alicando *y* Briones (petitioner) for the crime of rape with homicide committed against AAA,[3] a four-year old girl. The RTC imposed on the petitioner the penalty

[1] *Rollo*, pp. 10-40.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla, concurring; *id.* at 41-55.

[3] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

of death and awarded to the heirs of AAA ₱7,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. The CA concurred with the RTC's factual findings. However, in view of Republic Act (R.A.) No. 9346[4] and this Court's pronouncement in *People v. Bon*,[5] the CA modified the RTC's decision by imposing instead the penalty of *reclusion perpetua*. The CA likewise increased the award to the heirs of AAA of civil indemnity to ₱100,000.00 and moral damages to ₱75,000.00. In addition thereto, the CA awarded to AAA's heirs ₱25,000.00 as exemplary damages.

Antecedent Facts

The CA summed up the facts of the case, *viz*:

In the afternoon of June 12, 1994, [BBB], the father of four-year old [AAA], was having a drinking spree with a group composed of Ramil Rodriguez, Remus Montrel, Russel Autencio and the [petitioner] at his house at x x x. At about 4:45 o'clock in the afternoon, the [petitioner] left while [BBB] conducted his other companions to Lapuz. The [petitioner] was residing at his uncle's house about five (5) arm's length away from [BBB's] house.

When [BBB] arrived home at 8:00 o'clock that evening, he could not find [AAA]. He and his wife looked for her until 2:00 in the morning to no avail.

The following day, Leopoldo Santiago, a neighbor, was surprised when answering the call of nature outside his house, he chanced upon the dead body of [AAA]. It was covered by a fish basin and surrounded by ants. The child was crouched as if she was cold, with her hands on her head. Immediately, the girl's parents were informed. The small, lifeless body was brought to their house.

The matter was reported to the police at once. At this point, Luisa Rebada[,] who lived about 1-1/12 arm's length away from the house of [the petitioner,] related to the girl's distraught parents what she knew.

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[4] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[5] 536 Phil. 897 (2006).

Luisa Rebada recounted that at about 5:30 of the afternoon before, she saw [AAA] at the window of [the petitioner's] house. She called out to her and offered her some "*yemas*." The [petitioner] suddenly closed the window. Later on, Luisa heard [AAA] cry and then squeal. Her curiousity aroused, she crept two steps up the house of the [petitioner], peeped through an opening between the floor and the door, and saw [the petitioner] naked on top of [AAA], his right hand choking the girl's neck. Rebada became frightened and went back to her house to gather her children. She told her *compadre*, Ricardo Lagrana, who was in her house at that time, of what she saw. The latter got nervous and left. That evening[,] when she heard that [AAA's] parents were looking for the child, she called out from her window and asked what time [AAA] left their house. [BBB] answered he did not know. Thus, with Luisa Rebada's revelation, [the petitioner] was arrested.

During the investigation conducted by PO3 Danilo Tan, [the petitioner] readily admitted to raping and killing [AAA]. The police were able to recover from the house of the [petitioner] [AAA's] green slippers, a pair of gold earrings placed on top of a bamboo post, a bloodied *buri* mat, a pillow with blood stain in the middle, and a stained T-shirt owned by the [petitioner].

An autopsy was conducted and the report of Dr. Tito Doromal, the medico-legal officer, revealed that the child was sexually violated and that the following caused her death: (a) asphyxia by strangulation; (b) fractured, 2nd cervical vertebra; and (c) hemorrhage, 2nd degree to lacerated vaginal and rectal openings.

Consequently, the [petitioner] was charged in Criminal Case No. 43663 for Rape with Homicide before Branch 38 of the [RTC] of Iloilo City. The accusatory portion of the Information reads, to quote:

> "That on or about the 12th day of June, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said [petitioner], did then and there wilfully, unlawfully, and feloniously and by means of force, violence and intimidation[,] to wit: by then and there pinning down one [AAA], a minor, four years of age, choking her with his right hand, succeeded in having carnal knowledge with her and as a result thereof she suffered asphyxia by strangulation, fractured cervical vertebra and lacerations of the vaginal and rectal openings causing

profuse hemorrhages and other injuries which are necessarily fatal and which were the direct cause of her death thereafter.

CONTRARY TO LAW."

When arraigned, [the petitioner] entered a plea of guilty. In compliance with law and jurisprudence, the prosecution presented its evidence. It presented (1) Luisa Rebada; (2) Dr. Tito Doromal, the medico-legal officer; (3) SPO1 Manuel Artuz, the exhibit custodian of Iloilo City Police Station; (4) PO3 Danilo Tan; (5) SPO3 Rollie Luz, police investigator; and (6) [BBB], the victim's father. The defense, for its part, merely presented the autopsy report of Dr. Tito Doromal to show that the proximate cause of death was asphyxia by strangulation. Hearings on the merits were successively conducted from June to July in the year 1994.

On July 20, 1994, the trial court rendered a Decision convicting the [petitioner] of the crime of rape with homicide. He was accordingly meted out the penalty of death by electrocution.

On automatic appeal to the Supreme Court, the case was remanded to the trial court for further proceedings. The Supreme Court found that the proceedings before the lower court were tainted with procedural infirmities, namely: (a) an invalid arraignment; and, (b) admission of inadmissible evidence.

Thus, on August 13, 1996, [the petitioner] was arraigned anew whereby he entered a plea of not guilty. The defense filed a motion for inhibition against the Hon. David A. Alfeche, Jr. The motion was granted and the case was re-raffled to Branch 23 of the [RTC] in Iloilo [C]ity presided over by the Hon. Tito G. Gustilo.

Trial on the merits was again conducted. During the hearings, counsel for the defense refused to cross-examine the witnesses who had been presented in the first trial as he interposed a continuing objection to their presentation again as witnesses since their testimonies had already been ruled upon by the Supreme Court as incredible and inadmissible in case G.R. No. 117487.[6]

When the prosecution had finished presenting its evidence, the [petitioner] filed a demurrer to evidence, which was subsequently denied. Instead of presenting evidence, the [petitioner] manifested

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[6] *People v. Alicando,* 321 Phil. 656 (1995).

that he was submitting the case for judgment without presentation of evidence for the defense.

On May 2, 1997, the trial court rendered a decision against the [petitioner], x x x:

x x x x x x x x x.[7] (Citations omitted)

The petitioner, through the Free Legal Assistance Group, filed an appeal before the CA claiming that: (a) the pieces of evidence relied upon by the RTC in convicting him were all derived from his uncounselled confession, thus, they should be excluded as they were fruits of the poisonous tree; (b) he was denied due process as his previous counsel had committed gross mistakes and had ineffectively represented him; and (c) his guilt was not proven beyond reasonable doubt.[8]

The CA concurred with the RTC's factual findings, affirmed the conviction of the petitioner, but modified the penalty and the damages imposed upon him. The CA declared that:

After a careful scrutiny of the Decision rendered by the Supreme Court on automatic review of the judgment issued by the trial court remanding the instant case to the lower court for further proceedings, this Court found out that although the Highest Tribunal did say that "the conviction is based on an amalgam of inadmissible and incredible evidence and supported by scoliotic logic," the same did not refer to the testimony of witness Luisa Rebada. In fact, the Supreme Court came to mention witness Luisa Rebada only in reference to the trial court's conclusion that the physical evidence excluded by the Supreme Court "strongly corroborate the testimony of Luisa Rebada that the victim was raped." When the Highest Tribunal annulled and set aside the order of conviction of the [petitioner] on grounds that the Decision was shot full of errors, both substantive and procedural, it enumerated the errors committed by the [RTC], to wit:

x x x x x x x x x

We note that the testimony of Luisa Rebada was not among those errors named by the Supreme Court. Hence, the observation of the

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[7] *Rollo*, pp. 42-46.

[8] *Id.* at 42.

Office of the Solicitor General that "the refusal to cross-examine was a strategy deliberately adopted by the defense. x x x And other than the deliberate refusal on the part of the [petitioner's] trial attorney to cross-examine Rebada, [the petitioner] has not shown any other act or omission on the part of his former counsel to show 'gross mistake and ineffective assistance' resulting to the denial of due process," is correct.

Moreover, when the case was remanded for trial anew before the lower court, the physical evidence previously ruled upon by the Supreme Court as inadmissible, namely: the pillow and the bloodstained T-shirt of the [petitioner], were no longer offered as part of the evidence for the plaintiff-appellee. Hence, the claim of [the petitioner] that the judgment by the trial court was based on evidence derived from [the petitioner's] uncounselled confession is unfounded. Instead, the trial court relied on the testimony of eyewitness Luisa Rebada, which it found credible, trustworthy and sufficient to sustain a conviction.

x x x x x x x x x

We note that the worthiness of Rebada's testimony and her credibility as a witness had been passed upon not once, but twice by the trial court Judges David A. Alfeche, Jr. and Tito G. Gustilo. Both judges found the declarations of the eyewitness credible, trustworthy and free from serious and material contradictions.

Further, witness Rebada's testimony is confirmed by the physical evidence one of which is the result of the autopsy conducted on the victim's body. Rebada testified:

"Q: When you peeped through the hole of about two inches wide, did you see anything inside?
A: I saw [the petitioner] with his right hand choking [AAA] on the neck.

Q: What else?
A: [The petitioner] is nude and he is on top of [AAA].

x x x x x x x x x

Q: How about [AAA]?
A: [AAA] has a dress. It is only her short and panty that were taken off."

Given the recollection of Rebada as to the manner that the crime was perpetrated, the autopsy report aptly showed that the injuries sustained by [AAA] were the same injuries she would sustain as a result of the assault made on her by the [petitioner]. Thus:

x x x x x x x x x

x x x The vaginal and anal findings of Dr. Tito Doromal revealed that the lacerated wound from the fourchette up to the dome of the rectum was caused by forcible entry of an object. Rebada's testimony that she saw [the petitioner] naked on top of the victim and the autopsy report revealing the laceration of the vagina and the fact that the [petitioner] asked for forgiveness from the father of the victim when confronted of his act eloquently testify to the crime committed and its authorship in the case at bench.

There is nothing on record that can serve as basis to doubt the testimony of the key prosecution witness, which is confirmed by the ***corpus delicti***. The ***material*** events, which she declared in her affidavit, were the very same declarations she made when she took the witness stand. Rebada had no reason to falsely testify against the [petitioner] and there were no possible motives alleged for her to do so. She is not in any way related to the [victim's family], and there was no evidence adduced to show that she harboured any ill-feelings towards the [petitioner]. In a sense, her credibility is even enhanced by the absence of any improper motive. x x x.[9] (Citations omitted)

Issues and the Contending Parties' Arguments

The instant petition ascribes to the CA the following errors:

(1) The CA ignored the issue of ineffective assistance of counsel, thereby sacrificing substantial justice and departing from the usual course of judicial proceedings.

(2) The CA breached the Constitution and jurisprudential doctrines when it affirmed the petitioner's conviction on the basis of evidence derived from uncounselled confession.

(3) The CA erred in concurring with the RTC that the petitioner's guilt had been proven beyond reasonable doubt.[10]

[9] *Id.* at 48-53.

[10] *Id.* at 20.

In support thereof, the petitioner avers that his previous counsel refused to examine all the prosecution witnesses on the mistaken belief that their testimonies were already considered by this Court as incredible in the decision rendered in G.R. No. 117487. The said counsel did not even confront Luisa Rebada (Luisa) anent her prior inconsistent statements relative to which hand the petitioner used to strangle AAA, and when was the time she informed her *compadre,* Ricardo Lagrana (Lagrana), of the occurrence which she had witnessed.

Further, after the RTC denied the demurrer filed, the petitioner's previous counsel still refused to adduce evidence for the defense. The counsel's errors were gross. The petitioner was deprived of due process of law and should therefore not be bound by his counsel's mistakes.

The petitioner likewise reiterates his claim that the prosecution exhibits should be excluded for having been obtained in the process of a custodial interrogation where he was unassisted by counsel. Further, while the medical reports showed seminal stains in AAA's vaginal smears, there was no proof that the stains were identical or that they came from the petitioner.

The Office of the Solicitor General (OSG), on the other hand, seeks the dismissal of the instant petition. The OSG argues that the previous counsel of the petitioner deliberately adopted the strategy of refusing to cross-examine the prosecution witnesses. To do otherwise would have been futile considering that Luisa never wavered in her testimonies. Besides, apart from the refusal to cross-examine Luisa, the petitioner failed to prove any other act or omission of his counsel showing gross mistake or indicating ineffective assistance.

The OSG stresses that the conviction of the petitioner both by the RTC and the CA was based on the uncontradicted testimony of Luisa, which two trial judges had found to be clear, straightforward and credible. The physical evidence, to wit, the pillow and blood-stained shirt, which the petitioner alleged were fruits of the poisonous tree, were no longer offered as

evidence by the prosecution in the course of the second trial conducted after the case was remanded to the RTC.

Anent the sufficiency of the prosecution's evidence, the OSG emphasizes that the autopsy report prepared by Dr. Tito Doromal (Dr. Doromal) corroborated Luisa's statements. AAA's injuries, as indicated in the report, jibed with those she would have sustained as a result of the attack as narrated by Luisa. Further, according to Luisa's account, the petitioner was the person last seen with AAA and a conclusion can be drawn as to who caused the girl's death.[11]

This Court's Disquisition

The instant petition lacks merit.

"Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact."[12]

In the case at bar, the petitioner raises issues with an intent to subject to review by this Court the uniform factual findings of the RTC and the CA. Specifically, the alleged ineffective assistance of counsel and the existence of insufficient evidence to prove the guilt of the petitioner beyond reasonable doubt are

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[11] *Id.* at 100-101, citing *People v. Givera*, 402 Phil. 547, 568 (2001).

[12] *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011, 650 SCRA 35, 48-49, citing *Cebu Bionic Builders Supply, Inc. v. Development Bank of the Philippines*, G.R. No. 154366, November 17, 2010, 635 SCRA 13.

factual matters beyond the ambit of a petition filed under Rule 45 of the Rules of Court.

Further, the petitioner poses the question of whether or not the CA erred in convicting him on the basis of evidence obtained from an uncounselled confession. The issue is not genuinely a legal issue even when it speciously presents itself to be one at first glance. An examination of the assailed decision reveals that the conviction handed by the courts *a quo* was primarily based on the testimony of Luisa, as corroborated by Dr. Doromal's autopsy report, and not on physical evidence, to wit, the pillow and the blood-stained shirt, which the petitioner claimed were fruits of the poisonous tree.

Besides, the three issues, upon which the instant petition is based, are saliently the very same ones raised before and resolved by the CA.

"Axiomatic is the rule that factual findings of trial courts are accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted. This rule is founded on the fact that the trial judge has the unique opportunity to personally observe the witnesses and to note their demeanor, conduct and attitude on the witness stand, which are significant factors in evaluating their honesty, sincerity and credibility. Through its direct observations in the entire proceedings, the judge can be expected to reasonably determine whose testimony to accept and which witness to disbelieve. On the other hand, the reviewing magistrate has none of the advantages peculiar to the trial judge's position, and could rely only on the cold records of the case and on the judge's discretion."[13]

Luisa's testimonies were found by two branches of the trial court and the CA as credible, straightforward and consistent. It is also well to note that Luisa once again testified even after

[13] *People v. Paraiso*, 402 Phil. 372, 388-389 (2001).

the proceedings before the RTC, which were conducted relative to the petitioner's initial indictment, were declared null. She was firm and unshaken in her identification of the perpetrator of the crime and no ill motive can be attributed to her on why she testified against the petitioner. It is an oft-repeated doctrine that the testimony of even "a single eyewitness is sufficient to support a conviction so long as such testimony is found to be clear and straight-forward and worthy of credence by the trial court."[14] Further, discrepancies referring only to minor details and collateral matters do not affect the veracity of the witness' declarations.[15] The alleged inconsistencies in Luisa's statements regarding which hand the petitioner used to strangle AAA and when did she inform her *compadre*, Lagrana, about what she had witnessed, were too inconsequential for they do not relate to the elements of the crime charged. Those inconsistencies cannot destroy the thrust of Luisa's testimony that: (a) the petitioner was the last person seen with AAA before the girl's lifeless body was found; (b) from an opening in between the door and the floor, she saw the petitioner naked on top of AAA, whose panty and shorts were taken off; and (c) the petitioner choked AAA's neck with one hand. The autopsy report prepared by Dr. Doromal indicating that AAA was raped and that she sustained injuries in her head, neck, thoraco-abdominal regions, extremities, vagina and anus validated Luisa's statements. Hence, this Court finds no arbitrariness in the factual findings of the courts *a quo*.

The amounts of civil indemnity and moral and actual damages awarded by the CA to the heirs of AAA are proper. However, considering AAA's minority,[16] the highly reprehensible and

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[14] *People v. Alilio*, 311 Phil. 395, 404 (1995).

[15] *Supra* note 13, at 389.

[16] Under Section 11(4) of Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes), when the victim is a child below seven years of age, rape is qualified as a heinous crime punishable by death. *People v. Catubig* (416 Phil. 102, 120 [2001]) clarified that "relative to the civil aspect of the case, an aggravating circumstance, whether ordinary

outrageous acts committed against her, and for the purpose of serving as a deterrent against similar conduct, this Court finds it warranted to increase the petitioner's liability for exemplary damages to ₱50,000.00.[17] Further, the monetary awards for damages shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.[18]

WHEREFORE, the instant petition is **DENIED**. The Decision dated December 14, 2007 of the Court of Appeals in CA-CEB-CR-H.C. No. 00571 is however **MODIFIED**. **ARNEL ALICANDO *y* BRIONES** is found **GUILTY** beyond reasonable doubt of the crime of rape with homicide and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of AAA the amounts of ₱100,000.00 as civil indemnity, ₱7,000.00 as actual damages, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages. All the monetary awards for damages shall earn annual interest at the legal rate of six percent (6%) from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

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or qualifying, should entitle the offended party to an award of exemplary damages."

[17] In *People v. Villarino* (G.R. No. 185012, March 5, 2010, 614 SCRA 372), this Court awarded exemplary damages in the amount of ₱50,000.00 to the heirs of a ten-year old minor victim of rape with homicide.

[18] Please *see People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

THIRD DIVISION

[G.R. No. 183608. July 31, 2013]

FAUSTINO T. CHINGKOE and GLORIA CHINGKOE, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF CUSTOMS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE RULE PRECLUDES RECOURSE TO THE SPECIAL CIVIL ACTION FOR *CERTIORARI* IF APPEAL BY WAY OF PETITION FOR REVIEW IS AVAILABLE; APPLICATION IN CASE AT BAR.— It is settled that the Rules precludes recourse to the special civil action of *certiorari* if appeal by way of a Petition for Review is available, as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for *Certiorari* under Rule 65, as respondent here filed before the CA. A petition for *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. When an appeal is available, *certiorari* will not prosper, even if the basis is grave abuse of discretion. The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy.

2. ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; EFFECT OF FAILURE TO APPEAR; DISMISSAL OF

ACTION WITH PREJUDICE IS CONSIDERED AS ADJUDICATION ON THE MERITS OF THE CASE WHERE THE PROPER REMEDY IS AN APPEAL.— The rule is clear enough that an order of dismissal based on failure to appear at pre-trial is with prejudice, unless the order itself states otherwise. The questioned Order of the trial court did not specify that the dismissal is without prejudice. There should be no cause for confusion, and the trial court is not required to explicitly state that the dismissal is with prejudice. The respondent is not then left without a remedy, since the Rules itself construes the dismissal to be with prejudice. It should be considered as adjudication on the merits of the case, where the proper remedy is an appeal under Rule 41. Regrettably, the respondent chose the wrong mode of judicial review.

APPEARANCES OF COUNSEL

Rigoroso & Galindez Law Offices for petitioners.
The Solicitor General for respondent.
Roxas & Roxas Law Offices for Filstar Textile Industrial Corp.
Alan A. Leynes for Chiat Sing Cardboard, Inc.

D E C I S I O N

VELASCO, JR., *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45, seeking the reversal of the April 30, 2008 Decision[1] of the Court of the Appeals (CA) and its subsequent June 27, 2008 Resolution[2] in CA-G.R. SP No. 101394. The assailed CA issuances granted the Petition for *Certiorari* filed by respondent Bureau of Customs, thereby revoking the July 14, 2006 and August 31, 2007 Orders[3] of the Regional Trial Court (RTC),

[1] *Rollo*, pp. 25-33. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Vicente Q. Roxas.

[2] *Id.* at 35-37.

[3] Penned by Judge Romulo A. Lopez.

Branch 34 in Manila and denying the Motion for Reconsideration, respectively.

The Facts

This petition stemmed from two collection cases filed by the Republic of the Philippines (Republic), represented by the Bureau of Customs (BOC) before the Regional Trial Court (RTC) of Manila. In the first Complaint[4] for collection of money and damages, entitled *Republic of the Philippines, represented by the Bureau of Customs v. Chiat Sing Cardboard Inc. (defendant and third party plaintiff) v. Filstar Textile Industrial Corporation, Faustino T. Chingkoe (third party defendants)* and docketed as Civil Case No. 02-102612, the Republic alleged that Chiat Sing Cardboard Inc. (Chiat Sing), a corporation that imports goods to the Philippines, secured in 1997 fake and spurious tax credit certificates from Filstar Textile Industrial Corporation (Filstar), amounting to six million seventy-six thousand two hundred forty-six pesos (PhP 6,076,246). It claimed that Chiat Sing utilized the fraudulently-acquired tax credit certificates to settle its customs duties and taxes on its importations. BOC initially allowed the use of the said tax credit certificates, but after investigation, discovered that the same were fake and spurious. Despite due demand, Chiat Sing failed and refused to pay the BOC the amount of the tax credit certificates, exclusive of penalties, charges, and interest.

Along with its Answer,[5] Chiat Sing, with leave of court,[6] filed a Third-Party Complaint against Filstar. It claimed that it acquired the tax credit certificates from Filstar for valuable consideration, and that Filstar represented to it that the subject tax credit certificates are good, valid, and genuine.

Meanwhile, in the second Complaint, entitled *Republic of the Philippines, represented by the Bureau of Customs v. Filstar*

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[4] *Rollo*, pp. 95-97.

[5] *Id.* at 103-108.

[6] *Id.* at 109.

Textile Industrial Corporation and docketed as Civil Case No. 02-102634, the Republic alleged that in the years 1992-1998, defendant Filstar fraudulently secured 20 tax credit certificates amounting to fifty-three million six hundred fifty-four thousand six hundred seventy-seven pesos (PhP 53,654,677). Thereafter, Filstar made various importations, using the tax credit certificates to pay the corresponding customs duties and taxes. Later, BOC discovered the fact that they were fraudulently secured; thus, the Republic claimed, the customs duties and tax liability of Filstar remained unpaid.[7]

The Complaint was amended to include Dominador S. Garcia, Amalia Anunciacion, Jose G. Pena, Grace T. Chingkoe, Napoleon Viray, Felix T. Chingkoe, Faustino Chingkoe, and Gloria Chingkoe as party defendants. Later, however, pursuant to an Order of the trial court, the case against Felix Chingkoe was dismissed.[8]

After an Order[9] of consolidation was issued on June 23, 2003, the two cases were jointly heard before the RTC, initially by Branch 40, Manila RTC,[10] but after the presiding judge there inhibited from the case, they were re-raffled to Branch 34, Manila RTC.

Pursuant to a Notice of Mediation Hearing sent to the parties on October 17, 2005,[11] the cases were referred to the Philippine Mediation Center (PMC) for mandatory mediation.[12] The pre-trial for the consolidated cases was initially set on January 9, 2006, but come said date, the report of the mediation has yet to be submitted; hence, on the motion of the counsel of defendant Chiat Sing, the pre-trial was canceled and rescheduled to February 15, 2006.[13]

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[7] *Id.* at 27.

[8] *Id.*

[9] Issued by Judge Antonio M. Eugenio, Jr.

[10] *Rollo*, pp. 164-165.

[11] *Id.* at 166.

[12] RULES OF COURT, Rule 18, Sec. 2(a).

[13] *Rollo*, p. 167.

On February 15, 2006, the PMC reported that the proceedings are still continuing; thus, the trial court, on motion of the same counsel for Chiat Sing, moved for the re-setting of the pre-trial to March 17, 2006.[14] Unfortunately, the mediation proceedings proved to be uneventful, as no settlement or compromise was agreed upon by the parties.

During the March 17, 2006 pre-trial setting, the Office of the Solicitor General (OSG), representing the Republic, failed to appear. The counsel for defendant Filstar prayed for a period of 10 days within which to submit his motion or manifestation regarding the plaintiff's pre-trial brief. The trial court granted the motion, and again ordered a postponement of the pre-trial to April 19, 2006.[15]

Come the April 19, 2006 hearing, despite having received a copy of the March 17, 2006 Order, the OSG again failed to appear. It also failed to submit its comment. Thus, counsels for the defendants Filstar, Chiat Sing, and Chingkoe moved that plaintiff be declared non-suited. Meanwhile, the counsel for BOC requested for an update of their case. In its Order[16] on the same date, the trial court warned the plaintiffs Republic and BOC that if no comment is submitted and if they fail to appear during the pre-trial set on May 25, 2006, the court will be constrained to go along with the motion for the dismissal of the case.

The scheduled May 25, 2006 hearing, however, did not push through, since the trial court judge went on official leave. The pre-trial was again reset to June 30, 2006.

During the June 30, 2006 pre-trial conference, the OSG again failed to attend. A certain Atty. Bautista Corpin, Jr. (Atty. Corpin Jr.), appearing on behalf of BOC, was present, but was not prepared for pre-trial. He merely manifested that the BOC failed to receive the notice on time, and moved for another re-setting

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[14] *Id.* at 168.

[15] *Id.* at 169-170.

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

of the pre-trial, on the condition that if either or both lawyers from the BOC and OSG fail to appear, the court may be constrained to dismiss the abovementioned cases of the BOC for failure to prosecute.[17] Meanwhile, counsels for defendants Chiat Sing, Filstar, and third-party defendants Faustino T. Chingkoe and Gloria C. Chingkoe, who were all present during the pre-trial, moved for the dismissal of the case on the ground of respondent's failure to prosecute. The trial court judge issued an Order[18] resetting the pre-trial to July 14, 2006.

At the hearing conducted on July 14, 2006, the respective counsels of the defendants were present. Notwithstanding the warning of the judge given during the previous hearing, that their failure to appear will result in the dismissal of the cases, neither the OSG nor the BOC attended the hearing. Thus, as moved anew by the respective counsels of the three defendants, the trial court issued an Order[19] dismissing the case, which reads:

> As prayed for, the charge of the Republic of the Philippines against Chiat Sing Cardboard Incorporation and the Third Party complaint of Chiat Sing Cardboard Inc., against Textile Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102612 and the charge of the Republic of the Philippines against Filstar Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102634 are hereby dismissed.[20]

The motion for reconsideration of the July 14, 2006 Order was likewise denied by the RTC on August 31, 2007.[21] As recourse, respondents filed a Petition for *Certiorari* under Rule 65 before the CA, alleging that the trial court judge acted with grave abuse of discretion in dismissing the two cases.

In its Decision dated April 30, 2008, the CA granted the petition and remanded the case to the RTC for further proceedings.

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[17] *Id.* at 181.

[18] *Id.* at 180.

[19] *Id.* at 47.

[20] Records, Vol. 3, p. 277.

[21] *Rollo,* p. 49.

In reversing the RTC Order, the CA ruled that the case, being a collection case involving a huge amount of tax collectibles, should not be taken lightly. It also stated that it would be the height of injustice if the Republic is deprived of due process and fair play. Finally, it took "judicial notice of the fact that the collection of customs duties and taxes is a matter imbued with public interest, taxes being the lifeblood of the government and what we pay for civilized society."[22] The CA said:

> We view that the swiftness employed by the Court *a quo* in dismissing the case without first taking a thoughtful and judicious look into whether or not there is good reason to delve into the merits of the instant case by giving the parties an equal opportunity to be hard and submit evidence [in] support of their respective claims, was a display of grave abuse of discretion in a manner that is capricious, arbitrary and in a whimsical exercise of power – the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions, thus *certiorari* is necessarily warranted under the premises.[23]

The CA, thus, disposed of the case in this manner:

> **WHEREFORE,** premises considered, the instant petition is **GRANTED.** The Court *a quo*'s Orders dated 14 July 2006 and 31 August 2007, are hereby REVOKED and SET ASIDE and a new one rendered ordering the **REMAND** of this case to the Court *a quo* for further proceedings. The Bureau of Customs, through the Office of the Solicitor General (OSG), is hereby directed to give this case its **utmost and preferential attention**.[24]

In a Resolution dated June 27, 2008, the CA denied the separate motions for reconsideration filed by private respondents Faustino T. Chingkoe and Gloria Chingkoe as well as Filstar Textile Industrial Corporation.

Thus, the present recourse.

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[22] *Id.* at 31.

[23] *Id.* at 32.

[24] *Id.* at 33.

Issues

Petitioners posit:

Whether the Honorable Court of Appeals committed a reversible error when it granted the petition for *certiorari* and revoked and set aside the order of dismissal of the RTC considering that:

1. The extraordinary writ of *certiorari* is not available in the instant case as an appeal from the order of dismissal as a plain, speedy and adequate remedy available to the respondent;
2. The dismissal of the complaints below for the repeated failure of the respondent to appear during the pre-trial and for its failure to prosecute for an unreasonable length of time despite the stern warning of the RTC is not a dismissal on mere technical grounds; and
3. The dismissal of the cases with prejudice was not attended with grave abuse of discretion on the part of the RTC.

Petitioners argue that the CA committed reversible error in granting the Petition for *Certiorari*, because such extraordinary writ is unavailing in this case. They posit that contrary to the position of respondent, an ordinary appeal from the order of dismissal is the proper remedy that it should have taken. Since the dismissal is due to the failure of respondent to appear at the pre-trial hearing, petitioners add, the dismissal should be deemed an adjudication on the merits, unless otherwise stated in the order.[25]

Second, petitioner argue that the trial court properly dismissed the cases for the failure of the plaintiff *a quo*, respondent herein, to attend the pre-trial.

The Court's Ruling

The petition is meritorious.

The remedy of *certiorari* does not lie to question the RTC Order of dismissal

[25] *Id.* at 9-10.

Respondent's Petition for *Certiorari* filed before the CA was not the proper remedy against the assailed Order of the RTC. Pursuant to Rule 65 of the Rules of Court, a special civil action for *certiorari* could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment as to be said to be equivalent to lack of jurisdiction"[26] or when it acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[27]

It is settled that the Rules precludes recourse to the special civil action of *certiorari* if appeal by way of a Petition for Review is available, as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[28]

Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for *Certiorari* under Rule 65, as respondent here filed before the CA.

A petition for *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's

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[26] *Nepomuceno v. Court of Appeals*, G.R. No. 126405, February 25, 1999, 303 SCRA 679, 682; citations omitted.

[27] *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, G.R. No. 168672, August 9, 2010, 627 SCRA 125, 135.

[28] *Rigor v. Tenth Division of the Court of Appeals*, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 381-382.

choice of remedy occasioned such loss or lapse. When an appeal is available, *certiorari* will not prosper, even if the basis is grave abuse of discretion.[29] The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy.

In any case, the rule is settled in *Mondonedo v. Court of Appeals*,[30] where We said:

> The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.
>
> > For nonappearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court.
>
> And the remedy of a plaintiff declared non-suited is to appeal from the order of dismissal, the same being a final resolution of the case (Regalado, *Remedial Law Compendium*, 1988 ed., p. 185). Further, if a motion for reconsideration had been filed by the plaintiff but was denied, appeal lies from both orders (*ibid*.). And where appeal is the proper remedy, *certiorari* will not lie. (Citations omitted.)

Respondent laments that the questioned RTC Order did not specify whether the dismissal is with prejudice or not, putting it in a precarious situation of what legal actions to take upon its receipt. This misgiving, however, stems from a misreading of the Rules. Rule 18, Sec. 5 of the Rules of Court clearly states:

> Sec. 5. *Effect of failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. **The dismissal shall be with prejudice, unless otherwise ordered by the court**. x x x (Emphasis supplied.)

The rule is clear enough that an order of dismissal based on failure to appear at pre-trial is with prejudice, unless the order

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[29] *Catly v. Navarro*, G.R. No. 167239, May 5, 2010, 620 SCRA 151, 193.

[30] G.R. No. 113349, January 18, 1996, 252 SCRA 28, 30.

itself states otherwise. The questioned Order of the trial court did not specify that the dismissal is without prejudice. There should be no cause for confusion, and the trial court is not required to explicitly state that the dismissal is with prejudice. The respondent is not then left without a remedy, since the Rules itself construes the dismissal to be with prejudice. It should be considered as adjudication on the merits of the case, where the proper remedy is an appeal under Rule 41. Regrettably, the respondent chose the wrong mode of judicial review. In not dismissing the petition for *certiorari* outright, and in not ruling that such remedy is the wrong mode of judicial review, the CA committed grave and reversible error.

Neither is this issue a novel one. In *Corpuz v. Citibank, N.A.*,[31] this Court had already ruled that the proper remedy for an order of dismissal under the aforequoted Sec. 5, Rule 18 of the Rules of Court is to file an appeal. As in the case at bar, the plaintiffs in that case filed a petition for *certiorari* assailing the order of dismissal. Ruling that it is not the proper remedy, this Court said:

> Section 5, of Rule 18 provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be with prejudice, unless otherwise ordered by the court. In this case, the trial court deemed the plaintiffs-herein spouses as non-suited and ordered the dismissal of their Complaint. As the dismissal was a final order, the proper remedy was to file an ordinary appeal and not a petition for *certiorari*. The spouses' petition for *certiorari* was thus properly dismissed by the appellate court.

The OSG should have known better, and filed a Notice of Appeal under Rule 41, instead of a petition for *certiorari* under Rule 65. Its failure to file the proper recourse renders its petition dismissible, as it fails to allege sufficient grounds for the granting of a writ of *certiorari*. The fact that the CA overlooked this constitutes a reversible error on its part.

That the case involves the issuance of allegedly fraudulently secured tax credit certificates, and not an ordinary action for

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[31] G.R. Nos. 175677 & 177133, July 31, 2009, 594 SCRA 632, 640.

collection of money, is of no moment. This fact alone does not exempt respondent from complying with the rules of procedure, including the rules on appeal. Neither can respondent invoke the rule on technicalities yielding to the paramount interest of the nation, as the facts and circumstances of this case do not warrant such relaxation.

Dismissal due to the fault of respondent

Even going into the merits of the case, however, We find the trial court's dismissal of the case to be in order. As it were, the trial court amply gave respondent sufficient notice and opportunity to attend the pre-trial conference, but despite this, it neglected its duty to prosecute its case and attend the scheduled pre-trial hearings. Hence, the trial court cannot be faulted for dismissing the case.

This Court finds that the dismissal of the case by the trial court was due to the fault and negligence of respondent. There is clear negligence and laxity on the part of both the BOC and OSG in handling this case on behalf of the Republic. Despite several re-settings of the hearing, either or both counsels failed to attend the pre-trial conference, without giving a justifiably acceptable explanation of their absence. This utter neglect of its duty to attend the scheduled hearings is what led the trial court to ultimately dismiss the cases. In finding that the dismissal by the trial court is tainted with grave abuse of discretion, the CA committed reversible error.

The records bear out that the pre-trial conference has been reset for six times, for various reasons. It was initially set on February 16, 2006, but due to the PMC Report that the mediation proceedings are still continuing, the hearing was canceled.[32] In this first setting, neither BOC nor the OSG was present. The case was then set for hearing on March 17, 2006. However, the scheduled pre-trial conference again did not push through, due to the motion of the counsel for Filstar praying for time to

[32] Records, Vol. 2, p. 232.

submit his motion/manifestation regarding the Republic's pre-trial brief.[33] Again, during this setting, neither the BOC nor the OSG was present.

The pre-trial conference was reset for a third time to April 19, 2006. During this setting, pre-trial again did not push through, because of a pending Motion to Dismiss due to failure to prosecute filed by Filstar.[34] For the third time, there was no appearance on behalf of the Republic. The pre-trial conference was then reset to May 9, 2006. The hearing did not push through, however, because the presiding judge was on leave at the time.[35] Hence, the setting was transferred to June 30, 2006.

Come June 30, 2006, an unprepared Atty. Corpin, Jr. appeared on behalf of the BOC, and he had no necessary authority from BOC to represent it as its counsel. He manifested that they failed to receive the notice of hearing on time, and moved for another chance, "on the condition that if they will not be appearing, either or both lawyers from the Bureau of Customs or Office of the Solicitor General, the court [may be] constrained to dismiss all the above cases of the Bureau of Customs for failure to prosecute for an unreasonable length of time."[36] On the other hand, the BOC again failed to send a representative. The court again had to cancel the hearing and reset it, this time to July 14, 2006.

During the July 14, 2006 hearing, the counsels for the defendants were present. They were asked by the court to wait for the OSG until 9:45 a.m., considering that the OSG had already received the notice of hearing. However, neither the BOC nor the OSG arrived. The counsels for the defendants reiterated their motion, citing the warning of the trial court during the June 30, 2006 hearing that if no representative will appear on behalf of the Republic, all the cases will be dismissed. It

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[33] *Id.* at 237-238.

[34] *Id.* at 244.

[35] *Id.* at 245.

[36] *Id.* at 269-270, RTC Order dated June 30, 2006.

was due to this repeated absence on the part of the BOC and the OSG that the trial court issued the Order dated July 14, 2006 dismissing the cases filed by the Republic.

It is fairly obvious that the trial court gave the Republic, through the OSG and the BOC, every opportunity to be present during the pre-trial conference. The hearings had to be reset six times due to various reasons, but not once was the OSG and BOC properly represented. Too, not once did the OSG and BOC offer a reasonable explanation for their absence during the hearings. Despite the express warning by the trial court during the penultimate setting on June 30, 2006, the OSG and BOC still failed to attend the next scheduled setting.

Despite the leeway and opportunity given by the trial court, it seemed that the OSG and BOC did not accord proper importance to the pre-trial conference. Pre-trial, to stress, is way more than simple marking of evidence. Hence, it should not be ignored or neglected, as the counsels for respondent had. In *Tolentino v. Laurel*,[37] this Court has this to say on the matter of importance of pre-trial:

> In *The Philippine American Life & General Insurance Company v. Enario*, the Court held that pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. The Court said that:
>
> > The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus:
> >
> > Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:

[37] G.R. No. 181368, February 22, 2012, 666 SCRA 561, 570-571.

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action.

Petitioners' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules and their non-presentation of evidence before the trial court was essentially due to their fault. (Citations omitted.)

The inevitable conclusion in this case is that the trial court was merely following the letter of Sec. 5, Rule 18 of the Rules of Court in dismissing the case. Thus, the CA committed grave and reversible error in nullifying the Order of dismissal. The trial court had every reason to dismiss the case, not only due to the Motion to Dismiss filed by the defendants, but because the Rules of Court itself says so.

In view, however, of the huge amount of tax collectibles involved, and considering that taxes are the "lifeblood of the government," the dismissal of the case should be without prejudice.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The April 30, 2008 Decision and June 27,

2008 Resolution of the Court of Appeals in CA-G.R. SP No. 101394 are hereby **REVERSED** and **SET ASIDE**. The July 14, 2006 Order of the RTC, Branch 34 in Manila, in Civil Case Nos. 02-10212 and 02-102634, is hereby **REINSTATED** with the **MODIFICATION** that the dismissal of the two civil cases shall be **WITHOUT PREJUDICE**.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188708. July 31, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALAMADA MACABANDO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; IN THE ABSENCE OF DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE MAY BE SUFFICIENT TO SUSTAIN A CONVICTION; REQUIREMENTS.— It is settled that in the absence of direct evidence, circumstantial evidence may be sufficient to sustain a conviction provided that: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused."

2. ID.; ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— In the present case, the following circumstances constitute an unbroken chain that leads to an unavoidable conclusion that the appellant, **to the exclusion of others**, set fire to his house: *first*, the appellant, while holding an iron lead pipe, acted violently and broke bottles near his house at around 4:00 p.m. of December 21, 2001; *second*, while he was still in a fit of rage, the appellant stated that he would get even, and then threatened to burn his own house; *third*, Judith Quilantang saw a fire in the appellant's room approximately two hours after the appellant returned to his house; *fourth*, the appellant prevented Cornelio, Eric, and several other people from putting out the fire in his house; *fifth*, the appellant fired shots in the air, and then threatened to kill anyone who would try to put out the fire in his house; *sixth*, the appellant carried a traveling bag during the fire; and *finally*, the investigation conducted by the fire marshals of the Bureau of Fire Protection revealed that the fire started in the appellant's house, and that it had been intentional. The combination of these circumstances, indeed, leads to no other conclusion than that the appellant set fire to his house.

3. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1613 (AMENDING LAW ON ARSON); SIMPLE ARSON; DISTINGUISHED FROM DESTRUCTIVE ARSON UNDER THE REVISED PENAL CODE, ARTICLE 320.— "Article 320 contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons." Presidential Decree (*P.D.*) No. 1613, on the other hand, currently governs simple arson. x x x P.D. No. 1613 contemplates the malicious burning of public and private structures, regardless of size, not included in Article 320 of the RPC, as amended by Republic Act No. 7659. This law punishes simple arson with a lesser penalty because the acts that constitute it have a lesser degree of perversity and viciousness. Simple arson contemplates crimes with less significant social, economic, political, and national security implications than destructive arson.

4. ID.; ID.; ID.; ELEMENTS.— The elements of simple arson under Section 3(2) of P.D. No. 1613 are: (a) there is intentional burning; and (b) what is intentionally burned is an inhabited

house or dwelling. Both these elements have been proven in the present case. The Information alleged that the appellant set fire **to his own house**, and that the fire spread to other **inhabited houses**. These allegations were established during trial through the testimonies of the prosecution witnesses which the trial and appellate courts found credible and convincing, and through the report of the Bureau of Fire Protection which stated that damaged houses were **residential**, and that the fire had been **intentional**. Moreover, the certification from the City Social Welfare and Development Department likewise indicated that the burned houses were used as **dwellings**. The appellant likewise testified that his burnt two-story house was used as a **residence**. That the appellant's act affected many families will not convert the crime to destructive arson, since the appellant's act does not appear to be heinous or represents a greater degree of perversity and viciousness when compared to those acts punished under Article 320 of the RPC. The established evidence only showed that the appellant intended to burn his own house, but the conflagration spread to the neighboring houses.

5. ID.; ID.; ID.; PROPER PENALTY.— Under Section 3, paragraph 2, of P.D. No. 1613, the imposable penalty for simple arson is *reclusion temporal*, which has a range of twelve (12) years and one (1) day, to *reclusion perpetua*. Applying the Indeterminate Sentence Law, the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *prision mayor,* or six (6) years and one (1) day to twelve (12) years, and whose maximum should be the medium period of *reclusion temporal* to *reclusion perpetua*, or sixteen *(*16) years and one (1) day to twenty (20) years, taking into account the absence of any aggravating or mitigating circumstances that attended the commission of the crime. Taking these rules into account, we therefore impose on the appellant the indeterminate penalty of ten (I 0) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years and one (1) day of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

This is an appeal filed by appellant Alamada Macabando assailing the February 24, 2009 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 00208-MIN. The CA decision affirmed *in toto* the August 26, 2002 judgment[2] of the Regional Trial Court (*RTC*), Branch 25, Cagayan de Oro City, finding the appellant guilty beyond reasonable doubt of destructive arson, and sentencing him to suffer the penalty of *reclusion perpetua*.

THE CASE

The prosecution's evidence showed that at around 4:00 p.m. on December 21, 2001, the appellant broke bottles on the road while holding a G.I. pipe, and shouted that he wanted to get even ("*manabla ko*").[3] Afterwards, he uttered that he would burn his house.[4]

At 6:35 p.m. of the same day, Cornelio Feliciano heard his neighbors shout that there was a fire. When Cornelio went out of his house to verify, he saw smoke coming from the appellant's house. He got a pail of water, and poured its contents into the fire.[5] Eric Quilantang, a neighbor whose house was just 10 meters from that of the appellant, ran to the *barangay* headquarters to get a fire extinguisher. When Eric approached the burning house, the appellant, who was carrying a traveling bag and a gun, told him not to interfere; the appellant then fired three (3) shots in

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[1] *Rollo*, pp. 5-16; penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Jane Aurora C. Lantion.

[2] Records, pp. 453-460; penned by Judge Noli T. Catli.

[3] TSN, January 28, 2002, p. 6.

[4] TSN, March 4, 2002, p. 8.

[5] TSN, January 28, 2002, pp. 8-9.

the air.[6] The appellant also told the people around that whoever would put out the fire would be killed.[7]

Upon hearing the gunshots, Cornelio hurriedly went home to save his nephews and nieces.[8] Eric also returned to his house to save his belongings.[9]

Fire Officer (*FO*) II Victor Naive and FOI Reynaldo Maliao conducted a spot investigation of the incident, and concluded, among others, that the fire started in the appellant's house; and that it had been intentional.[10] Barangay Chairman Modesto Ligtas stated that the fire gutted many houses in his *barangay*, and that he assisted the City Social Welfare and Development Department personnel in assessing the damage.[11]

The defense, on the other hand, presented a different version of the events.

The appellant declared on the witness stand that he lived in the two-storey house in Barangay 35, Limketkai Drive, which was owned by his sister, Madji Muslima Edemal.[12] He admitted that he felt angry at around 2:00 p.m. on December 21, 2001 because one of his radio cassettes for sale had been stolen.[13] The appellant claimed that he went to sleep after looking for his missing radio cassette, and that the fire had already started when he woke up. He denied making a threat to burn his house, and maintained that he did not own a gun. He added that the gunshots heard by his neighbors came from the explosion of

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[6] TSN, February 4, 2002, pp. 8-10.

[7] TSN, March 4, 2002, pp. 7-8.

[8] TSN, January 28, 2002, p. 9.

[9] TSN, February 4, 2002, pp.19-20.

[10] Records, pp. 99-101.

[11] TSN, April 12, 2002, pp. 5-11.

[12] TSN, June 3, 2002, pp. 3-4.

[13] *Id.* at 7-8.

firecrackers that he intended to use during the New Year celebration.[14]

Lomantong Panandigan, the appellant's cousin, stated, among others, that he did not see the appellant carry a revolver or fire a shot on December 21, 2001.[15] Dimas Kasubidan, the appellant's brother-in-law, stated that he and the appellant lived in the same house, and that the latter was asleep in his room at the ground floor before the fire broke out.[16]

The prosecution charged the appellant with the crime of destructive arson under Article 320 of the Revised Penal Code (*RPC*), as amended, before the RTC.[17] The appellant pleaded not guilty to the charge on arraignment.[18] In its judgment dated August 26, 2002, the RTC found the appellant guilty beyond reasonable doubt of the crime charged, and sentenced him to suffer the penalty of *reclusion perpetua*.

On appeal, the CA affirmed the RTC judgment *in toto*. It gave weight to the RTC's factual findings since these findings were based on unrebutted testimonial and documentary evidence. The CA held that the totality of the presented circumstantial evidence led to the conclusion that the appellant was guilty of the crime charged.

THE COURT'S RULING

We deny the appeal, but modify the crime committed by the appellant and the penalty imposed on him.

Sufficiency of Prosecution Evidence

We point out at the outset that no one saw the appellant set fire to his house in Barangay 35, Limketkai Drive, Cagayan de

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

[15] TSN, May 2, 2002, p. 8.

[16] *Id.* at 27-28.

[17] Records, p. 4.

[18] *Id.* at 12.

Oro City. The trial and appellate courts thus resorted to circumstantial evidence since there was no direct evidence to prove the appellant's culpability to the crime charged.

It is settled that in the absence of direct evidence, circumstantial evidence may be sufficient to sustain a conviction provided that: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused."[19]

In the present case, the following circumstances constitute an unbroken chain that leads to an unavoidable conclusion that the appellant, **to the exclusion of others**, set fire to his house: *first*, the appellant, while holding an iron lead pipe, acted violently and broke bottles near his house at around 4:00 p.m. of December 21, 2001; *second*, while he was still in a fit of rage, the appellant stated that he would get even, and then threatened to burn his own house; *third*, Judith Quilantang saw a fire in the appellant's room approximately two hours after the appellant returned to his house; *fourth*, the appellant prevented Cornelio, Eric, and several other people from putting out the fire in his house; *fifth*, the appellant fired shots in the air, and then threatened to kill anyone who would try to put out the fire in his house; *sixth*, the appellant carried a traveling bag during the fire; and *finally*, the investigation conducted by the fire marshals of the Bureau of Fire Protection revealed that the fire started in the appellant's house, and that it had been intentional.

The combination of these circumstances, indeed, leads to no other conclusion than that the appellant set fire to his house. We find it unnatural and highly unusual for the appellant to

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[19] See *Buebos v. People*, G.R. No. 163938, March 28, 2008, 550 SCRA 210, 223, citing *People v. Casitas*, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

prevent his neighbors from putting out the fire in his house, and threaten to kill them if they did, if he had nothing to do with the crime. The first impulse of an individual whose house is on fire is to save his loved ones and/or belongings; it is contrary to human nature, reason and natural order of things for a person to thwart and prevent any effort to put out the fire in his burning property. By carrying (and firing) a gun during the fire, the appellant showed his determination to repel any efforts to quell the fire. Important to note, too, is the fact that the appellant carried a traveling bag during the fire which, to our mind, showed deliberate planning and preparedness on his part to flee the raging fire; it likewise contradicted his statement that he was asleep inside his house when the fire broke out, and that the fire was already big when he woke up. Clearly, the appellant's indifferent attitude to his burning house and his hostility towards the people who tried to put out the fire, coupled with his preparedness to flee his burning house, belied his claim of innocence. Notably, the appellant failed to impute any improper motive against the prosecution witnesses to falsely testify against him; in fact, he admitted that he had no misunderstanding with them prior to the incident.

The Crime Committed

The CA convicted the appellant of destructive arson under Article 320 of the RPC, as amended, which reads:

Article 320. *Destructive Arson*. — The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.

2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings,

public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

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The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

In sum, "Article 320 contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons."[20]

Presidential Decree (*P.D.*) No. 1613,[21] on the other hand, currently governs simple arson. Section 3 of this law provides:

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[20] *People v. Murcia*, G.R. No. 182460, March 9, 2010, 614 SCRA 741, 752.

[21] A Decree Amending the Law on Arson.

Section 3. Other Cases of Arson. The penalty of *Reclusion Temporal* to *Reclusion Perpetua* shall be imposed if the property burned is any of the following:

1. Any building used as offices of the government or any of its agencies;

2. ***Any inhabited house or dwelling***;

3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;

4. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;

5. Any rice mill, sugar mill, cane mill or mill central; and

6. Any railway or bus station, airport, wharf or warehouse. [italics and emphasis ours]

P.D. No. 1613 contemplates the malicious burning of public and private structures, regardless of size, not included in Article 320 of the RPC, as amended by Republic Act No. 7659.[22] This law punishes simple arson with a lesser penalty because the acts that constitute it have a lesser degree of perversity and viciousness. Simple arson contemplates crimes with less significant social, economic, political, and national security implications than destructive arson.[23]

The elements of simple arson under Section 3(2) of P.D. No. 1613 are: (a) there is intentional burning; and (b) what is intentionally burned is an inhabited house or dwelling. Both these elements have been proven in the present case. The Information alleged that the appellant set fire **to his own house**, and that the fire spread to other **inhabited houses**. These allegations were established during trial through the testimonies of the prosecution witnesses which the trial and appellate courts found credible and convincing, and through the report of the Bureau of Fire Protection which stated that damaged houses were **residential**, and that the fire had been **intentional**. Moreover,

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[22] *People v. Malngan*, 534 Phil. 404, 443 (2006).

[23] *People v. Soriano*, 455 Phil. 77, 93 (2003).

the certification from the City Social Welfare and Development Department likewise indicated that the burned houses were used as **dwellings**. The appellant likewise testified that his burnt two-story house was used as a **residence**. That the appellant's act affected many families will not convert the crime to destructive arson, since the appellant's act does not appear to be heinous or represents a greater degree of perversity and viciousness when compared to those acts punished under Article 320 of the RPC. The established evidence only showed that the appellant intended to burn his own house, but the conflagration spread to the neighboring houses.

In this regard, our ruling in *Buebos v. People*[24] is particularly instructive, thus:

> The nature of Destructive Arson is distinguished from Simple Arson by the degree of perversity or viciousness of the criminal offender. The acts committed under Art. 320 of The Revised Penal Code constituting Destructive Arson are characterized as heinous crimes "for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society." On the other hand, acts committed under PD 1613 constituting Simple Arson are crimes with a lesser degree of perversity and viciousness that the law punishes with a lesser penalty. In other words, Simple Arson contemplates crimes with less significant social, economic, political and national security implications than Destructive Arson.

The Proper Penalty

Under Section 3, paragraph 2, of P.D. No. 1613, the imposable penalty for simple arson is *reclusion temporal*, which has a range of twelve (12) years and one (1) day, to *reclusion perpetua*. Applying the Indeterminate Sentence Law, the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which

[24] *Supra* note 19, at 228.

is *prision mayor*, or six (6) years and one (1) day to twelve (12) years, and whose maximum should be the medium period of *reclusion temporal* to *reclusion perpetua*, or sixteen (16) years and one (1) day to twenty (20) years, taking into account the absence of any aggravating or mitigating circumstances that attended the commission of the crime. Taking these rules into account, we therefore impose on the appellant the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years and one (1) day of *reclusion temporal*, as maximum.

As regards the award of damages, we sustain the lower courts' findings that the records do not adequately reflect any concrete basis for the award of actual damages to the offended parties. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[25]

WHEREFORE, the assailed February 24, 2009 decision of the Court of Appeals in CA-G.R. CR HC No. 00208-MIN is **AFFIRMED** with the following **MODIFICATIONS**:

(1) appellant Alamada Macabando is found guilty beyond reasonable doubt of simple arson under Section 3(2) of Presidential Decree No. 1613; and

(2) he is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years and one (1) day of *reclusion temporal*, as maximum.

SO ORDERED.

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

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[25] We also point out that there is a discrepancy between the affidavit-complaint of Barangay Chairman Ligtas and the certification issued by the City Social Welfare and Development Department with regard to the names and number of fire victims, and the estimated cost of the damage to their respective properties.

SECOND DIVISION

[G.R. No. 189121. July 31, 2013]

AMELIA GARCIA-QUIAZON, JENNETH QUIAZON and MARIA JENNIFER QUIAZON, *petitioners, vs.* **MA. LOURDES BELEN, for and in behalf of MARIA LOURDES ELISE QUIAZON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; PETITION FOR LETTERS OF ADMINISTRATION SHOULD BE FILED IN THE REGIONAL TRIAL COURT OF THE PROVINCE WHERE THE DECEDENT RESIDES AT THE TIME OF HIS DEATH; THE TERM "RESIDES," CONSTRUED.— Under Section 1, Rule 73 of the Rules of Court, the petition for letters of administration of the estate of a decedent should be filed in the RTC of the province where the decedent resides at the time of his death: x x x The term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute *or rule* in which it is employed. In the application of venue statutes and rules – Section 1, Rule 73 of the Revised Rules of Court is of such nature – residence *rather than* domicile is the significant factor. Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense. **Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode**. It signifies physical presence in a place and actual stay thereat. Venue for ordinary civil actions and that for special proceedings have one and the same meaning. **As thus defined, "residence," in the context of venue**

provisions, means nothing more than a person's actual residence or place of abode, provided he resides therein with continuity and consistency.

2. CIVIL LAW; MARRIAGE; A VOID MARRIAGE CAN BE QUESTIONED EVEN BEYOND THE LIFETIME OF THE PARTIES TO THE MARRIAGE; CASE AT BAR.— In a void marriage, it was though no marriage has taken place, thus, it cannot be the source of rights. Any interested party may attack the marriage directly or collaterally. A void marriage can be questioned even beyond the lifetime of the parties to the marriage. x x x [T]here is no doubt that Elise, whose successional rights would be prejudiced by her father's marriage to Amelia, may impugn the existence of such marriage even after the death of her father. The said marriage may be questioned directly by filing an action attacking the validity thereof, or collaterally by raising it as an issue in a proceeding for the settlement of the estate of the deceased spouse, such as in the case at bar. Ineluctably, Elise, as a compulsory heir, has a cause of action for the declaration of the absolute nullity of the void marriage of Eliseo and Amelia, and the death of either party to the said marriage does not extinguish such cause of action.

3. ID.; ID.; VOID MARRIAGE; THE EXISTENCE OF A PREVIOUS MARRIAGE AND IN THE ABSENCE OF ANY SHOWING THAT SUCH MARRIAGE HAD BEEN DISSOLVED RENDERS THE LATTER MARRIAGE BIGAMOUS AND THEREFORE VOID *AB INITIO;* PRESENT IN CASE AT BAR.— Contrary to the position taken by the petitioners, the existence of a previous marriage between Amelia and Filipito was sufficiently established by no less than the Certificate of Marriage issued by the Diocese of Tarlac and signed by the officiating priest of the Parish of San Nicolas de Tolentino in Capas, Tarlac. The said marriage certificate is a competent evidence of marriage and the certification from the National Archive that no information relative to the said marriage exists does not diminish the probative value of the entries therein. We take judicial notice of the fact that the first marriage was celebrated more than 50 years ago, thus, the possibility that a record of marriage can no longer be found in the National Archive, given the interval of time, is not completely remote. Consequently, in the absence of any showing that such marriage had been dissolved at the time Amelia and

Eliseo's marriage was solemnized, the inescapable conclusion is that the latter marriage is bigamous and, therefore, void *ab initio*.

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; LETTERS OF ADMINISTRATION; PERSONS ENTITLED TO THE ISSUANCE OF LETTERS OF ADMINISTRATION; INTERESTED PARTY, DEFINED AND CONSTRUED; ESTABLISHED IN CASE AT BAR.— Section 6, Rule 78 of the Revised Rules of Court lays down the preferred persons who are entitled to the issuance of letters of administration. x x x Upon the other hand, Section 2 of Rule 79 provides that a petition for Letters of Administration must be filed by an interested person. x x x An "interested party," in estate proceedings, is one who would be benefited in the estate, such as an heir, or one who has a claim against the estate, such as a creditor. Also, in estate proceedings, the phrase "next of kin" refers to those whose relationship with the decedent is such that they are entitled to share in the estate as distributees. In the instant case, Elise, as *a* compulsory heir who stands to be benefited by the distribution of Eliseo's estate, is deemed to be an interested party. With the overwhelming evidence on record produced by Elise to prove her filiation to Eliseo, the petitioners' pounding on her lack of interest in the administration of the decedent's estate, is just a desperate attempt to sway this Court to reverse the findings of the Court of Appeals. Certainly, the right of Elise to be appointed *administratrix* of the estate of Eliseo is on good grounds. It is founded on her right as a compulsory heir, who, under the law, is entitled to her legitime after the debts of the estate are satisfied. Having a vested right in the distribution of Eliseo's estate as one of his natural children, Elise can rightfully be considered as an interested party within the purview of the law.

APPEARANCES OF COUNSEL

Heinrich V. Garena for petitioners.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* filed pursuant to Rule 45 of the Revised Rules of Court, primarily assailing the 28 November 2008 Decision rendered by the Ninth Division of the Court of Appeals in CA-G.R. CV No. 88589,[1] the decretal portion of which states:

> **WHEREFORE**, premises considered, the appeal is hereby **DENIED.** The assailed Decision dated March 11, 2005, and the Order dated March 24, 2006 of the Regional Trial Court, Branch 275, Las Piñas City are **AFFIRMED *in toto.***[2]

The Facts

This case started as a Petition for Letters of Administration of the Estate of Eliseo Quiazon (Eliseo), filed by herein respondents who are Eliseo's common-law wife and daughter. The petition was opposed by herein petitioners Amelia Garcia-Quaizon (Amelia) to whom Eliseo was married. Amelia was joined by her children, Jenneth Quiazon (Jenneth) and Maria Jennifer Quiazon (Jennifer).

Eliseo died intestate on 12 December 1992.

On 12 September 1994, Maria Lourdes Elise Quiazon (Elise), represented by her mother, Ma. Lourdes Belen (Lourdes), filed a Petition for Letters of Administration before the Regional Trial Court (RTC) of Las Piñas City.[3] In her Petition docketed as SP Proc. No. M-3957, Elise claims that she is the natural child of Eliseo having been conceived and born at the time when her parents were both capacitated to marry each other. Insisting on the legal capacity of Eliseo and Lourdes to marry,

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Josefina Guevara–Salonga and Magdangal M. De Leon, concurring. CA *rollo*, pp. 94-106.

[2] *Id.* at 105.

[3] Special Proceeding No. M-3957. Records, Vol. I, pp. 1-9.

Elise impugned the validity of Eliseo's marriage to Amelia by claiming that it was bigamous for having been contracted during the subsistence of the latter's marriage with one Filipito Sandico (Filipito). To prove her filiation to the decedent, Elise, among others, attached to the Petition for Letters of Administration her Certificate of Live Birth[4] signed by Eliseo as her father. In the same petition, it was alleged that Eliseo left real properties worth ₱2,040,000.00 and personal properties worth ₱2,100,000.00. In order to preserve the estate of Eliseo and to prevent the dissipation of its value, Elise sought her appointment as *administratrix* of her late father's estate.

Claiming that the venue of the petition was improperly laid, Amelia, together with her children, Jenneth and Jennifer, opposed the issuance of the letters of administration by filing an Opposition/ Motion to Dismiss.[5] The petitioners asserted that as shown by his Death Certificate,[6] Eliseo was a resident of Capas, Tarlac and not of Las Piñas City, at the time of his death. Pursuant to Section 1, Rule 73 of the Revised Rules of Court,[7] the petition for settlement of decedent's estate should have been filed in Capas, Tarlac and not in Las Piñas City. In addition to their claim of improper venue, the petitioners averred that there are no factual and legal bases for Elise to be appointed *administratix* of Eliseo's estate.

[4] *Id.* at 10.

[5] *Id.* at 40-44.

[6] *Id.* at 11.

[7] **Sec. 1.** ***Where estate of deceased persons settled.*** – If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance [now Regional Trial Court] in the province in which he resides at the time of his death**,** and if he is an inhabitant of a foreign country, the Court of First Instance [now Regional Trial Court] of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

In a Decision[8] dated 11 March 2005, the RTC directed the issuance of Letters of Administration to Elise upon posting the necessary bond. The lower court ruled that the venue of the petition was properly laid in Las Piñas City, thereby discrediting the position taken by the petitioners that Eliseo's last residence was in Capas, Tarlac, as hearsay. The dispositive of the RTC decision reads:

> Having attained legal age at this time and there being no showing of any disqualification or incompetence to serve as administrator, let letters of administration over the estate of the decedent Eliseo Quiazon, therefore, be issued to petitioner, Ma. Lourdes Elise Quiazon, after the approval by this Court of a bond in the amount of ₱100,000.00 to be posted by her.[9]

On appeal, the decision of the trial court was affirmed *in toto* in the 28 November 2008 Decision[10] rendered by the Court of Appeals in CA-G.R. CV No. 88589. In validating the findings of the RTC, the Court of Appeals held that Elise was able to prove that Eliseo and Lourdes lived together as husband and wife by establishing a common residence at No. 26 Everlasting Road, Phase 5, Pilar Village, Las Piñas City, from 1975 up to the time of Eliseo's death in 1992. For purposes of fixing the venue of the settlement of Eliseo's estate, the Court of Appeals upheld the conclusion reached by the RTC that the decedent was a resident of Las Piñas City. The petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution[11] dated 7 August 2009.

The Issues

The petitioners now urge Us to reverse the assailed Court of Appeals Decision and Resolution on the following grounds:

I. THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THAT ELISEO QUIAZON WAS A RESIDENT

[8] Penned by Judge Bonifacio Sanz Maceda. CA *rollo*, pp. 33-38.

[9] *Id.* at 38.

[10] *Id.* at 94-106.

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

OF LAS PIÑAS AND THEREFORE[,] THE PETITION FOR LETTERS OF ADMINISTRATION WAS PROPERLY FILED WITH THE [RTC] OF LAS PIÑAS[;]

II. THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT AMELIA GARCIA-QUIAZON WAS NOT LEGALLY MARRIED TO ELISEO QUIAZON DUE TO PRE-EXISTING MARRIAGE[;] [AND]

III. THE COURT OF APPEALS OVERLOOKED THE FACT THAT ELISE QUIAZON HAS NOT SHOWN ANY INTEREST IN THE PETITION FOR LETTERS OF ADMINISTRATION[.][12]

The Court's Ruling

We find the petition bereft of merit.

Under Section 1, Rule 73 of the Rules of Court, the petition for letters of administration of the estate of a decedent should be filed in the RTC of the province where the decedent resides at the time of his death:

Sec. 1. ***Where estate of deceased persons settled.*** – If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance **[now Regional Trial Court] in the province in which he resides at the time of his death,** and if he is an inhabitant of a foreign country, the Court of First Instance [now Regional Trial Court] of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record. (Emphasis supplied).

The term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term

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[12] *Rollo,* pp. 32-33.

"resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute *or rule* in which it is employed. In the application of venue statutes and rules – Section 1, Rule 73 of the Revised Rules of Court is of such nature – residence *rather than* domicile is the significant factor.[13] Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense.[14] **Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant."**[15] **In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode**.[16] It signifies physical presence in a place and actual stay thereat.[17] Venue for ordinary civil actions and that for special proceedings have one and the same meaning.[18] **As thus defined, "residence," in the context of venue provisions, means nothing more than a person's actual residence or place of abode, provided he resides therein with continuity and consistency**.[19]

Viewed in light of the foregoing principles, the Court of Appeals cannot be faulted for affirming the ruling of the RTC that the venue for the settlement of the estate of Eliseo was properly laid in Las Piñas City. It is evident from the records that during his lifetime, Eliseo resided at No. 26 Everlasting Road, Phase 5, Pilar Village, Las Piñas City. For this reason, the venue for the settlement of his estate may be laid in the said city.

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[13] *Garcia Fule v. Court of Appeals,* G.R. Nos. L-40502 and L-42670, 29 November 1976, 74 SCRA 189, 199.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Jao v. Court of Appeals,* 432 Phil. 160, 170 (2002).

[19] *Id.*

In opposing the issuance of letters of administration, the petitioners harp on the entry in Eliseo's Death Certificate that he is a resident of Capas, Tarlac where they insist his estate should be settled. While the recitals in death certificates can be considered proofs of a decedent's residence at the time of his death, the contents thereof, however, is not binding on the courts. Both the RTC and the Court of Appeals found that Eliseo had been living with Lourdes, deporting themselves as husband and wife, from 1972 up to the time of his death in 1995. This finding is consistent with the fact that in 1985, Eliseo filed an action for judicial partition of properties against Amelia before the RTC of Quezon City, Branch 106, on the ground that their marriage is *void* for being bigamous.[20] That Eliseo went to the extent of taking his marital feud with Amelia before the courts of law renders untenable petitioners' position that Eliseo spent the final days of his life in Tarlac with Amelia and her children. It disproves rather than supports petitioners' submission that the lower courts' findings arose from an erroneous appreciation of the evidence on record. Factual findings of the trial court, when affirmed by the appellate court, must be held to be conclusive and binding upon this Court.[21]

Likewise unmeritorious is petitioners' contention that the Court of Appeals erred in declaring Amelia's marriage to Eliseo as void *ab initio*. In a void marriage, it was though no marriage has taken place, thus, it cannot be the source of rights. Any interested party may attack the marriage directly or collaterally. A void marriage can be questioned even beyond the lifetime of the parties to the marriage.[22] It must be pointed out that at the

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[20] *Quiazon v. Garcia*, Civil Case No. Q-43712. Records, Vol. II, pp. 234-240.

[21] *Golden (Iloilo) Delta Sales Corporation v. Pre-Stress International Corporation*, G.R. No. 176768, 12 January 2009, 576 SCRA 23, 35; *Seaoil Petroleum Corporation v. Autocorp Group*, G.R. No. 164326, 17 October 2008, 569 SCRA 387, 394; *Ejercito v. M.R. Vargas Construction*, G.R. No. 172595, 10 April 2008, 551 SCRA 97, 106.

[22] *Juliano-Llave v. Republic*, G.R. No. 169766, 30 March 2011, 646 SCRA 637, 656-657 citing *Niñal v. Bayadog*, 384 Phil. 661, 673 (2000).

time of the celebration of the marriage of Eliseo and Amelia, the law in effect was the Civil Code, and not the Family Code, making the ruling in *Niñal v. Bayadog*[23] applicable four-square to the case at hand. In *Niñal*, the Court, in no uncertain terms, allowed therein petitioners to file a petition for the declaration of nullity of their father's marriage to therein respondent after the death of their father, by contradistinguishing void from voidable marriages, to wit:

> [C]onsequently, void marriages can be questioned even after the death of either party but voidable marriages can be assailed only during the lifetime of the parties and not after death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid. That is why the action or defense for nullity is imprescriptible, unlike voidable marriages where the action prescribes. Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage.[24]

It was emphasized in *Niñal* that in a void marriage, no marriage has taken place and it cannot be the source of rights, such that any interested party may attack the marriage directly or collaterally without prescription, which may be filed even beyond the lifetime of the parties to the marriage.[25]

Relevant to the foregoing, there is no doubt that Elise, whose successional rights would be prejudiced by her father's marriage to Amelia, may impugn the existence of such marriage even after the death of her father. The said marriage may be questioned directly by filing an action attacking the validity thereof, or collaterally by raising it as an issue in a proceeding for the settlement of the estate of the deceased spouse, such as in the case at bar. Ineluctably, Elise, as a compulsory heir,[26] has a

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[23] *Id.*

[24] *Id.* at 673.

[25] *Id.*

[26] New Civil Code. **Art. 961.** In default of the testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State.

cause of action for the declaration of the absolute nullity of the void marriage of Eliseo and Amelia, and the death of either party to the said marriage does not extinguish such cause of action.

Having established the right of Elise to impugn Eliseo's marriage to Amelia, we now proceed to determine whether or not the decedent's marriage to Amelia is void for being bigamous.

Contrary to the position taken by the petitioners, the existence of a previous marriage between Amelia and Filipito was sufficiently established by no less than the Certificate of Marriage issued by the Diocese of Tarlac and signed by the officiating priest of the Parish of San Nicolas de Tolentino in Capas, Tarlac. The said marriage certificate is a competent evidence of marriage and the certification from the National Archive that no information relative to the said marriage exists does not diminish the probative value of the entries therein. We take judicial notice of the fact that the first marriage was celebrated more than 50 years ago, thus, the possibility that a record of marriage can no longer be found in the National Archive, given the interval of time, is not completely remote. Consequently, in the absence of any showing that such marriage had been dissolved at the time Amelia and Eliseo's marriage was solemnized, the inescapable conclusion is that the latter marriage is bigamous and, therefore, void *ab initio*.[27]

New Civil Code. **Art. 988.** In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

[27] Old Civil Code. **Art. 83.** Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to Articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

Neither are we inclined to lend credence to the petitioners' contention that Elise has not shown any interest in the Petition for Letters of Administration.

Section 6, Rule 78 of the Revised Rules of Court lays down the preferred persons who are entitled to the issuance of letters of administration, thus:

Sec. 6. When and to whom letters of administration granted. — If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

Upon the other hand, Section 2 of Rule 79 provides that a petition for Letters of Administration must be filed by an interested person, thus:

Sec. 2. Contents of petition for letters of administration. — A petition for letters of administration must be filed by an interested person and must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;

(c) The probable value and character of the property of the estate;

(d) The name of the person for whom letters of administration are prayed.

But no defect in the petition shall render void the issuance of letters of administration.

An "interested party," in estate proceedings, is one who would be benefited in the estate, such as an heir, or one who has a claim against the estate, such as a creditor. Also, in estate proceedings, the phrase "next of kin" refers to those whose relationship with the decedent is such that they are entitled to share in the estate as distributees.[28]

In the instant case, Elise, as a compulsory heir who stands to be benefited by the distribution of Eliseo's estate, is deemed to be an interested party. With the overwhelming evidence on record produced by Elise to prove her filiation to Eliseo, the petitioners' pounding on her lack of interest in the administration of the decedent's estate, is just a desperate attempt to sway this Court to reverse the findings of the Court of Appeals. Certainly, the right of Elise to be appointed *administratrix* of the estate of Eliseo is on good grounds. It is founded on her right as a compulsory heir, who, under the law, is entitled to her legitime after the debts of the estate are satisfied.[29] Having a vested right in the distribution of Eliseo's estate as one of his natural children, Elise can rightfully be considered as an interested party within the purview of the law.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the Court of Appeals assailed 28 November 2008 Decision and 7 August 2009 Resolution, are **AFFIRMED *in toto*.**

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[28] *Solinap v. Locsin, Jr.,* 423 Phil. 192, 199 (2001).

[29] New Civil Code. **Art. 961.** In default of the testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State.

New Civil Code. **Art. 988.** In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189570. July 31, 2013]

HEIRS OF SANTIAGO NISPEROS, TEODORICO NISPEROS, RESTITUTA LARON, CARMELITA H. NISPEROS, VIRGILIO H. NISPEROS, CONCHITA H. NISPEROS, PURITA H. NISPEROS, PEPITO H. NISPEROS, REBECCA H. NISPEROS, ABRAHAM H. NISPEROS, IGNACIO F. NISPEROS, RODOLFO F. NISPEROS, RAYMUNDO F. NISPEROS, RENATO F. NISPEROS, FE N. MUNAR, BENITO F. NISPEROS, REYNALDO N. NISPEROS, MELBA N. JOSE, ELY N. GADIANO, represented by TEODORICO NISPEROS, *petitioners, vs.* **MARISSA NISPEROS-DUCUSIN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM [CARP]); AGRARIAN DISPUTE; DEFINED.— Section 3(d) of R.A. No. 6657 defines an agrarian dispute as "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements" and includes "any controversy relating to compensation of lands acquired under this Act and

other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

2. ID.; ID.; TENANCY RELATIONSHIP; INDISPENSABLE ELEMENTS.— Thus, in *Morta, Sr. v. Occidental*, this Court held that there must be a tenancy relationship between the parties for the DARAB to have jurisdiction over a case. It is essential to establish all of the following indispensable elements, to wit: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JURISDICTION; JURISDICTION CANNOT BE ACQUIRED THROUGH, OR WAIVED BY, ANY ACT OR OMISSION OF THE PARTIES; APPLICATION IN CASE AT BAR.— It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action. The failure of the parties to challenge the jurisdiction of the DARAB does not prevent the court from addressing the issue, especially where the DARAB's lack of jurisdiction is apparent on the face of the complaint or petition. Considering that the allegations in the complaint negate the existence of an agrarian dispute among the parties, the DARAB is bereft of jurisdiction

> to take cognizance of the same as it is the DAR Secretary who has authority to resolve the dispute raised by petitioners. x x x While it is true that the PARAD and the DARAB (which was upheld by the CA) thoroughly discussed in their respective decisions the issues pertaining to the validity of the VLT and the OCT/CLOA issued to respondent, the fact that they are bereft of jurisdiction to resolve the same prevents this Court from resolving the instant petition on its merits. The doctrine of primary jurisdiction does not allow a court to arrogate unto itself authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. To assume the power is to short-circuit the administrative process, which has yet to run its regular course. The DAR must be given a chance to correct its administrative and procedural lapses in the issuance of the CLOA. Moreover, it is in a better position to resolve the particular issue at hand, being the agency possessing the required expertise on the matter and authority to hear the same.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Estrellita Briones for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the July 13, 2009 Decision[1] and September 14, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105898. The appellate court affirmed the Decision[3] of the

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[1] *Rollo*, pp. 32-44. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Isaias P. Dicdican concurring.

[2] *Id.* at 46-47.

[3] Records, pp. 97-106. The records are reversely paginated from page 97 to 128.

Department of Agrarian Reform Adjudication Board (DARAB) upholding the validity of the Deed of Voluntary Land Transfer and Original Certificate of Title (OCT) No. CLOA-623 issued in favor of respondent Marissa Nisperos-Ducusin.

The instant case stemmed from a complaint[4] filed by petitioners with the DARAB alleging the following antecedents:

The 15,837-square-meter parcel of land subject of the instant case is part of the 58,350-square-meter agricultural land in Pao Sur, San Fernando City, La Union acquired by Santiago Nisperos, the predecessor of petitioners, during his lifetime. He declared said property for taxation purposes starting December 1947.[5]

When Santiago and his wife Estefania died, they were survived by their nine children: Tranquilino, Felix, Olling, Maria, Lenardo, Millan, Fausto, Candido and Cipriana. The heirs of Santiago, petitioners herein, claim that the subject property was occupied, controlled and tilled by all nine children of Santiago. They paid taxes for it and even hired farm workers under Maria and Cipriana's supervision for the cultivation of the same. For taxation purposes, however, it was initially declared only under the name of Maria.[6] Starting 1988, it was declared under the names of Maria and Cipriana.[7]

During the time when Maria and Cipriana were overseeing the property, Maria took respondent Marissa Nisperos-Ducusin, a daughter of their cousin Purita, as her ward and raised her like her own child.

On February 12, 1988, Maria and Cipriana, acting as representatives of their other siblings, executed a Deed of Donation *Mortis Causa*[8] in favor of petitioners over the 58,350-square-meter property and another 46,000-square-meter property.

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[4] *Id.* at 66-70.

[5] *Id.* at 73.

[6] *Id.* at 74-84.

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

[8] *Id.* at 87.

On April 28, 1992, a Deed of Voluntary Land Transfer[9] (VLT) over the subject property was executed between Maria and Cipriana as landowners, and respondent, who was then only 17 years old, as farmer-beneficiary. The instrument was signed by the three in the presence of witnesses Anita, Lucia and Marcelina Gascon and Municipal Agrarian Reform Officer Susimo Asuncion. The same was notarized by Notary Public Atty. Roberto E. Caoayan.

On June 24, 1992, Certificate of Land Ownership Award (CLOA) No. 0002122453902[10] was issued to respondent by the Department of Agrarian Reform (DAR) over the subject property. By virtue of said CLOA, OCT No. CLOA-623[11] was issued to respondent a month later, or on July 24, 1992.

Alleging fraud on the part of respondent which petitioners claim to have discovered only in August 2001, petitioners filed a complaint on September 6, 2001 with the Municipal Agrarian Reform Office (MARO) of San Fernando City, La Union. Unfortunately, no settlement between petitioners and respondent was reached prompting the MARO to issue a Certificate to File Action.[12]

On January 23, 2002, petitioners filed with the DARAB a complaint for annulment of documents and damages against respondent. Petitioners contended that the transfer of ownership over the subject land was made without the consent of the heirs of Santiago and that respondent took advantage of Maria's senility and made it appear that Maria and Cipriana sold said property by virtue of the VLT. They further alleged that said document was falsified by respondent because Maria could not anymore sign but could only affix her thumbmark as she did in a 1988 Deed of Donation. To support their complaint, they

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[9] *Id.* at 88.

[10] *Id.* at 90. Sometimes referred to as CLOA/OCT No. 00021224 in some parts of the records.

[11] *Id.*

[12] *Id.* at 91.

attached a Joint Affidavit of Denial[13] by Anita and Lucia Gascon the supposed instrumental witnesses to the VLT. In said affidavit, Anita and Lucia claimed that the signatures appearing therein are not theirs as they never affixed their signatures on said document. They further stated that they were never aware of said document.

Petitioners likewise asseverated in their complaint that respondent committed fraud because she was not a bona fide beneficiary as she was not engaged in farming since she was still a minor at that time and that she could not validly enter into a contract with Maria and Cipriana.

On March 6, 2002, respondent filed a Motion to Dismiss[14] petitioners' complaint. She argued that the action for annulment of the VLT and the OCT/CLOA and the claim for damages have already prescribed.

In an Order[15] dated April 17, 2002, the DARAB Regional Adjudicator denied respondent's Motion to Dismiss and ordered her to file her answer to the complaint.

In respondent's Answer with Counterclaim[16] dated July 7, 2002, respondent alleged that Maria and Cipriana acquired the property from Santiago and possessed the same openly, continuously, exclusively and publicly; thus, the consent of petitioners is not necessary to the VLT. She denied the allegations of fraud and falsification, and insisted that she is a bona fide beneficiary as she has been tilling the land with her parents even before 1992. She added that her minority does not disqualify her from availing the benefits of agrarian reform.

On October 16, 2002, DARAB Regional Adjudicator Rodolfo A. Caddarao rendered a Decision[17] annulling the VLT and OCT/

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[13] *Id.* at 89.

[14] *Id.* at 61-64.

[15] *Id* at 53.

[16] *Id.* at 34-42.

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

CLOA in respondent's name. The *fallo* of the said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring Deed of Voluntary [L]and Transfer dated April 28, 1992 executed by Maria Nisperos in favor of Marissa Nisperos annulled or cancelled and [without] force and effect for having been executed not in accordance with agrarian laws;
>
> 2. Declaring OCT No. 00021224 in the name of Marissa D. Nisperos annulled or cancelled on the ground of material misrepresentation of the alleged agrarian reform beneficiary.
>
> 3. Directing the Register of Deeds of La Union to cause the cancellation of the aforementioned title;
>
> 4. Directing the concerned Assessor's Office to reinstate the tax declaration of said landholding in the name of Maria and Cipriana Nisperos;
>
> 5. Directing the parties to refer this problem with the court so that the issue of ownership of the landholding could be finally resolved; and
>
> 6. Dismissing the other ancillary claims and counterclaims for lack of merit and evidence.
>
> SO ORDERED.[18]

The Regional Adjudicator noted that the land supposedly owned by Maria and Cipriana (which includes the 15,837-square-meter subject property) has a total area of 58,350 square meters. Considering that there are two owners, he ruled that the individual share of each would be less than five hectares each and well within the retention limit.

The Regional Adjudicator also held there was reason to believe that Maria and Cipriana's names were stated in the tax declaration for purposes of taxation only as no evidence was presented that they lawfully acquired the property from their parents. It was also ruled that the issuance of the title in respondent's

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[18] *Id.* at 13.

name was not in accordance with agrarian laws because she cannot be considered as a tenant but more of an heir of the transferors.

Respondent contested the Regional Adjudicator's decision before the DARAB alleging that the Regional Adjudicator committed grave abuse of discretion. Respondent contended that the complaint should not have been given due course since other parties-in-interest such as Maria, the Register of Deeds of La Union and duly authorized representatives of the DAR were not impleaded and prescription had already set in insofar as the contestability of the CLOA is concerned. She likewise argued that being a farmer or a tenant is not a primordial requisite to become an agrarian reform beneficiary. She added that the Regional Adjudicator went beyond the scope of his authority by directing the parties to litigate the issue of ownership before the court.

On September 16, 2008, the DARAB rendered a Decision[19] reversing the decision of the Regional Adjudicator and upholding the validity of the VLT and respondent's title. The decretal portion reads:

WHEREFORE, premises considered, a new judgment is hereby rendered:

1. DECLARING the VLT executed on April 28, 1992, between respondent-appellant Marissa Nisperos-Ducusin and Maria and Cipriana Nisperos as valid and regular;

2. DECLARING the validity of the Original Certificate of Title (OCT) CLOA No. 623 issued in the name of respondent-appellant Marissa Nisperos-Ducusin covering 15,837 square meter portion of the disputed lot; and

3. MAINTAINING respondent-appellant Marissa Nisperos-Ducusin in peaceful possession and cultivation of the subject lot.

No costs.

SO ORDERED.[20]

[19] *Supra* note 3.

[20] *Id.* at 97-98.

The DARAB dismissed petitioners' claim of fraud since the VLT was executed in the presence of DAR-MARO Susimo Asuncion, signed by three instrumental witnesses and notarized by Atty. Roberto E. Caoayan of the DAR. It likewise held that the records are bereft of any indication that fraud was employed in the transfer, and mere conjectures that fraud might have been exerted just because Maria was already of advanced age while respondent was her care giver or ward is not evidence. The DARAB also did not give credence to the Affidavit of Denial by the instrumental witnesses since the statements there are mere hearsay because the affiants were not cross-examined.

The DARAB likewise ruled that the fact that respondent was a minor at the time of the execution of the VLT does not void the VLT as this is the reason why there is an active government involvement in the VLT: so that even if the transferee is a minor, her rights shall be protected by law. It also held that petitioners cannot assert their rights by virtue of the Deed of Donation *Mortis Causa* allegedly executed by Maria and Cipriana in their favor since before the operative condition (the death of the donors) was fulfilled, the donation was revoked by virtue of the VLT. The DARAB further ruled that when OCT No. CLOA-623 was issued in respondent's name, she acquired absolute ownership of the landholding. Thus her right thereto has become fixed and established and is no longer open to doubt or controversy.

Aggrieved, petitioners elevated the case to the CA via a petition for review[21] where they raised the following issues: (1) whether the subject property is covered by the Comprehensive Agrarian Reform Program (CARP); (2) whether the VLT is valid having been issued through misrepresentation and fraud; and (3) whether the action for annulment had already prescribed.

On July 13, 2009, the appellate court rendered the assailed decision dismissing the petition for review and upholding the DARAB decision. It ruled that the Regional Adjudicator acted with grave abuse of discretion when it held that the subject

[21] CA *rollo,* pp. 10-26.

property was no longer covered by our agrarian laws because of the retention rights of petitioners. The CA held that retention rights, exclusion of a property from CARP coverage and the qualification and disqualification of agrarian reform beneficiaries are issues not cognizable by the Regional Adjudicator and the DARAB but by the DAR Secretary. The appellate court nevertheless held that petitioners failed to discharge their burden of proving that fraud attended the execution of the VLT. It also agreed with the DARAB that considering a certificate of title was already issued in favor of respondent, the same became indefeasible and incontrovertible by the time petitioners instituted the case in January 2002, and thus may no longer be judicially reviewed.

Hence this petition before this Court raising the issues of whether the appellate court erred in:

I

x x x DECLARING THAT THE PARAB HAS NO JURISDICTION TO RULE THAT THE SUBJECT PIECE OF LAND WAS NO LONGER COVERED BY AGRARIAN LAWS.

II

x x x AFFIRMING THE DECISION OF THE DARAB DESPITE CLEAR AND CONVINCING EVIDENCE REGARDING THE EXISTENCE OF FRAUD.

III

x x x RULING THAT THE CERTIFICATES OF TITLE ISSUED IN THE NAME OF THE RESPONDENT IS INDEFEASIBLE.[22]

We set aside the assailed Decision and Resolution.

The complaint should have been lodged with the Office of the DAR Secretary and not with the DARAB.

Section 1, Rule II of the 1994 DARAB Rules of Procedure, the rule in force at the time of the filing of the complaint by petitioners in 2001, provides:

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[22] *Rollo*, p. 18.

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

x x x x x x x x x

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

However, it is not enough that the controversy involves the cancellation of a CLOA registered with the Land Registration Authority for the DARAB to have jurisdiction. What is of primordial consideration is the existence of an agrarian dispute between the parties.[23]

Section 3(d) of R.A. No. 6657 defines an agrarian dispute as "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements" and includes "any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

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[23] *Sutton v. Lim*, G.R. No. 191660, December 3, 2012, 686 SCRA 745, 753.

Thus, in *Morta, Sr. v. Occidental*,[24] this Court held that there must be a tenancy relationship between the parties for the DARAB to have jurisdiction over a case. It is essential to establish all of the following indispensable elements, to wit: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[25]

In the instant case, petitioners, as supposed owners of the subject property, did not allege in their complaint that a tenancy relationship exists between them and respondent. In fact, in their complaint, they described respondent as a "ward" of one of the co-owners, Maria, who is "not a bona fide beneficiary, she being not engaged in farming because she was still a minor" at the time the VLT was executed.[26]

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action. The failure of the parties to challenge the jurisdiction of the DARAB does not

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[24] 367 Phil. 438 (1999).

[25] *Id.* at 446.

[26] Records, pp. 67, 68.

prevent the court from addressing the issue, especially where the DARAB's lack of jurisdiction is apparent on the face of the complaint or petition.[27]

Considering that the allegations in the complaint negate the existence of an agrarian dispute among the parties, the DARAB is bereft of jurisdiction to take cognizance of the same as it is the DAR Secretary who has authority to resolve the dispute raised by petitioners. As held in *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz:*

> The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. **However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the *administrative* implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB**.[28] (Emphasis supplied.)

What the PARAD should have done is to refer the complaint to the proper office as mandated by Section 4 of DAR Administrative Order No. 6, Series of 2000:

> SEC. 4. *Referral of Cases*. – If a case covered by Section 2 herein is filed before the DARAB, the concerned DARAB official shall refer the case to the proper DAR office for appropriate action within five (5) days after said case is determined to be within the jurisdiction of the Secretary. Likewise, if a case covered by Section 3 herein is filed before any office other than the DARAB, the concerned DAR official shall refer the case to the DARAB for resolution within the same period provided herein.

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[27] *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*, 512 Phil. 389, 400-401 (2005).

[28] *Id.* at 404.

While it is true that the PARAD and the DARAB (which was upheld by the CA) thoroughly discussed in their respective decisions the issues pertaining to the validity of the VLT and the OCT/CLOA issued to respondent, the fact that they are bereft of jurisdiction to resolve the same prevents this Court from resolving the instant petition on its merits. The doctrine of primary jurisdiction does not allow a court to arrogate unto itself authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[29] To assume the power is to short-circuit the administrative process, which has yet to run its regular course. The DAR must be given a chance to correct its administrative and procedural lapses in the issuance of the CLOA.[30] Moreover, it is in a better position to resolve the particular issue at hand, being the agency possessing the required expertise on the matter and authority to hear the same.

WHEREFORE, the July 13, 2009 Decision and September 14, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 105898 are **SET ASIDE**. The complaint is **REFERRED** to the Office of the Department of Agrarian Reform Secretary for appropriate action.

No pronouncement as to costs.

SO ORDERED.

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

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[29] *Heirs of Tantoco, Sr. v. Court of Appeals*, 523 Phil. 257, 284 (2006).

[30] *Id.*

[*] Designated additional member per Raffle dated July 8, 2013.

FIRST DIVISION

[G.R. No. 191025. July 31, 2013]

RHODORA PRIETO, *petitioner*, *vs.* **ALPADI DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS NEITHER A NATURAL RIGHT NOR A PART OF DUE PROCESS; EFFECT, EXPLAINED.—** Time and again the Court has declared that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.

2. **ID.; ID.; PARTIES PRAYING FOR THE LIBERAL INTERPRETATION OF THE RULES MUST BE ABLE TO HURDLE THAT HEAVY BURDEN OF PROVING THAT THEY DESERVE AN EXCEPTIONAL TREATMENT; NOT ESTABLISHED IN CASE AT BAR.—** It must be stressed that anyone seeking exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of exceptionally meritorious instances warranting such deviation. Parties praying for the liberal interpretation of the rules must be able to hurdle that heavy burden of proving that they deserve an exceptional treatment. It was never the Court's intent "to forge a bastion for erring litigants to violate the rules with impunity." Unfortunately for Prieto, she was unable to discharge this burden of proof. Procedural rules should not be so easily brushed aside with the mere averment of the "higher interest of justice," as the Court discussed in *Building Care Corp./Leopard Security & Investigation Agency v. Macaraeg*: x x x Prieto cannot claim that she had been deprived of her day in court when her arguments in support of her Demurrer to Evidence had been heard by the RTC and the Court of Appeals. Moreover, she does not lose her liberty at this point for she still has the opportunity to

present evidence in her defense before the RTC in the continuation of the proceedings in Criminal Case No. 97-157752. With the withdrawal of the appeal in G.R. No. 190282 and the belated filing of the Petition in G.R. No. 191025, the Decision dated August 28, 2009 of the Court of Appeals in CA-G.R. SP No. 91714, reversing the grant by the RTC of Prieto's Demurrer to Evidence and reinstating Criminal Case No. 97-157752, had become final and executory, thus, immutable.

APPEARANCES OF COUNSEL

Barroga Nario & Associates Law Offices for petitioner.
Padilla Asuncion Bote-Veguillas Matta Cariño Law Offices for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioner Rhodora Prieto (Prieto) seeks to annul and set aside the Decision[1] dated August 28, 2009 and Resolution[2] dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714, which (1) annulled and set aside, on the ground of grave abuse of discretion, the Orders dated March 8, 2005[3] and August 8, 2005[4] of the Regional Trial Court (RTC) of Manila, Branch 8, in Criminal Case No. 97-157752, granting Prieto's Demurrer to Evidence; and (2) reinstated and remanded said criminal case to the RTC for further trial.

Prieto was employed as an accounting clerk and cashier of the Alpadi Group of Companies, composed of respondent Alpadi

[1] *Rollo*, pp. 20-32; penned by Associate Justice Romeo F. Barza with Associate Justices Remedios A.Salazar-Fernando and Isaias P. Dicdican, concurring.

[2] *Id.* at 34-35.

[3] *Id.* at 81-83.

[4] *Id.* at 84-86.

Development Corporation (ADC), Manufacturers Building, Incorporated (MBI), and Asian Ventures Corporation (AVC). ADC and MBI are both engaged in the business of leasing office spaces.

Prieto was charged before the RTC with the crime of *estafa* in an Information[5] dated May 13, 1997 that reads:

> That in or about and during the year from 1992 up to 1994, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud ALPADI DEVELOPMENT CORPORATION, a business entity duly organized and existing under the laws of the Republic of the Philippines, and doing business in said City, in the following manner, to wit: the said accused being then employed as cashier and accounting clerk of the said corporation, collected and received rental payments from the different tenants of Alpadi Development Corporation in the total amount of ₱544,858.64, under the express obligation on the part of said accused to account for and remit immediately the deposits and rentals due to said corporation, but the said accused, once in the possession of the said amount, far from complying with her aforesaid obligation, failed and refused and still fails and refuses to do so, despite repeated demands made upon her to that effect and instead, with intent to defraud, unfaithfulness and grave abuse of confidence, misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of Alpadi Developement Corporation represented by Angeles Manzano, in the aforesaid sum of ₱544,858.64, Philippine Currency.

Trial ensued and the prosecution presented its evidence which included, among other things, the testimonies of Angeles A. Manzano (Manzano), Office Manager of ADC and MBI, and Jaime Clamar, Jr. (Clamar), Private Investigator; Prieto's "*kusang-loob na salaysay*" executed before Clamar on January 3, 1995, in which Prieto admitted collecting rental payments from the tenants of ADC and MBI, making it appear through fraudulent deposit slips that she deposited her collections in the bank accounts of ADC and MBI, and actually using said collections to pay for her household expenses and to lend to employees of Tri-Tran

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[5] *Id.* at 37.

Transit; the fraudulent deposit slips; Clamar's Investigation Report dated July 18, 1995 recommending that Prieto be charged in court for *estafa* and be made to pay the amount she misappropriated; computation of Prieto's unremitted/undeposited rental collections prepared by Lourdes P. Roque, Supervising Director, and Manzano, Office Manager, with the *conforme* of Prieto; and Affidavit dated December 16, 1994 of Harry Chua Ga Haou, a tenant of MBI, stating that Prieto, personally and by a handwritten note, requested that rental payments be made in cash rather than checks.

After resting its case, the prosecution filed its Formal Offer of Evidence, which was admitted by the RTC in an Order dated December 13, 2004. Prieto, represented by the Public Attorney's Office (PAO), asked for leave of court to file a Demurrer to Evidence. The RTC gave Prieto 20 days from December 13, 2004 within which to file her Demurrer to Evidence. The 20th day of the period was January 2, 2005, a Sunday, so Prieto could still file her Demurrer to Evidence on January 3, 2005, a Monday. Records show that Prieto filed her Demurrer to Evidence only on January 13, 2005.

In her Demurrer to Evidence, Prieto argued that she could not be convicted for *estafa* because (1) as an employee, her custody of the rental collections was precarious and for a temporary purpose or short period only, and the juridical or constructive possession of the said collections remained in her employer; and (2) there was no showing that demand was made upon Prieto to deliver or return the rental collections to ADC.

In an Order dated March 8, 2005, the RTC granted Prieto's Demurrer to Evidence, reasoning as follows:

> Accused being an employee of the complaining corporation, cannot be convicted of estafa because when accused received the rental payments from the tenants, she only received the material and physical possession of the money and the juridical possession remains in the owner. The position of accused is likened to that of a bank teller receiving money from the depositors.

The Supreme Court ruled in the case *GUZMAN vs. CA (G.R. No. L-9572[,] July 31, 1956)* that:

> "The case cited by the Court of Appeals (*People v. Locson*, 57 Phil., 325), in support of its theory that appellant only had the material possession of the merchandise he was selling for his principal, or their proceeds, is not in point. In said case, the receiving teller of a bank who misappropriated money received by him for a bank, was held guilty of qualified theft on the theory that the possession of the teller is the possession of the bank. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault (Article 1915, new Civil Code; Article 1730, old)."

Accused in this case is not even an agent of the corporation but a cashier and accounting clerk. Payment of rentals by the tenants to the accused is also payment to the corporation because accused is only a cashier whose duties include the receipt of rentals due from the tenants.

WHEREFORE, the Demurrer to Evidence is granted.

On the civil aspect of the case, set for hearing on May 25, 2005 and June 13, 2005 at 8:30 A.M.[6]

ADC, as the private complainant in Criminal Case No. 97-157752, filed a Motion for Reconsideration of the aforementioned RTC Order. The RTC, in an Order dated August 8, 2005, denied the Motion for Reconsideration, thus:

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[6] *Id.* at 82.

[T]he Court is constrained to deny the [Motion for Reconsideration filed by private complainant] because the prosecution failed to prove all the elements of estafa with abuse of confidence under paragraph 1(b) of Art. 315 which are the following:

1) That money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

2) That there be misappropriation or conversion of such money or property by the offender, or denial on his part as such receipt;

3) That such misappropriation or conversion or denial is to the prejudice of another; and

4) That there is a demand made by the offended party to the offender.

In this case, the prosecution failed to prove the first element. The Supreme Court ruled in the case of *Burce vs. CA, supra*, to wit:

"When the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees."

To reiterate, when accused received the rental payments from the tenants, she only received the material and physical possession of the money and the juridical possession remains in the owner.

In view of the foregoing, [the] Motion for Reconsideration is hereby DENIED.

ADC sought recourse from the Court of Appeals by filing a Petition for *Certiorari*, docketed as CA-G.R. SP No. 91714. ADC averred that the RTC committed grave abuse of discretion

amounting to lack or excess of jurisdiction in issuing the Orders dated March 8, 2005 and August 8, 2005, contrary to law and jurisprudence, and despite the overwhelming evidence on record proving Prieto's liability for *estafa*. ADC additionally pointed out that Prieto's Demurrer to Evidence was filed beyond the 20-day period granted by the RTC.

Prieto, through the PAO, filed her Comment, arguing that: (1) the Petition for *Certiorari* of ADC was not anchored on any of the grounds provided under Rule 65 of the Rules of Court and failed to expressly indicate that there was no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, available; (2) ADC had no personality to file the Petition because only the Office of the Solicitor General (OSG) may represent the Republic of the Philippines or the People, in criminal proceedings, before the Court of Appeals and the Supreme Court; and (3) the grant of the demurrer to evidence dismissed the criminal case and was equivalent to Prieto's acquittal, from which no appeal could be taken, as it would place Prieto in double jeopardy.

The OSG, on behalf of the People, eventually filed, in lieu of a Comment, a Manifestation and Motion ratifying and adopting the Petition for *Certiorari* of ADC. According to the OSG, in addition to Prieto's own confession, the prosecution had duly proven the elements of *estafa*. The cases cited by the RTC in its assailed Orders were inapplicable to Prieto's case. Also, since the grant of the demurrer to evidence is tantamount to an acquittal, albeit based on erroneous grounds and misinterpretation of law and jurisprudence, the remedy of appeal was not available to the People. Thus, the Petition for *Certiorari* was the proper remedy.

The Court of Appeals rendered its Decision on August 28, 2009 granting the Petition for *Certiorari* in CA-G.R. SP No. 91714 and finding that:

> Evidence on record strongly supports the *People's* argument that the cases cited by the trial court are inapplicable in this case. The elements of Estafa have been duly proven by the prosecution. Records

reveal that [Prieto] had admitted having failed to remit the rentals from 1992 to 1994, or for a period of two (2) years. While it is a fact that she was instructed to have the rentals collected to be deposited on the day of the collection or the following day, however, since the misappropriation was discovered only after two (2) years, it only goes to show that she had the discretion as to when to have these rentals deposited or not to have them deposited at all. She had control as to the amount she wished to include as part of her collections, which led her to misappropriating the rental collections. The said misappropriation would not have been discovered only after 2 years had there not been a fiduciary relationship between [Prieto] and her employer. As such, she could not be considered not having juridical possession of the rentals she had collected. Clearly, the trial court erred in declaring that [Prieto] is likened to a bank teller, whose possession of the cash collections is merely physical. Contrary to such findings, [Prieto] in this case had physical or material possession and juridical possession with a duty to make delivery of the collections she received in trust.

Moreover, it is well to note that the case of *People vs. Benitez* raised by [ADC], finds application in the instant case. In *Benitez*, the accused was employed as collector of rents of the houses owned by his employer. For two (2) months, the accused made several collections from his employer's tenants amounting to ₱540.00. Having failed to turn over said amount, or to account for it, to his employer, upon demand, the accused offered to work in the former's establishment, in the sum of ₱100.00, to be deducted from his salary every month until the whole amount of ₱540.00 is fully paid. The agreement was reduced to writing. However, after working for a few days, the accused did not report for work. His employer sent him a demand letter for the settlement of his account. As the accused failed to pay the amount of his obligation, a complaint for Estafa was filed against him, and for which he was convicted. The Supreme Court ratiocinates in this case that the failure to account upon demand, for funds or property held in trust is circumstantial evidence of misappropriation.[7]

Given the findings of the Court of Appeals that the RTC Orders were in contravention of law and settled jurisprudence and were, therefore, issued with grave abuse of discretion

[7] *Id.* at 27-29.

amounting to lack or excess of jurisdiction, the appellate court held that its reversal of the grant of Demurrer to Evidence did not violate Prieto's right against double jeopardy, citing *People v. Hon. Laguio, Jr.*[8] and *Dayap v. Sendiong*.[9]

The Court of Appeals lastly ruled, based on *People v. Nano*,[10] that the filing of the Petition for *Certiorari* by ADC, instead of by the OSG, was a mere defect in form, which was cured when the OSG subsequently filed a Manifestation and Motion ratifying and adopting said Petition.

In the end, the Court of Appeals decreed:

> **WHEREFORE,** finding grave abuse of discretion amounting to lack or excess of jurisdiction, as prayed for, the assailed Orders, of the Regional Trial Court of Manila, Branch 8, dated 08 March 2005 and 08 August 2005, in Criminal Case No. 97-157752, are hereby **ANNULLED and SET ASIDE**. Let the instant case be remanded to the RTC and reinstated for the reception of the defense evidence/ further trial.[11]

The appellate court denied Prieto's Motion for Reconsideration in its Resolution dated November 12, 2009.

The PAO, Prieto's counsel before the RTC and the Court of Appeals, received a copy of the Resolution dated November 12, 2009 on November 24, 2009, hence, giving Prieto until December 9, 2009 to appeal the adverse judgment of the Court of Appeals to this Court. Atty. Allan Julius B. Azcueta (Azcueta), Public Attorney II of the PAO, filed on December 4, 2009 a Motion for Extension of Time to File Petition for Review on *Certiorari* before the Court, requesting an extension of 30 days from December 9, 2009, or until January 8, 2010, within which to file Prieto's appeal of the Decision dated August 28, 2009 and Resolution dated November 12, 2009 of the Court of Appeals

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[8] 547 Phil. 296, 309-310 (2007).

[9] G.R. No. 177960, January 29, 2009, 577 SCRA 134, 146-147.

[10] G.R. No. 94639, January 13, 1992, 205 SCRA 155, 159.

[11] *Rollo*, p. 31.

in CA-G.R. SP No. 91714. The Motion was docketed as G.R. No. 190282.

However, on January 12, 2010, Atty. Azcueta filed before the Court a Manifestation with Motion, alleging that:

> 3. On 06 January 2010, the petitioner, Rhodora Prieto, personally visited the undersigned counsel's office and after a thorough discussion of the case with her, [Prieto] had a change of heart and has decided not to further appeal her case anymore, considering that she still has the chance to present her evidence before the lower court and at the same time the chance to have the case settled amicably if the lower court allows;
>
> 4. After careful deliberation and exhaustive discussion with the undersigned counsel, [Prieto] is now voluntarily signifying her desire to withdraw the filing of the Petition for Review on *Certiorari*;
>
> 5. For this reason, the undersigned humbly and profusely apologizes for the inconvenience that the non-filing of the petition may have caused to this Honorable Court. The motion for extension was filed solely for the purpose of protecting and serving the interest of [Prieto].[12]

Atty. Azcueta then prayed for the Court to note the Manifestation with Motion and to dispense with the filing of the Petition for Review on *Certiorari*.

In its Resolution dated February 10, 2010 in G.R. No. 190282, the Court resolved:

> (1) to ***NOTE*** the manifestation of Public Attorney's Office that [Prieto] decided not to appeal her case considering that she still has the chance to present her evidence before the lower court and at the same time has the chance to have the case amicably settled;
>
> (2) to ***GRANT*** the said counsel's motion to withdraw the filing of the petition for review on *certiorari*; and
>
> (3) to consider this case ***CLOSED*** and ***TERMINATED***.[13]

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[12] *Id.* at 114-115.

[13] *Id.* at 117.

Entry of Judgment was eventually made in G.R. No. 190282 on April 5, 2010.

Meanwhile, also on February 10, 2010, Prieto, through another counsel, Atty. Xilexferen P. Barroga (Barroga) of Barroga, Nario & Associates Law Offices, filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying for the reversal of the Decision dated August 28, 2009 and Resolution dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714 and the reinstatement of the Orders dated March 8, 2005 and August 8, 2005 of the RTC in Criminal Case No. 97-157752. The Petition is docketed as G.R. No. 191025.

To justify the timeliness of the filing of her Petition in G.R. No. 191025 on February 10, 2012, Prieto alleges that she received a copy of the Resolution dated November 12, 2009 of the Court of Appeals, denying her Motion for Reconsideration, only on January 26, 2010, mailed to her by the PAO.

In the present Petition, Prieto insists that she was a mere employee with continuing instruction from ADC to deposit the rental payments either on the same day or the day after collection, and she could not have validly retained control of the amounts collected because ownership of the same still belonged to ADC. Prieto goes on to argue that without juridical possession of the rental payments she collected, she cannot be convicted of *estafa* since an essential element of the crime is lacking.

In a Resolution[14] dated March 3, 2010, the Court, without necessarily giving due course to the Petition in G.R. No. 191025, required ADC to file its Comment.

ADC, in its Comment, prays for the outright denial of the Petition on the following grounds: (1) G.R. Nos. 190282 and 191025 both involve Prieto's appeal of the Decision dated August 28, 2009 and Resolution dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714, and in the Resolution dated February 10, 2010, the Court already granted Prieto's motion to withdraw the Petition in G.R. No. 190282 and

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

considered G.R. No. 190282 closed and terminated; (2) even with the grant of Prieto's previous motion for extension of time, she only had until January 8, 2010 within which to appeal the adverse judgment of the Court of Appeals in CA-G.R. SP No. 91714, so the filing of the Petition in G.R. No. 191025 on February 10, 2010 was already out of time; and (3) Prieto's arguments in her Petition in G.R. No. 191025 merely rehash or restate those already resolved by the Court of Appeals.

Prieto claims in her Reply that she was not aware that Atty. Azcueta filed a Motion for Extension of Time to file a Petition for Review, docketed as G.R. No. 190282 and that she did not authorize Atty. Azcueta to file a Manifestation with Motion withdrawing her appeal of the adverse judgment of the Court of Appeals in CA-G.R. SP No. 91714. According to Prieto, she went to the PAO from time to time to follow-up on her case, but she felt that her case was not being diligently attended to, so she decided to hire the services of a private lawyer with money raised by her relatives. When she asked for a copy of the Court of Appeals Resolution dated November 12, 2009 denying her Motion for Reconsideration, she was told by the PAO that a copy of the same would be sent to her through mail. She received a copy of said Resolution only on January 26, 2010, giving her until February 10, 2010 to appeal. Consequently, her Petition in G.R. No. 191025 filed on February 10, 2010 was filed within the reglementary period.

At the outset, the Court notes that both G.R. Nos. 190282 and 191025 involve Prieto's appeal of the Decision dated August 28, 2009 and Resolution dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714. On February 10, 2010, the motion to withdraw the appeal in G.R. No. 190282, filed by the PAO, was granted by the Court; and on the same date, the Petition in G.R. No. 191025 was filed by Prieto's new counsel.

The Court hereby outrightly denies Prieto's Petition in G.R. No. 191025 for being filed out of time, without the need of delving into the propriety of the institution of G.R. No. 191025 in light of the previous withdrawal of G.R. No. 190282.

The reglementary period for filing a Petition for Review on *Certiorari* is set forth in Rule 45, Section 2 of the Rules of Court, which provides:

> SEC. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

In this case, Prieto, through her counsel of record, the PAO, received a copy of the Resolution denying her Motion for Reconsideration of the adverse judgment of the Court of Appeals on November 24, 2009. The 15-day period to appeal would have ended on December 9, 2009, but with the 30-day extension period prayed for by the PAO in G.R. No. 190282, the last day for filing the appeal was moved to January 8, 2010. Clearly, the filing of the Petition in G.R. No. 191025 by Prieto's new counsel was already beyond the reglementary period for appeal.

Time and again the Court has declared that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[15]

Prieto prays for the liberal application of the rules of procedure and posits that the 15-day reglementary period be counted from January 26, 2010, the day she actually received a copy of the Resolution denying her Motion for Reconsideration of the adverse judgment of the Court of Appeals, sent to her through mail by the PAO.

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[15] *Basuel v. Fact-Finding and Intelligence Bureau (FFIB),* 526 Phil. 608, 613-614 (2006).

The Court is not persuaded.

In *National Power Corporation v. Laohoo*,[16] the Court pronounced that:

> The rules provide that if a party is appearing by counsel, service upon him shall be made upon his counsel or one of them unless service upon the party himself is ordered by the court. x x x.
>
> The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. The failure of a party's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence, which is not excusable. Notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.
>
> To sustain petitioner's self-serving argument that it cannot be bound by its counsel's negligence would set a dangerous precedent, as it would enable every party-litigant to render inoperative any adverse order or decision of the courts, through the simple expedient of alleging gross negligence on the part of its counsel. (Citations omitted.)

The Court further elucidated in *People v. Kawasa and Salido*[17] on why it is not easily swayed by assertions of gross negligence or mistake on the part of the counsel that should not bind the client:

> If indeed accused-appellant felt and believed that his counsel was inept, that he should have taken action, such as discharging him earlier, instead of waiting until an adverse decision was handed, and thereupon heap all blame and condemnation on his counsel, who cannot now be heard to defend himself. This cannot be allowed, for to do otherwise would result in a situation where all a defeated party would have to do to salvage his case is to claim neglect or mistake on the part of

[16] G.R. No. 151973, July 23, 2009, 593 SCRA 564, 584-585.

[17] 327 Phil. 928, 935 (1996).

his counsel as a ground for reversing an adverse judgment. There would be no end to litigation if this were allowed as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on *ad infinitum*. This would render court proceedings indefinite, tentative, and subject to reopening at any time by the mere subterfuge of replacing counsel. x x x.

Prieto herein not only alleges mistake or negligence on the part of the PAO, but more seriously, attributes to her former counsel deliberate acts which deprived her of her right to appeal, *i.e.*, refusing to give her a copy of the Resolution dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714 and misrepresenting to the Court that it was authorized by Prieto to withdraw her appeal in G.R. No. 190282. However, other than Prieto's bare allegations, there is no other evidence of the purported detrimental acts of the PAO. In addition, Prieto's allegations are so contrary to the past conduct of the PAO, which diligently represented her before the RTC, the Court of Appeals, and even up to this Court, with the PAO even timely filing the Motion for Extension of Time to File Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 190282.

It must be stressed that anyone seeking exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of exceptionally meritorious instances warranting such deviation.[18] Parties praying for the liberal interpretation of the rules must be able to hurdle that heavy burden of proving that they deserve an exceptional treatment. It was never the Court's intent "to forge a bastion for erring litigants to violate the rules with impunity."[19] Unfortunately for Prieto, she was unable to discharge this burden of proof.

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[18] *Neplum, Inc. v. Orbeso*, 433 Phil. 844, 868 (2002).

[19] *Rivera-Pascual v. Lim*, G.R. No. 191837, September 19, 2012, 681 SCRA 429, 436.

Procedural rules should not be so easily brushed aside with the mere averment of the "higher interest of justice," as the Court discussed in *Building Care Corp./Leopard Security & Investigation Agency v. Macaraeg*:[20]

> It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. In *Marohomsalic v. Cole*, the Court stated:
>
> > While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.
>
> The later case of *Daikoku Electronics Phils., Inc. v. Raza*, further explained that:
>
> > To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice. x x x. The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. x x x.
> >
> > We must stress that the bare invocation of "the interest of substantial justice" line is not some magic want that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the

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[20] G.R. No. 198357, December 10, 2012, 687 SCRA 643, 647-648.

> rules cannot be justly rationalized by harping on the policy of liberal construction. (Emphases and citations omitted.)

Prieto cannot claim that she had been deprived of her day in court when her arguments in support of her Demurrer to Evidence had been heard by the RTC and the Court of Appeals. Moreover, she does not lose her liberty at this point for she still has the opportunity to present evidence in her defense before the RTC in the continuation of the proceedings in Criminal Case No. 97-157752.

With the withdrawal of the appeal in G.R. No. 190282 and the belated filing of the Petition in G.R. No. 191025, the Decision dated August 28, 2009 of the Court of Appeals in CA-G.R. SP No. 91714, reversing the grant by the RTC of Prieto's Demurrer to Evidence and reinstating Criminal Case No. 97-157752, had become final and executory, thus, immutable. As the Court declared in *Lalican v. Insular Life Assurance Co. Ltd.*:[21]

> A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has become final. When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court, which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. (Citations omitted.)

WHEREFORE, the Petition is **DENIED** for being filed out of time.

SO ORDERED.

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

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[21] G.R. No. 183526, August 25, 2009, 597 SCRA 159, 173.

SECOND DIVISION

[G.R. No. 191219. July 31, 2013]

SPO1 RAMON LIHAYLIHAY[1] **and C/INSP. VIRGILIO V. VINLUAN,** *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN APPEALS FROM THE DECISION OF THE SANDIGANBAYAN, ONLY QUESTIONS OF LAW MAY BE RAISED; APPLICATION IN CASE AT BAR.— [I]t bears pointing out that in appeals from the Sandiganbayan, as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact. Hence, absent any of the recognized exceptions to the above-mentioned rule, the Sandiganbayan's findings on the foregoing matters should be deemed as conclusive.

2. CRIMINAL LAW; REPUBLIC ACT 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3 (E); ELEMENTS; ESTABLISHED IN CASE AT BAR.— Petitioners were charged with the crime of violation of Section 3(e) of RA 3019 which has the following essential elements: (*a*) the accused must be a public officer discharging administrative, judicial or official functions; (*b*) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (*c*) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x [C]onsidering the presence of all its elements, the Court sustains the conviction of petitioners for the crime of violation of Section 3(e) of RA 3019.

[1] "Lihay-Lihay" in some parts of the records.

3. ID.; ID.; ID.; *ARIAS* DOCTRINE AS A DEFENSE; THE DOCTRINE IS NOT APPLICABLE WHEN THERE ARE REASONS FOR THE HEADS OF OFFICES TO FURTHER EXAMINE THE DOCUMENTS IN QUESTION; PRESENT IN CASE AT BAR.— In this relation, it must be clarified that the ruling in *Arias v. Sandiganbayan* (*Arias*) cannot be applied to exculpate petitioners in view of the peculiar circumstances in this case which should have prompted them to exercise a higher degree of circumspection, and consequently, go beyond what their subordinates had prepared. x x x Equally compelling is the nature of petitioners' responsibilities and their role in the purchasing of the CCIE (Combat, Clothing and Individual Equipment) items in this case which should have led them to examine with greater detail the documents which they were made to approve. As held in the recent case of *Bacasmas v. Sandiganbayan*, when there are reasons for the heads of offices to further examine the documents in question, they cannot seek refuge by invoking the *Arias* doctrine: The *Arias* doctrine espouses the general rule that all heads of office cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authority, affixed their signatures on the subject documents.

APPEARANCES OF COUNSEL

Eduardo J.F. Abella for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[2] are the Decision[3] dated August 8, 2008 and Resolution[4] dated February

[2] *Rollo*, pp. 3-34.

[3] *Id.* at 38-74. Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Ma. Cristina G. Cortez-Estrada and Roland B. Jurado, concurring.

[4] *Id.* at 76-83. Penned by Associate Justice Roland B. Jurado, with Associate Justices Alexander G. Gesmundo and Napoleon E. Inoturan, concurring.

12, 2010 of the Sandiganbayan in Criminal Case No. 22098 which found petitioners Virgilio V. Vinluan (Vinluan) and Ramon Lihaylihay (Lihaylihay) guilty beyond reasonable doubt of the crime of violation of Section 3(e) of Republic Act No. (RA) 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act."

The Facts

Acting on the special audit report[5] submitted by the Commission on Audit, the Philippine National Police (PNP) conducted an internal investigation[6] on the purported "ghost" purchases of combat, clothing, and individual equipment (CCIE) worth ₱133,000,000.00 which were allegedly purchased from the PNP Service Store System (SSS) and delivered to the PNP General Services Command (GSC). As a result of the internal investigation, an Information[7] was filed before the Sandiganbayan, charging 10 PNP officers, including, among others, Vinluan and Lihaylihay, for the crime of violation of Section 3(e) of RA 3019, the accusatory portion of which reads:

That on January 3, 6, 8, 9 and 10, 1992, and for sometime subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officers namely: Gen. Cesar P. Nazareno, being then the Director General of the Philippine National Police (PNP); Gen. Guillermo T. Domondon, Director for Comptrollership, PNP; Sr. Supt. Bernardo Alejandro, Administrator, PNP Service Store System; Sr. Supt. Arnulfo Obillos, Director, PNP, General Services Command (GSC); C/Insp. Virgilio Vinluan, Chairman, Inspection and Acceptance Committee, PNP, GSC; C/Insp. Pablito Magnaye, Member, Inspection and Acceptance Committee, PNP, GSC; Sr. Insp. Amado Guiriba, Jr., Member, Inspection and Acceptance Committee, PNP, GSC; SPO1 Ramon Lihay-Lihay, Inspector, Office of the Directorate for Comptrollership, PNP; Chief Supt. Jose M. Aquino, Director, Finance Service, PNP; and Sr. Supt. Marcelo Castillo III, Chief, Gen. Materials

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[5] Sandiganbayan *rollo*, Vol. 3, pp. 110-199. Referring to Special Audit Office Report No. 92-156 on the audit of the Philippine National Police.

[6] *Id.* at 175.

[7] Sandiganbayan *rollo*, Vol. 1, pp. 1-4.

Office/Technical Inspector, PNP, while in the performance of their respective official and administrative functions as such, taking advantage of their positions, committing the offense in relation to their office and conspiring, confederating with one another, did then and there willfully, unlawfully and criminally, through evident bad faith, cause undue injury to the government in the following manner:

> Accused Gen. Nazareno in his capacity as Chief, PNP and concurrently Board Chairman of the PNP Service Store System, surreptitiously channeled PNP funds to the PNP SSS through "Funded RIVs" valued at ₱8 [M]illion and Director Domondon released ASA No. 000-200-004-92 (SN-1353) without proper authority from the National Police Commission (NAPOLCOM) and Department of Budget and Management (DBM), and caused it to appear that there were purchases and deliveries of combat clothing and individual equipment (CCIE) to the General Service Command (GSC), PNP, by deliberately and maliciously using funds for personal services and divided the invoices of not more than ₱500,000.00 each, pursuant to which the following invoices were made and payments were effected therefor through the corresponding checks, to wit:

Invoice No.	Check No.		Amount
30368	880932	₱	500,000.00
30359	880934		500,000.00
30324	880935		500,000.00
30325	8080936		500,000.00
30322	8080937		500,000.00
30356	8080938		500,000.00
30364	8080939		500,000.00
30360	8080940		500,000.00
30365	8080941		500,000.00
30323	880943		500,000.00
30358	880942		500,000.00
30362	880943		500,000.00
30366	880943		500,000.00
30357	880946		500,000.00
30361	880947		500,000.00

30363	880948	500,000.00
		₱ 8,000,000.00
		==========

thereafter, accused members of the Inspection and Acceptance Committee together with respondents Marcelo Castillo III and Ramon Lihay-Lihay certified or caused to be certified that the CCIE items covered by the aforementioned invoices were delivered, properly inspected and accepted, and subsequently distributed to the end-users, when in truth and in fact, as accused well knew, no such purchases of CCIE items were made and no items were delivered, inspected, accepted and distributed to the respective end-users; that despite the fact that no deliveries were made, respondent Alejandro claimed payment therefor, and respondent Obillos approved the disbursement vouchers therefor as well as the checks authorizing payment which was countersigned by respondent Aquino; and as a result, the government, having been caused to pay for the inexistent purchases and deliveries, suffered undue injury in the amount of EIGHT MILLION PESOS (₱8,000,000.00), more or less.

CONTRARY TO LAW.[8]

Four of the above-named accused died during the pendency of the case, while Chief Supt. Jose M. Aquino was dropped from the Information for lack of probable cause.[9] As such, only Director Guillermo Domondon, Sr. (Domondon), Supt. Arnulfo Obillos (Obillos), C/Inspector Vinluan, Sr. Inspector Amado Guiriba, Jr. (Guiriba), and SPO1 Lihaylihay remained as accused in the subject case. During their arraignment, Domondon, Obillos, Vinluan, and Lihaylihay all pleaded not guilty to the crime charged,[10] while Guiriba remained at large.[11]

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

[9] *Rollo*, p. 40. The following accused died during the pendency of the case: Marcelo Castillo III, Pablito Magnaye, Bernardo Alejandro, and Cesar P. Nazareno.

[10] *Id.* at 41.

[11] *Id.* at 74.

The Sandiganbayan Ruling

On August 8, 2008, the Sandiganbayan rendered the assailed Decision,[12] exonerating Domondon but finding Obillos, Vinluan, and Lihaylihay guilty beyond reasonable doubt of the crime charged.[13] It found that all the essential elements of the crime of violation of Section 3(e) of RA 3019 were present in the case, in particular that: (*a*) Obillos, Vinluan, and Lihaylihay are public officers discharging administrative functions; (*b*) they have acted with evident bad faith in the discharge of their respective functions considering that: (1) seven of the sixteen Requisition and Invoice Vouchers (RIVs) bore erasures and/or superimposition to make it appear that the transactions were entered into in 1992 instead of 1991;[14] (2) the details of the supplies purportedly received and inspected were not reflected in the Reports of Public Property Purchased, thus, indicating that no actual inspection of the items were made;[15] and (3) there was a "splitting" of the subject transactions into ₱500,000.00 each to avoid the review of a higher authority as well as to make it fall within the signing authority of Obillos;[16] and (*c*) they failed to refute the prosecution's claim that the subject CCIE items were never received by Supply Accountable Officer of the GSC (GSC SAO), Dante Mateo (Mateo), nor delivered to its end-users,[17] hence, leading to the conclusion that the subject transactions were indeed

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[12] *Id.* at 38-74.

[13] *Id.* at 69-72. While the Sandiganbayan absolved Domondon from any liability on the ground that his release of the Advises of Sub-Allotment "does not appear to be a conscious participation of whatever defects or irregularities there may have been in the CCIE purchases," it found that Vinluan, Obillos, and Lihaylihay admittedly signed various receipts and forms and certified them correct even if some of them were tampered with and/or incomplete.

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

[15] *Id.* at 63.

[16] *Id.* at 63-65.

[17] *Id.* at 66-67. In fact, the evidence the accused presented to prove delivery pertained to another set of end-users who were not members of the GSC.

"ghost" purchases which resulted to an ₱8,000,000.00 loss to the government. In view of their conviction, Obillos, Vinluan, and Lihaylihay were sentenced to suffer imprisonment for a term of six years and one month, as minimum, to nine years and one day, as maximum, including the penalty of perpetual disqualification from public office. They were likewise ordered to jointly and severally indemnify the government the amount of ₱8,000,000.00.[18] Aggrieved, Obillos, Vinluan, and Lihaylihay filed their separate motions for reconsideration which were all denied in a Resolution[19] dated February 12, 2010. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not petitioners' conviction for the crime of violation of Section 3(e) of RA 3019 was proper.

The Court's Ruling

The petition lacks merit.

At the outset, it bears pointing out that in appeals from the Sandiganbayan, as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact.[20] Hence, absent any of the recognized exceptions to the above-mentioned rule,[21] the Sandiganbayan's findings on the foregoing matters should be deemed as conclusive.

[18] *Id.* at 73.

[19] *Id.* at 76-83.

[20] *Jaca v. People*, G.R. Nos. 166967, 166974, and 167167, January 28, 2013.

[21] "Settled is the rule that findings of fact of the Sandiganbayan in cases before this Court are binding and conclusive in the absence of a showing that

Petitioners were charged with the crime of violation of Section 3(e) [22] of RA 3019 which has the following essential elements: (*a*) the accused must be a public officer discharging administrative, judicial or official functions; (*b*) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (*c*) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[23] As observed by the Sandiganbayan, all these elements are extant in this case:

As to the **first** element, it is undisputed that both petitioners were public officers discharging administrative functions at the time material to this case.

As to the **second** element, records show that Vinluan, in his capacity as Chairman of the Inspection and Acceptance

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they come under the established exceptions, among them: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record." (*Balderama v. People,* G.R. Nos. 147578-85 and G.R. Nos. 147598-605, January 28, 2008, 542 SCRA 423, 432.)

[22] 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 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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

[23] *People v. Atienza*, G.R. No. 171671, June 18, 2012, 673 SCRA 470, 479-480.

Committee, signed the 16 certificates of acceptance, inventory, and delivery of articles from the PNP SSS despite its incompleteness or lack of material dates, while Lihaylihay certified to the correctness of the Inspection Report Forms even if no such deliveries were made.[24] Petitioners' claim that the subject CCIE items were received by GSC SAO Mateo[25] is belied by the absence of any proof as to when the said deliveries were made. Moreover, the supposed deliveries to the Narcotics Command[26] were properly rejected by the Sandiganbayan considering that the said transactions pertained to a different set of end-users other than the PNP GSC. Hence, having affixed their signatures on the disputed documents despite the glaring defects found therein, petitioners were properly found to have acted with evident bad faith in approving the "ghost" purchases in the amount of ₱8,000,000.00.[27] To note, their concerted actions, when taken together, demonstrate a common design[28] which altogether justifies the finding of conspiracy.

Lastly, as to the **third** element, petitioners' participation in facilitating the payment of non-existent CCIE items resulted to an ₱8,000,000.00 loss on the part of the government.

[24] *Rollo*, pp. 58-59.

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

[26] *Id.* at 25-27.

[27] *Id.* at 65.

[28] "x x x x x x x x x

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. x x x.

x x x" (*Lazarte, Jr. v. Sandiganbayan*, G.R. No. 180122, March 13, 2009, 581 SCRA 431, 449, citing *People v. Quitlong*, 354 Phil. 372 [1998].)

Thus, considering the presence of all its elements, the Court sustains the conviction of petitioners for the crime of violation of Section 3(e) of RA 3019.

In this relation, it must be clarified that the ruling in *Arias v. Sandiganbayan*[29] (*Arias*) cannot be applied to exculpate petitioners in view of the peculiar circumstances in this case which should have prompted them to exercise a higher degree of circumspection, and consequently, go beyond what their subordinates had prepared. In particular, the tampered dates on some of the RIVs, the incomplete certification by GSC SAO Mateo on the date of receipt of the CCIE items, the missing details on the Reports of Public Property Purchased and the fact that sixteen checks all dated January 15, 1992 were payable to PNP SSS should have aroused a reasonable sense of suspicion or curiosity on their part if only to determine that they were not approving a fraudulent transaction. In a similar case where the documents in question bore irregularities too evident to ignore, the Court in *Cruz v. Sandiganbayan*[30] carved out an exception to the *Arias* doctrine and as such, held:

> Unlike in *Arias*, however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, the **added reason contemplated in *Arias* which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case**.

We refer to the unusual fact that the checks issued as payment for construction materials purchased by the municipality were not made payable to the supplier, *Kelly Lumber*, but to petitioner himself even as the disbursement vouchers attached thereto were in the name of *Kelly Lumber*. The discrepancy between the names indicated in

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[29] The *Arias* doctrine espouses the general rule that all heads of office cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authority, affixed their signatures on the subject documents. (259 Phil. 794, 801[1989].)

[30] G.R. No. 134493, August 16, 2005, 467 SCRA 52.

the checks, on one hand, and those in the disbursement vouchers, on the other, should have alerted petitioner - if he were conscientious of his duties as he purports to be — that something was definitely amiss. The fact that the checks for the municipality's purchases were made payable upon his order should, without more, have prompted petitioner to examine the same further together with the supporting documents attached to them, and not rely heavily on the recommendations of his subordinates.[31] (Emphasis supplied)

Equally compelling is the nature of petitioners' responsibilities and their role in the purchasing of the CCIE items in this case which should have led them to examine with greater detail the documents which they were made to approve. As held in the recent case of *Bacasmas v. Sandiganbayan*,[32] when there are reasons for the heads of offices to further examine the documents in question, they cannot seek refuge by invoking the *Arias* doctrine:

Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan* 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**.[33] (Emphasis supplied)

Finally, on the matter of the admissibility of the prosecution's evidence, suffice it to state that, except as to the checks,[34] the

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[31] *Id.* at 65.

[32] G.R. Nos. 189343, 189369, and 189553, July 10, 2013.

[33] *Id.*

[34] Sandiganbayan *rollo*, Vol. 3, pp. 218, 226, 234, 243, 251, 259, 267, 275, 283, 291, 299, 307, 315, 323, 332, and 341.

parties had already stipulated on the subject documents' existence and authenticity and accordingly, waived any objections thereon.[34] In this respect, petitioners must bear the consequences of their admission and cannot now be heard to complain against the admissibility of the evidence against them by harking on the best evidence rule. In any event, what is sought to be established is the mere general appearance of forgery which may be readily observed through the marked alterations and superimpositions on the subject documents, even without conducting a comparison with any original document as in the case of forged signatures where the signature on the document in question must always be compared to the signature on the original document to ascertain if there was indeed a forgery.

WHEREFORE, the petition is **DENIED.** The Decision dated August 8, 2008 and Resolution dated February 12, 2010 of the Sandiganbayan in Criminal Case No. 22098 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 192685. July 31, 2013]

OSCAR R. AMPIL, *petitioner, vs***. THE HON. OFFICE OF THE OMBUDSMAN, POLICARPIO L. ESPENESIN, Registrar, Register of Deeds, Pasig City, FRANCIS SERRANO, YVONNE S. YUCHENGCO, and GEMA O. CHENG,** *respondents.*

[35] TSN, October 1, 2002, pp. 13-15; and TSN, February 3, 2005, pp. 16-17.

[G.R. No. 199115. July 31, 2013]

OSCAR R. AMPIL, *petitioner, vs.* **POLICARPIO L. ESPENESIN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN'S CONDUCT OF PRELIMINARY INVESTIGATION IS BOTH POWER AND DUTY; RATIONALE.— That the Ombudsman is a constitutional officer duty bound to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient" brooks no objection. The Ombudsman's conduct of preliminary investigation is both power and duty. Thus, the Ombudsman and his Deputies, are constitutionalized as protectors of the people, who "shall act promptly on complaints filed in any form or manner against public officials or employees of the government x x x, and shall, x x x notify the complainants of the action taken and the result thereof." The *raison d'être* for its creation and endowment of broad investigative authority is to insulate the Office of the Ombudsman from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the execution of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers.

2. ID.; ID.; ID.; IT IS THE COURT'S POLICY NOT TO INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF ITS CONSTITUTIONALLY MANDATED POWERS; EXCEPTIONS.— Plainly, the Ombudsman has "full discretion," based on the attendant facts and circumstances, to determine the existence of probable cause or the lack thereof. On this score, we have consistently hewed to the policy of non-interference with the Ombudsman's exercise of its constitutionally mandated powers. The Ombudsman's finding to proceed or desist in the prosecution of a criminal case can only be assailed through *certiorari* proceedings before this

Court on the ground that such determination is tainted with grave abuse of discretion which contemplates an abuse so grave and so patent equivalent to lack or excess of jurisdiction. However, on several occasions, we have interfered with the Ombudsman's discretion in determining probable cause: (a) To afford protection to the constitutional rights of the accused; (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (c) When there is a prejudicial question which is *sub judice*; **(d) When the acts of the officer are without or in excess of authority**; (e) Where the prosecution is under an invalid law, ordinance or regulation; (f) When double jeopardy is clearly apparent; (g) Where the court has no jurisdiction over the offense; (h) Where it is a case of persecution rather than prosecution; (i) Where the charges are manifestly false and motivated by the lust for vengeance.

3. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION UNDER SECTION 3(A) THEREOF; ELEMENTS.— The elements of Section 3(a) of Republic Act No. 3019 are: (1) the offender is a public officer; (2) the offender persuades, induces, or influences **another** public officer to perform an act **or** the offender allows himself to be persuaded, induced, or influenced to commit an act; (3) the act performed by the other public officer or committed by the offender constitutes a violation of rules and regulations duly promulgated by competent authority **or** an offense in connection with the official duty of the latter.

4. ID.; ID.; VIOLATION UNDER SECTION 3(E) THEREOF; ELEMENTS.— [P]aragraph (e) [Sections 3 of Republic Act No. 3019] x x x lists the following elements: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF PROBABLE CAUSE DOES

NOT REQUIRE CERTAINTY OF GUILT FOR A CRIME; EXPLAINED.— The determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. x x x A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

6. **POLITICAL LAW; LAW ON PUBLIC OFFICERS; THREE-FOLD LIABILITY RULE; THE WRONGFUL ACTS OR OMISSIONS OF A PUBLIC OFFICER MAY GIVE RISE TO CIVIL, CRIMINAL AND ADMINISTRATIVE LIABILITY.—** As regards the administrative liability of Espenesin, the basic principle in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer, Espenesin in these cases, may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others.

7. **ID.; ID.; MISCONDUCT, DEFINED; GRAVE MISCONDUCT DISTINGUISHED FROM SIMPLE MISCONDUCT.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct. Thus, a person

charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave. x x x Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

8. CIVIL LAW; PROPERTY; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); THE OFFICE OF THE REGISTER OF DEEDS REQUIRES DOCUMENTATION IN THE REGISTRATION OF PROPERTY; VIOLATION IN CASE AT BAR.— Certainly, a Registrar of Deeds who is required by law to be a member of the legal profession, possesses common sense and prudence to ask for documents on which to base his corrections. Reliance on the mere word of even the point person for the transaction, smacks of gross negligence when all transactions with the Office of the Register of Deeds, involving as it does registration of property, ought to be properly recorded and documented. That the Office of the Register of Deeds requires documentation in the registration of property, whether as an original or a subsequent registration, brooks no argument. Again, and it cannot be overlooked that, Espenesin initially referred to a MOA albeit Serrano worked on the registration transaction for both ASB and MICO. Subsequently, Serrano returns, bearing ostensible authority to transact even for ASB, and Espenesin fails to ask for documentation for the correction Serrano sought to be made, and simply relies on Serrano's word. We are baffled by the Registrar of Deeds' failure to require documentation which would serve as his basis for the correction. The amendment sought by Serrano was not a mere clerical change of registered name; it was a substantial one, changing ownership of 38 units in The Malayan Tower from one entity, ASB, to another, MICO. Even just at Serrano's initial request for correction of the CCTs, a red flag should have gone up for a Registrar of Deeds.

9. POLITICAL LAW; LAW ON PUBLIC OFFICERS; WHEN GUILTY OF GRAVE MISCONDUCT; PENALTY; CASE AT BAR.— Grave misconduct, of which Espenesin has been charged, consists in a public officer's deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to violate the

law, *or flagrant disregard of established rules are present*. In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character to procure some benefit for himself *or for another person*, contrary to duty and the rights of others. In sum, the actions of Espenesin clearly demonstrate a *disregard of well-known legal rules*. The penalty for Grave Misconduct is dismissal from service with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from re-employment in the government service, including government-owned or controlled corporation.

APPEARANCES OF COUNSEL

E.M. Banaag & Associates Law Offices for Oscar R. Ampil in G.R. No. 199115.

Nelson A. Loyola for Oscar R. Ampil in G.R. No. 192685.

Poblador Bautista and Reyes for Yvonne S. Yuchengco and Gema O. Cheng.

Zamora Poblador Vasquez & Bretaña for Francis Serrano.

D E C I S I O N

PEREZ, *J.*:

No less than the Constitution maps out the wide grant of investigatory powers to the Ombudsman.[1] Hand in hand with this bestowal, the Ombudsman is mandated to investigate and prosecute, for and in behalf of the people, criminal and administrative offenses committed by government officers and employees, as well as private persons in conspiracy with the former.[2] There can be no equivocation about this power-and-duty function of the Ombudsman.

Before us are consolidated petitions separately filed by Oscar R. Ampil (Ampil): (1) one is for *certiorari* under Rule 65 of the Rules of Court docketed as G.R. No. 192685; and (2) the

[1] Constitution, Art. XI, Secs. 12-13.

[2] *Id.*; The Ombudsman Act of 1989, Secs. 13 and 15.

other is for review on *certiorari* under Rule 45 of the Rules of Court docketed as G.R. No. 199115.

Challenged in the petition for *certiorari* is the Resolution[3] of the Ombudsman in OMB-C-C-07-0444-J, dismissing the criminal complaint filed by Ampil against respondents Policarpio L. Espenesin (Espenesin), Francis Serrano (Serrano), Yvonne S. Yuchengco (Yuchengco) and Gema O. Cheng (Cheng), and the Order[4] denying Ampil's motion for reconsideration thereof. Ampil's complaint charged respondents with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Sections 3(a) and (e) of Republic Act No. 3019, The Anti-Graft and Corrupt Practices Act, as amended.

The appeal by *certiorari*, on the other hand, assails the Decision of the Court of Appeals in CA G.R. SP No. 113171, which affirmed the Order dated 13 July 2009 of the Ombudsman in OMB-C-A-07-0474-J on the administrative aspect of the mentioned criminal complaint for Falsification and violation of Republic Act No. 3019 against the Registrar of Deeds, respondent Espenesin. Initially, the Ombudsman issued a Decision dated 30 April 2008, finding Espenesin guilty of Simple Misconduct and meting on Espenesin the penalty of one (1) month suspension. On motion for reconsideration of Ampil, the Ombudsman favored Espenesin's arguments in his Opposition, and recalled the one-month suspension the Ombudsman had imposed on the latter.

These consolidated cases arose from the following facts.

On 9 November 1995, ASB Realty Corporation (ASB) and Malayan Insurance Company (MICO) entered into a Joint Project Development Agreement (JPDA) for the construction of a condominium building to be known as "The Malayan Tower." Under the JPDA, MICO shall provide the real property located at the heart of the Ortigas Business District, Pasig City, while ASB would construct, and shoulder the cost of construction and development of the condominium building.

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[3] *Rollo* (G.R. No. 192685), pp. 31-41.

[4] *Id.* at 50-55.

A year thereafter, on 20 November 1996, MICO and ASB entered into another contract, with MICO selling to ASB the land it was contributing under the JPDA. Under the Contract to Sell, ownership of the land will vest on ASB only upon full payment of the purchase price.

Sometime in 2000, ASB, as part of the ASB Group of Companies, filed a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings before the Securities and Exchange Commission (SEC). As a result, the SEC issued a sixty (60) day Suspension Order (a) suspending all actions for claims against the ASB Group of Companies pending or still to be filed with any court, office, board, body, or tribunal; (b) enjoining the ASB Group of Companies from disposing of their properties in any manner, except in the ordinary course of business, and from paying their liabilities outstanding as of the date of the filing of the petition; and (c) appointing Atty. Monico V. Jacob as interim receiver of the ASB Group of Companies.[5] Subsequently, the SEC, over the objections of creditors, approved the Rehabilitation Plan submitted by the ASB Group of Companies, thus:

> PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered **unreasonable**.
>
> Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.[6] (Emphasis supplied).

Because of the obvious financial difficulties, ASB was unable to perform its obligations to MICO under the JPDA and the Contract to Sell. Thus, on 30 April 2002, MICO and ASB executed their Third contract, a Memorandum of Agreement (MOA),[7] allowing MICO to assume the entire responsibility for the

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[5] *Metropolitan Bank and Trust Co. v. ASB Holdings, Inc.*, 545 Phil. 604, 610 (2007).

[6] *Id.* at 612.

[7] *Rollo* (G.R. No. 192685), pp. 66-75.

development and completion of The Malayan Tower. At the time of the execution of the MOA, ASB had already paid MICO ₱427,231,952.32 out of the ₱640,847,928.48 purchase price of the realty.[8]

The MOA specifies the entitlement of both ASB and MICO to net saleable areas of The Malayan Tower representing their investments. It provides, in pertinent part:

> Section 4. *Distribution and Disposition of Units*. (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Costs (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining cost of construction exceeds the Remaining Construction Cost):
>
> (i) [MICO] – the net saleable area particularly described in Schedule 2 hereof.
>
> (ii) ASB – the following net saleable area:
>
> (A) the net saleable area which ASB had pre-sold for an aggregate purchase price of ₱640,085,267.30 as set forth in Schedule 1 (including all paid and unpaid proceeds of said pre-sales);
>
> (B) the net saleable area particularly described in Schedule 3 hereof which shall be delivered to ASB upon completion of the Project; and,
>
> (C) provided that the actual remaining construction costs do not exceed the Remaining Construction Cost, the net saleable area particularly described in Schedule 4 hereof which shall be delivered to ASB upon completion of the Project and determination of its actual construction costs. If the actual remaining construction costs exceed the Remaining Construction Cost, sub-paragraph (b) of this Section 4 shall apply.

[8] 3RD Recital, paragraph C of the MOA. *Id.* at 66.

(b) In the event that the actual remaining construction costs exceed the Remaining Construction Cost as represented and warranted by ASB to [MICO] under Section 9(a) hereof, and [MICO] pays for such excess, the pro-rata sharing in the net saleable area of the Building, as provided in sub-paragraph (a) of this Section 4 shall be adjusted accordingly. In such event, [MICO] shall be entitled to such net saleable area in Schedule 4 that corresponds to the excess of the actual remaining cost over the Remaining Construction Cost.

(c) To ensure the viability of the Project, the parties agree on a single pricing system, which [MICO] shall have the exclusive right to fix and periodically adjust based on prevailing market conditions in consultation with, but without need of consent of, ASB, for each party's primary sale or other disposition of its share in the net saleable area of the Building. In accordance with the immediately preceding provision, [MICO] hereby adopts the selling prices set forth in Schedule 5 hereof. Each party or its officers, employees, agents or representatives shall not sell or otherwise dispose any share of said party in the net saleable area of the Building below the prices fixed by [MICO] in accordance with this Section 4 (c). [MICO] shall have the exclusive right to adopt financing and discounting schemes to enhance marketing and sales of units in the Project and such right of [MICO] shall not be restricted or otherwise limited by the foregoing single pricing system provision.

(d) Each party shall bear the profits earned and losses incurred as well as any and all taxes and other expenses in connection with the allocation or sale of, or other transaction relating to, the units allotted to each party.[9]

On 11 March 2005, Condominium Certificates of Title (CCTs) for 38 units[10] and the allotted parking spaces were issued in the name of ASB. On even date but prior to its release, another set of CCTs covering the same subject units but with MICO as registered owner thereof, was signed by Espenesin in his capacity as Registrar of Deeds of Pasig City. Notably, Espenesin had

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

[10] Unit Nos.: 706, 902, 907, 911, 912, 914, 918, 1805, 1807, 1809, 1810, 1811, 1814, 1815, 1816, 1818, 2204, 2207, 2208, 2209, 2210, 2211, 2212, 2214, 2215, 2217, 2302, 2303, 2304, 2306, 2309, 2311, 2312, 2314, 2315, 2318, P5 and 2316. *Id.* at 34.

likewise signed the CCTs which were originally issued in ASB's name.

On 2 April 2006, counsel for ASB wrote Espenesin calling his attention to the supposed amendment in the CCTs which he had originally issued in ASB's name.[11] Counsel for ASB demanded that Espenesin effect in the second set of CCTs, the registration of the subject units in The Malayan Tower back to ASB's name.

On 17 May 2006, Espenesin replied and explained, thus:

> The registration of the Malayan-ASB Realty transaction[,] from its inception up to the issuance of titles[,] were all handled by [respondent] Atty. Francis Serrano. He therefore appeared and we have considered him the legitimate representative of both parties (*sic*). His representation, we gathered, covers the interest of both [MICO] and [ASB] in as far as the titling of the condominium unit[s] are concerned.
>
> Sometime ago [Serrano] requested that condominium titles over specified unit[s] be issued in consonance with the sharing in the joint venture [MOA]. Titles were correspondingly issued as per request, some in the name of [MICO] and some in the name of [ASB]. Before its release to the parties, Atty. Serrano came back and requested that some titles issued in the name of [ASB] be change[d] to [MICO] because allegedly there was error in the issuance.
>
> Believing it was a simple error and on representation of the person we came to know and considered the representative of both parties, we erased the name ASB Realty Corporation on those specified titles and placed instead the name Malayan Insurance Company.
>
> To our mind[,] the purpose was not to transfer ownership but merely to rectify an error committed in the issuance of titles. And since they were well within our capacity to do, the titles not having been released yet to its owner, we did what we believed was a simple act of rectifying a simple mistake.[12]

After learning of the amendment in the CCTs issued in ASB's name, Ampil, on 23 January 2007, wrote respondents Yuchengco

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[11] *Id.* at 200-202.

[12] *Id.* at 203.

and Cheng, President and Chief Financial Officer of MICO, respectively, introducing himself as an unsecured creditor of ASB Holdings, Inc., one of the corporations forming part of the ASB Group of Companies.[13] Ampil averred that MICO had illegally registered in its name the subject units at The Malayan Tower which were reserved for ASB under the MOA, and actually, already registered in ASB's name with the Register of Deeds of Pasig City. Ampil pointed out that the "condominium units should have benefited [him and other] unsecured creditors [of ASB because the latter had] categorically informed [them] previously that the same would be contributed to the Asset Pool created under the Rehabilitation Plan of the ASB Group of Companies." Ultimately, Ampil demanded that Yuchengco and Cheng rectify the resulting error in the CCTs, and facilitate the registration of the subject units back to ASB's name.

Respondents paid no heed to ASB's and Ampil's demands.

As previously adverted to, Ampil charged respondents with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Sections 3(a) and (e) of Republic Act No. 3019 before the Office of the Ombudsman, alleging the following:

1. Respondents, in conspiracy, erased the name of ASB, and intercalated and substituted the name of MICO under the entry of registered owner in the questioned CCTs covering the subject units of The Malayan Tower;

2. The alterations were done without the necessary order from the proper court, in direct violation of Section 108[14] of Presidential Decree No. 1529;

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[13] *Id.* at 204.

[14] Entitled, "Property Registration Decree."

Section 108. *Amendment and alteration of certificates*. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered

3. Respondents violated Article 171(6) of the Revised Penal Code by:

3.1 Altering the CCTs which are public documents;

3.2 Effecting the alterations on genuine documents;

3.3 Changing the meaning of the CCTs with MICO now appearing as registered owner of the subject units in Malayan Tower; and

3.4 Effectively, making the documents speak something false when ASB is the true owner of the subject units, and not MICO.

4. Ampil, as unsecured creditor of ASB, was unjustly prejudiced by the felonious acts of respondents;

5. Respondents violated Sections 3(a) and (e) of Republic Act No. 3019:

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property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

5.1 Respondent Espenesin, as Registrar of the Pasig City Registry of Deeds, committed an offense in connection with his official duties by allowing himself to be persuaded, induced or influenced by respondent Serrano into altering the questioned CCTs; and

5.2 The actions of respondent Espenesin demonstrate manifest partiality, evident bad faith and/or, at the least, gross inexcusable negligence.

6. Respondents Yuchengco and Cheng, being responsible officers of MICO, as principals by inducement and conspirators of Espenesin and Serrano, are likewise liable for falsification of the CCTs and violation of Sections 3(a) and (e) of Republic Act No. 3019.[15]

As required by the Ombudsman, respondents filed their counter-affidavits: Espenesin and Serrano filed individually, while Yuchengco and Cheng filed jointly. Respondents' respective counter-affidavits uniformly denied petitioner's charges and explicated as follows:

Respondent Espenesin countered, among others, **(i)** that their intention was only to cause the necessary rectification on certain errors made on the CCTs in issue; **(ii)** that since the CCTs were not yet issued and released to the parties, it is still within his authority, as part of the registration process, to make the necessary amendments or corrections thereon; **(iii)** that no court order would be necessary to effect such changes, the CCTs still being within the control of the Register of Deeds and have not yet been released to the respective owners; **(iv)** that the amendments were made not for the purpose of falsifying the CCTs in issue but to make the same reflect and declare the truth; and **(v)** that he merely made the corrections in accordance with the representations of respondent Serrano who he believed to be guarding and representing both the interests of MICO and ASB.

Respondent Serrano, on the other hand, argued: **(i)** that the units in issue are not yet owned by ASB; **(ii)** that these units were specifically segregated and reserved for MICO in order to answer for any excess in the estimated cost that it will expend in the

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[15] *Rollo* (G.R. No. 192685), pp. 56-65.

completion of the [Malayan Tower]; **(iii)** that ASB is only entitled to these reserved units only after the [Malayan Tower] is completed and that the units are not utilized to cover for the increase in the cost expended by MICO pursuant to Section 4(c) of the MOA; **(iv)** that the [Malayan Tower] was still incomplete at the time when the alterations were made on the CCT, hence, the claim of ownership of ASB over the reserved units is premature and totally baseless; **(v)** that prior to the fulfillment of the resolutory condition, that is, after the completion of the [Malayan Tower] and there remains a balance in the Remaining Construction Cost, the units still rightfully belongs to MICO; and **(vi)** that the alteration was made merely for the purpose of correcting an error.

Respondents Cheng and Yuchengco, while [adopting the foregoing arguments of Espenesin and Serrano, further averred that]: **(i)** [Ampil] has no legal personality to file this suit, he being merely an unsecured creditor of ASB whose interest was not definitively shown to have been damaged by the subject controversy; **(ii)** that their participation as respondents and alleged co-conspirators of Serrano and Espenesin was not clearly shown and defined in the complaint; **(iii)** the CCTs issued in the name of ASB have not yet been entered in the Registration Book at the time when the alterations were effected, hence, the same could still be made subject of appropriate amendments; **(iv)** that the CCTs in issue named in favor of ASB were mere drafts and cannot legally be considered documents within the strict definition of the law; **(v)** that court order authorizing to amend a title is necessary only if the deed or document sought to be registered has already been entered in the registration book; and **(vi)** that MICO is the duly registered owner of the land on which [Malayan Tower] stands and ASB was merely referred to as the developer.[16]

Thereafter, the Ombudsman issued the assailed Resolution in G.R. No. 192685 dismissing Ampil's complaint. For the Ombudsman, the resolution of whether respondents falsified the CCTs must be prefaced by a determination of who, between MICO and ASB, is the rightful owner of the subject units. The Ombudsman held that it had no authority to interpret the provisions of the MOA and, thus, refrained from resolving the preliminary

[16] *Id.* at 35-37.

question of ownership. Given the foregoing, the Ombudsman was hard pressed to make a categorical finding that the CCTs were altered to speak something false. In short, the Ombudsman did not have probable cause to indict respondents for falsification of the CCTs because the last element of the crime, *i.e.*, that the change made the document speak something false, had not been established.

Significantly, the Ombudsman did not dispose of whether probable cause exists to indict respondents for violation of Sections 3(a) and (e) of Republic Act No. 3019.

Ampil filed a Motion for Reconsideration. However, in yet another setback, the Ombudsman denied Ampil's motion and affirmed the dismissal of his complaint.

On the administrative litigation front and as previously narrated, the Ombudsman found Espenesin liable for Simple Misconduct. However, on motion for reconsideration of Ampil praying for a finding of guilt against Espenesin for Grave Misconduct and Dishonesty, the Ombudsman reconsidered its earlier resolution and recalled the one-month suspension meted on Espenesin.

Thereafter, Ampil filed a petition for review under Rule 43 of the Rules of Court before the appellate court. And as already stated, the appellate court affirmed the Ombudsman's resolution absolving Espenesin of not just Grave Misconduct and Dishonesty, but also of Simple Misconduct.

Hence, this dual recourse by Ampil: first, alleging grave abuse of discretion in the Ombudsman's failure to find probable cause to indict respondents for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, and for their commission of corrupt practices under Sections 3(a) and (e) of Republic Act No. 3019; and second, raising grievous error of the Court of Appeals in affirming the Ombudsman's absolution of Espenesin from administrative liability.

To obviate confusion, we shall dispose of the first issue, *i.e.*, whether probable cause exists to indict respondents for Falsification of Public Documents under Article 171(6) of the

Revised Penal Code and for their commission of corrupt practices under Sections 3(a) and (e) of Republic Act No. 3019.

Despite the Ombudsman's categorical dismissal of his complaint, Ampil is adamant on the existence of probable cause to bring respondents to trial for falsification of the CCTs, and for violation of Sections 3(a) and (e) of Republic Act No. 3019. In fact, he argues that Espenesin has been held administratively liable by the Ombudsman for altering the CCTs. At the time of the filing of G.R. No. 192685, the Ombudsman had not yet reversed its previous resolution finding Espenesin liable for simple misconduct. He insists that the admission by respondents Espenesin and Serrano that they altered the CCTs should foreclose all questions on all respondents' (Espenesin's, Serrano's, Yuchengco's and Cheng's) liability for falsification and their commission of corrupt practices, under the Revised Penal Code and Republic Act No. 3019, respectively. In all, Ampil maintains that the Ombudsman's absolution of respondents is tainted with grave abuse of discretion.

G.R. No. 192685 is partially impressed with merit. Accordingly, we find grave abuse of discretion in the Ombudsman's incomplete disposition of Ampil's complaint.

That the Ombudsman is a constitutional officer duty bound to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient"[17] brooks no objection. The Ombudsman's conduct of preliminary investigation is both power and duty. Thus, the Ombudsman and his Deputies, are constitutionalized as protectors of the people, who "shall act promptly on complaints filed in any form or manner against public officials or employees of the government x x x, and shall, x x x notify the complainants of the action taken and the result thereof."[18]

The *raison d'être* for its creation and endowment of broad investigative authority is to insulate the Office of the Ombudsman

[17] Constitution, Art. XI, Sec. 13.

[18] Constitution, Art. XI, Sec. 12.

from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the execution of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers.[19]

Plainly, the Ombudsman has "full discretion," based on the attendant facts and circumstances, to determine the existence of probable cause or the lack thereof.[20] On this score, we have consistently hewed to the policy of non-interference with the Ombudsman's exercise of its constitutionally mandated powers.[21] The Ombudsman's finding to proceed or desist in the prosecution of a criminal case can only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion which contemplates an abuse so grave and so patent equivalent to lack or excess of jurisdiction.[22]

However, on several occasions, we have interfered with the Ombudsman's discretion in determining probable cause:

(a) To afford protection to the constitutional rights of the accused;
(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
(c) When there is a prejudicial question which is *sub judice*;
(d) When the acts of the officer are without or in excess of authority;
(e) Where the prosecution is under an invalid law, ordinance or regulation;

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[19] *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, G.R. No. 133347, 15 October 2008, 569 SCRA 59, 75.

[20] *Vergara v. Ombudsman*, G.R. No. 174567, 12 March 2009, 580 SCRA 693, 708; *Presidential Commission on Good Government v. Desierto*, 563 Phil. 517, 525-526 (2007).

[21] *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, *supra* note 19 at 75-76.

[22] *Baviera v. Zoleta*, 535 Phil. 292, 314 (2006).

(f) When double jeopardy is clearly apparent;
(g) Where the court has no jurisdiction over the offense;
(h) Where it is a case of persecution rather than prosecution;
(i) Where the charges are manifestly false and motivated by the lust for vengeance.[23] (Emphasis supplied).

The fourth circumstance is present in G.R. No. 192685.

While we agree with the Ombudsman's disquisition that there is no probable cause to indict respondents for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, we are puzzled why the Ombudsman completely glossed over Ampil's charge that respondents committed prohibited acts listed in Sections 3(a) and (e) of Republic Act No. 3019. Nowhere in the Resolution or in the Order denying reconsideration thereof did the Ombudsman tackle and resolve the issue of whether respondents violated the particular provisions of Republic Act No. 3019.

Curiously, the Ombudsman docketed Ampil's complaint-affidavit as one "for: Falsification of Public Documents and Violation of Section[s] 3(a) [and] (e) of [Republic Act] No. 3019, as amended."[24] The Ombudsman even prefaced the Resolution, thus: "[t]his has reference to the complaint filed by Oscar Ampil on [17 September 2007] against [respondents], for Falsification of Public Documents and Violation of Sections 3, paragraphs (a) and (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended."[25]

The Ombudsman's silence on the component anti-graft charges is pointed up by the specific allegations in Ampil's complaint-affidavit that:

18. The acts of ATTY. ESPENESIN and his co-conspirators are clear violations of Section 3 paragraph (a) and/or (e) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act x x x;

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[23] *Vergara v. Ombudsman, supra* note 20 at 709.

[24] *Rollo* (G.R. No. 192685), p. 31.

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

x x x x x x x x x

19. On the basis of the evidence x x x and the admissions of the conspirators themselves, ATTY. ESPENESIN is liable under both pars. (a) and (e) thereof or either of the two. By maliciously and feloniously altering the subject CCT's (sic), contrary to law and to the prejudice of ASB and [Ampil], ATTY. ESPENESIN committed an offense in connection with his official duties and he admitted having done so in conspiracy with his co-respondents. x x x ATTY. ESPENESIN allowed himself to be persuaded, induced or influenced into committing such violation or offense which is the substance of par. (a) of RA 3019;

20. In committing such unauthorized and unlawful alterations on the subject CCT's (sic), ATTY. ESPENESIN caused undue injury to ASB and to [AMPIL as an] unsecured creditor, who is ultimately one of the beneficiaries of said CCT from the ASSET POOL created by the SEC, and gave MICO unwarranted benefits, advantage or preference in the discharge of his official duties as Register of Deeds of Pasig City. Such acts were admitted by ATTY. ESPENESIN in his letter to ASB x x x. Such acts[,] taken together with his admission[,] indubitably show ATTY. ESPENESIN's manifest partiality, evident bad faith and/or[,] at the least, his gross inexcusable negligence in doing the same;

21. ATTY. ESPENESIN is liable under Section 3 pars. (a) and/or (e) of RA 3019[,] as well as under Article 171 par. 6 of the RPC. ATTY. SERRANO, YVONNE S. YUCHENGCO and (sic) GEMMA O. CHENG are also liable for violation of the said provisions of law in conspiracy with ATTY. ESPENESIN, the latter as a principal via direct participation, ATTY. SERRANO, as principal by inducement and YUCHENGCO and CHENG, also by inducement[,] [who] being responsible officers of MICO ultimately benefited from said unlawful act[.][26]

and the pith of the Resolution which carefully and meticulously dissected the presence of the first three definitive elements of the crime of falsification under Article 171(6) of the Revised Penal Code:

The first three definitive elements of the crime, albeit present, are defeated by the absence of the fourth.

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

The respondents readily admitted that an alteration was indeed made on the CCTs in issue allegedly for the purpose of correcting a mistake in the name of the registered owner of the condominium units involved. Said alteration had obviously changed the tenor of the CCTs considering that ASB, the initially named owner, was changed into MICO. The first and third elements are undeniably present.

Anent the second element, the respondents argued that the CCTs in issue were mere drafts and are not legally considered "genuine documents" within the strict definition of the law. Albeit the contention is partially true, no proof has been shown to prove that the CCTs issued in favor of ASB were mere drafts.

The CCTs of ASB are obviously complete. If we are to compare it with the appearance and contents of the CCTs issued in favor of MICO, one will notice no definitive difference between the two except that one set was named in favor of ASB and the other set, in favor of MICO. Nothing is shown that will clearly prove that the former were mere drafts and the latter are the final copies. As far as the appearance of the CCTs of ASB is concerned, all appear to be complete and genuine. Proof to the contrary must be shown to prove otherwise.

Delivery of the titles to the named owners is not a pre-requisite before all these CCTs can be legally categorized as genuine documents. The fact that the same had already been signed by respondent Espenesin in his capacity as Registrar of Deeds of Pasig City and the notations imprinted thereon appeared to have been entered on March 11, 2005 at 11:55 a.m. at the Registry Books of Pasig City, the CCTs in issue are bound to be treated as genuine documents drafted and signed in the regular performance of duties of the officer whose signature appears thereon.[27]

On the whole, the Ombudsman's discussion was straightforward and categorical, and ultimately established that Espenesin, at the urging of Serrano, altered the CCTs issued in ASB's name resulting in these CCTs ostensibly declaring MICO as registered owner of the subject units at The Malayan Tower.

Despite the admission by Espenesin that he had altered the CCTs and the Ombudsman's findings thereon, the Ombudsman

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

abruptly dismissed Ampil's complaint-affidavit, resolving only one of the charges contained therein with nary a link regarding the other charge of violation of Sections 3(a) and (e) of Republic Act No. 3019. Indeed, as found by the Ombudsman, the 4th element of the crime of Falsification of Public Documents is lacking, as the actual ownership of the subject units at The Malayan Tower has yet to be resolved. Nonetheless, this circumstance does not detract from, much less diminish, Ampil's charge, and the evidence pointing to the possible commission, of offenses under Sections 3(a) and (e) of the Anti-Graft and Corrupt Practices Act.

Sections 3(a) and (e) of Republic Act No. 3019 reads:

Section 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:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of Section 3(a) of Republic Act No. 3019 are:

(1) the offender is a public officer;

(2) the offender persuades, induces, or influences **another** public officer to perform an act **or** the offender allows himself to be persuaded, induced, or influenced to commit an act;

(3) the act performed by the other public officer or committed by the offender constitutes a violation of rules and regulations duly promulgated by competent authority **or** an offense in connection with the official duty of the latter. (Emphasis supplied).

Whereas, paragraph (e) of the same section lists the following elements:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[28]

As Registrar of the Registry of Deeds of Pasig City, Espenesin is tasked, among others, to review deeds and other documents for conformance with the legal requirements of registration.[29] Section 10 of Presidential Decree No. 1529, Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes provides:

Section 10. *General functions of Registers of Deeds*. – The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary

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[28] *Sison v. People*, G.R. Nos. 170339 and 170398-403, 9 March 2010, 614 SCRA 670, 679.

[29] *Office of the Ombudsman (Mindanao) v. Cruzabra*, G.R. No. 183507, 24 February 2010, 613 SCRA 549, 552.

and science stamps and that the same are properly cancelled. If the instrument is not registerable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefore, and advising him of his right to appeal by consulta in accordance with Section 117 of the Decree.

Most importantly, a Registrar of the Registry of Deeds is charged with knowledge of Presidential Decree No. 1529, specifically Sections 57[30] and 108.[31]

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[30] **Section 57.** *Procedure in registration of conveyances.* An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled." The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

[31] Entitled, "Property Registration Decree."

Section 108. *Amendment and alteration of certificates*. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate,

In the instant case, the elements of the offenses under Sections 3(a) and (e) of Republic Act No. 3019, juxtaposed against the functions of a Registrar of the Registry of Deeds establish a *prima facie* graft case against Espenesin and Serrano only. Under Section 3(a) of Republic Act No. 3019, there is a *prima facie* case that Espenesin, at the urging of Serrano, allowed himself to be persuaded to alter the CCTs originally issued in ASB's name, against the procedure provided by law for the issuance of CCTs and registration of property. In addition, under Section 3(e) of the same law, there is likewise a *prima facie* case that Espenesin, through gross inexcusable negligence, by simply relying on the fact that all throughout the transaction to register the subject units at The Malayan Tower he liaised with Serrano, gave MICO an unwarranted benefit, advantage or preference in the registration of the subject units.

In *Sison v. People of the Philippines*, we expounded on Section 3(e) of Republic Act No. 3019:

> The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.

Explaining what "partiality," "bad faith" and "gross negligence" mean, we held:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote

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or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

> bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "**Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.**"

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.

Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

The fourth element is likewise present. **While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that**

there are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under *either mode or both*. The use of the disjunctive "or' connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

Aside from the allegation of undue injury to the government, petitioner was also charged with having given unwarranted benefit, advantage or preference to private suppliers. Under the second mode, damage is not required.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government. The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.[32] (Emphasis supplied).

We stress that the Ombudsman did not find probable cause to indict respondents for falsification simply because the Ombudsman could not categorically declare that the alteration made the CCT speak falsely as the ownership of the subject units at The Malayan Tower had yet to be determined. However,

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[32] *Supra* note 28 at 679-682.

its initial factual findings on the administrative complaint categorically declared, thus:

> x x x [Espenesin] justified his action by asseverating that since the CCTs were still under the possession and control of the Register of Deeds and have not yet been distributed to the owners, amendments can still be made thereon.
>
> It is worthy to note that the CCTs of ASB, at the time when the amendment was made, were obviously complete. From its face, we can infer that all have attained the character of a binding public document. The signature of [Espenesin] is already affixed thereon, and on its face, it was explicitly declared that the titles have already been entered in the Registration Book of the Register of Deeds of Pasig City on March 11, 2005 at 11:55 a.m. Allegations to the contrary must be convincingly and positively proven, otherwise, the presumption holds that the CCTs issued in the name of ASB were regular and the contents thereon binding.
>
> **Stated in a different light, delivery of the titles to the named owners is not a pre-requisite before all these CCTs can be legally categorized as genuine documents.** The fact that the same had already been signed by x x x Espenesin in his capacity as Register of Deeds of Pasig City and the notations imprinted thereon appeared to have been entered on March 11, 2005 at 11:55 a.m. at the Registry Books of Pasig City, the CCTs in issue are bound to be treated as genuine documents drafted and signed in the regular performance of duties of the officer whose signature appears thereon. The law has made it so clear that it is the entry of the title in the Registration Book that controls the discretion of the Register of Deeds to effect the necessary amendments and not the actual delivery of the titles to the named owners.
>
> This being the case, strict compliance with the mandates of **Section 108 of P.D. 1529** is strictly called for. The provision is clear that **upon entry** of a certificate of title (which definitely includes Condominium Certificate of Title) attested to by the Register of Deeds, no amendment shall be effected thereon except upon lawful order of the court.
>
> **In the instant case, it became obvious that after the CCTs of ASB were entered in the Registration Book on March 11, 2005 at exactly 11:55 a.m., the notations thereon were thereafter amended by [Espenesin] when Atty. Serrano purportedly**

informed him of the alleged error inscribed therein. The proper remedy that should have been undertaken by [Espenesin] soon after he was informed of the error is to either initiate the appropriate petition himself or to suggest to the parties to the MOA to file said petition in court for the amendment of the CCTs. An amendment by way of a shortcut is not allowed after entry of the title in the Registration Book.

x x x x x x x x x

If the Regional Trial Court sitting as a land registration court is not legally authorized to determine the respective rights of the parties to the MOA when deciding on the petition for amendment and cancellation of title, all the more with the Registrar of Deeds who is legally not empowered to make such determination and to cause an automatic amendment of entries in the Registration Book on the basis of his unauthorized determination.

[Espenesin's] liability is grounded on the untimely and unauthorized amendment of the CCTs in issue. This is regardless of whether the amendment had made the CCTs speak of either a lie or the truth. What defines his error is his inability to comply with the proper procedure set by law.[33] (Emphasis supplied).

We likewise stress that the determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty;[34] it is merely based on opinion and reasonable belief.[35] It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. Well-settled in jurisprudence, as in *Raro v. Sandiganbayan*,[36] that:

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[33] *Rollo* (G.R. No. 199115), pp. 174-176.

[34] *Metropolitan Bank and Trust Company v. Tobias III*, G.R. No. 177780, 25 January 2012, 664 SCRA 165, 177-178.

[35] *Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City*, G.R. No. 174350, 13 August 2008, 562 SCRA 184, 207.

[36] 390 Phil. 912 (2000).

x x x [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[37]

Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so.[38]

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.[39]

A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[40]

A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.[41] (Emphasis and italics supplied).

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[37] *Id.* at 945-946.

[38] *Fuentes, Jr. v. Office of the Ombudsman,* 511 Phil. 402, 415 (2005).

[39] *Galario v. Office of the Ombudsman (Mindanao),* G.R. No. 166797, 10 July 2007, 527 SCRA 190, 204.

[40] *Casing v. Ombudsman,* G.R. No. 192334, 13 June 2012, 672 SCRA 500, 509 citing *Metropolitan Bank and Trust Company v. Gonzales,* G.R. No. 180165, 7 April 2009, 584 SCRA 631, 641.

[41] *Pilapil v. Sandiganbayan,* G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

In this instance, Espenesin explains and categorically admits that he altered, nay corrected, 38 certificates of title which we again reproduce for easy reference:

> Sometime ago [Serrano] requested that condominium titles over specified unit[s] be issued in consonance with the sharing in the joint venture [MOA]. Titles were correspondingly issued as per request, some in the name of [MICO] and some in the name of [ASB]. Before its release to the parties, Atty. Serrano came back and requested that some titles issued in the name of [ASB] be change[d] to [MICO] because allegedly there was error in the issuance.
>
> Believing it was a simple error and on representation of the person we came to know and considered the representative of both parties, we erased the name ASB Realty Corporation on those specified titles and placed instead the name Malayan Insurance Company.
>
> To our mind[,] the purpose was not to transfer ownership but merely to rectify an error committed in the issuance of titles. And since they were well within our capacity to do, the titles not having been released yet to its owner, we did what we believed was a simple act of rectifying a simple mistake.[42]

The letter of Espenesin itself underscores the existence of a *prima facie* case of gross negligence:

> 1. Serrano transacted the registration of the units in The Malayan Tower with the Office of the Register of Deeds, Pasig City;
>
> 2. Serrano had previously presented a joint venture agreement, the MOA, which Espenesin followed in the initial preparation and issuance of the titles;
>
> 3. Before some CCTs initially issued in ASB's name were released, Serrano returned and requested that some titles issued in the name of ASB be changed to MICO because those titles were supposedly erroneously registered to ASB; and
>
> 4. Just on Serrano's utterance and declaration which Espenesin readily believed because he considered Serrano the representative

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[42] *Rollo* (G.R. No. 192685), p. 203.

of both parties, and without any other documentation to base the amendment on, Espenesin **erased** the name of ASB on those specified titles and replaced it with the name of MICO.

Espenesin, a Registrar of Deeds, relied on Serrano's word alone that a supposed error has been committed. Even if ownership of the units covered by the amended CCTs has not been categorically declared as ASB's given the ongoing dispute between the parties, the MOA which Espenesin had previously referred to, allocates those units to ASB:

> Section 4. *Distribution and Disposition of Units*. (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Costs (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining cost of construction exceeds the Remaining Construction Cost):
>
> (i) [MICO] – the net saleable area particularly described in Schedule 2 hereof.
>
> (ii) ASB – the following net saleable area:
>
> (A) the net saleable area which ASB had pre-sold for an aggregate purchase price of ₱640,085,267.30 as set forth in Schedule 1 (including all paid and unpaid proceeds of said pre-sales);
>
> (B) the net saleable area particularly described in Schedule 3 hereof which shall be delivered to ASB upon completion of the Project; and,
>
> (C) provided that the actual remaining construction costs do not exceed the Remaining Construction Cost, the net saleable area particularly described in Schedule 4 hereof which shall be delivered to ASB upon completion of the Project and determination of its actual construction costs. If the actual remaining construction costs exceed the Remaining

Construction Cost, sub-paragraph (b) of this Section 4 shall apply.[43]

The MOA even recognizes and specifies that:

E. ASB has pre-sold a number of condominium units in the Project to certain buyers as set forth in Schedule 1 hereof, and in order to protect the interests of these buyers and preserve the interest in the Project, the goodwill and business reputation of Malayan, Malayan has proposed to complete the Project, and ASB has accepted such proposal, subject to the terms and conditions contained herein, including the contribution to the Project (a) by Malayan of the Lot and (b) by ASB of its interest as buyer under the Contract to Sell.

x x x x x x x x x

Section 3. *Recognition of ASB's Investment*. The parties confirm that as of the date hereof, ASB invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including ASB's interest as buyer under the Contract to Sell.[44]

One fact deserves emphasis. The ownership of the condominium units remains in dispute and, by necessary inference, does not lie as well in MICO. By his baseless reliance on Serrano's word and representation, Espenesin allowed MICO to gain an unwarranted advantage and benefit in the titling of the 38 units in The Malayan Tower.

That a *prima facie* case for gross negligence amounting to violation of Sections 3(a) and (e) of Republic Act No. 3019 exists is amply supported by the fact that Espenesin disregarded the well-established practice necessitating submission of required documents for registration of property in the Philippines:

Documents Required for Registration of Real Property with the Register of Deeds:

1. Common Requirements

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[43] *Rollo* (G.R. No. 199115), pp. 79-80.

[44] *Id.* at 79.

- o Original copy of the Deed or Instrument (Original Copy + 2 duplicate copies)If the original copy cannot be produced, the duplicate original or certified true copy shall be presented accompanied with a sworn affidavit executed by the interested party why the original copy cannot be presented.
- o Owner's copy of the Certificate of Title or Co-owner's copy if one has been issued. (Original Copy + 2 duplicate copies)
- o Latest Tax Declaration if the property is an unregistered land. (Original Copy + 2 duplicate copies)

2. Specific Requirements

- o Deed of Sale/Transfer

x x x x x x x x x

- ■ For Corporation

1. Secretary's Certificate or Board Resolution to Sell or Purchase (Original Copy + Duplicate Copy)
2. Articles of Incorporation (for transferee corporation) (1 Certified Copy of the Original)
3. Certificate of the Securities and Exchange Commission (SEC) that the Articles of Incorporation had been registered . (1 Certified Copy of the Original)
4. For Condominium or Condominium Certificate of Transfer, affidavit/certificate of the Condominium Corporation that the sale/transfer does not violate the 60-40 rule.(Original Copy + 1 Duplicate Copy)
5. Subsequent transfer of CCT requires Certificate of the Condominium Management. (Original Copy)
6. Sale by a Corporation Sole, court order is required.(Original copy of the Court Order)

Additional Requirements

x x x x x x x x x

11. Condominium Projects

- ■ Master Deed (Original Copy + 1 Duplicate Copy)
- ■ Declaration of Restriction (Original Copy + 1 Duplicate Copy)
- ■ Diagrammatic Floor Plan (Original Copy + 1 Duplicate Copy) If the Condominium Certificate of Title is issued for the first time in the name of the registered owner, require the following:

- o Certificate of Registration with the Housing and Land Use Regulatory Board (Original Copy + 1 Duplicate Copy)
- o Development Permit (Original Copy + 1 Duplicate Copy)
- o License to Sell (Original Copy + 1 Duplicate Copy)[45]

Espenesin, by his own explanation, relied on nothing more than Serrano, who he "came to know and considered as representative of both parties," and Serrano's interpretation of the MOA that Serrano had brought with him.

On the whole, there is sufficient ground to engender a well-founded belief that respondents Espenesin and Serrano committed prohibited acts listed in Sections 3(a) and (e) of Republic Act No. 3019.

As regards Yuchengco and Cheng, apart from Ampil's general assertions that the two, as officers of MICO, benefited from the alteration of the CCTs, there is a dearth of evidence pointing to their collective responsibility therefor. While the fact of alteration was admitted by respondents and was affirmed in the Ombudsman's finding of fact, there is nothing that directly links Yuchengco and Cheng to the act.

We are aware that the calibration of evidence to assess whether a *prima facie* graft case exists against respondents is a question of fact. We have consistently held that the Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of *certiorari* where neither questions of fact nor law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[46] In this case, however, *certiorari* will lie, given that the Ombudsman made no finding at all on respondents possible liability for violation of Sections 3(a) and (e) of Republic Act No. 3019.

We hasten to reiterate that we are only dealing herein with the preliminary investigation aspect of this case. We do not

[45] See http://nreaphilippines.com/question-on-philippine-real-estate/land-registration-procedure/ last visited 21 July 2013.

[46] *See* Sec. 1, Rule 45 in relation to Sec. 1, Rule 65 of the Rules of Court; *Angeles v. Gutierrez,* G.R. Nos. 189161 and 189173, 21 March 2012, 668 SCRA 803.

adjudge respondents' guilt or the lack thereof. The assertions of Espenesin and Serrano on the former's good faith in effecting the alteration and the pending arbitration case before the Construction Industry Arbitration Commission involving the correct division of MICO's and ASB's net saleable areas in The Malayan Tower are matters of defense which they should raise during trial of the criminal case.

As regards the administrative liability of Espenesin, the basic principle in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer, Espenesin in these cases, may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others.[47]

On this point, we find that the appellate court erred when it affirmed the Ombudsman's last ruling that Espenesin is not administratively liable.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[48]

In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest[49] and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct.[50] Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.[51]

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[47] *Domingo v. Rayala*, G.R. Nos. 155831, 155840 and 158700, 18 February 2008, 546 SCRA 90, 112.

[48] *Estarija v. Ranada*, 525 Phil. 718, 728 (2006); *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

[49] *Villanueva v. Court of Appeals*, 528 Phil. 432, 442 (2006); *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).

[50] *Santos v. Rasalan*, 544 Phil. 35, 43 (2007); *Civil Service Commission v. Ledesma*, 508 Phil. 569, 580 (2005).

[51] *Santos v. Rasalan, id.*

In (G.R. No. 199115), the elements particular to Grave Misconduct are, by the Ombudsman's own finding, present. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[52] This has already been demonstrated as discussed above. And, there is here a manifest disregard for established rules on land registration by a Register of Deeds himself. As he himself admits in his letter, Espenesin erased the name of ASB on the specified CCTs because he believed that Serrano's request for the re-issuance thereof in MICO's name constituted simple error.

Section 108 of Presidential Decree No. 1529 provides:

Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant

[52] *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, 27 February 2008, 547 SCRA 148, 157.

any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

The foregoing clearly speaks of a court order prior to any erasure, alteration or amendment upon a certificate of title.

In reversing its prior ruling, the Ombudsman cavalierly dismisses the fact of Espenesin already signing the CCTs issued in ASB's name as "only a part of the issuance process because the final step in the titling procedure is indeed the release of the certificate of title."[53] The Ombudsman further ruled:

> Considering that prior to the release of titles, [Espenesin] merely rectified what was represented to this office as error in the preparation of typing or the certificates, hence, it is wrong to subject him to an administrative sanction. This is bolstered by the fact that, at the time of release (and perhaps even up to the present time), **there was no final determination yet from the land registration court as to who has a better right to the property in question**.[54] (Emphasis supplied).

This statement of the Ombudsman is virtually a declaration of Espenesin's misconduct. It highlights Espenesin's awareness and knowledge that ASB and MICO are two different and separate entities, albeit having entered into a joint venture for the building of "The Malayan Tower."

As Registrar of Deeds, Espenesin was duty bound to inquire and ascertain the reason for Serrano's new instruction on those specific set of CCTs and **not just heed Serrano's bidding**. He heads the Office of Register of Deeds which is constituted

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[53] *Rollo* (G.R. No. 199115), p. 184.

[54] *Id*.

by law as "a public repository of records of instruments affecting registered or unregistered lands x x x in the province or city wherein such office is situated." He should not have so easily taken Serrano's word that the amendment Serrano sought was to correct simple and innocuous error. Espenesin could have then easily asked, as he is obliged to, for a contract or an authenticated writing to ascertain which units and parking slots were really allotted for ASB and MICO. His actions would then be based on what is documented and not merely by a lame claim of *bona fides* mistake.

Moreover, Espenesin was previously presented a MOA, and consulted this same MOA, in the initial preparation and issuance of the 38 CCTs in ASB's name. Certainly, a Registrar of Deeds who is required by law to be a member of the legal profession,[55] possesses common sense and prudence to ask for documents on which to base his corrections. Reliance on the mere word of even the point person for the transaction, smacks of gross negligence when all transactions with the Office of the Register of Deeds, involving as it does registration of property, ought to be properly recorded and documented.

That the Office of the Register of Deeds requires documentation in the registration of property, whether as an original or a subsequent registration, brooks no argument. Again, and it cannot be overlooked that, Espenesin initially referred to a MOA albeit Serrano worked on the registration transaction for both ASB and MICO. Subsequently, Serrano returns, bearing ostensible authority to transact even for ASB, and Espenesin fails to ask for documentation for the correction Serrano sought to be made, and simply relies on Serrano's word.

We are baffled by the Registrar of Deeds' failure to require documentation which would serve as his basis for the correction. The amendment sought by Serrano was not a mere clerical change of registered name; it was a substantial one, changing ownership of 38 units in The Malayan Tower from one entity, ASB, to another, MICO. Even just at Serrano's initial request

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[55] Sec. 9, Presidential Decree No. 1529.

for correction of the CCTs, a red flag should have gone up for a Registrar of Deeds.

Espenesin splits hairs when he claims that it is "in the [R]egistration [B]ook where the prohibition to erase, alter, or amend, without court order, applies." We disagree with Espenesin. Chapter IV on Certificate of Title of Presidential Decree No. 1529,[56] specifically Sections 40, 42 and 43 belie the claim of Espenesin:

Section 40. *Entry of Original Certificate of Title.* Upon receipt by the Register of Deeds of the original and duplicate copies of the

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

Section 40. *Entry of Original Certificate of Title.* x x x.

Section 41. *Owner's duplicate certificate of title.* The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

Section 42. *Registration Books.* x x x.

Section 43. *Transfer Certificate of Title.* x x x.

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

Section 42. *Registration Books.* The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

Section 43. *Transfer Certificate of Title.* The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title," and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

Recording or entry of the titles, whether an original or a subsequent transfer certificate of title in the record, is simultaneous with the signing by the Register of Deeds. The signature on the certificate by the Registrar of Deeds is accompanied by the dating, numbering and sealing of the certificate. All these are part of a single registration process. Where there has been a completed entry in the Record Book, as in this case where the Ombudsman found that "the signature of [Espenesin] is already affixed [on the CCTs], and on its face, it was explicitly declared that the titles have already been entered in the Registration Book of the Register of Deeds of Pasig City on March 11, 2005 at 11:55 a.m.," the Register of Deeds can no longer tamper with entries, specially the very name of the titleholder. The law says that the certificate of title shall take effect upon the date of entry thereof.

To further drive home the point, as Registrar of Deeds, Espenesin knew full well that "there [is] no final determination yet from the land registration court as to who has a better right

to the property in question." Espenesin's attempt to minimize the significance of a Registrar of Deed's signature on a CCT only aggravates the lack of prudence in his action. The change in the titleholder in the CCTs from ASB to MICO was an official documentation of a change of ownership. It definitely cannot be characterized as simple error.

Grave misconduct, of which Espenesin has been charged, consists in a public officer's deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to violate the law, *or flagrant disregard of established rules are present*.[57] In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character to procure some benefit for himself *or for another person*, contrary to duty and the rights of others.[58]

In sum, the actions of Espenesin clearly demonstrate a *disregard of well-known legal rules*.[59] The penalty for Grave Misconduct is dismissal from service with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from re-employment in the government service, including government-owned or controlled corporation.[60]

WHEREFORE, the petition in G.R. No. 192685 is **PARTIALLY GRANTED**. The Resolution of the Ombudsman dated 30 April 2008 in OMB-C-C-07-0444-J is **REVERSED and SET ASIDE**. The Ombudsman is hereby directed to file the necessary Information for violation of Sections 3(a) and (e)

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[57] *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, 4 October 2011, 658 SCRA 497, 506.

[58] *National Power Corporation v. Civil Service Commission*, G.R. No. 152093, 24 January 2012, 663 SCRA 492, 495.

[59] *National Power Corporation v. Civil Service Commission, id.*; *Jamsani-Rodriguez v. Justices Ong, Hernandez, Ponferrada*, A.M. 8-19-SBJ, 24 August 2010.

[60] Section 22, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987.

of Republic Act No. 3019 against public respondent Policarpio L. Espenesin and private respondent Francis Serrano.

The petition in G.R. No. 199115 is **GRANTED**. The Decision of the Court of Appeals dated 28 September 2011 in CA-G.R. SP No. 113171 and the Order dated 13 July 2009 of the Ombudsman in OMB-C-A-07-0474-J are **REVERSED** and **SET ASIDE**. Respondent Policarpio L. Espenesin is **GUILTY** of Grave Misconduct and we, thus, impose the penalty of **DISMISSAL** from service. However, due to his retirement from the service, we order forfeiture of all his retirement pay and benefits.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194709. July 31, 2013]

MINETTE BAPTISTA, BANNIE EDSEL SAN MIGUEL, and MA. FE DAYON, *petitioners, vs.* **ROSARIO VILLANUEVA, JANETTE ROLDAN, DANILO OLAYVAR, ONOFRE ESTRELLA, CATALINO LEDDA, MANOLO GUBANGCO, GILBERT ORIBIANA, CONSTANCIO SANTIAGO, RUTH BAYQUEN, RUBY CASTAÑEDA, ALFRED LANDAS, JR., ROSELYN GARCES, EUGENE CRUZ, MENANDRO SAMSON, FEDERICO MUÑOZ and SALVADOR DIWA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; IN ADMINISTRATIVE PROCEEDINGS, THE FILING OF CHARGES AND GIVING REASONABLE OPPORTUNITY FOR THE PERSON SO CHARGED TO ANSWER THE ACCUSATIONS AGAINST HIM CONSTITUTE THE MINIMUM REQUIREMENTS OF DUE PROCESS.— Due process, as a constitutional precept, is satisfied when a person was notified of the charge against him and was given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. It cannot be denied that petitioners were properly notified of the charges filed against them and were equally afforded the opportunity to present their side. x x x Mere absence of a one-on-one confrontation between the petitioners and their complainants does not automatically affect the validity of the proceedings before the Committee. Not all cases necessitate a trial-type hearing. As in this case, what is indispensable is that a party be given the right to explain one's side, which was adequately afforded to the petitioners.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; UNFAIR LABOR PRACTICES (ULP); FOR THE CHARGE AGAINST A LABOR ORGANIZATION TO PROSPER, THE *ONUS PROBANDI* RESTS UPON THE PARTY ALLEGING TO PROVE OR SUBSTANTIATE SUCH CLAIMS BY THE REQUISITE QUANTUM OF EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— It is well-settled that workers' and employers' organizations shall have the right to draw up their constitutions and rules to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. x x x For a charge of ULP against a labor organization to prosper, the *onus probandi* rests upon the party alleging it to prove or substantiate such claims by the requisite

quantum of evidence. In labor cases, as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. Moreover, it is indubitable that all the prohibited acts constituting unfair labor practice should materially relate to the workers' right to self-organization. Unfortunately, petitioners failed to discharge the burden required to prove the charge of ULP against the respondents. Aside from their self-serving allegations, petitioners were not able to establish how they were restrained or coerced by their union in a way that curtailed their right to self-organization. The records likewise failed to sufficiently show that the respondents unduly persuaded management into discriminating against petitioners other than to bring to its attention their expulsion from the union, which in turn, resulted in the implementation of their CBA' s union security clause.

APPEARANCES OF COUNSEL

Jose P. Calinao for petitioners.
Taquio & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Minette Baptista, Bannie Edsel San Miguel and Ma. Fe Dayon *(petitioners)* assails the March 9, 2010 Decision[2] and the December 1, 2010 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 105027, which affirmed the March 31, 2008 Decision[4] of

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[1] *Rollo*, pp. 13-59.

[2] *Id.* at 61-69. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Mario V. Lopez, concurring.

[3] *Id.* at 71-75.

[4] *Id.* at 257-b to 257-j.

the National Labor Relations Commission *(NLRC)* dismissing the complaint for Unfair Labor Practice *(ULP)* filed against the named respondents.

The Facts

Petitioners were former union members of Radio Philippines Network Employees Union *(RPNEU)*, a legitimate labor organization and the sole and exclusive bargaining agent of the rank and file employees of Radio Philippines Network *(RPN)*, a government-sequestered corporation involved in commercial radio and television broadcasting affairs, while the respondents were the union's elected officers and members.

On April 26, 2005, on suspicion of union mismanagement, petitioners, together with some other union members, filed a complaint for impeachment of their union president, Reynato Siozon, before the executive board of RPN, which was eventually abandoned. They later re-lodged the impeachment complaint, this time, against all the union officers and members of RPNEU before the Department of Labor and Employment *(DOLE)*. They likewise filed various petitions for audit covering the period from 2000 to 2004.[5]

Thereafter, two (2) written complaints, dated May 26, 2005 and May 27, 2005, were filed against petitioners and several others for alleged violation of the union's Constitution and By-Laws.[6] Months later, on September 19, 2005, a different group of union members filed a third complaint against petitioners and 12 others,[7] before the Chairman of RPNEU's Committee on Grievance and Investigation *(the Committee)* citing as grounds the "commission of an act which violates RPNEU Constitution and By-Laws, specifically, Article IX, Section 2.2 for joining or forming a union outside the sixty (60) days period and Article IX, Section 2.5 for urging or advocating that a member

[5] *Id.* at 77.

[6] *Id.* at 76.

[7] *Id.*

start an action in any court of justice or external investigative body against the Union or its officer without first exhausting all internal remedies open to him or available in accordance with the CBL."[8] These complaints were, later on, consolidated.[9]

Thereafter, petitioners received a memorandum notice from Jeric Salinas, Chairman of the Committee, requesting them to answer the complaint and attend a hearing scheduled on October 3, 2005.[10] Petitioners and their group, through an exchange of communications with the Committee, denied the charges imputed against them and contested the procedure adopted by the Committee in its investigation. On November 9, 2005, the Committee submitted their recommendation of expulsion from the union to RPNEU's Board of Directors.[11] On December 21, 2005, the RPNEU's Board of Directors affirmed the recommendation of expulsion of petitoners and the 12 others from union membership in a Board Resolution No. 018-2005.[12] Through a Memorandum,[13] dated December 27, 2005, petitioners were served an expulsion notice from the union, which was set to take effect on December 29, 2005. On January 2, 2006, petitioners with the 12 others wrote to RPNEU's President and Board of Directors that their expulsion from the union was an *ultra vires* act because the Committee failed to observe the basic elements of due process because they were not given the chance to physically confront and examine their complainants.[14]

In a letter, dated January 24, 2006, RPNEU's officers informed their company of the expulsion of petitioners and the 12 others from the union and requested the management to serve them notices of termination from employment in compliance

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[8] *Id.* at 59.

[9] *Id.* at 77.

[10] *Id.* at 60.

[11] *Id.* at 94-98.

[12] *Id.* at 92-93.

[13] *Id.* at 91.

[14] *Id.* at 99-100.

with their CBA's union security clause.[15] On February 17, 2006, RPN HRD Manager, Lourdes Angeles, informed petitioners and the 12 others of the termination of their employment effective March 20, 2006, enforcing Article II, Section 2[16] also known as the union security clause of their current CBA.[17]

Aggrieved, petitioners filed three (3) separate complaints for ULP against the respondents, which were later consolidated,[18] questioning the legality of their expulsion from the union and their subsequent termination from employment.

In a decision,[19] dated April 30, 2007, the Labor Arbiter *(LA)* ruled in favor of the petitioners and adjudged the respondents guilty of ULP pursuant to Article 249 (a) and (b) of the Labor Code. The LA clarified that only the union officers of RPNEU could be held responsible for ULP, so they exonerated six (6) of the original defendants who were mere union members. The LA also ordered the reinstatement of petitioners as *bonafide* members of RPNEU. The decretal portion reads:

> WHEREFORE, premises above considered, a decision is being issued declaring union officers Ruth Bayquen, Ruby Castañeda, Alfred Landas, Roce Garces, Board of Directors Federico Muñoz, Janette Roldan, Rosario Villanueva, Menandro Samson, Salvador Diwa and Eugene Cruz guilty of unfair labor practice for violating Article 249, paragraph A and B of the Labor Code. Respondents are also ordered to cease and de[sist] from further committing unfair labor practice and order the reinstatement of the complainants as bonafide members of the union.
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> The other claims are hereby denied for lack of factual and legal basis.

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[15] *Id.* at 119-122.

[16] All covered employees not otherwise disqualified herein shall become and remain members in good standing of the UNION. Any employee whose membership in the UNION is terminated shall likewise be deemed terminated from the COMPANY.

[17] *Rollo*, pp. 148-162.

[18] *Id.* at 18.

[19] *Id.* at 203-213.

SO ORDERED.[20]

Undaunted, the respondents appealed the LA decision to the NLRC.

In its Decision,[21] dated March 31, 2008, the NLRC *vacated* and *set aside* the LA decision and dismissed the complaint for ULP for lack of merit. The NLRC found that petitioners filed a suit calling for the impeachment of the officers and members of the Executive Board of RPNEU without first resorting to internal remedies available under its own Constitution and By-Laws. The NLRC likewise decreed that the LA's order of reinstatement was improper because the legality of the membership expulsion was not raised in the proceedings and, hence, beyond the jurisdiction of the LA.[22] The *fallo* of the NLRC decision reads:

WHEREFORE, the partial appeal filed by the respondents is GRANTED. The decision, dated 30 April 2007 is VACATED and SET ASIDE. The complaint is dismissed for lack of merit.

SO ORDERED.[23]

Petitioners filed for a motion for reconsideration, but the NLRC denied it in its Resolution,[24] dated May 30, 2008.

The CA, in its March 9, 2010 Decision, *sustained* the NLRC decision. The CA stated that the termination of employment by virtue of a union security clause was recognized in our jurisdiction. It explained that the said practice fortified the union and averted disunity in the bargaining unit within the duration of the CBA. The CA declared that petitioners were accorded due process before they were removed from office. In fact, petitioners were given the opportunity to explain their case and they actually

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[20] *Id.* at 64.

[21] *Id.* at 257-b to 257-j.

[22] *Id.* at 257-i.

[23] *Id.* at 257-i.

[24] *Id.* at 257-j to 257-n.

availed of said opportunity by submitting letters containing their arguments.[25]

Petitioners moved for reconsideration, but the CA likewise denied the same in its December 1, 2010 Resolution,[26] The CA expounded:

> Anent petitioners' charge of ULP against respondents, the records are barren of proof to sustain such charge. What remains apparent is that petitioners were expelled from the union due to their violation of Section 2.5 of Article IX of the CBL which punishes the act of "[u]rging or advocating that a member start an action in any court of justice or external investigative body against the Union or any of its officer, without first exhausting all [in]ternal remedies open to him or available in accordance with the Constitution and By-Laws of Union." As petitioners' expulsion was pursuant to the union's CBL, We absolve respondents of the charges of ULP absent any substantial evidence to sustain it.
>
> The importance of a union's constitution and bylaws cannot be overemphasized. They embody a covenant between a union and its members and constitute the fundamental law governing the member's rights and obligations. As such, the union's constitution and bylaws should be upheld, as long as they are not contrary to law, good morals or public policy. In *Diamonon v. Department of Labor and Employment*, the High Court affirmed the validity and importance of the provision in the CBL of exhaustion of administrative remedies, *viz*:
>
> > When the Constitution and by-laws of both unions dictated the remedy for intra-union dispute, such as petitioner's complaint against private respondents for unauthorized or illegal disbursement of union funds, this should be resorted to before recourse can be made to the appropriate administrative or judicial body, not only to give the grievance machinery or appeals' body of the union the opportunity to decide the matter by itself, but also to prevent unnecessary and premature resort to administrative or judicial bodies. Thus, a party with an administrative remedy must not merely initiate the prescribed

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

[26] *Id.* at 71-75.

administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention.[27]

Thus, petitioners advance the following

GROUNDS/ARGUMENTS IN SUPPORT OF THE PETITION

1. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS MISERABLY FAILED TO APPRECIATE THE REAL ISSUE IN THIS CASE.

2. WITH DUE RESPECT, THE DECISION AND RESOLUTION ARRIVED AT BY THE HONORABLE COURT OF APPEALS ARE NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE, THEREBY GRAVELY ABUSING ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION.[28]

Petitioners submit that the respondents committed ULP under Article 289 (a) and (b) of the Labor Code.[29] They insist that they were denied substantive and procedural due process of law when they were expelled from the RPNEU.

The petition is bereft of merit.

The primary concept of ULP is embodied in Article 247 of the Labor Code, which provides:

Article 247. *Concept of unfair labor practice and procedure for prosecution thereof.*––Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

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

[28] *Id.* at 29.

[29] *Id.* at 466.

In essence, ULP relates to the commission of acts that transgress the workers' right to organize. As specified in Articles 248 and 249 of the Labor Code, the prohibited acts must necessarily relate to the workers' right to self-organization and to the observance of a CBA.[30] Absent the said vital elements, the acts complained, although seemingly unjust, would not constitute ULP.[31]

In the case at bench, petitioners claim that the respondents, as union officers, are guilty of ULP for violating paragraphs (a) and (b) of Article 249 of the Labor Code, to wit:

ART. 249. UNFAIR LABOR PRACTICES OF LABOR ORGANIZATIONS.— It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

(a) To restrain or coerce employees in the exercise of their rights to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership:

(b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;

Petitioners posit that the procedure that should have been followed by the respondents in resolving the charges against them was Article XVII, Settlement of Internal Disputes of their Constitution and By-Laws, specifically, Section 2[32] thereof,

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[30] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010, 626 SCRA 376, 388.

[31] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, G.R. No. 178647, February 13, 2009, 579 SCRA 414, 419, citing *Philcom Employees Union v. Philippine Global Communication*, 527 Phil. 540, 557 (2006).

[32] SECTION 2. Any grievance shall be made in writing and submitted to the President three (3) days from the day the incident happened who shall the[n] call the members involved and shall undertake to have the parties settle their differences amicably.

requiring members to put their grievance in writing to be submitted to their union president, who shall strive to have the parties settle their differences amicably. Petitioners maintain that any form of grievance would be referred only to the committee upon failure of the parties to settle amicably.[33]

The Court is not persuaded.

Based on RPNEU's Constitution and By-Laws, the charges against petitioners were not mere internal squabbles, but violations that demand proper investigation because, if proven, would constitute grounds for their expulsion from the union. As such, Article X, Investigation Procedures and Appeal Process of RPNEU's Constitution and By-Laws, which reads –

> SECTION 1. Charge against any member or officer of the Union shall be submitted to the Board of Directors (BOD) in writing, which shall refer the same, if necessary, to the committee on Grievance and Investigation. The Committee shall hear any charge and subsequently, forward its finding and recommendation to the BOD. The BOD has the power to approv[e] or nullify the recommendation of the Committee on Grievance and Investigation based on the merit of the appeal.

was correctly applied under the circumstances.

Besides, any supposed procedural flaw in the proceedings before the Committee was deemed cured when petitioners were given the opportunity to be heard. Due process, as a constitutional precept, is satisfied when a person was notified of the charge against him and was given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[34] The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity

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[33] SECTION 3. In the event of failure to settle the grievance amicably, the President shall refer the matter to the Grievance Committee, which shall investigate the grievance, observing procedural due process in the investigation.

[34] *Cayago v. Lina*, 489 Phil. 735, 750-751 (2005).

to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[35] It cannot be denied that petitioners were properly notified of the charges filed against them and were equally afforded the opportunity to present their side.

Next, petitioners point out that they were not given the opportunity to personally face and confront their accusers, which were violative of their right to examine the complainants and the supposed charges against them.[36]

Petitioners' contention is without merit. Mere absence of a one-on-one confrontation between the petitioners and their complainants does not automatically affect the validity of the proceedings before the Committee. Not all cases necessitate a trial-type hearing.[37] As in this case, what is indispensable is that a party be given the right to explain one's side, which was adequately afforded to the petitioners.

It is well-settled that workers' and employers' organizations shall have the right to draw up their constitutions and rules to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.[38] In this case, RPNEU's Constitution and By-Laws expressly mandate that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the internal remedies within the organization. Petitioners were found to have violated the provisions of the union's Constitution and By-Laws when they filed petitions for impeachment against their union officers and for audit before the DOLE without first exhausting all internal remedies available within their organization. This act is a ground for expulsion from union

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[35] *Libres v. NLRC*, 367 Phil. 181, 190 (1999).

[36] *Rollo*, p. 490.

[37] *Mariveles Shipyard Corp. v. Court of Appeals*, 461 Phil. 249, 265 (2003); *Columbus Philippines Bus Corp. v. National Labor Relations Commission*, 417 Phil. 81, 98 (2001).

[38] Article 3, ILO Convention No. 87.

membership. Thus, petitioners' expulsion from the union was not a deliberate attempt to curtail or restrict their right to organize, but was triggered by the commission of an act, expressly sanctioned by Section 2.5 of Article IX of the union's Constitution and By-Laws.

For a charge of ULP against a labor organization to prosper, the *onus probandi* rests upon the party alleging it to prove or substantiate such claims by the requisite quantum of evidence.[39] In labor cases, as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[40] Moreover, it is indubitable that all the prohibited acts constituting unfair labor practice should materially relate to the workers' right to self-organization.[41]

Unfortunately, petitioners failed to discharge the burden required to prove the charge of ULP against the respondents. Aside from their self-serving allegations, petitioners were not able to establish how they were restrained or coerced by their union in a way that curtailed their right to self-organization. The records likewise failed to sufficiently show that the respondents unduly persuaded management into discriminating against petitioners other than to bring to its attention their expulsion from the union, which in turn, resulted in the implementation of their CBA's union security clause. As earlier stated, petitioners had the burden of adducing substantial evidence to support its allegations of ULP,[42] which burden they failed to discharge. In fact, both the NLRC and the CA found that petitioners were unable to prove their charge of ULP against the respondents.

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[39] *UST Faculty Union v. University of Santo Tomas,* G.R. No. 180892, April 7, 2009, 584 SCRA 648, 662.

[40] *Standard Chartered Bank Employees Union (NUBE) v. Confesor,* 476 Phil. 346, 367 (2004).

[41] *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation,* 362 Phil. 452, 464 (1999).

[42] *Tiu v. National Labor Relations Commission,* 343 Phil. 478, 485 (1997).

It is axiomatic that absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when affirmed by the CA, as in this case, are binding and conclusive upon the Court.[43] Having found none, the Court finds no cogent reason to deviate from the challenged decision.

WHEREFORE, the petition is **DENIED**. The March 9, 2010 Decision and the December 1, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 105027 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 196973. July 31, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUPER POSING *Y* ALAYON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.— For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the

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[43] *Acevedo v. Advanstar Company, Inc*. 511 Phil. 279, 287 (2005).

proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDENCE SHOULD BE GIVEN TO THE NARRATION OF THE INCIDENT BY THE WITNESSES WHO ARE POLICE OFFICERS AND PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER.— In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this regard, the defense failed to show any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as in the case of appellant. Incidentally, if these were simply trumped-up charges against him, it remains a question why no administrative charges were brought against the police operatives.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; CHAIN OF CUSTODY RULE; REQUIREMENTS.— In *Malillin v. People*, we laid down the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item. x x x [J]urisprudence is consistent in stating that less than strict compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— As to the charge of illegal possession of dangerous drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is

not authorized by law; and (3) the accused freely and consciously possessed the drug. In the case at hand, the prosecution was able to prove that the accused-appellant was in possession of one (1) plastic sachet of *shabu*, when he was frisked on the occasion of his arrest. There was also no showing that he had the authority to possess the drugs that was in his person. This Court held in a catena of cases that mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession — the *onus probandi* is shifted to the accused, to explain the absence·of knowledge or *animus possidendi*.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE COURTS GENERALLY VIEW THE DEFENSE OF DENIAL WITH DISFAVOR; EXPLAINED.— Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of the prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.

6. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT THEREON ARE ACCORDED GREAT WEIGHT AND RESPECT; RATIONALE.— It is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The *rationale* behind this rule is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during trial. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals. This Court does not find any convincing reason to depart from the ruling of the trial court, which was affirmed by the appellate court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the Decision[2] dated 30 November 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03858 which affirmed the conviction of herein accused-appellant RUPER POSING *y* ALAYON of illegal sale and illegal possession of dangerous drugs in violation of Sections 5[3] and 11[4] respectively, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, p. 17; Via a Notice of Appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court.

[2] *Id.* at 2-16; Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan concurring.

[3] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[4] Section 11. *Possession of Dangerous Drugs.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos(₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or

The factual antecedents of the case are as follows:

The prosecution presented SPO1 Purisimo Angeles (SPO1 Angeles), who testified that while on duty on 13 August 2003, at the Station Anti Illegal Drugs (SAID), an asset based at Makabayan St., Brgy. Obrero informed the duty officer about the illegal activities of certain Ruper Posing (Posing), a known drug pusher in their *barangay*. As a result, Chief P/Inspector Arturo Caballes (Chief Caballes) formed a team to conduct a buy bust operation.[5] A one hundred peso bill (₱100.00) was given by Chief Caballes with his initials, to serve as the marked money.[6]

SPO1 Angeles together with PO1 Jesus Cortez (PO1 Cortez), PO1 Ralph Nicart (PO1 Nicart) and the informant were dispatched to Makabayan St., Brgy. Obrero, Kamuning, Quezon City, and upon arrival, the informant and SPO1 Angeles proceeded to the squatter's area. On the other hand, his companions positioned themselves within viewing distance.[7]

SPO1 Angeles met Posing beside the basketball court, where he was introduced by the informant as a buyer of *shabu*. The former asked if he could buy one hundred peso (₱100.00) worth of *shabu* for personal use. Posing then pulled out one (1) transparent plastic sachet from his pocket and gave it to SPO1 Angeles in exchange for the buy-bust money. Afterwards, SPO1 Angeles took out his cap to alert his companions that the deal was already concluded. PO1 Cortez and PO1 Nicart rushed to the scene and introduced themselves as police officers. Posing was frisked, and the buy- bust money and another transparent

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cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] TSN, 8 August 2006, p. 3; Direct Examination of SPO1 Angeles.

[6] *Id.* at 4.

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

plastic sachet were recovered from him. Afterwards, the suspect and the evidence were taken to the station.[8]

Prior to the turnover of the evidence to the desk officer, SPO1 Angeles placed his marking on the two (2) small heat sealed transparent plastic sachets.[9] The same were then turned over to PO2 John Sales (PO2 Sales), who prepared a request for laboratory examination.[10]

On the same day, the specimens were delivered by PO1 Nicart to the Philippine National Police (PNP) Crime Laboratory for quantitative and qualitative examination, wherein each sachet was found to contain 0.03 gram and tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.[11]

Both parties agreed to dispense with the testimonies of the following witnesses, and entered into stipulations, to wit:

As regards Engr. Leonard Jabonillo (Engr. Jabonillo):

1) That he is a Forensic Chemist of the [PNP];

2) That his office received a request for laboratory examination marked as Exhibit "A";

3) That together with said request, was a brown envelope marked as Exhibit "B" which contained two (2) plastic sachets marked as Exhibits "B-1" and "B-2";

4) That he thereafter conducted the requested laboratory examination and, in connection therewith, he submitted Chemistry Report marked as Exhibit "C";

5) That the findings thereon showing the specimen positive for methylamphetamine hydrochloride was marked as Exhibit "C-1";

6) That he likewise issued a Certification marked as Exhibit "D" and thereafter turned over the specimen to the Evidence

[8] *Id.* at 7-8.

[9] *Id.* at 8.

[10] *Id.* at 9-10.

[11] Records, p. 145-146; Request for Laboratory Examination; Records, p. 147; Chemistry Report.

Custodian and retrieved the same for the trial scheduled today; and

7) That he has no personal knowledge about the circumstances surrounding the arrest of the accused as well as the source of the substance subject of his examination.[12]

As regards PO2 Sales:

1) That he was the investigator assigned to investigate this case;

2) That in connection with the investigation he conducted and took the Affidavit of Arrest of [PO1 Nicart], [PO1 Cortez] and [SPO1 Angeles] (Exhibit "E");

3) That the two (2) plastic sachets marked as Exhibits "B-1" and "B-2" were turned over to him by the arresting officers;

4) That he prepared a request for laboratory examination marked as Exhibit "A" and in connection therewith he received a copy of the Chemistry Report, the original of which was marked as Exhibit "C";

5) That the buy bust money consisting of one (1) ₱100.00 bill marked as Exhibit "F" was likewise turned over to him with the updated "Watchlist of [Illegal] Drug Personalities" of Bgy. Obrero, Quezon City (Exhibit "G");

6) That he thereafter prepared the letter referral to the Office of the City Prosecutor, Quezon City marked as Exhibit "H"; and

7) That he has no personal knowledge about the circumstances surrounding the arrest of the accused as well as the source of the substance subject of his investigation.[13]

On the contrary, Posing testified that on 13 August 2004, between 4:00 to 5:00 o'clock in the afternoon, he was walking along a basketball court at Makabayan St., Kamuning, Quezon City, when he was arrested by PO1 Cortez and PO1 Nicart, who he came to know based on their name plates.[14] When he

[12] CA *rollo*, pp. 123-124; CA Decision.

[13] *Id.* at 124.

[14] TSN, 25 November 2008, pp. 2-3; Direct examination of Posing.

asked the officers what his violation was, they replied: "*Nag-mamaang-maangan ka pa*."[15] He was then led to their vehicle and was brought to Station 10 wherein he was asked to point to a certain "Nene" whom he did not know. He refused, which was why he was detained and charged with violation of R.A. No. 9165.[16]

Based on the above, the following were filed against the accused:

For Criminal Case No. Q-03-120266 for violation of Section 5, Article II of R.A. No. 9165:

That on or about the 13th day of August, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport, distribute any dangerous drug, did then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.[17]

For Criminal Case No. Q-03-120267 for violation of Section 11, Article II of R.A. No. 9165:

That on or about the 13th day of August, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his/her possession and control 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.[18]

Upon arraignment on 2 December 2003, Posing entered a plea of "not guilty" on both charges.[19]

On 2 December 2008, the trial court found Posing GUILTY of violation of both Sections 5 and 11, Article II, of R.A. 9165

[15] *Id.* at 4.

[16] *Id.* at 5-7.

[17] Records, p. 2.

[18] *Id.* at 6.

[19] *Id.* at 30.

in Criminal Case No. Q-03-120266 and Criminal Case No. Q-03-120267, respectively. The disposition reads:

WHEREFORE, premises considered, judgement is hereby rendered as follows:

(a) Re: Criminal Case No. Q-03-120266 – The Court finds accused **RUPER POSING *y* ALAYON *guilty*** beyond reasonable doubt of a violation of Section 5, Article II of R. A. 9165. Accordingly, he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine in the amount of **Five Hundred Thousand** (₱500,000.00) **PESOS.**

(b) Re: Criminal Case No. Q-03-120267 – The Court finds accused **RUPER POSING *y* ALAYON *guilty*** beyond reasonable doubt of a violation of Section 11, Article II of R. A. 9165. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** as **MINIMUM** to **FOURTEEN (14) YEARS** as **MAXIMUM** and to pay a fine in the amount of **THREE HUNDRED THOUSAND** (₱300,000.00) **PESOS.**

The Branch Clerk of Court is hereby ordered to turn over the possession of custody of the dangerous drugs subject hereof to the Philippine Drug Enforcement Agency for proper disposition and final disposal.[20]

On appeal, the accused-appellant, contended that the trial court gravely erred when it failed to consider the police officers' failure to comply with the proper procedure in the handling and custody of the seized drugs, as provided under Section 21 of R. A. No. 9165, which ultimately affected the chain of custody of the confiscated drugs.[21] Further, it was posited that there was no prior surveillance conducted to verify the informant's tip and that there was no coordination made with the Philippine Drug Enforcement Agency (PDEA).[22] Furthermore, the accused-appellant invoked his right to be presumed innocent until proven guilty beyond reasonable doubt.[23]

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[20] CA *rollo*, p. 31; RTC Decision.

[21] *Id.* at 55; Accused-Appellant's Brief.

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

[23] *Id.* at 60.

The People, through the Office of the Solicitor General, countered that although the requirements under Section 21 of R. A. No. 9165 has been held to be mandatory, non-compliance with the same, does not necessarily warrant an acquittal.[24] In addition, it was averred that the police officers are entitled to the presumption of regularity in the performance of official duties. Finally, the accused-appellant did not interpose any evidence in support of his defense aside from his bare denial.[25]

The CA affirmed the ruling of the trial court. The dispositive portion reads:

WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 82, dated 2 December 2008, in Criminal Cases Nos. Q-03-120266 and Q-03-120267, is **AFFIRMED.**[26]

The appellate court ruled that the requisites laid down under Section 21 of R.A. No. 9165 were complied with, more particularly, through the testimonies of the police officers which sufficiently established that the integrity and the evidentiary value of the seized items were preserved.[27] As to the alleged non-coordination with the PDEA, it was held that although the PDEA is the lead agency, it is not to be considered as the exclusive agency, in enforcing drug-related matters. Lastly, the evidence presented by the prosecution clearly showed that the elements of illegal sale and possession of dangerous drugs were proven by competent evidence, as compared to the bare denial interposed by the accused-appellant.[28]

In the instant appeal, accused-appellant, merely reiterated his previous arguments before the appellate court that the prosecution failed to establish the complete and unbroken chain

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[24] *Id.* at 93; Plaintiff-Appellee's Brief.

[25] *Id.* at 97.

[26] *Id.* at 134-135.

[27] *Id.* at 130-131.

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

of custody of the plastic sachets of *shabu* allegedly sold and possessed by accused-appellant.[29]

Posed for resolution is whether or not the accused-appellant is guilty of illegal sale and possession of dangerous drugs, and in the course of the investigation and trial, whether the integrity of the evidence was preserved.

We uphold the ruling of both the trial and the appellate court.

Both agreed that the illegal sale of *shabu* was proven beyond reasonable doubt. For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[30]

SPO1 Angeles testified thus:

Q: Now Mr. Witness did you report for duty on August 13, 2003?
A: Yes, sir.

Q: What happened while you were...What time did you report for duty?
A: I reported at around 10:00 in the morning.

Q: What happened while you were on duty on that date and time?
A: At around 5:30 in the afternoon, one of our asset which is based at Makabayan St., Brgy. Obrero, came to our office and informed our duty officer about a certain Ruper Posing who was known as drug pusher at their Barangay.

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[29] *Rollo*, pp. 34-41; Accused-Appellant's Supplemental Brief.

[30] *People v. Andres*, G. R. No. 193184, 7 February 2011, 641 SCRA 602, 608 citing *People v. Serrano*, G. R. No. 179038, 6 May 2010, 620 SCRA 327.

Q: What happened after this report was given to the desk officer?
A: Since the suspect is also included in our drug watch list, our Chief [SAID] immediately formed a team to conduct buy-bust operation against the suspect.[31]

x x x x x x x x x

Q: What else transpired Mr. Witness?
A: After forming the said team, our Chief SAID P/Insp. Arturo Caballes gave me one (1) piece Php 100.

Q: What did he do?
A: He gave me one (1) piece Php100 which will be used as the buy bust money.[32]

x x x x x x x x x

Q: What happened next Mr. Witness after placing your initial on that Php 100?
A: After that we were immediately dispatched to the location at Makabayan St., Brgy. Obrero.

x x x x x x x x x

Q: Where in Quezon City?
A: Kamuning, Your Honor.

Q: District of Kamuning?
A: Yes, Your Honor.

Q: What time was that when you were dispatched?
A: We were dispatched at about 5:40 and we arrived at the location at around 5:45. It was just a 5-minute drive from our station.

Q: And who were with you at that time, Mr. Witness?
A: [PO1 Cortez] and [PO1 Nicart].

Q: Who else?
A: [PO1 Cortez].

Q: Who else?
A: And the informant, Your Honor.

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[31] TSN, 8 August 2006, p. 3; Direct testimony of SPO1 Angeles.

[32] *Id.* at 4.

Q: So how many were you all in all?
A: Four (4), sir.

Q: What happened when you arrived there?
A: Upon arrival thereat, I, together with the informant went to the squatter's area of Makabayan St., and my companions positioned themselves in the viewing distance so that they will be able to monitor the transaction. We were able to meet the suspect beside the basketball court of Makabayan Street.

Q: And what happened when you met the suspect?
A: I was introduced by the informant as the buyer of *shabu* and I asked the suspect if I can purchase worth Php100 just for my personal use?

Q: You asked him?
A: Yes, sir.

Q: What was his reply?
A: Immediately, he pulled out one (1) transparent plastic sachet.

Q: Where did he get that plastic sachet?
A: Inside his pocket, sir.

Q: And what happened next Mr. Witness?
A: After the exchange, I immediately took out my cap signifying completion of the drug deal.

Q: After making the pre-arranged signal, what happened next? What is your pre-arranged signal?
A: Removing my cap, Your Honor. After that, my two (2) companions PO1 Nicart and PO1 Cortez immediately rushed to the scene, took hold of the suspect and introduced themselves as police officers.

Q: How about you, what did you do?
A: I'm just beside the suspect.

Q: And what happened when your companion arrested the suspect?
A: Then I conducted body frisk on the suspect and I was able to recover the buy bust money and another transparent plastic sachet inside his left palm.

Q: Which buy-bust money are you referring to?
A: Which I gave to the suspect.

Q: If that buy-bust money is shown to you will you be able to identify the same?
A: Yes, sir. I have already identified it.

x x x x x x x x x

Q: I'm showing you Mr. Witness two (2) transparent plastic sachets marked as Exhibits "B-1" and "B-2," kindly examine these two (2) plastic sachets and tell this Honorable Court the relation of these sachets to the one you said you bought and recovered from the accused?
A: This one with marking RT1 is the one I bought from the suspect and the other heat sealed transparent plastic sachet which is marked as RT2 which I recovered from his left palm.[33]

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this regard, the defense failed to show any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as in the case of appellant. Incidentally, if these were simply trumped-up charges against him, it remains a question why no administrative charges were brought against the police operatives. Moreover, in weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[34]

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

[34] *People v. Sembrano*, G. R. No. 185848, 16 August 2010, 628 SCRA 328, 342 citing *People v. Lamado*, G. R. No. 185278, 13 March 2009, 581 SCRA 544, 552 and *People v. Remerata*, G. R. No. 147230, 449 Phil. 813, 822 (2003).

With the illegal sale of dangerous drugs established beyond reasonable doubt, the handling of the evidence, or the observance of the proper chain of custody, which is also an indispensable factor in prosecution for illegal sale of dangerous drugs, is the next matter to be resolved.

The accused-appellant, argued that the following instances would constitute a break in the chain of custody of the seized plastic sachets of *shabu*: (1) SPO1 Angeles failed to identify the duty officer to whom he turned over the alleged confiscated *shabu*; (2) SPO1 Angeles was not able to recall who brought the drug specimens to the crime laboratory; (3) SPO1 Angeles failed to mark the confiscated sachets at the crime scene immediately after the accused-appellant was arrested; and (4) the police officers failed to prepare an inventory report of the confiscated drugs, no photographs of the same were taken in the presence of the accused-appellant and that of a representative from the media or the Department of Justice or any elected public official.[35]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "Chain of Custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Malillin v. People*,[36] we laid down the chain of custody requirements that must be met in proving that the seized drugs

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[35] *Rollo*, pp. 35-38.

[36] G. R. No. 172953, 30 April 2008, 553 SCRA 619, 632-633.

are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.

In this case, the prosecution was able to prove, through the testimonies of its witnesses that the integrity of the seized item was preserved every step of the process. After the sale of *shabu* and another sachet was discovered in the person of accused-appellant, SPO1 Angeles, who was the poseur-buyer in the buy-bust operation, marked the drug specimens, and then turned over the same to the desk officer, who in turn handed it to PO1 Sales. The latter then prepared a Request for Laboratory Examination, and on the same day, the specimens were delivered by PO1 Nicart to the PNP Crime Laboratory for quantitative and qualitative examination, conducted by Engr. Jabonillo.[37]

The same was corroborated by PO1 Sales and Engr. Jabonillo, whose testimonies were dispensed with, and formed part of the stipulations of facts agreed upon by both the prosecution and defense.[38]

The defense kept on harping on alleged lapses in the procedure observed by the apprehending officers, like SPO1 Angeles' failure to recall the duty officer to whom he turned over the specimens, and the officer who brought the specimens to the crime laboratory. Also, they questioned the absence of an inventory report of the confiscated drugs and that there were no photographs taken in the presence of the accused-appellant and that of a representative from the media or the Department of Justice or any elected public officer.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides:

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[37] CA *rollo*, pp. 125-126.

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

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

But time and again, jurisprudence is consistent in stating that less than strict compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.[39]

As held in *People v. Llanita*[40] as cited in *People v. Ara:*[41]

RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. x x x We have emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

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[39] *People v. Cardenas*, G. R. No. 190342, 21 March 2012, 668 SCRA 827, 836-837.

[40] G.R. No. 189817, 3 October 2012, 682 SCRA 288, 306-307.

[41] G.R. No. 185011, 23 December 2009, 609 SCRA 304, 325.

As to the charge of illegal possession of dangerous drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[42] In the case at hand, the prosecution was able to prove that the accused-appellant was in possession of one (1) plastic sachet of *shabu*, when he was frisked on the occasion of his arrest. There was also no showing that he had the authority to possess the drugs that was in his person. This Court held in a catena of cases that mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.[43]

In fine, considering the pieces of evidence presented by the prosecution, the denial of the accused-appellant fails. Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of the prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[44]

Also, it is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings.

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[42] *Asiatico v. People*, G. R. No. 195005, 12 September 2011, 657 SCRA 443, 450 citing *People v. Quiamanlon*, G. R. No. 191198, 26 January 2011, 640 SCRA 697.

[43] *People v. Dela Rosa*, G. R. No. 185166, 26 January 2011, 640 SCRA 635, 650.

[44] *Zalameda v. People*, G. R. No. 183656, 4 September 2009, 598 SCRA 537, 556.

The *rationale* behind this rule is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during trial. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[45] This Court does not find any convincing reason to depart from the ruling of the trial court, which was affirmed by the appellate court.

WHEREFORE, the instant appeal is **DENIED.** Accordingly, the Decision of the Court of Appeals dated 30 November 2010 in CA-G. R. CR-HC No. 03858 is hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197725. July 31, 2013]

MARK ANTHONY ESTEBAN (in substitution of the deceased GABRIEL O. ESTEBAN), *petitioner, vs.* **SPOUSES RODRIGO C. MARCELO and CARMEN T. MARCELO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LEASE; IT IS THE OWNER'S DEMAND FOR THE TENANT TO VACATE THE PREMISES AND THE TENANT'S REFUSAL TO DO SO WHICH MAKES THE WITHHOLDING OF POSSESSION UNLAWFUL.— As

[45] *People v. Cruz,* G. R. No. 187047, 15 June 2011, 652 SCRA 286, 297-298.

correctly pointed out by the petitioner, there should first be a *demand to pay or to comply with the terms of the lease* ***and*** *a demand to vacate* before unlawful detainer arises. The Revised Rules of Court clearly so state. Since 1947, case law has consistently upheld this rule. "Mere failure to pay rents does not *ipso facto* make unlawful tenant's possession of the premises. It is the owner's **demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful withholding of possession.**" In 2000, we reiterated this rule when we declared: "It is therefore clear that before the lessor may institute such action, he must make a demand upon the lessee to pay or comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession. Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer."

2. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE 1517 (URBAN LAND REFORM LAW); A LEGITIMATE TENANT'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LEASED PROPERTY DEPENDS ON WHETHER THE DISPUTED PROPERTY IS SITUATED IN AN AREA DECLARED TO BE BOTH AN AREA FOR PRIORITY DEVELOPMENT AND URBAN LAND REFORM ZONE; SUSTAINED.— In *Sps. Frilles v. Sps. Yambao*, the Court traced the purpose, development and coverage of P.D. 1517. The Court declared in this case that the purpose of the law is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These legitimate tenants have the right not to be dispossessed and to have the right of first refusal to purchase the property under reasonable terms and conditions to be determined by the appropriate government agency. Subsequent to P.D. 1517, then President Ferdinand Marcos issued Proclamation No. 1893 on September 11, 1979, declaring the entire Metropolitan Manila area an Urban Land Reform Zone for purposes of urban land reform. On May 14, 1980, he issued Proclamation No. 1967, amending Proclamation No. 1893 and identifying 244

sites in Metropolitan Manila as Areas for Priority Development and Urban Land Reform Zones. The Proclamation pointedly stated that: "[t]he provisions of P.D. Nos. 1517, 1640 and 1642 and of LOI No. 935 shall apply only to the above-mentioned Areas for Priority Development and Urban Land Reform Zones." "Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the disputed property in Metropolitan Manila is situated in an area specifically declared to be **both** an Area for Priority Development **and** Urban Land Reform Zone."

3. ID.; ID.; FOR THE DECREE TO APPLY, THE TENANTS MUST HAVE BEEN A LEGITIMATE TENANT FOR TEN (10) YEARS WHO HAVE BUILT THEIR HOMES ON THE DISPUTED PROPERTY; NOT ESTABLISHED IN CASE AT BAR.— We find it clear that for P.D. 1517 to apply, the tenants must have been a legitimate tenant for ten (10) years who have built their homes on the disputed property. These circumstances do not obtain in the present case as it was not the respondents-spouses who built their dwelling on the land; it was the late Esteban's sister who had the foundry shop built in the 1960s and eventually leased the property to the respondents-spouses in the 1970s. Even assuming that these two requirements have been complied with, P.D. 1517 still will not apply as the issue raised in the present petition is not the right of first refusal of the respondents-spouses, but their non-payment of rental fees and refusal to vacate. In fact, it was their non-payment of rental fees and refusal to vacate which caused the petitioner's predecessor to file the action for unlawful detainer. Finally, even assuming that the aforementioned circumstances were present, the respondents-spouses still cannot qualify under P.D. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone.

4. CIVIL LAW; PROPERTY; CO-OWNERSHIP; ANYONE OF THE CO-OWNERS MAY BRING AN ACTION FOR THE RECOVERY OF THE CO-OWNED PROPERTIES.— The present petition has been properly filed under the express provision of Article 487 of the Civil Code. In the recent case of *Rey Castigador Catedrilla v. Mario and Margie Lauron*, we explained that while all co-owners are real parties in interest in suits to recover properties, anyone of them may bring an

action for the recovery of co-owned properties. Only the co-owner who filed the suit for the recovery of the co-owned property becomes an indispensable party thereto; the other co-owners are neither indispensable nor necessary parties.

APPEARANCES OF COUNSEL

Roberto C. Bermejo for petitioner.
F.B. Alcones Law Office for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed under Rule 45 of the Rules of Court, assailing the decision[2] dated January 17, 2011 and the resolution[3] dated July 15, 2011 of the Court of Appeals *(CA)* in CA-G.R. SP No. 112609.

The Facts

The late Gabriel O. Esteban, substituted by his son, petitioner Mark Anthony Esteban,[4] had been in possession of a piece of land located at 702 Tiaga St., Barangka Drive, Mandaluyong City, since the 1950s.[5] In the 1960s, the late Esteban's sister constructed a foundry shop at the property. In the 1970s, after the foundry operations had proven unproductive, the respondents-spouses Rodrigo and Carmen Marcelo were allowed to reside therein, for a monthly rental fee of ₱50.00. Since March 2001, the respondents-spouses have stopped paying the rental fee (which by that time amounted to ₱160.00). On October 31, 2005, the

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[1] *Rollo*, pp. 9-24.

[2] *Id.* at 31-47; penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

[3] *Id.* at 49-53.

[4] *Id.* at 54.

[5] *Id.* at 120.

late Esteban, through a lawyer, sent the respondents-spouses a demand letter requiring them to settle their arrears and to vacate within five (5) days from receipt thereof.[6] For failure to comply with the demand to pay and to vacate, the late Esteban instituted an unlawful detainer case against the respondents-spouses on December 6, 2005.

The MeTC's and RTC's Rulings

In its April 23, 2009 decision,[7] the **Metropolitan Trial Court (MeTC)** ruled that there was a valid ground for ejectment; with the jurisdictional demand to vacate complied with, the respondents-spouses must vacate the property, pursuant to paragraphs 1 and 2, Article 1673 of the New Civil Code,[8] on the grounds of expiration of the lease and non-payment of monthly rentals. The MeTC likewise ordered the respondents-spouses to pay back rentals and rentals, plus legal interest until they shall have vacated the property, attorney's fees and cost of the suit. On appeal, the Regional Trial Court (*RTC*) fully affirmed the MeTC ruling.[9]

The CA Ruling

The respondents-spouses appealed the RTC's ruling to the CA.

In its January 17, 2011 decision,[10] **the CA reversed the RTC.** The CA ruled that from the year of dispossession in

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[6] *Id.* at 59.

[7] Penned by Judge Lizabeth Gutierrez-Torres, MeTC of Mandaluyong City, Branch 60; *id.* at 119-124.

[8] The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687, has expired;

(2) Lack of payment of the price stipulated[.]

[9] *Rollo*, pp. 137-142; penned by Judge Ofelia L. Calo.

[10] *Supra* note 2.

2001 when the respondents-spouses stopped paying rent, until the filing of the complaint for ejectment in 2005, more than a year had passed; hence, the case no longer involved an *accion interdictal*[11] cognizable by the MeTC, but an *accion publiciana*[12] that should have been filed before the RTC.[13] Therefore, the MeTC had no jurisdiction over the case so that its decision was a nullity. Likewise, the Court ruled that the respondents-spouses cannot be evicted as they are protected by Section 6 of Presidential Decree No. (P.D.) 1517.[14] Finally, the CA ruled that the respondents-spouses qualifies as beneficiary under Section 16 of Republic Act No. (RA) 7279.[15]

[11] *Accion Interdictal* is the summary action for Forcible entry and detainer which seeks the recovery of physical possession only and is brought within one (1) year in the justice of the peace court (*Reyes v. Judge Sta. Maria*, 180 Phil. 141, 145 (1979), citing Moran's *Comments on the Rules of Court*, 1970 Ed., p. 298).

[12] *Accion Publiciana* is recovery of the right to possess and is a plenary action in an ordinary civil proceeding in the RTC (*Reyes v. Judge Sta. Maria, supra*).

[13] *Rollo*, p. 38.

[14] PROCLAIMING URBAN LAND REFORM IN THE PHILIPPINES AND PROVIDING FOR THE IMPLEMENTING MACHINERY THEREOF; Section 6. *Land Tenancy in Urban Land Reform Areas*. Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. [italics supplied]

[15] AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES; Section 16. Eligibility Criteria for Socialized Housing Program Beneficiaries. — To qualify for the socialized housing program, a beneficiary:

a) Must be a Filipino citizen;

b) Must be an underprivileged and homeless citizen, as defined in Section 3 of this Act; c) Must not own any real property whether in the urban or rural areas; and

d) Must not be a professional squatter or a member of squatting syndicates.

In its July 15, 2011 resolution, the CA denied the respondents-spouses' partial motion for reconsideration anchored on the petitioner's failure to effect a substitution of parties upon the death of the late Esteban. The CA reasoned out that mere failure to substitute a deceased party is not a sufficient ground to nullify a trial court's decision.[16] The CA also reiterated its finding against the petitioner that since the time of dispossession, more than one year had passed; hence, the case was an *accion publiciana* that should have been commenced before the RTC.[17]

The Parties' Arguments

The petitioner filed the present petition for review on *certiorari* to assail the CA rulings. The petitioner argues that the case has been properly filed as an *accion interdictal* cognizable by the MeTC and was filed on December 6, 2005, or within the one-year prescriptive period counted from the date of the last demand on October 31, 2005; hence, the MeTC had proper jurisdiction over the case.

The petitioner further argues that contrary to the CA's findings, the failure to pay did not render the possession unlawful; it was the failure or refusal to vacate after demand and failure to pay that rendered the occupancy unlawful.[18]

The petitioner likewise points out that the respondents-spouses are not covered by P.D. 1517 as there was no showing that the subject lot had been declared an area for priority development or for urban land reform.

Finally, the petitioner avers that it was improper for the CA to rule that the respondents-spouses are qualified beneficiaries under the RA 7279 as this point was not in issue and should not have been covered by the appellate review.

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[16] *Rollo*, pp. 52-53.

[17] *Id.* at 52.

[18] *Id.* at 7.

In their comment to the petition,[19] the respondents-spouses claim that the substitution of petitioner was irregular as the other compulsory heirs of the late Esteban had not been made parties to the present case.

The Court's Ruling

The Court finds the petition meritorious.

The one-year prescription period is counted from the last demand to pay and vacate

As correctly pointed out by the petitioner, there should first be a *demand to pay or to comply with the terms of the lease* ***and*** *a demand to vacate* before unlawful detainer arises. The Revised Rules of Court clearly so state.[20]

Since 1947, case law has consistently upheld this rule. "Mere failure to pay rents does not *ipso facto* make unlawful tenant's possession of the premises. It is the owner's **demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful withholding of possession.**"[21] In 2000, we reiterated this rule when we declared: "It is therefore clear that before the lessor may institute such action, he must make a demand upon the lessee to pay or comply with the conditions of the lease and to vacate the premises. It is the owner's demand

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[19] *Id.* at 148-150.

[20] Rule 70, Section 2. Lessor to proceed against lessee only after demand. Unless otherwise stipulated, such action by the lessor shall be commenced only **after demand to pay or comply with the conditions of the lease and to vacate** is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. [emphasis ours]

[21] *Canaynay v. Sarmiento*, 79 Phil. 36, 40 (1947). Emphases ours; italics supplied.

for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession. Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer."[22]

Furthermore, in cases where there were more than one demand to pay and vacate, the reckoning point of one year for filing the unlawful detainer is from the last demand as the lessor may choose to waive his cause of action and let the defaulting lessee remain in the premises.[23]

P.D. 1517 does not apply: in the absence of showing that the subject land has been declared and classified as an Area for Priority Development and as a Land Reform Zone

It was an error for the CA to rule that the respondents-spouses could not be ousted because they were protected by P.D. 1517. This decree, in fact, does not apply to them.

In *Sps. Frilles v. Sps. Yambao*,[24] the Court traced the purpose, development and coverage of P.D. 1517. The Court declared in this case that the purpose of the law is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These legitimate tenants have the right not to be dispossessed and to have the right of first refusal to purchase the property under reasonable terms and conditions to be determined by the appropriate government agency.[25]

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[22] *Siapian v. Court of Appeals*, 383 Phil. 753, 762 (2000), citing *Dio v. Concepcion*, G.R. No. 129493, September 25, 1998, 296 SCRA 579, 590. Emphases ours.

[23] *Cañiza v. CA*, 335 Phil. 1107, 1117 (1997).

[24] 433 Phil. 715, 721-724. Citations omitted.

[25] *Id.* 721.

Subsequent to P.D. 1517, then President Ferdinand Marcos issued Proclamation No. 1893 on September 11, 1979, declaring the entire Metropolitan Manila area an Urban Land Reform Zone for purposes of urban land reform. On May 14, 1980, he issued Proclamation No. 1967, amending Proclamation No. 1893 and identifying 244 sites in Metropolitan Manila as Areas for Priority Development and Urban Land Reform Zones. The Proclamation pointedly stated that: "[t]he provisions of P.D. Nos. 1517, 1640 and 1642 and of LOI No. 935 shall apply only to the above-mentioned Areas for Priority Development and Urban Land Reform Zones."

"Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the disputed property in Metropolitan Manila is situated in an area specifically declared to be **both** an Area for Priority Development **and** Urban Land Reform Zone."[26]

Based on the cited issuances, we find it clear that for P.D. 1517 to apply, the tenants must have been a legitimate tenant for ten (10) years who have built their homes on the disputed property. These circumstances do not obtain in the present case as it was not the respondents-spouses who built their dwelling on the land; it was the late Esteban's sister who had the foundry shop built in the 1960s and eventually leased the property to the respondents-spouses in the 1970s. Even assuming that these two requirements have been complied with, P.D. 1517 still will not apply as the issue raised in the present petition is not the right of first refusal of the respondents-spouses, but their non-payment of rental fees and refusal to vacate. In fact, it was their non-payment of rental fees and refusal to vacate which caused the petitioner's predecessor to file the action for unlawful detainer.

Finally, even assuming that the aforementioned circumstances were present, the respondents-spouses still cannot qualify under P.D. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone.

[26] *Id.* at 724.

Issues not raised may not be considered and ruled upon

The rule on the propriety of resolving issues not raised before the lower courts cannot be raised on appeal: "points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule."[27]

As the petitioner correctly observed, the respondents-spouses never intimated, directly or indirectly, that they were seeking the protection of RA 7279. Therefore, the CA did not have any authority to rule that the respondents-spouses qualified as beneficiaries under RA 7279.

Any one of the co-owners may bring an action for ejectment

We see no merit in the respondents-spouses' observation that the present petition is irregular because the other compulsory heirs (or co-owners) have not been impleaded. The present petition has been properly filed under the express provision of Article 487 of the Civil Code.[28]

In the recent case of *Rey Castigador Catedrilla v. Mario and Margie Lauron*,[29] we explained that while all co-owners are real parties in interest in suits to recover properties, anyone of them may bring an action for the recovery of co-owned properties. Only the co-owner who filed the suit for the recovery of the co-owned property becomes an indispensable party thereto; the other co-owners are neither indispensable nor necessary parties.

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[27] *Nunez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145. Citations omitted.

[28] Article 487. Any one of the co-owners may bring an action in ejectment.

[29] G.R. No. 179011, April 15, 2013, citing *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695.

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition for review on *certiorari*. The decision dated January 17, 2011 and the resolution dated July 15, 2011 of the Court of Appeals in CA-G.R. SP No. 112609 are hereby **REVERSED and SET ASIDE**. The decision dated January 13, 2010 of the Regional Trial Court, Branch 211, Mandaluyong City, in Civil Case No. 20270, is hereby **REINSTATED**. Costs against the respondents spouses Rodrigo and Carmen Marcelo.

SO ORDERED.

Carpio (Chairperosn), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 198110. July 31, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILSON ROMAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; THERE CAN BE NO SELF-DEFENSE, COMPLETE OR INCOMPLETE, UNLESS THE VICTIM COMMITS AN UNLAWFUL AGGRESSION AGAINST THE PERSON DEFENDING HIMSELF.— It bears emphasizing that self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Thus, it must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (*a*) unlawful

aggression on the part of the victim; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself. It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition *sine qua non* must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; ESTABLISHED IN CASE AT BAR.— There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make. It takes place when the following elements concur: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means of attack employed. x x x At the time that the crime was about to be committed, the victim does not have the slightest idea of the impending danger to his person. He was not facing the accused-appellant and unarmed, hence, lacked the opportunity to avoid the attack, or at least put up a defense to mitigate the impact. On the one hand, the accused-appellant was armed and commenced his attack while behind the victim. The presence of treachery cannot be any clearer.

3. ID.; ID.; MURDER; IMPOSABLE PENALTY.— Under Article 248 of the Revised Penal Code, as amended, the crime of murder is punishable by *reclusion perpetua* to death. Pursuant to Article 63, paragraph 2 of the same Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstance is present in the commission of the crime. In the present case, no aggravating circumstance attended the commission of the crime. Thus, the lesser penalty of *reclusion perpetua* is the proper penalty which should be imposed upon the accused-appellant.

4. ID.; ID.; PENALTY; *RECLUSION PERPETUA* IS AN INDIVISIBLE PENALTY, IT HAS NO MINIMUM, MEDIUM, AND MAXIMUM PERIODS; APPLICATION IN CASE AT BAR.— In *People v. Diquit*, this Court held that *reclusion perpetua* is an *indivisible* penalty, it has no minimum, medium, and maximum periods. It is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime. Consequently, in this case, the CA should have rectified the error committed by the RTC as to the penalty imposed on the accused-appellant. The CA should have been more circumspect in scrutinizing the appealed decision, specifically the propriety of the penalty imposed, since the very purpose of appeal is to amend or correct errors overlooked by the lower court. In this case, therefore, the accused-appellant should simply and appropriately be sentenced to suffer the penalty of *reclusion perpetua*, without any specification of duration.

5. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY RAISED TO ₱75,000.00.— 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. It requires only the establishment of the fact of death as a result of the crime and that the accused-appellant is responsible thereto. However, in order to conform with the prevailing jurisprudence, the civil indemnity awarded to the heirs of victim must be raised to ₱75,000.00.

6. ID.; ID.; ID.; MORAL DAMAGES CAN BE AWARDED DESPITE ABSENCE OF PROOF OF MENTAL OR EMOTIONAL SUFFERING OF THE VICTIM'S HEIRS.— Moral damages in the sum of ₱50,000.00 can 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.

7. ID.; ID.; ID.; THE AWARD OF TEMPERATE DAMAGES IS WARRANTED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS WAS SUFFERED BUT ITS AMOUNT CANNOT BE PROVED WITH CERTAINTY.— The award of temperate damages, on the other hand, is warranted when the court finds that some pecuniary loss was suffered but its

amount cannot be proved with certainty. Considering that the death of the victim definitely caused his heirs some expenses for his wake and burial, though they were not able to present proof, temperate damages in the amount of ₱25,000.00 was properly awarded to them.

8. ID.; ID.; ID.; EXEMPLARY DAMAGES MAY BE IMPOSED WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES; PROPER IN CASE AT BAR.— Exemplary damages, on the other hand, may also be imposed when the crime was committed with one or more aggravating circumstances. The presence of treachery was sufficiently established by the testimonies of the prosecution witnesses, recounting how the victim was surprised by the accused-appellant's attack from behind. It has been repeatedly reiterated in the records that the victim was unarmed and defenseless at the time of the attack. The results of the post-mortem examination of the cadaver of the victim further confirmed the veracity of the accounts of the witnesses particularly that the attack was done when the victim had his back against the accused-appellant. Given the clear presence of the qualifying aggravating circumstance of treachery, the award of exemplary damages of ₱30,000.00 is in place.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated February 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03972, which affirmed with modification the Judgment[2] dated June 10,

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios, concurring; *rollo*, pp. 2-14.

[2] CA *rollo*, pp. 32-38.

2009 of the Regional Trial Court (RTC) of Iriga City, Branch 35, in Criminal Case No. IR-4231.

The Antecedent Facts

On November 11, 1996, Wilson Roman (accused-appellant) was charged with Murder before the RTC of Iriga City, Branch 35. Upon arraignment on February 6, 2004, accused-appellant pleaded not guilty to the charge.[3] Thereafter, trial on the merits ensued.

The prosecution presented the following as witnesses: Elena Romero (Romero), Asterio Ebuenga (Ebuenga), Martin Borlagdatan (Borlagdatan), Elisea Indaya (Indaya), Ramil Baylon (Baylon), SPO1 Medardo Delos Santos and Dr. Teodora Pornillos (Dr. Pornillos). The defense, on the other hand, presented the testimony of the accused-appellant and Delia Tampoco (Tampoco).

Prosecution witness Romero testified that in the morning of June 22, 1995, she was at a wedding party in the house of a certain Andang Toniza in *Barangay* Coguit, Balatan, Camarines Sur, when she witnessed the accused-appellant hacks Vicente Indaya (victim) unrelentingly with a bolo. The victim was hit on his head, nape, right shoulder, base of the nape and right elbow before he fell on the ground and instantly died.[4]

Borlagdatan, who was also at the wedding party, testified that he was at the kitchen, getting rice to be served for the guests, when he heard someone shouting that somebody was hacked. When he went out to check what the commotion is about, he saw the victim lying on his stomach, drenched in his own blood, while the accused-appellant was standing in front of him, holding a bolo. Borlagdatan tried to seize possession of the bolo from the accused-appellant but the latter made a downward thrust, hitting his right thumb. He left the place and proceeded to the nearby health center to have his wound treated.[5]

[3] *Id.* at 32.

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

[5] *Id.* at 33.

The testimonies of Ebuenga and Ramil Baylon, who were also in attendance at the wedding party, corroborated the testimony of Borlagdatan.

Ebuenga testified that he was only two (2) feet away from the accused-appellant and the victim when the former hacked the latter at the back of his head, nape and left shoulder.[6] Baylon, on the other hand, demonstrated in open court how the incident transpired, with him acting as the accused-appellant and a court employee as the victim. With the court employee had his back to Baylon, the latter mimicked how the accused-appellant hacked the victim five (5) times. The accused-appellant continued to hack the victim even when he was already on his knees.[7]

Indaya, wife of the victim, testified that she learned of the incident from her sister-in-law, Consorcia Villaflor. They immediately proceeded to the crime scene and saw her husband lying on his stomach, with five (5) hack wounds at the back of his head. She further testified on the damages sustained by their family from the untimely demise of the victim, who is a father to eleven (11) children and the breadwinner of the household.[8]

Dr. Pornillos interpreted in open court the Necropsy Report[9] executed by Dr. Mario Bañal (Dr. Bañal), who conducted the post-mortem examination on the cadaver of the victim. She testified that the victim sustained seven (7) hack wounds. The first and second wounds were inflicted at the back of the head and at the posterior lobe, respectively, while the third and fourth wounds were found at the skull. The fifth and sixth wounds were inflicted at the left shoulder of the victim while the seventh wound was at the back portion, above the waist and along the spine. She further testified that the weapon used could be a bolo and that the assailant was positioned at the back of the

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[6] *Id.*

[7] *Id.* at 33-34.

[8] *Rollo,* p. 4.

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

victim. She also confirmed that the wounds could have been inflicted while the victim is already down on the ground.[10]

The accused-appellant proffered a different version of the incident. He testified that on June 22, 1995, he went to the house of his parents-in-law in *Barangay* Coguit, Balatan, Camarines Sur to bring the bamboos he towed from San Isidro, Balatan, Camarines Sur. On his way back, he met his close friend, Abundio Belbis (Belbis), who cajoled him to come with him to a wedding party at *Barangay* Coguit, Balatan, Camarines Sur. At the wedding venue, he saw the victim having a heated exchange of words with his brother-in-law, Geronimo Villaflor (Villaflor), who happened to be his friend. He pacified the two and told Villaflor to leave. Thereafter, he joined Belbis and had some drinks. After twenty (20) minutes, the victim suddenly appeared, loudly tapped their table and, while pointing at him, exclaimed, "*Son of a bitch, I'll kill you! Why are you pacifying me[?] You are just like your friends*." He stood up and turned to leave. While leaving, however, he heard a woman shouting, "*Wilson, you will be hacked!*" When he turned his head, he saw the victim running towards him with a bolo. Seeing the impending attack, he moved back, making him lean on the fence, but still he was hit on his left hand at the back of his palm. While wrapping his palm with a towel, the victim hit him once again but he was able to dodge. He got mad and lost control of himself so he pulled his bolo from the scabbard and hacked the victim.[11]

Tampoco, on the other hand, testified that when she saw the victim aiming to hack the accused-appellant, she shouted, "*Wilson, you will be hacked*!" With her warning, the accused-appellant was able to move back and avoid the attack. However, the victim moved and lunged at the accused-appellant again. The accused-appellant was hit once but was, thereafter, able to seize possession of the bolo from the victim and hacked the latter.[12]

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[10] *Id.* at 34.

[11] *Id.* at 34-35.

[12] *Id.* at 35.

The Ruling of the RTC

On June 10, 2009, the RTC rendered a decision,[13] finding the accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

> **WHEREFORE**, the prosecution having proven the guilt of the accused WILSON ROMAN beyond reasonable doubt for the felony of murder, he is hereby CONVICTED and sentenced to suffer imprisonment from twenty years and one day to forty years of *reclusion perpetua*. He is further ordered to indemnify the heirs of Vicente Indaya represented by Elisea B. Indaya the following amount: 1)For the death of Vicente Indaya – Pesos:One Hundred Thousand ([₱]100,000.00); 2)actual Damages in the amount of Pesos: Fifty Thousand ([₱]50,000.00); 3)Moral Damages in the amount of Pesos: Fifty Thousand ([₱]50,000.00); and the cost of suit.
>
> SO ORDERED.[14]

The RTC ruled that the prosecution was able to establish all the elements constitutive of the crime charged. Specifically, it was able to prove the identity of the accused-appellant as the perpetrator of the crime through the categorical testimonies of Romero, Ebuenga, Borlagdatan and Baylon who personally witnessed the hacking of the victim. Further, the qualifying circumstance of treachery was also sufficiently established by the consistent accounts of the witnesses that the accused-appellant attacked and hacked the victim from behind, while he was unarmed and defenseless, until he was down on the ground.[15]

The RTC also dismissed the plea of self-defense proffered by the accused-appellant. It ruled that the accused-appellant's bare claim that the unlawful aggression initially came from the victim cannot stand against the overwhelming evidence presented by the prosecution showing that it was him who attacked and repeatedly hacked the victim to his death. It noted the variance

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[13] *Id.* at 32-38.

[14] *Id.* at 38.

[15] *Id.* at 36.

between the testimonies of the accused-appellant and his witness, Tampoco, as to where the bolo that was used in the crime came from.[16] The accused-appellant testified, thus:

"Q What did you do, if any?
A I was able to pull my bolo out of the scabbard and hacked him."[17]

On the other hand, Tampoco testified:

"Q While Wilson Roman, the accused was in that position, what [did] Vicente Indaya do if any?

A What Vicente Indaya did was to move to where I was standing and then Vicente Indaya lunged at Wilson Roman.

Q Then after that what happened?

A Wilson Roman was able to seize the bolo.

Q Before Wilson Roman was able to seize the bolo held by Vicente Indaya, was Wilson Roman hit by that bolo?

A Yes, sir.

Q You said that accused Wilson Roman was able to seize the bolo from the victim, Vicente Indaya and Wilson Roman hacked Indaya, that's why he died?

A Yes, sir."[18]

As regards the civil liability, the RTC ordered the accused-appellant to indemnify the heirs of the victim with actual and moral damages.[19]

The Ruling of the CA

On appeal, the CA affirmed with modification the ruling of the RTC in a Decision[20] dated February 28, 2011, disposing thus:

[16] *Id.* at 37.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Rollo,* pp. 2-14.

WHEREFORE, in view of all the foregoing, the assailed Decision of the Regional Trial Court dated June 10, 2009 is hereby **AFFIRMED with MODIFICATION** on the damages. Accordingly, accused-appellant Wilson Roman is directed to pay the heirs of Vicente Indaya the amount of [₱]50,000.00 as civil indemnity, [₱]50,000.00 as moral damages, [₱]25,000.00 as temperate damages and [₱]30,000.00 as exemplary damages. The award of actual damages of [₱]50,000.00 is deleted.

SO ORDERED.[21]

The CA ruled that the RTC correctly dismissed the accused-appellant's plea of self-defense to extricate himself from criminal liability. It pointed out that the eyewitnesses' accounts confirmed that the accused-appellant was the unlawful aggressor and not the victim. It was established during the trial that the victim was only walking in the yard when the accused-appellant attacked him from behind.

Further, the CA noted that the disparity of the wounds sustained by the accused-appellant and the victim militates against the claim of self-defense. While the accused-appellant sustained a superficial cut at the back of his palm, measuring an inch, the victim was inflicted with seven (7) hack wounds on his head, neck and shoulder, all of which were mortal.[22]

The CA, however, modified the award of damages, ratiocinating thus:

In consonance with the Supreme Court's pronouncements, WE reduce the award of civil indemnity given by the trial court from [₱]100,000.00 to [₱]50,000.00 while the amount of [₱]50,000.00 as moral damages is maintained.

As to actual damages, the heirs of the victim of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty. To be entitled to actual damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.

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[21] *Id.* at 13.

[22] *Id.* at 9-10.

In the present case, no proof was presented that the heirs of Vicente Indaya actually spent the amount of [₱]50,000.00 awarded by the court *a quo*. However, under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Thus, in lieu of actual damages, the award of [₱]25,000.00 as temperate damages is proper.

Likewise, exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying. In this case, since the qualifying circumstance of treachery was established, WE award the amount of [₱]30,000.00 as exemplary damages.[23] (Citations omitted)

On March 10, 2011, the accused-appellant, through the Public Attorney's Office, filed a Notice of Appeal[24] with the CA, pursuant to Section 13(c), Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

The Issues

The issues for consideration of this Court in the present appeal are the following:

(1) Whether the accused-appellant may properly invoke self-defense; and

(2) Whether the qualifying circumstance of treachery exists.

The accused-appellant contends that the prosecution was not able to establish his guilt beyond moral certainty. He argues that he should not be held criminally liable for the death of the victim as he only acted in self-defense from the unlawful aggression exerted by the latter. He was just walking when he was suddenly attacked by the victim with a bolo and that he swung his own bolo only to save himself from the impending danger to his person.[25]

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

[24] *Id.* at 15.

[25] CA *rollo*, p. 57.

The accused-appellant further asseverates that there was a reasonable necessity for him to use his bolo to repel the unlawful aggression of the victim as it is the only weapon available to him at the time of the attack. He adds that the unlawful aggression was exerted by the victim without any provocation on his part.[26]

Even granting that the theory of self-defense is unavailing to him, the accused-appellant contends that he should only be convicted of the lesser crime of homicide for failure of the prosecution to establish the presence of treachery. He claims that the evidence on record failed to show that there was a conscious effort on his part to adopt a particular means, method or form of attack to ensure the commission of the crime, without affording the victim any opportunity to defend himself. And, considering that treachery cannot be presumed, he opines that any doubt as to its existence must be resolved in his favor.[27]

For their part, the Office of the Solicitor General (OSG) maintains that the accused-appellant's guilt for the crime of murder was proven beyond reasonable doubt. The testimonies of the prosecution witnesses were positive, clear and consistent in that the victim was unarmed when he was attacked from behind by the accused-appellant.[28]

The OSG likewise refutes the accused-appellant's claim of self-defense. It argues that the evidence presented by the accused-appellant do not clearly and convincingly establish the presence of unlawful aggression on the part of the victim. The mere fact that the victim was engaged in a heated argument with another person so much so that the accused-appellant pacified them does not constitute unlawful aggression within the contemplation of the law.[29]

Finally, the OSG maintains that the qualifying circumstance of treachery was clearly established by the eyewitnesses'

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[26] *Id.* at 58.

[27] *Id.* at 60.

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

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

consistent accounts that the accused-appellant, without provocation, suddenly attacked the victim with his bolo from behind, the latter being defenseless and totally unaware of the impending danger to his person.[30]

The Court's Ruling

The accused-appellant's guilt was proven beyond reasonable doubt.

Absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings. Such findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.[31]

In the instant case, the records are replete with evidence establishing the accused-appellant's guilt for the crime charged. The testimonies of the prosecution witnesses, Romero, Borlagdatan and Baylon, were positive, clear and consistent in all material points. They uniformly declared that they were at the scene of the crime at the time it was committed and identified the accused-appellant as the assailant who hacked the victim to his death. Specifically, Baylon relayed in his testimony how the accused-appellant hacked the unsuspecting victim from behind with a bolo. He recounted that the accused-appellant continued hacking the victim even as the latter was already kneeling on the ground.[32] Baylon's testimony was corroborated by several eyewitnesses: Romero, Ebuenga and Borlagdatan, all of whom confirmed the veracity of his account.

Further corroborating the eyewitnesses' testimonies is the Necropsy Report issued by Dr. Bañal. In the said report, it was confirmed that all of the wounds suffered by the victim were

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[30] *Id.* at 92- 93.

[31] *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 633.

[32] CA *rollo*, p. 34.

located at his back, mostly in the head, inflicted by a sharp-edged object which is presumably a bolo.[33]

Remarkably, the accused-appellant did not impute any ill-motive on the part of the prosecution witnesses which could have impelled them to falsely implicate him in a serious crime like murder. Where there is no evidence that the witnesses of the prosecution were actuated by ill-motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[34]

With the overwhelming evidence presented against the accused-appellant, this Court entertains no doubt on his guilt.

The accused-appellant failed to establish the elements of self-defense.

In his vain attempt to extricate himself from criminal liability, the accused-appellant interposed a plea of self-defense. In his version of the incident, he claims that the victim was the unlawful aggressor and that he simply acted in self-defense in order to avert an impending harm. He avers that he earned the ire of the victim when he intervened in his altercation with Villaflor while at a wedding reception. A few minutes after that, he claims that the victim came back and loudly tapped the table where he and his friends were having some drinks. The victim hurled invectives against him and threatened to kill him but he simply stood up and turned to leave the place. As he was leaving, however, he heard someone shouting that he is about to be hacked. Turning his head, he saw the victim running towards him, aiming to hit him with a bolo. He was able to avoid the attack but he was still hit in the palm as the victim continued to thrust his bolo. It was then that he removed the bolo from his scabbard and hit the victim.[35]

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[33] *Id.*

[34] *People v. De Leon*, 408 Phil. 589, 597 (2001), citing *People v. Lumacang*, 381 Phil. 266, 279 (2000) and *People v. Manegdeg*, 375 Phil. 154, 174 (1999).

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

It bears emphasizing that self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Thus, it must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[36] In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (*a*) unlawful aggression on the part of the victim; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself.[37]

It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition *sine qua non* must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself.[38] There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon.[39]

In *People v. Nugas*,[40] this Court expounded on the nature of unlawful aggression as the key element of self-defense:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of

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[36] *People v. Bracia*, G.R. No. 174477, October 2, 2009, 602 SCRA 351, 372.

[37] *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 242, citing REVISED PENAL CODE, Article 11, Section 1.

[38] *People v. Bracia*, *supra* note 36, at 370, citing *People v. Ansowas*, 442 Phil. 449, 459 (2002).

[39] *People v. Ansowas*, *id.*

[40] G.R. No. 172606, November 23, 2011, 661 SCRA 159.

unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.[41] (Citations omitted)

In *Del Castillo*, the Court discussed the implication of a plea of self-defense, *viz*:

The rule consistently adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court. The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof. He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, considering that the Prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing.[42] (Citations omitted)

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[41] *Id.* at 167-168.

[42] *Supra* note 37, at 243-244.

Unfortunately for the accused-appellant, his claim of self-defense shrinks into incredulity when scrutinized alongside the positive and consistent testimonies of the prosecution witnesses as to what transpired during the incident. It is worth noting that the incident transpired in broad daylight, in the midst of a wedding reception at that, within the clear view of a number of guests. Thus, it is of no wonder that the testimonies of all the prosecution witnesses are consistent in all material points, particularly how the attack was made upon the defenseless victim. They all confirmed that before the crime was consummated, the victim was only walking in the yard, unarmed. There was not the least provocation done by the victim that could have triggered the accused-appellant to entertain the thought that there was a need to defend himself. The victim did not exhibit any act or gesture that could show that he was out to inflict harm or injury. On the contrary, the witnesses all point to the accused-appellant as the unlawful aggressor who mercilessly hacked the unwary victim until he collapsed lifeless on the ground.

Further, as correctly observed by the CA, the severity, location and the number of wounds suffered by the victim are indicative of a serious intent to inflict harm on the part of the accused-appellant and not merely that he wanted to defend himself from an imminent peril to life. The CA noted:

> As clearly shown by the evidence at hand, his cut was superficial which only measures one (1) inch. In stark contrast, Vicente Indaya suffered seven (7) hack wounds on his head, neck and shoulder, all located at the back and Dr. Teodora Pornillos described all of them as fatal. It is, therefore, difficult to believe that accused-appellant hacked Vicente Indaya merely to defend himself or to disarm the latter. The severity, location and number of wounds sustained by the victim are eloquent evidence that accused-appellant was resolute on his intent to kill Vicente Indaya.[43]

Moreover, in the incident report executed by the police officers, only one (1) bolo, specifically that which was used in the hacking, was reported to have been recovered from the crime scene.[44]

[43] *Rollo,* pp. 9-10.

[44] CA *rollo,* p. 14.

This belies the accused-appellant's claim that the victim was also armed at the time of the incident.

Crime was qualified by treachery.

The accused-appellant contends that even supposing he should be found guilty of killing the victim, he should be convicted only of homicide, not murder, for failure of the prosecution to establish treachery.

There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[45] It takes place when the following elements concur: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means of attack employed.[46]

The CA correctly appreciated the presence of the qualifying circumstance of treachery, *viz*:

> WE also concur with the lower court's appreciation of the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims. Verily, what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.
>
> The record shows that Vicente Indaya, while walking in the yard, was suddenly and repeatedly attacked with a bolo from behind. The manner and mode of attack adopted by accused-appellant, to OUR minds, bespeak of treachery. To be sure, the victim, who was then unarmed and unsuspecting, was deprived of any real chance to mount a defense, thereby ensuring the commission of the crime without

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[45] REVISED PENAL CODE, Article 16, Section 14.

[46] *People v. Amazan*, 402 Phil. 247, 264 (2001).

risk to accused-appellant. This is also buttressed by the fact that the wounds sustained by the victim were all located at the back. On this score, WE agree with the trial court's finding of treachery.[47] (Citations omitted)

At the time that the crime was about to be committed, the victim does not have the slightest idea of the impending danger to his person. He was not facing the accused-appellant and unarmed, hence, lacked the opportunity to avoid the attack, or at least put up a defense to mitigate the impact. On the one hand, the accused-appellant was armed and commenced his attack while behind the victim. The presence of treachery cannot be any clearer.

Penalty and Award of Damages

The RTC and the CA did not err in finding the accused-appellant guilty beyond reasonable doubt of the crime of murder qualified by treachery. However, modifications have to be made with respect to the penalty imposed and the amount of civil indemnity awarded to the heirs of the victim.

In its Judgment dated June 10, 2009, the RTC convicted the accused-appellant with the crime of murder and sentenced him to suffer the penalty of "imprisonment from twenty years and one day to forty years of *reclusion perpetua*."[48] On appeal, the CA affirmed the decision of the RTC with modification only as to the damages.[49]

Under Article 248 of the Revised Penal Code, as amended, the crime of murder is punishable by *reclusion perpetua* to death. Pursuant to Article 63, paragraph 2 of the same Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstance is present in the commission of

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[47] *Rollo*, p. 11.

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

[49] *Rollo*, p. 13.

the crime.[50] In the present case, no aggravating circumstance attended the commission of the crime. Thus, the lesser penalty of *reclusion perpetua* is the proper penalty which should be imposed upon the accused-appellant.

The RTC, however, sentenced the accused-appellant to an imprisonment of twenty (20) years and one (1) day to forty (40) years of *reclusion perpetua,* giving the impression that the penalty of *reclusion perpetua* can be divided into periods when in fact it is a single and indivisible penalty. In *People v. Diquit*,[51] this Court held that *reclusion perpetua* is an *indivisible* penalty, it has no minimum, medium, and maximum periods. It is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.[52] Consequently, in this case, the CA should have rectified the error committed by the RTC as to the penalty imposed on the accused-appellant. The CA should have been more circumspect in scrutinizing the appealed decision, specifically the propriety of the penalty imposed, since the very purpose of appeal is to amend or correct errors overlooked by the lower court. In this case, therefore, the accused-appellant should simply and appropriately be sentenced to suffer the penalty of *reclusion perpetua*, without any specification of duration.[53]

Further, modification has to be made with respect to the amount of civil indemnity awarded to the heirs of the victim.

In *People v. Asis*,[54] this Court held:

When death occurs due to a crime, the following may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

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[50] *People v. Bensig,* 437 Phil. 748, 764 (2002).

[51] G.R. No. 96714, January 27, 1992, 205 SCRA 501.

[52] *Id.* at 508.

[53] *People v. Bensig, supra* note 50, at 765.

[54] G.R. No. 177573, July 7, 2010, 624 SCRA 509.

Conformably with existing jurisprudence, the heirs of Donald Pais are entitled to civil indemnity in the amount of ₱75,000.00, which is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Likewise, moral damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim. Moral damages are 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.[55] (Citations omitted)

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. It requires only the establishment of the fact of death as a result of the crime and that the accused-appellant is responsible thereto.[56] However, in order to conform with the prevailing jurisprudence, the civil indemnity awarded to the heirs of victim must be raised to ₱75,000.00.[57]

The awards of moral damages in the amount of ₱50,000.00, temperate damages in the amount of ₱25,000.00 and exemplary damages in the amount of ₱30,000.00, of the CA are all in accordance with existing jurisprudence[58] and are thus sustained.

Moral damages in the sum of ₱50,000.00 can 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.[59] The award of temperate damages, on the other hand, is warranted when the court finds that some pecuniary loss was

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[55] *Id.* at 530-531.

[56] *People v. Molina*, G.R. No. 184173. March 13, 2009, 581 SCRA 519, 542.

[57] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206.

[58] *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560; *People v. Asis*, *supra* note 54.

[59] *People v. Laurio*, *id.* at 572.

suffered but its amount cannot be proved with certainty.[60] Considering that the death of the victim definitely caused his heirs some expenses for his wake and burial, though they were not able to present proof, temperate damages in the amount of ₱25,000.00 was properly awarded to them.

Exemplary damages, on the other hand, may also be imposed when the crime was committed with one or more aggravating circumstances.[61] The presence of treachery was sufficiently established by the testimonies of the prosecution witnesses, recounting how the victim was surprised by the accused-appellant's attack from behind. It has been repeatedly reiterated in the records that the victim was unarmed and defenseless at the time of the attack. The results of the post-mortem examination of the cadaver of the victim further confirmed the veracity of the accounts of the witnesses particularly that the attack was done when the victim had his back against the accused-appellant. Given the clear presence of the qualifying aggravating circumstance of treachery, the award of exemplary damages of ₱30,000.00[62] is in place.

WHEREFORE, the Decision dated February 28, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03972, finding Wilson Roman **GUILTY** beyond reasonable doubt of murder is hereby **AFFIRMED with MODIFICATION** in that Wilson Roman is hereby sentenced to suffer the indivisible penalty of *reclusion perpetua* and that the award of civil indemnity is hereby raised to ₱75,000.00.

SO ORDERED.

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

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[60] NEW CIVIL CODE, Article 2224.

[61] NEW CIVIL CODE, Article 2230.

[62] *People v. Asis, supra* note 54, at 531.

SECOND DIVISION

[G.R. No. 199294. July 31, 2013]

RALPH LITO W. LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE SCOPE OF THE INQUIRY IS LIMITED TO QUESTIONS OF LAW; EXCEPTION.—** The narrow ambit of review prescribed under Section 1 of Rule 45, limiting the scope of our inquiry to questions of law only enforces our ordinary *certiorari* jurisdiction efficiently. By sparing the Court from the task of parsing through factual questions, we are able to swiftly dispose of such appeals. This rule, of course, admits of exceptions applicable to those rare petitions whose peculiar factual milieu justifies relaxation of the Rules such as when the Court of Appeals made erroneous inferences, arrived at a conclusion based on speculation or conjectures, or overlooked undisputed facts which, if duly considered, lead to a different conclusion.

2. **CRIMINAL LAW; REVISED PENAL CODE; SWINDLING (ESTAFA) UNDER ARTICLE 315, PAR. 2 (A); ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The Code defines estafa under Article 315, paragraph 2(a), the offense for which petitioner and Ragonjan stand accused. x x x This provision lays on the prosecution the burden of proving beyond reasonable doubt each of the following constitutive elements: (1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits; (2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud; (3) The offended party relied on such deceitful means to part with his money or property; and (4) The offended party suffered damage. There is no mistaking that the claim made by Ragonjan to Sy that Primelink was authorized to sell membership shares is false - Primelink held no license to sell securities at the time Sy bought a Club share on 10 October 1996 or afterwards.

Such alleged false representation, which Sy relied upon to buy the share, belongs to the category of false pretense of *qualification* (to sell securities) under Section 2(a) of Article 315. Unlike estafa under paragraph 1 (b) of Article 315 of the Code, estafa under paragraph 2(a) of that provision does not require as an element of the crime proof that the accused misappropriated or converted the swindled money or property. All that is required is proof of pecuniary damage sustained by the complainant arising from his reliance on the fraudulent representation. The prosecution in this case discharged its evidentiary burden by presenting the receipts of the installment payments made by Sy on the purchase price for the Club share.

3. COMMERCIAL LAW; THE REVISED SECURITIES ACT (B.P. 178); SELLERS OF SECURITIES SUCH AS NON-PROPRIETARY MEMBERSHIP CERTIFICATE ARE REQUIRED TO REGISTER WITH THE SECURITIES AND EXCHANGE COMMISSION (SEC) THE SALE OF SUCH SECURITIES AND OBTAIN A PERMIT TO SELL.— Contrary to petitioner's submission, there was a law effective at the time Sy bought the Club share on 10 October 1996, requiring sellers of securities such as the non-proprietary membership certificate sold by Primelink to Sy to register with the SEC the sale of such security and obtain a permit to sell. x x x The registration requirement under BP 178 applies to all sales of securities includ[ing] every contract of sale or disposition of a security," regardless of the stage of development of the project on which the securities are based. No amount of "industry practice" works to amend these provisions on pre-sale registration.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

We review[1] the ruling[2] of the Court of Appeals affirming petitioner's conviction for estafa.

The Facts

Petitioner Ralph Lito W. Lopez (petitioner) was President and Chief Executive Officer (CEO) of Primelink Properties and Development Corporation (Primelink), a real estate developer. On 4 July 1996, Primelink entered into a Joint Venture Agreement (Agreement) with Pamana Island Resort Hotel and Marina Club, Inc. (Pamana) to develop a ₱60 million exclusive residential resort with marina (Subic Island Residential Marina and Yacht Club [Club]), on a 15,000 square-meter portion of an island in Subic, Zambales (Club site).[3] Under the Agreement, Pamana, the Club site owner, undertook to keep the title over the island where the Club site is located free of encumbrances. Primelink, for its part, will provide capital and handle marketing concerns, among others.[4] The Club was slated for completion in July 1998. While promoting the Club locally[5] and abroad,[6] Primelink

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 31 January 2011 and Resolution denying reconsideration dated 9 November 2011, penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Ruben C. Ayson, concurring.

[3] Referred to as Pamana Island, measuring 56,000 square meters. The Club will include a "Clubhouse, residential units composed of low rise condominiums and town houses, and other recreational facilities." *Rollo*, p. 164.

[4] *Id.* at 166.

[5] On 16 July 1996 at the Shangri La Hotel and on 11 February 1997 at the Manila Peninsula Hotel, both in Makati City. *Id.* at 105.

[6] In an event in Singapore dubbed "Boat Asia 96." *Id.* at 57.

commenced selling membership shares as stipulated in the Agreement.

On 10 October 1996, private complainant Alfredo Sy (Sy), through one of Primelink's sales officers, Joy Ragonjan (Ragonjan), placed a reservation to purchase one Club share for ₱835,999.94 (payable in installments), executed the reservation agreement, and paid the reservation fee of ₱209,000. Sy fully paid the balance by 19 April 1998.

In March 2002, Sy filed a criminal complaint against petitioner and Ragonjan in the Pasig City Prosecutor's Office for estafa. The complaint was grounded on the fact that the Club remained undeveloped and Primelink failed to return Sy's payment despite demands to do so. Sy also discovered that Primelink had no license from the Securities and Exchange Commission (SEC) to sell securities.

The Pasig City Prosecutor found probable cause to indict petitioner and Ragonjan for violation of Article 315, paragraph 2(a) of the Revised Penal Code, as amended (Code)[7] and filed the Information[8] with the Regional Trial Court of Pasig City (trial

[7] Act No. 3815.

[8] Which alleged:

On or about October 10, 1996, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and mutually helping and aiding one another, by means of deceit and false pretenses executed prior to or simultaneously with the commission of fraud, did, then and there willfully, unlawfully[,] and feloniously defraud the complainant, Alfredo P. Sy, in the following manner, to wit: the said accused convinced the complainant to purchase a Membership Share in a residential marina and yacht club known as Subic Island Residential Marina and Yacht Club (Subic Island) worth ₱835,999.94, the complainant relied on the representation made by the accused that [1] Subic Island would be developed by Primelink and that [2] the latter was duly authorized to sell membership certificates. Believing in the said representation, the complainant paid the purchase price of one Membership Certificate. However, it turn[ed] out that accused sold to the complainant an unregistered and non-existing membership certificate in an undeveloped marina and ya[ch]t club, and accused once in possession of said amount, misappropriated, misapplied[,] and converted the same to their own personal use and benefit, to the damage and prejudice of the complainant, Alfredo P. Sy[,] in the amount of ₱835,999.94. (*Rollo*, p. 42)

court).[9] Ragonjan remained at large, leaving petitioner to face trial by himself.

During trial, Sy testified that Ragonjan assured him that Primelink was licensed to sell Club shares.[10] On cross-examination, Sy admitted dealing exclusively with Ragonjan for his reservation and purchase of the Club share.[11]

The defense presented Atty. Jaime Santiago (Santiago), Primelink comptroller and drafter of the Agreement, to testify on the circumstances leading to the sale of Club shares and petitioner's role in Primelink's decision to do so.

Petitioner also took the stand, testifying that the Club was a legitimate project of Primelink and Pamana but whose completion was rendered impossible by Pamana's breach of the Agreement, by, among others, mortgaging the Club site to Wesmont Bank. As a result, Primelink sued Pamana in the Regional Trial Court of Makati (Branch 59) for damages for breach of the Agreement.[12]

Petitioner admitted that Primelink sold unregistered shares. He invoked the Agreement as basis for the undertaking, adding that such is also an "industry practice."[13] On Ragonjan's dealings with Sy, petitioner stated that Primelink's sales agents were instructed to be "honest and candid" with prospective buyers on the status of the project and on Primelink's lack of license to sell Club shares.[14]

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[9] Docketed as Criminal Case No. 123300 and raffled to Branch 155.

[10] TSN (Alfredo Sy), 12 December 2003, p. 8.

[11] TSN (Alfredo Sy), 27 February 2004, pp. 7-8.

[12] TSN (Ralph Lopez), 8 December 2006, pp. 14, 18-26. The case was docketed as Civil Case No. 02-418. In its Decision dated 16 March 2006, the trial court ruled for Primelink and ordered Pamana to pay a total of ₱41 million as damages. On appeal, the Court of Appeals (CA G.R. CV No. 88775) affirmed the trial court with modification.

[13] TSN (Ralph Lopez), 13 December 2007, pp. 17-21.

[14] *Id.* at 27, 30.

The Ruling of the Trial Court

The trial court found petitioner guilty as charged, sentenced him to four years, two months and one day of *prision correccional* to twenty years of *reclusion temporal* and to indemnify Sy the amount of ₱835,999.94.[15] In the trial court's evaluation –

[t]he evidence on record indubitably shows that the elements of the subject offense are present in the case. Accused fraudulently offered to sell to private complainant a share over Subic Island [Club], while concealing from the former the material fact that x x x accused has yet to secure the requisite licenses and registration with the SEC to sell shares of the project and from the DENR and HLURB to develop and construct the same. Relying on the accused's misrepresentations, private complainant paid him the total amount of Php835,999.94, as consideration but he was never able to gain possession of a Certificate of Membership given accused's continued failure to proceed with the project. x x x.

x x x x x x x x x

[T]he act of deliberately misrepresenting to the private complainant that Primelink had the necessary authority or license to pre[-] sell shares in Subic Island [Club], and the act of collecting money from private complainant only to renege on the promise to turn over said share[] and for failure to return the money collected from the private complainant, despite several demands, are clearly acts attributable to herein accused Lopez and amount to estafa punishable under Article 315, paragraph 2(a), of the Revised Penal Code.[16]

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[15] The dispositive portion of the Decision, dated 24 August 2009, provides:

WHEREFORE, finding accused RALPH LITO W. LOPEZ GUILTY beyond reasonable doubt of the crime of Estafa under Article 315, par. 2(a) of the Revised Penal Code, he is sentenced to an indeterminate prison term of four (4) years, two (2) months and one (1) day of *prison correccional*, as minimum, to twenty (20) years of *reclusion temporal* as maximum. He is further ordered to indemnify the private complainant Alfredo Pe Sy the sum of Php835,999.94, with interest of twelve percent (12%) per annum from the date of filing of the Information in this case until the same is fully paid.

Meanwhile, considering that accused Joy Ragonjan remains at large, let an *alias* warrant against her issue forthwith. (*Rollo*, p. 68)

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

Petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's ruling *in toto*. According to the Court of Appeals —

> [t]he RTC correctly found that the Accused-Appellant is guilty beyond reasonable doubt of Estafa as all [its] elements are present. The Accused-Appellant made false representations, through his marketing officer, Ragonjan, by making Sy believe that the necessary license to sell or permit from the government agencies has been obtained by their company, Primelink, to sell membership shares in the [Club]. Sy, highly trusting of the misrepresentations of the Accused-Appellant and Ragonjan, willingly parted with his money and bought a membership share in the same. x x x.
>
> x x x x x x x x x
>
> [Were] it not for the Accused-Appellant's fraudulent machinations and false representations, Sy would not have parted with his money and would not be ripped-off of his hard-earned money in the amount of ₱835,999.94. x x x. It is also peculiar that no refund was made to the latter from the start of the trial until this time.[17]

Hence, this appeal under Rule 45.

Petitioner seeks a re-appraisal of the Court of Appeals' factual findings, pointing to facts allegedly overlooked which, if considered, would alter the case's disposition. He also assails the Court of Appeals' appreciation of conspiracy between him and Ragonjan as speculative, grounded on mere assumptions.[18]

The Office of the Solicitor General (OSG) prays for the denial of the petition. As a threshold objection, the OSG contests the propriety of reviewing questions of fact, considering that the office of a Rule 45 petition is limited to the review of questions of law only. On the merits, the OSG prays for affirmance of the Court of Appeals' ruling.

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[17] *Id.* at 21, 24.

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

The Issue

The question is whether the Court of Appeals erred in affirming petitioner's conviction for estafa under Article 315, paragraph 2(a) of the Code.

The Court's Ruling

We hold that the Court of Appeals committed no error in affirming petitioner's conviction for estafa.

Review of Questions of Fact Improper

We first resolve the threshold issue of the propriety of passing upon questions of fact in this review. The narrow ambit of review prescribed under Section 1 of Rule 45,[19] limiting the scope of our inquiry to questions of law only enforces our ordinary *certiorari* jurisdiction efficiently. By sparing the Court from the task of parsing through factual questions, we are able to swiftly dispose of such appeals. This rule, of course, admits of exceptions applicable to those rare petitions whose peculiar factual milieu justifies relaxation of the Rules such as when the Court of Appeals made erroneous inferences, arrived at a conclusion based on speculation or conjectures, or overlooked undisputed facts which, if duly considered, lead to a different conclusion.[20] As shown in the discussion below, however, none of these grounds obtain here. We thus proceed with our review without disturbing the Court of Appeals' factual findings.

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[19] "*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."

[20] *Eugenio v. People*, G.R. No. 168163, 26 March 2008, 549 SCRA 433; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79.

Elements of Estafa Under Article 315, paragraph 2(a)

The Code defines estafa under Article 315, paragraph 2(a), the offense for which petitioner and Ragonjan stand accused, as follows:

> *Swindling* (*estafa*). — Any person who shall defraud another x x x
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> 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.

This provision lays on the prosecution the burden of proving beyond reasonable doubt each of the following constitutive elements:

(1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits;

(2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud;

(3) The offended party relied on such deceitful means to part with his money or property; and

(4) The offended party suffered damage.

Elements of Use of, and Reliance on, False Pretenses by Petitioner and Sy, Respectively

The Information filed against petitioner and Ragonjan alleges that they conspired to use two false pretenses on Sy to defraud him on 10 October 1996, namely, that "[1] Subic Island [Club] would be developed by Primelink and that [2] the latter was duly authorized to sell membership certificates." We find merit

in petitioner's contention that the prosecution failed to prove the element of use of false pretense regarding the first allegation. Nevertheless, we find the evidence sufficient to prove the use of false pretense on the second allegation.

Allegation on the Club's Development not "False"

It is impossible to determine from the records the category of false pretense the prosecution wished the first allegation to belong. Undoubtedly, it concerns Primelink's *capability* to develop the Club. Use of false pretense of *capability* is, however, not penalized under Section 2(a) of Article 315. The category approximating the allegation in question is false pretense of *power* (to develop the Club). We proceed with our analysis using such category as frame of reference.[21]

Without need of passing upon the question whether Ragonjan's representations to Sy on 10 October 1996 bind petitioner, we resolve the threshold question whether her alleged statement that the Club will be finished by July 1998 was in the first place *false*. The Court of Appeals grounded its affirmative answer on the fact that the Club remained unfinished even after the lapse of its target completion date in July 1998. Section 2(a) of Article 315, however, requires that the false pretense be used "prior to or simultaneous with the execution of the fraud," that is, on 10 October 1996. The crux of this issue then, is whether before or at that time, Primelink possessed *no power* (capability) to develop the Club, rendering Ragonjan's statement false.

A review of the records compels a negative answer. When Sy reserved to buy a Club share on 10 October 1996, barely three months had passed after Primelink, a duly incorporated real estate developer, signed the Agreement with Pamana, another real estate developer, to develop the Club. Four months after Sy bought a Club share, Primelink promoted the Club here

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[21] The alleged false pretense could not pertain to Primelink's *business* as Primelink is a duly incorporated entity authorized to engage in real estate development. (*Rollo*, p. 38). See also *Primelink Properties and Development Corporation v. Lazatin-Magat*, 526 Phil. 394 (2006).

and abroad and continued selling Club shares.[22] All the while, Primelink released funds to finance the project's initial expenses, a portion of which Pamana was ordered to repay by a Makati court after the project was aborted.[23]

These facts negate the conclusion that on or before 10 October 1996, petitioner and Ragonjan *knew* that the Club was a bogus project. At that time, the Project was on-course as far as Primelink was concerned. It was only after 10 October 1996 that Primelink encountered problems with Pamana, rendering impossible the Club's completion.[24]

False Pretense on Primelink's Qualification to Pre-sell Club Shares Proven Beyond Reasonable Doubt

There is no mistaking that the claim made by Ragonjan to Sy that Primelink was authorized to sell membership shares is false — Primelink held no license to sell securities at the time Sy bought a Club share on 10 October 1996 or afterwards. Such alleged false representation, which Sy relied upon to buy the share, belongs to the category of false pretense of *qualification* (to sell securities) under Section 2(a) of Article 315.

Petitioner seeks exculpation for the use of such false pretense by raising the following arguments: (1) Ragonjan's representation to Sy does not bind him for lack of proof that he conspired with Ragonjan;[25] (2) the contract Sy entered into with Primelink was not a sale of a Club share but a reservation to buy one;[26] (3) even if the contract involved the sale of a Club share, petitioner is not liable because (a) Ragonjan's representation amounted to a warranty which, not having been reduced in writing as

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[22] See notes 5 and 6.

[23] See note 12.

[24] Petitioner testified that Primelink learned for the first time of the Club site's mortgage to Westmont Bank only in 1999 (TSN [Ralph Lopez], 8 December 2006, p. 22).

[25] *Rollo*, pp. 53, 54.

[26] *Id.* at 50.

required in the reservation agreement, does not bind Primelink,[27] and (b) at the time Sy bought the Club share, there was no law requiring Primelink to obtain a license from the SEC to sell Club shares.[28]

These contentions lack merit.

First. Petitioner was no bystander in Primelink's sale of unregistered shares. Santiago, Primelink's comptroller and drafter of the Agreement, testified as witness for petitioner that after Primelink's Board of Directors approved the sale of the unregistered Club shares, petitioner "encouraged and instructed" the sale of "many shares,"[29] no doubt to raise as much capital

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[27] *Id*.

[28] *Id*. at 49-54.

[29] The relevant portions of his testimony read:

Q - Mr. Witness, this case involves the sale to the Private Complainant of a membership share. Now, will you please tell us why did your company, Primelink through the accused Lopez, [sell] this membership share to the Private Complainant and what was the basis for such sale, if you know?

A - The JVA provides for the co-developer, Primelink Properties, and it is authorize[d] by the land owner to pre-sell certain condominium units and membership share[s] to preferred buyer[s] and I think this is embodied in the JVA, sir.

Q - You also mentioned earlier that you had a hand in the preparation of this JVA because one of your duties, among others, was to involve yourself also in the preparation of contracts regarding the project being undertaken by your company. Now, will you please tell us, if you know, the meaning of the word pre-selling under Article 10 of the JVA.

x x x x x x x x x

A - Pre-selling as the word connotes is the industry practice of peculiarity in the real estate business wherein membership shares and condominium units are offered to sell [sic] to the public to a preferred buyer prior to the registration of the project and issuance of the license to sell. x x x.

x x x x x x x x x

Q - You were the one who drafted the JVA?

A - I assisted in the preparation.

for the Club as possible. This was the context of Sy's purchase of a Club share from Primelink.

Q - You assisted in the drafting of JVA upon the Instruction of Primelink Board of Directors and accused as President and CEO?

A - Yes, sir.

Q - Considering, Mr. Witness, that you are supposed to invest substantial sums on this project, the stipulations that were contained in the JVA were reached after careful study and consultation with the Board and with the accused?

A - Yes, sir.

Q - Mr. Witness, you were careful in the drafting of the JVA since your purpose is to see to it that the interest of Primelink is protected?

A - Yes, sir.

Q - And, having finalized and completed the JVA, you were assured that the terms and conditions thereof were supposed to protect Primelink's interest?

A - Yes, sir.

Q - And, you also assured the Board of Directors of Primelink and the accused Mr. Lopez that the JVA is in order?

A - Yes, sir.

Q - On the part of Mr. Lopez before he affix[ed] his signature on the JVA he readily understood the terms and conditions of the JVA?

A - Yes, sir.

Q - So, Mr. Lopez is aware of the concept of pre-selling?

A - Yes, sir.

Q - So, when the JVA was signed and implemented, Primelink through the Board of Directors, and the accused as Primelink's CEO made its part [sic] to sell as many shares of the subdivision units under the concept of pre-selling as embodied in the JVA?

A - Yes, sir.

Q - In fact, Mr. Lopez, the accused, encouraged and instructed the selling of many shares under the concept of pre-selling?

A - Yes, sir.

Q - And, so it is under these conditions, Mr. Witness, that the complainant was sold with a one share, the subject share in this case?

A - Yes, sir.

x x x x x x x x x

Petitioner attempts to distance himself from the transaction between Ragonjan and Sy by claiming that Ragonjan violated standing company policy to be "candid" to buyers by disclosing Primelink's lack of license. We find this unpersuasive. In the first place, petitioner failed to present independent proof of such company policy, putting in serious doubt the veracity of his claim. Secondly, it is improbable for Ragonjan to take it upon herself to fabricate the serious claim that Primelink was a licensed securities dealer in violation of company policy, in the process risking her employment. It is more consistent with logic and common sense to hold that Ragonjan followed company policy in giving assurances to Sy that Primelink was licensed to sell Club shares. After all, Primelink stood to attract more investments if it presented itself to the public as a licensed securities dealer. Indeed, Sy was emphatic in his claim that he bought a Club share for ₱0.8 million because he was "convinced that there was a license to sell."[30]

Petitioner's direct hand in the unlicensed selling of Club shares, coupled with Ragonjan's position in Primelink's organizational and sales structure, suffices to prove petitioner's liability under the allegation of use of false pretense of qualification. With Santiago's testimony on petitioner's central role in the sale of unregistered Primelink shares, further proof of conspiracy between petitioner and Ragonjan is superfluous.

Second. There is no merit in the argument that Ragonjan's assurance to Sy of Primelink's status as a licensed securities dealer amounts to a warranty, and thus required, under the warranty clause of the reservation agreement, to be reduced in writing. The warranty clause, which provides —

Any representation or warranty made by the agent who handled this sale not embodied herein shall not bind the company, unless reduced

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Q - As a lawyer, Mr. Witness, you are of course aware that you have first to secure the pertinent licenses and registration with the HLURB and SEC before you undertake the project and to sell the project?

A - Yes, sir. (TSN [Jaime B. Santiago], 16 September 2005, pp. 13, 15, 16; 2 March 2006, pp. 8-10, 14) (emphasis supplied).

[30] TSN (Alfredo Sy), 12 December 2003, p. 8.

in writing and confirmed by the President or the Chairman of the Board.[31]

refers to warranties on the terms of the share sold, not to the capacity of Primelink to sell Club shares. Indeed, the fact that "the seller has the right to sell the thing at the time when ownership is to pass," is implied in sales,[32] dispensing with the need to expressly state such in the contract. Further, the clause operates to shield Primelink from claims of violation of unwritten warranties, not its officers from criminal liability for making fraudulent representation on Primelink's authority to sell Club shares.

Third. It is futile for petitioner to recast, at this late stage of the proceedings, the nature of the contract between Primelink and Sy as a "reservation agreement" and not a contract of sale. At no time during the trial did the defense present any evidence to support this theory, having consistently characterized the contract as a "pre-selling" of Club share.[33] Indeed, the very warranty clause in the reservation agreement petitioner invokes to exculpate himself refers to the transaction as "sale."

Fourth. Contrary to petitioner's submission, there was a law effective at the time Sy bought the Club share on 10 October 1996, requiring sellers of securities such as the non-proprietary membership certificate sold by Primelink to Sy[34] to register with the SEC the sale of such security and obtain a permit to sell. Relevant portions of Batas Pambansa Blg. 178 (BP 178), which took effect on 22 November 1982 and superseded by Republic Act No. 8799 only on 8 August 2000, provide:

Sec. 4. *Requirement of registration of securities*. — (a) No securities, x x x, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.

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[31] Records, p. 171.

[32] CIVIL CODE, Article 1547(1).

[33] TSN (Ralph Lopez), 8 December 2006, p. 17-18; 13 December 2007, pp. 17-21; TSN (Jaime Santiago), 16 September 2005, pp. 13-14, 16-17.

[34] TSN (Ralph Lopez), 28 May 2009, pp. 14-15.

x x x x x x x x x

Sec. 8. *Procedure for registration*. — (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities x x x.

x x x x x x x x x

If after the completion of the aforesaid publication, the Commission finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements and conditions for the protection of the investors have been complied with, x x x, *it shall as soon as feasible enter an order making the registration effective, and issue to the registrant a permit* reciting that such person, its brokers or agents, are entitled to offer the securities named in said certificate, with such terms and conditions as it may impose in the public interest and for the protection of investors. (Emphasis supplied)

The registration requirement under BP 178 applies to all sales of securities "includ[ing] every contract of sale or disposition of a security,"[35] regardless of the stage of development of the project on which the securities are based. No amount of "industry practice" works to amend these provisions on pre-sale registration.

Nor can petitioner rely on *G.G. Sportswear Mfg. Corp. v. World Class Properties, Inc*.[36] to evade criminal liability. That case involved an action for rescission and refund filed before the Housing and Land Use Regulatory Board (HLURB) by a condominium buyer against the developer for breach contract. The HLURB Arbiter rescinded the contract for lack of license of the developer to sell condominium units. The HLURB Board of Commissioners modified the Arbiter's ruling by denying rescission, holding, among others, that the developer's acquisition of license before the filing of the complaint mooted the prayer for rescission. On appeal, this Court affirmed. Here, Primelink

[35] Section 1(c), BP 178.

[36] G.R. No. 182720, 2 March 2010, 614 SCRA 75.

never acquired a license to sell from the SEC, unlike in *G.G. Sportswear*. Thus, *G.G. Sportswear* is clearly not applicable to the present case.

On the Element of Damage Sustained by Sy

Petitioner contends that Sy sustained damage only for ₱209,000, the amount he paid upon signing the reservation agreement on 10 October 1996 as alleged in the Information, and not ₱835,999.94, the price of the Club share. Alternatively, petitioner argues that he neither received nor profited from the payments made by Sy. Petitioner's contention would hold water if Sy did not buy a Club share. Sy, however, not only paid the reservation fee, which constituted five percent (5%) of the share price,[37] he also paid the balance in installments, evidenced by receipts the prosecution presented during trial.

Lastly, unlike estafa under paragraph 1(b) of Article 315 of the Code, estafa under paragraph 2(a) of that provision does not require as an element of the crime proof that the accused misappropriated or converted the swindled money or property. All that is required is proof of pecuniary damage sustained by the complainant arising from his reliance on the fraudulent representation. The prosecution in this case discharged its evidentiary burden by presenting the receipts of the installment payments made by Sy on the purchase price for the Club share.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 31 January 2011 and the Resolution dated 9 November 2011 of the Court of Appeals.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[37] Records, p. 171.

SECOND DIVISION

[G.R. No. 200895. July 31, 2013]

ROLANDO M. MENDIOLA, *petitioner, vs.* **COMMERZ TRADING INT'L., INC.,** *respondent.*

SYLLABUS

TAXATION; VALUE ADDED TAX (VAT); THE SELLER ON RECORD WILL BE LIABLE FOR THE PAYMENT OF VAT BASED ON THE OFFICIAL RECEIPT ISSUED; APPLICATION IN CASE AT BAR.— Under the MOA, petitioner requested respondent "to use the [latter's] name, office, secretary, invoice, official receipts and its facilities for the distribution and sale of Genicon products in the Philippines." Petitioner, who is a physician, made such request "solely for ethical and personal reasons." Accommodating and agreeing to petitioner's request, respondent, a VAT-registered entity, issued Official Receipt No. 11148 to evidence the sale of the Genicon laparoscopic instrument to PMSHI, and the payment by the latter of the purchase price. PMSHI, in turn, issued two checks in favor of respondent totaling ₱2,600,000.00. Clearly, based on respondent's records, it would appear that (1) it received ₱2,600,000.00 from PMSHI, which amount is subject to VAT as found by its external auditor and (2) it is the seller of the Genicon laparoscopic instrument. Therefore, petitioner should pay the VAT due on the sale, which would be computed based on the official receipt issued by respondent. To hold otherwise clearly operates to defraud the government of the correct amount of taxes due on the sale, and contravenes the Civil Code provision mandating "every person x x x [to] act with justice, give everyone his due, and observe honesty and good faith." While by agreement of the parties petitioner bears the economic burden for paying the VAT, the legal liability to pay the same to the BIR falls on respondent. Thus, since respondent, as the seller on record, will be liable for the payment of the VAT based on the official receipt it issued, we shall allow respondent to retain the ₱70,000.00 only for the purpose of paying forthwith, if it has not done so yet, this amount to the BIR as the estimated tax due on the subject sale.

APPEARANCES OF COUNSEL

Homer N. Mendoza for petitioner.
Langcay Soriano & Tatad Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 30 January 2012 Decision[2] of the Court of Appeals in CA-G.R. SP No. 110491. The Court of Appeals reversed the 27 May 2009 Decision[3] of the Regional Trial Court, Branch 255, Las Piñas City, which affirmed the 6 October 2008 Decision[4] of the Metropolitan Trial Court, Branch 79, Las Piñas City, in a collection suit filed by petitioner Rolando M. Mendiola against respondent Commerz Trading Int'l., Inc.

The Facts

Genicon, Inc. (Genicon) is a foreign corporation based in Florida, United States of America, which designs, produces, and distributes "patented surgical instrumentation focused exclusively on laparoscopic surgery."[5] Petitioner, a physician by profession, entered into a contract with Genicon to be its exclusive distributor of Genicon laparoscopic instruments in the Philippines, as evidenced by a Distribution Agreement dated 18 July 2007.[6] Petitioner, in turn, entered into a Memorandum

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

[2] *Rollo*, pp. 205-216. Penned by Associate Justice Francisco P. Acosta with Associate Justices Magdangal M. De Leon and Angelita A. Gacutan concurring.

[3] *Id.* at 105-111. Penned by Judge Raul Bautista Villanueva.

[4] *Id.* at 68-72. Penned by Judge Pio M. Pasia.

[5] http://geniconendo.com/?page_id=2 (last visited 29 July 2013).

[6] CA *rollo*, pp. 53-64.

of Agreement (MOA)[7] with respondent to facilitate the marketing and sale of Genicon laparoscopic instruments in the Philippines. Under the MOA, respondent would be compensated for ₱100,000.00 "[f]or the use of [respondent's] name, office, secretary, invoices, official receipts and facilities x x x for every sale of [a] complete set of Genicon laparoscopic instruments x x x."[8]

Respondent sent a price quotation to Pampanga Medical Specialist Hospital, Inc. (PMSHI), which thereafter agreed to purchase a Genicon laparoscopic instrument for Two Million Six Hundred Thousand Pesos (₱2,600,000.00). Then, petitioner ordered the laparoscopic instrument from Genicon, which in turn shipped the medical equipment to the Philippines. Respondent undertook the release of the laparoscopic instrument from the Bureau of Customs and subsequently delivered the same to PMSHI.

PMSHI made the following payments to respondent: (1) ₱520,000.00 per PMSHI Check Voucher No. 2448 dated 1 February 2007, and to which respondent issued Official Receipt No. 11148; and (2) ₱2,080,000.00 per PMSHI Check Voucher No. 2419 dated 6 February 2007. From the total amount of ₱2,600,000.00 paid by PMSHI to respondent, the latter's president Joaquin Ortega deducted ₱100,000.00 as respondent's compensation for its services pursuant to the MOA. Respondent remitted to petitioner ₱2,430,000.00 only, instead of ₱2,500,000.00.

Despite petitioner's repeated demands, respondent failed to remit the remaining balance of ₱70,000.00 from the proceeds of the sale of the laparoscopic instrument. Consequently, petitioner filed a collection suit against respondent with the Metropolitan Trial Court, Branch 79, Las Piñas City (MeTC).

In its Answer, respondent countered that petitioner had no cause of action because it did not owe petitioner any amount.

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[7] *Id.* at 65-68.

[8] *Id.* at 65.

Respondent alleged that the case was a pre-emptive measure taken by petitioner in anticipation of the collection suit respondent would file for over payment of the purchase price of the laparoscopic instrument. Respondent claimed that the unremitted amount of ₱70,000.00 represented a portion of the ₱267,857.14 Expanded Value Added Tax (EVAT) which was erroneously and inadvertently credited or remitted by respondent to petitioner's account.

The MeTC rendered its Decision of 6 October 2008 in favor of petitioner. The MeTC held that "respondent has no right to retain the ₱70,000.00 x x x. [Respondent] had been duly compensated [for] its work done. It is not its duty to pay any government taxes in whatever form because it is clearly a responsibility of the buyer."[9]

The dispositive portion of the MeTC decision reads:

> WHEREFORE, the Court hereby renders judgment in favor of the plaintiff ordering the defendant to pay plaintiff the sum of ₱70,000.00 as actual damages plus 12% per annum beginning June, 2007 until the amount is fully paid. The defendant is also ordered to pay plaintiff reasonable attorney's fees of ₱20,000.00 and costs of suit.
>
> SO ORDERED.[10]

Respondent appealed to the Regional Trial Court, Branch 255, Las Piñas City (RTC). In its 27 May 2009 Decision, the RTC sustained the MeTC, holding that the MOA is the law between the parties. Under the MOA, "there was no right or authority given to [respondent] to retain a portion of the proceeds of any sale coursed through or obtained by it for taxation purposes."[11]

The dispositive portion of the RTC decision reads:

> WHEREFORE, the foregoing considered, the herein appeal of the defendant-appellant Commerz Trading International, Inc. is

[9] *Rollo*, p. 71.

[10] *Id.* at 72.

[11] *Id.* at 109.

DENIED for lack of merit. Accordingly, the DECISION dated 06 October 2008 rendered by the Metropolitan Trial Court of Las Piñas City, Branch 79 in Civil Case No. 7645 is affirmed *in toto*.

SO ORDERED.[12]

Respondent appealed to the Court of Appeals, which reversed the RTC in its Decision of 30 January 2012.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals reversed the RTC and ruled in favor of respondent. The Court of Appeals found respondent, a VAT-registered entity, as the seller/importer of the laparoscopic instrument and thus, is the person liable for the payment of the VAT. The Court of Appeals held that respondent "made the sale to PMSHI, x x x [and thus] is liable for the payment of EVAT albeit [respondent] is, per the Memorandum of Agreement, only the marketer of the medical product."[13] Assuming that the importation of the laparoscopic instrument was the taxable transaction, "it was not disputed x x x that it was [respondent] which arranged the importation of the medical equipment from Genicon in the U.S.A. and undertook the processing and release of the same before the Bureau of Customs."[14]

The Court of Appeals likewise reversed the RTC's award of interest and attorney's fees. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the instant Petition is GRANTED. The Decision dated 27 May 2009 of the Regional Trial Court is REVERSED and SET ASIDE.

Respondent Rolando M. Mendiola is hereby ORDERED to reimburse the Petitioner the sum of ₱197,857.14 within five (5)

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[12] *Id.* at 111.

[13] *Id.* at 211.

[14] *Id.* at 212.

days from receipt of finality of this decision. Petitioner is thereafter ORDERED to reflect the reimbursement in its EVAT Return for the current quarter to be submitted to the Bureau of Internal Revenue and pay the same to the latter's authorized collecting agency immediately within the next monthly pay period as provided under the NIRC.

Petitioner and Respondent are ORDERED to submit their compliance thereto within fifteen (15) days from receipt of finality of this decision.

SO ORDERED.[15]

The Issues

Petitioner raises the following issues:

1. Whether respondent has the right to retain the balance of the proceeds of the sale in the amount of ₱70,000.00; and
2. Whether petitioner is entitled to the award of interest and attorney's fees.

The Ruling of the Court

We deny the petition.

There is no dispute that the ₱70,000.00 respondent withheld from petitioner formed part of the proceeds of the sale of the Genicon laparoscopic instrument.

Respondent, however, claims that the ₱70,000.00 represents a portion of the total VAT due[16] from the Genicon transaction which is allegedly petitioner's obligation under paragraph V of

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[15] *Id.* at 215.

[16] Respondent claims that the total tax due is ₱267,857.14 based on the certification issued by its retained accountant. (*Id.* at 36-37; Answer, paragraph 5)

the MOA which states: "All taxes/expenses and expenses related to Genicon transactions shall be the responsibility of [petitioner]."[17]

Basic is the principle that a contract is the law between the parties,[18] and its stipulations are binding on them, unless the contract is contrary to law, morals, good customs, public order or public policy.[19] Indeed, paragraph V of the MOA obligates petitioner to pay the taxes due from the sale of the Genicon laparoscopic instrument. Petitioner admits that he is the one "responsible in the payment of the EVAT and not the respondent, who merely acted as the marketer"[20] of the Genicon laparoscopic instrument. Hence, as between petitioner and respondent, petitioner bears the burden for the payment of VAT.

The question now is whether respondent is authorized under the MOA to withhold a specific amount from the proceeds of the sale of the Genicon laparoscopic instrument as tax due from petitioner.

The MOA is silent on this matter. The MOA does not expressly allow respondent to collect or withhold from petitioner any amount from the sale of the Genicon laparoscopic instrument for taxation purposes.

However, the same agreement (1) allows respondent to issue official receipts on which VAT should have been computed and included in the purchase price, and (2) obligates petitioner to pay any tax due on the sale.

Under the MOA, petitioner requested respondent "to use the [latter's] name, office, secretary, invoice, official receipts and its facilities for the distribution and sale of Genicon products in the Philippines."[21] Petitioner, who is a physician, made such

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[17] CA *rollo*, p. 66.

[18] *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, 25 November 2009, 605 SCRA 370, 380.

[19] Article 1409 of the Civil Code which refers to inexistent and void contracts.

[20] *Rollo*, p. 20.

[21] CA *rollo*, p. 65. Second Whereas clause of the MOA.

request "solely for ethical and personal reasons."[22] Accommodating and agreeing to petitioner's request, respondent, a VAT-registered entity, issued Official Receipt No. 11148 to evidence the sale of the Genicon laparoscopic instrument to PMSHI, and the payment by the latter of the purchase price. PMSHI, in turn, issued two checks in favor of respondent totaling ₱2,600,000.00.[23]

Clearly, based on respondent's records, it would appear that (1) it received ₱2,600,000.00 from PMSHI, which amount is subject to VAT as found by its external auditor and (2) it is the seller of the Genicon laparoscopic instrument. Therefore, petitioner should pay the VAT due on the sale, which would be computed based on the official receipt issued by respondent. To hold otherwise clearly operates to defraud the government of the correct amount of taxes due on the sale, and contravenes the Civil Code provision mandating "every person x x x [to] act with justice, give everyone his due, and observe honesty and good faith."[24] While by agreement of the parties petitioner bears the economic burden for paying the VAT, the legal liability to pay the same to the BIR falls on respondent.

Thus, since respondent, as the seller on record, will be liable for the payment of the VAT based on the official receipt it issued, we shall allow respondent to retain the ₱70,000.00 only for the purpose of paying forthwith, if it has not done so yet, this amount to the BIR as the estimated tax due on the subject sale. There remains a dispute on the computation of the correct amount of VAT because respondent allegedly issued an official receipt[25] only in the amount of ₱520,000.00, instead of the ₱2,600,000.00 purchase price. Considering this, and the foregoing findings, the BIR must be informed of this Decision for its appropriate action.

We find the resolution of the other issue unnecessary.

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[22] *Id.*

[23] As indicated in Check Voucher Nos. 2448 and 2419. *Id.* at 71-72.

[24] Article 19 (Human Relations).

[25] CA *rollo*, p. 73.

WHEREFORE, we **DENY** the petition.

Let a copy of this Decision be forwarded to the Bureau of Internal Revenue for its appropriate action.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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INDEX

(7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Bank of the Phil. Islands *vs*. Sarabia Manor Hotel Corp., G.R. No. 175844, July 29, 2013) p. 420

(Manila Bankers Life Insurance Corp. *vs*. Aban, G.R. No. 175666, July 29, 2013) p. 404

Petition for review on certiorari to the Supreme Court under Rule 45 — Limited only to questions of law; exceptions. (Lopez *vs*. People, G.R. No. 199294, July 31, 2013) p. 839

(Alicando *vs*. People, G.R. No. 181119, July 31, 2013) p. 638

(Yoshizaki *vs*. Joy Training Center of Aurora, Inc., G.R. No. 174978, July 31, 2013) p. 609

(Philman Marine Agency, Inc. *vs*. Cabanban, G.R. No. 186509, July 29, 2013) p. 454

(Bank of the Phil. Island *vs*. Sarabia Manor Hotel Corp., G.R. No. 175844, July 29, 2013) p. 420

(Recio *vs*. Heirs of Sps. Aguedo and Maria Altamirano, G.R. No. 182349, July 24, 2013) p. 126

(Asian Terminal, Inc. *vs*. Philam Insurance Co., Inc., G.R. No. 181163, July 24, 2013) p. 78

Points, issues, theories and arguments — Issue of non-payment of just compensation is within the primary, original and exclusive jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB) which cannot be raised for the first time on appeal. (Sps. Dycoco *vs*. Court of Appeals, G.R. No. 147257, July 31, 2013) p. 550

Tenancy relationship — Must have the following elements: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is a personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee. (Heirs of Santiago Nisperos *vs*. Nisperos-Ducusin, G.R. No. 189570, July 31, 2013) p. 691

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and finally for destruction. (People *vs*. Clara, G.R. No. 195528, July 24, 2013) p. 259

— The saving clause provided under Sec 21(a) of the Implementing Rules and Regulations (IRR) that non-compliance with the legal requirement shall not render void and invalid seizures of and custody over the items is applicable only if the prosecution was able to prove the existence of justifiable grounds and preservation of the integrity and evidentiary value of the items. *(Id.)*

Illegal possession of dangerous drugs — The following elements must be present: (1) the accused is in possession of an item or object which is identified to be prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People *vs*. Posing, G.R. No. 196973, July 31, 2013) p. 788

— The requirement of authentication may be excused: (1) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (2) when the genuineness and authenticity of the actionable document have not been specifically denied under oath by the adverse party; (3) when the genuineness and authenticity of the document have been admitted; or (4) when the document is not being offered as genuine. *(Id.)*

Public documents — As enumerated under Section 19, Rule 132 of the Rules of Court, are self-authenticating and require no further authentication in order to be presented as evidence in court. (Asian Terminal, Inc. *vs.* Philam Insurance Co., Inc., G.R. No. 181163, July 24, 2013) p. 78

EMPLOYER-EMPLOYEE RELATIONSHIP

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— Include the determination of the continuing necessity of employee's services. *(Id.)*

EMPLOYMENT

Regular employment — Extension of the employment of a project employee long after the supposed project has been completed removes the employee from the scope of a project employee and makes him a regular employee. (D.M. Consunji Corp. *vs.* Bello, G.R. No. 159371, July 29, 2013) p. 335

— The successive re-engagement of the employee in order to perform the same kind of work firmly manifested the necessity and desirability of his work in the company's usual business. *(Id.)*

ESTAFA

Estafa by means of deceit — A *prima facie* presumption of deceit arises when a check is dishonored for lack or insufficiency of funds. (Sps. Gaditano *vs*. San Miguel Corp., G.R. No. 188767, July 24, 2013) p. 180

— Elements of the crime are: (1) the accused used fictitious name or false pretense that he possesses the power, influence, qualifications, property, credit, agency, business or imaginary transaction, or other similar deceits; (2) the accused used such deceitful means prior to or simultaneous with the execution of the fraud; (3) the offended party relied on such deceitful means to part with his money or property; and (4) the offended party suffered damage. (Lopez *vs*. People, G.R. No. 199294, July 31, 2013) p. 839

— The fraud or deceit employed by the accused in issuing a worthless check is penalized. (Sps. Gaditano *vs*. San Miguel Corp., G.R. No. 188767, July 24, 2013) p. 180

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Application — The absence of opposition from government agencies is of no controlling significance because the State cannot be estopped by the omission, mistake or error of its officials or agents, nor is the Republic barred from assailing the decision granting the petition for correction of entries if, on the basis of the law and evidence on record, such petition has no merit. (Police Senior Superintendent Macawadib *vs*. Phil. National Police Directorate for Personnel and Records Management, G.R. No. 186610, July 29, 2013) p. 484

EVIDENCE

Best evidence rule — No evidence is admissible other than the original document itself, unless the offeror proves: (1) the existence or due execution of the original; (2) the loss and destruction of the original, or the reason for its non-production in court; and (3) the absence of bad faith on

INJUNCTION

Concept — Injunction is not designed to protect contingent or future rights. (Province of Cagayan *vs.* Lara, G.R. No. 188500, July 24, 2013) p. 172

Writ of — Would be issued upon the satisfaction of two (2) requisites, namely: (1) the existence of a right to be protected; and (2) act which is violative of the said right. (Province of Cagayan *vs.* Lara, G.R. No. 188500, July 24, 2013) p. 172

INSURANCE

Incontestability clause — An insurer is given two (2) years from the effectivity of a life insurance contract and while the insured is alive to discover or prove that the policy is void *ab initio* or is rescindable by reason of the fraudulent concealment or misrepresentation of the insured or his agent. (Manila Bankers Life Insurance Corp. *vs*. Aban, G.R. No. 175666, July 29, 2013) p. 404

Insurance contract — A contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the insured's interest. (Manila Bankers Life Insurance Corp. *vs*. Aban, G.R. No. 175666, July 29, 2013) p. 404

Rescission of contract of insurance — Fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract. (Manila Bankers Life Insurance Corp. *vs*. Aban, G.R. No. 175666, July 29, 2013) p. 404

Right of subrogation — 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. (Asian Terminal, Inc. *vs*. Philam Insurance Co., Inc., G.R. No. 181163, July 24, 2013) p. 78

JUDGES

— The filing of an applicant's bond executed to the party against whom the application for receivership is presented is mandatory and the consent of the other party is of no moment, on the other hand, the requirement of a receiver's bond rests upon the discretion of the court. *(Id.)*

— The power to appoint a receiver should not be exercised when it is likely to produce irreparable injustice or injury to private rights and the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the person requesting for receivership. *(Id.)*

— Where the effect of the appointment of a receiver is to take real estate out of the possession of the defendant before final adjudication of the rights of the parties, the appointment should be made only in extreme cases. *(Id.)*

Petition for — May be granted only when the circumstances so demand, either because the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired, and that being a drastic and harsh remedy. (Tantano *vs*. Espina-Caboverde, G.R. No. 203585, July 29, 2013) p. 497

RECONSTITUTION OF TITLE

Publication requirements — Publication means the actual circulation or release of the issue of the Official Gazette on which the notice of the petition is printed, for publication without actual circulation of the printed material is worthless. (Republic *vs*. De Asis, Jr., G.R. No. 193874, July 24, 2013) p. 245

— Strict compliance with the publication requirement is required by law and any defect thereon renders null and void the entire proceedings before the Regional Trial Court for lack of jurisdiction. *(Id.)*

— The thirty-day period that precedes the scheduled hearing should be reckoned from the time of the actual circulation or release of the last issue of the Official Gazette, and not on the date of its issue as reflected on its front cover. *(Id.)*

— To be valid, it requires: (1) meeting of minds of the parties to transfer ownership of the thing sold in exchange for a price; (2) the subject matter, which must be a possible thing; and (3) the price certain in money or its equivalent. (Recio*vs*. Heirs of Sps. Aguedo and Maria Altamirano, G.R. No. 182349, July 24, 2013) p. 126

Contract to sell real property on installment basis — Non-payment of installment does not warrant rescission of contract but rather an event that prevents the supposed seller from being bound to convey title to the supposed buyer. (Sps. Bonrostro *vs*. Sps. Luna, G.R. No. 172346, July 24, 2013) p. 1

SECURITIES ACT, REVISED (B.P. BLG. NO. 178)

Sale of securities — Sellers of securities such as non-proprietary membership certificate are required to register with the Securities and Exchange Commission, the sale of such securities and obtain a permit to sell. (Lopez *vs*. People, G.R. No. 199294, July 31, 2013) p. 839

SELF-DEFENSE

As a justifying circumstance — Belied by the nature, number and location of the wounds inflicted on the victim since the gravity of said wounds is indicative of a determined effort to kill and not just to defend. (People *vs*. Ramos, G.R. No. 190340, July 24, 2013) p. 193

— The following elements must be proved: (1) unlawful aggression on 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. (People *vs*. Roman, G.R. No. 198110, July 31, 2013) p. 817

(People *vs*. Ramos, G.R. No. 190340, July 24, 2013) p. 193

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